

SOCIETY OF ADVOCATES OF NAMIBIA
(Member of the International Bar Association)

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PRESS RELEASE

In a recent media release issued by the Minister of Trade and Industry, Dr Hage Geingob ("the Minister"), criticism was levelled against an order handed down by the High Court of Namibia earlier this month concerning an application initiated by Wal-Mart Stores Incorporated, and to which application the Minister was joined as a respondent.

The Minister, *inter alia*, expressed disappointment with the order, and stated (and quoting verbatim from the media release provided to the Society of Advocates of Namibia ["the Society"]) that -

- "I am disappointed at the judgment, which has once again restated the non-importance in the eyes of the court, of the broader issues around SMEs, employment creation, local participation and the right of the Minister of Trade and Industry to safeguard local companies from undue completion (sic) in the retail industry as per the Government Gazette Notice 75"; and
- "The judgement which may be construed as a blanket sanction by the High Court to Wal-Mart Stores Incorporated to commence with operations by taking over all companies under Massmart Holdings ... without awaiting the appeal which we have lodged, may appear as a retention of the apartheid legacy"; and
- "However, I am a strong believer in our justice system and fair play, for which we fought and sacrificed our lives, so that the psychosis of apartheid cannot haunt us in this country after 21 years".

The Minister's criticism of the High Court order received wide media coverage (also on the international plane), and was levelled before the High Court handed down reasons for its order.

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The Minister's criticism was not only unfortunately worded, but given the fact that it contained sweeping statements before the reasons for the High Court's order became available, also premature and irresponsible. His comments could be construed by the ordinary person on the street as implying that the High Court was somehow promoting the "*retention of the apartheid legacy*" and contributing to the "*psychosis of apartheid*". The seriousness of this matter is underscored by the fact that it is the paramount function of the High Court to uphold the Namibian Constitution, which very Constitution condemns the practise and ideology of apartheid in the strongest of terms.

The right to fairly and reasonably criticise a judgment avails any person - but such criticism should be accurate and fair, especially bearing in mind that the judiciary cannot enter into public controversy and cannot reply to criticism. Moreover, when a high-profile politician criticizes a High Court order he or she should appreciate that, if the words used are not carefully chosen, they may be taken out of context and published internationally, tarnishing Namibia's good name and reputation.

The High Court has served, and will continue to serve, a pivotal role in upholding the fundamental rights and freedoms enshrined in Chapter 3 of the Namibian Constitution and in impartially and independently administering justice. The Namibian Constitution expressly prohibits a member of the Cabinet from interfering with judges in the exercise of their judicial functions and all organs of the State are required to accord such assistance to the Courts as may be required to protect their independence, dignity and effectiveness, subject to the terms of the Namibian Constitution or any other law.

The Minister's criticism, in the respects highlighted above (and without commenting on the balance of the media release), was neither accurate nor fair, infringed the dignity of the High Court and is decried by the Society.

DATED at WINDHOEK this 22nd day of JUNE, 2011.

Adv R Töttemeyer, SC

VICE-PRESIDENT

SOCIETY OF ADVOCATES OF NAMIBIA