

EXPLICATION OF THE RULE OF LAW IN BOTSWANA JUDICATURE WITH REGARD TO NATURAL JUSTICE

Dr. Nico P. Swartz

Department of Law, Faculty of Social Sciences
University of Botswana

ABSTRACT

The Courts in Botswana have evolved a salutary practice over time, natural justice dictates that in order to ensure a fair and just trial the magistrate should on the accused's first appearance and before a plea is taken, inform the of his right to legal representation. The right to legal representation is a fundamental right in the Court process that should be explained to every accused person, whether he be literate or illiterate. The right to legal representation is a sine qua non for any fair hearing to which an applicant also has a constitutional right. Also, when a presiding judge or magistrate become agitated at an appellant's unbecoming demeanour in Court, the judge or magistrate's language should at all times be measured and in keeping with the Court's dignity. A judge should be careful not to let a judicial decision assume what might be regarded as a tone of partisan argument. On the other hand, if bias is inferred by litigants to a case, then there must be reasonable evidence for such a claim. It would be unfortunate if the mere vague suspicions of whimsical, capricious and unreasonable people should be made a standard to regulate the determination of recusal in a case. Mere flimsy, elusive, and morbid suspicions should not be permitted to form a ground for recusal.

Keywords: Constitutionalism, rule of law, natural justice, magna carte of 1215, nemo iudex in sua causa, audi alteram partem rule.