



# JUDICIAL EDUCATION NEWSLETTER SOUTH AFRICA

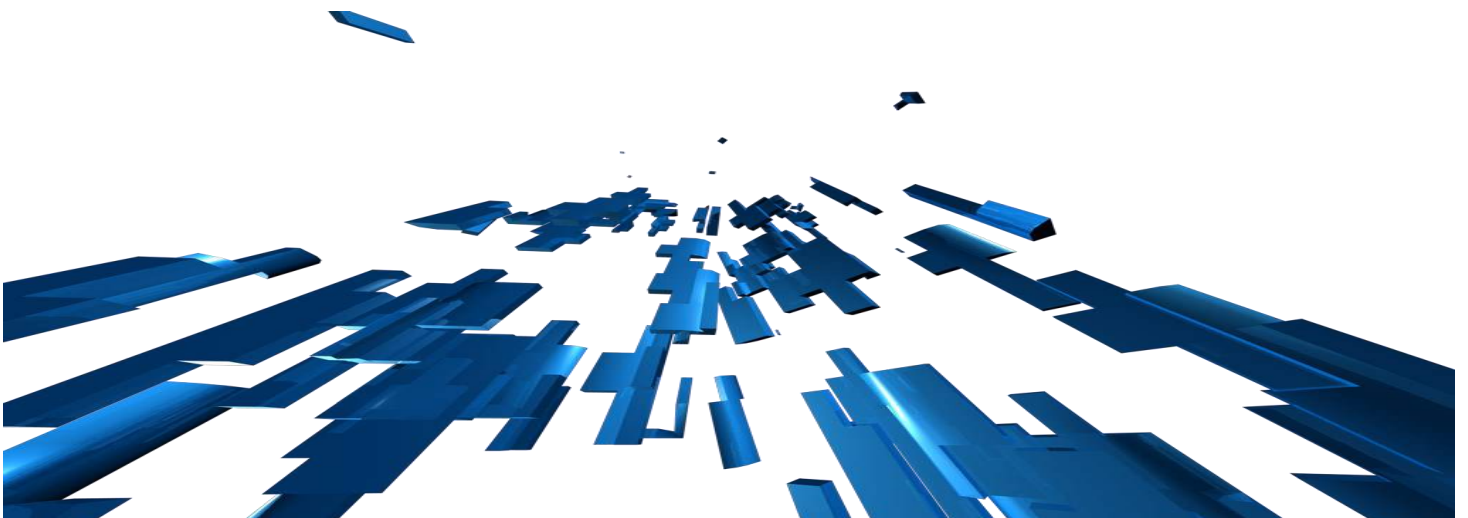
DECEMBER 2019 | ISSUE 6



# TABLE OF CONTENTS



|     |   |       |
|-----|---|-------|
| 1.  | EDITORIAL TEAM.....   | 2     |
| 2.  | FROM THE DESK OF THE CEO.....   | 3     |
| 3.  | FROM THE DESK OF THE EDITOR-IN-CHIEF.....   | 4     |
| 4.  | NORMS AND STANDARDS CORNER.....   | 5     |
| 5.  | RECENT JUDGEMENTS AND COMMENTS.....   | 7-9   |
| 6.  | S 67 FAILURE OF ACCUSED TO APPEAR ON BAIL.....  | 10    |
| 7.  | PROPER PROCEDURE FOR EVICTIONS IN THE MAGISTRATES COURTS,<br>IN TERMS OF SECTION 4 OF PREVENTION OF ILLEGAL EVICTIONS<br>AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998(PIE)..... | 11-13 |
| 8.  | MAGISTRATES CELEBRATING WORLD AIDS DAY 2019.....  | 13-16 |
| 9.  | NEW SAJEI INITIATIVES .....   | 16    |
|     | 9.1 WILDLIFE TRAFFICKING COLLOQUIUM.....  | 16-19 |
|     | 9.2 HUMAN RIGHTS WEEK 2019.....   | 20-21 |
|     | 9.3 SUPPORT TO FOREIGN JURISDICTIONS.....   | 22    |
|     | 9.4 REGIONAL TRAINING MANUAL ON HIV/AIDS,<br>TB AND HUMAN RIGHTS.....   | 23    |
|     | 9.5 JUDICIAL SKILLS FOR TRADITIONAL LEADERS.....  | 24    |
| 10. | LIST OF STRUCK OFF LEGAL PRACTITIONERS.....   | 25-33 |
| 11. | UPCOMING WORKSHOPS.....   | 34    |





## Editorial Committee

- Mr Vincent Ratshibvumo - Editor-in-Chief (Regional Magistrate)
- Mr Dario Dosio – Regional Magistrate
- Ms Shanaaz Mia - District Magistrate
- Ms Jinx Bhoola – Judicial Educator
- Dr Gomolemo Moshoeu – SAJEI Chief Executive Officer (CEO)
- Ms Poso Mogale – Executive Support to the CEO

## Contributors

- Mr Vincent Ratshibvumo
- Mr Nditsheni Nemaqwarani
- Ms Kwenadi Ledwaba
- Dr Gomolemo Moshoeu
- Ms Vuyo Noncembu
- Ms Poso Mogale
- Ms Teresa Horne
- Mr Edmund Ngubane

## Editorial Enquiries

Telephone: +27 10 493 2621

Email: [pmogale@judiciary.org.za](mailto:pmogale@judiciary.org.za)



@OCJ\_RSA



Judiciary RSA



@OCJ\_RSA



TheSouthAfricanJudiciary





**Dr Gomolemo Moshoeu**

**CEO of SAJEI**

Welcome to issue 6 of SAJEI Newsletter. It is in deed credible that this publication has grown irrespective of the slow pace of contributions. We hope that in the new year, SAJEI will receive more contributions from the Magistrates. For the Magistrates who have contributed to the Newsletter, SAJEI greatly appreciates your unwavering support. Prosperity and Blessings for the forthcoming year.



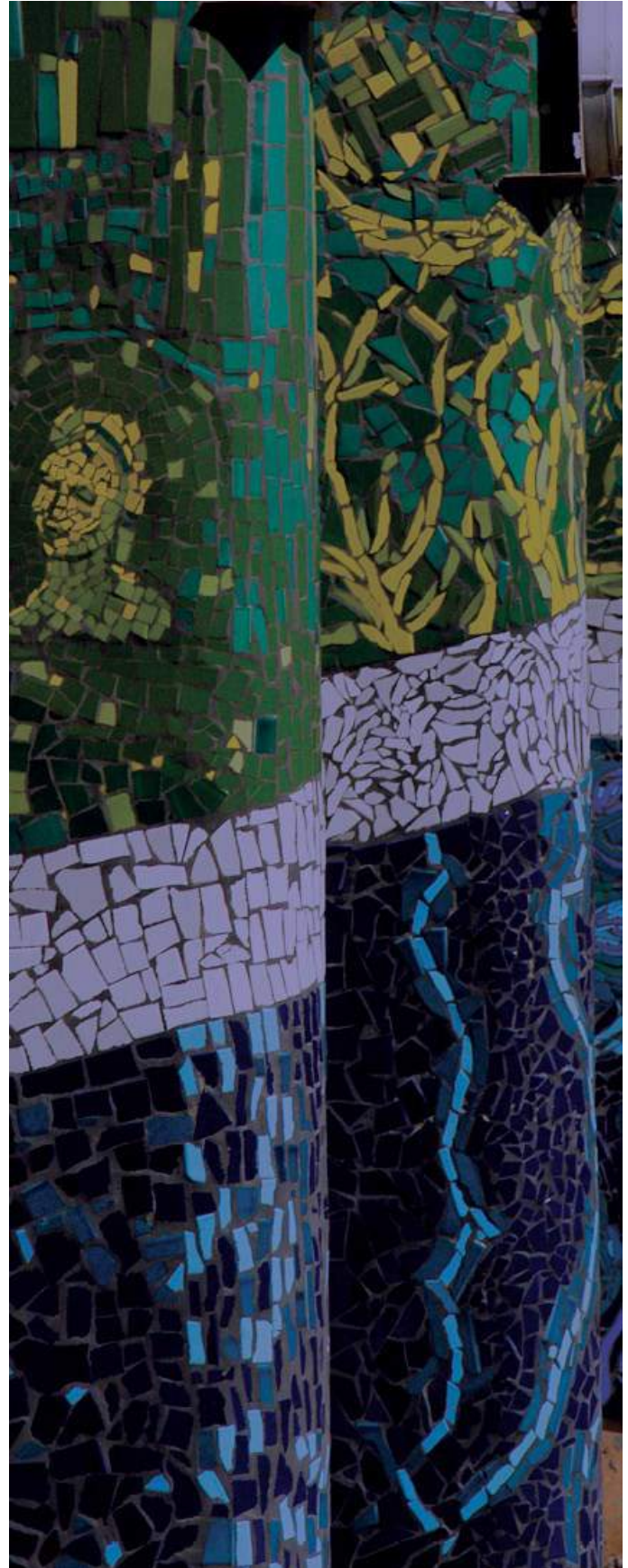
**Mr TV Ratshibvumo**

**Editor-in-Chief**

The holidays are upon us. This could be the last time that Magistrates take vacation leave under the current regulations. New regulations to be published on 20 December 2019 come into operation on 01 January 2019. In terms of the new dispensation, if Magistrates do not take vacation leave in three years, they will forfeit their leave credit. In so doing, Magistrates will be forced to go on leave.

On that note, I encourage all my colleagues who still have leave credit to make use of it over the remaining few days before the new dispensation. This is because with the kind of work we do, we deserve some holiday. I know that with no salary increase in the horizon, we may not have money to spend on holiday. However, spending time at home with loved ones, taking a break from hearing the gruesome crimes perpetuated to our people every day is a well-deserved break and can help reduce distress.

I wish all of you Happy Holidays and Merry Christmas. Come back in the New Year alive, safe and refreshed. God bless the Magistrates!!!





## Norms and Standards Corner

Extract from Norms and Standards issued by the leadership of the Judiciary:

- I. Judicial officers shall at all times strive to deliver quality justice as expeditiously as possible in all cases.
- II. It is not that there is a significant difference in the manner which courts and the Constitutional court, the Supreme Court of Appeal and Specialist Court (the Labour Courts, Labour Appeal Courts, Land Claims Court and the Competition Appeal Court) perform their work, as well as the case loads they carry, the standards set out herein must be applied within that context. The Head of each Court must ensure that Judicial Officers are always available to handle cases.
- III. The Head of each Court will be responsible for determining the sittings of each court, subject to the directives and oversight of the Chief Justice.
- IV. Trial courts should strive to sit for a minimum of 4.5 hours per day and all Judicial Officers should strictly comply with court hours, save where, for good reason, this cannot be done.
- V. In the event that a Judicial Officer should become available eg. Where the roll collapses, the Judicial Officer should make him or a designated Judicial Officer.



## RECENT CASES OF INTEREST TO JUDICIAL OFFICERS



**Mr TV Ratshibvumo**  
**Regional Magistrate**

### I. COMMON PURPOSE

***Tshabalala v The State; Ntuli v The State* ([2019] ZACC 48, Date: 11 December 2019, Constitutional Court).**

The doctrine of common purpose for crime of rape. The appellants were part of a big group that terrorised Umthambeka section of Tembisa in Gauteng one night in 1998. Eight women were raped from various houses that night by some from the group while others were interested in robbing the victims and others were on the “lookout” while their friends perpetrated the crimes.

They were convicted of the various crimes including all the charges of rape even though there was no evidence that each one of them raped each and every one of the victims. The conviction was based on the doctrine of common purpose. On appeal, a member of the group and a co-accused during the trial, Mr. Phetoe appealed and had his convictions on rape charges set aside because the SCA held that the doctrine of common purpose cannot be applied on charges of rape (see *S v Phetoe* 2018 (1) SACR 593 (SCA)). Spurred by this finding, Mr. Tshabalala and Mr. Ntuli (all of whom were members of the group) also appealed to the Constitutional Court. In rewriting the law when it pertains to the doctrine of common purpose, Mathopo AJ found, “there is no reason why the use of one’s body should be determinative in the case of rape but not in the case of other crimes such as murder and assault. The instrumentality argument has no place in our modern society founded upon the Bill of Rights.” The appeal was dismissed. One can be guilty of rape without actually using his organ to perpetuate the crime, provided other elements of this doctrine, displaying “association” with the perpetrators are present.

### II. RECUSAL

***Makaphela & Others v Acting Regional Magistrate Dumani & Others* (Case no. 816/2018, ECL – Bhisho, Date: 14 November 2019)**

Regional Magistrate Dumani had presided over a matter where one of the accused decided to plead guilty. A statement was tendered in terms of section 112(2) of the Criminal Procedure Act (no. 51 of 1977) and the matter was proceeded with to finality having been separated from the trial of the rest of the accused. The trial involving the other accused was postponed to a new date.

# RECENT CASES OF INTEREST TO JUDICIAL OFFICERS



On that date, the matter lied before the same magistrate and he was willing to hear the trial. The defence for the accused applied for his recusal since he had heard the matter involving the co-accused who pleaded guilty, which application was not opposed by the State counsel. The magistrate refused to recuse himself. That decision was taken on review by the High Court. The decision was set aside. The High Court was so concerned over the decision by the magistrate in refusing to recuse himself that it even contemplated ordering him to pay the costs.

### III. VALIDITY OF SEARCH WARRANT

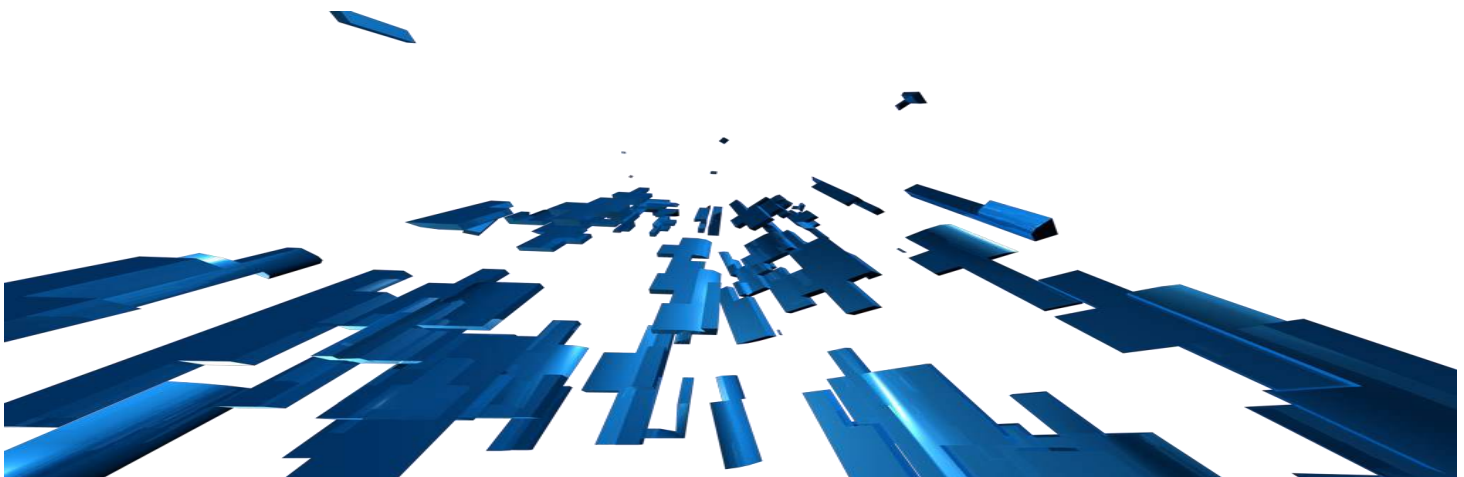
***S v Malherbe* (Case no. 1182/2018, ZASCA 169, Date: 29 November 2019).**

The appellant was convicted for possession of child pornographic material in contravention of section 24B(1) of Films and Publication Act. This followed a search warrant authorised by a magistrate based on an unsworn statement. The trial court was satisfied that the search warrant was lawful despite the fact that the statement upon which it was signed, was not an affidavit. On appeal, the SCA held that a search warrant based on unsworn statement is invalid and evidence on anything found pursuant to that warrant is inadmissible. Conviction and sentence were set aside.

### IV. INTENTION TO DO GRIEVOUS BODILY HARM

***S v Oosthuizen & Another* (Case no. 180/2018, ZASCA 182, Date: 02 December 2019).**

The law pertaining to assault with the intent to do grievous bodily harm (GBH) was equally rewritten by the SCA. After watching a video recorded by the appellants, the SCA felt it was time that perpetrators can be convicted of assault GBH even without physically touching the victim – but by threats. In the video, the victim is depicted being forcefully pushed with booted feet into the coffin and the lid being pressed heavily on his head. The victim is seen crying and pleading for his life with two hands folded together. One of the appellants was heard asking how the victim wanted to die, whether by being burnt with petrol or a snake being placed inside the coffin next to him. Next to the coffin lay the knobkierie. The SCA then concluded by quoting *S v Mtimunye* 1994 (2) SACR 482 (T) with approval where the following was said: “[O]ften the intention of the perpetrator of an assault is inferred from the act by which a physical assault is carried out. Where an assault consists of a threat, there can be no reason why the intention cannot be inferred from the contents of the threat, unless, obviously, it appears that the perpetrator does not have the intention or the ability to carry out the threat.”





# RECENT CASES OF INTEREST TO JUDICIAL OFFICERS

## V. RECRUITMENT OF MAGISTRATES

*Amos v The Minister of Justice & Others* (Case no. 9469/2017, ZAWCHC 130, Date: 12 September 2019).

*Lawrence v The Magistrates Commission & Others* (Case no. 1070/2019, FSD Bloemfontein, Date: 12 December 2019)

The two judgments deal with the shortlisting of magistrates, the interviews and the recommendations made by the Magistrates' Commission. They were dealt with by the High Courts of different Divisions. In all, they shortlisted and the resultant appointments were set aside in respect of particular offices for various reasons. What I found to be the common denominator is that the Commission going ahead with the shortlisting of the applicants while its Appointments committee did not form a quorum.

## VI. REPOSSESSION OF A VEHICLE (Consumers & Banks)

*First Rand Bank v Davel* (Case no. 1229/2018, ZASCA 168 Date: 29 November 2019):

This is one of the NCA matters involving a consumer unable to pay the motor vehicle instalment and the Bank approached the court in order to get an order to repossess the motor vehicle. The matter served before the Pretoria High Court sitting in Mpumalanga at the time, on the unopposed roll. The Court had the consumer's interests in mind when it ordered the bank to first inform the consumer of the value of the motor vehicle and not sell it for less without a court order meaning it would have to approach the Court in case it wants the motor vehicle sold for less than the value the consumer was informed

On appeal to the (SCA), the (HC) decision was set aside to a limited extent. The SCA retained much of the HC order to the extent of protecting a consumer. The SCA made a long order in which it incorporated the rights that a consumer should be enjoying to the NCA with the hope of informing/educating the consumer of his/her rights and reminding the bank of its obligations in terms of the NCA.

The SCA has now ordered what should be standard in these types of application as follows:

- Upon the return of each of the vehicles described above to the plaintiff:

The plaintiff shall, within 10 business days from the date of receiving return of the vehicle, give the defendant written notice:

- (a) setting out the estimated value of the returned vehicle;
- (b) informing the defendant that it intends to sell the returned vehicle as soon as practicable for the best price reasonably obtainable; and
- (c) informing the defendant that the price obtained for the returned vehicle upon its sale may be higher or lower than the estimated value.
- The plaintiff shall sell the returned vehicle as soon as practicable for the best price reasonably obtainable.

After selling the returned vehicle, the plaintiff shall:

- (a) credit or debit the defendant with a payment or charge equivalent to the proceeds of the sale less any expenses reasonably incurred by the plaintiff in connection with the sale of the goods; and
- (b) give the defendant a written notice stating the following:
  - (i) the settlement value of the agreement immediately before the sale;

## RECENT CASES OF INTEREST TO JUDICIAL OFFICERS



- (ii) the gross amount realised on the sale;
- (iii) the net proceeds of the sale after deducting the plaintiff's permitted default charges, if applicable, and reasonable costs allowed under paragraph (a); and
- (iv) the amount credited or debited to the defendant's account.

- The notice referred to in paragraph 20.3.3(b) above shall state that:

(a) If the defendant disputes the amount of the proceeds of the sale or any other charges or expenses incurred, he or she may engage directly with the credit provider in relation thereto.

(b) If the engagement referred to in (a) does not yield, from the defendant's perspective, the desired result, he or she may, refer the dispute to the Tribunal or submit a complaint in terms of [s 136](#) of the [National Credit Act 34 of 2005](#) to the National Credit Regulator.

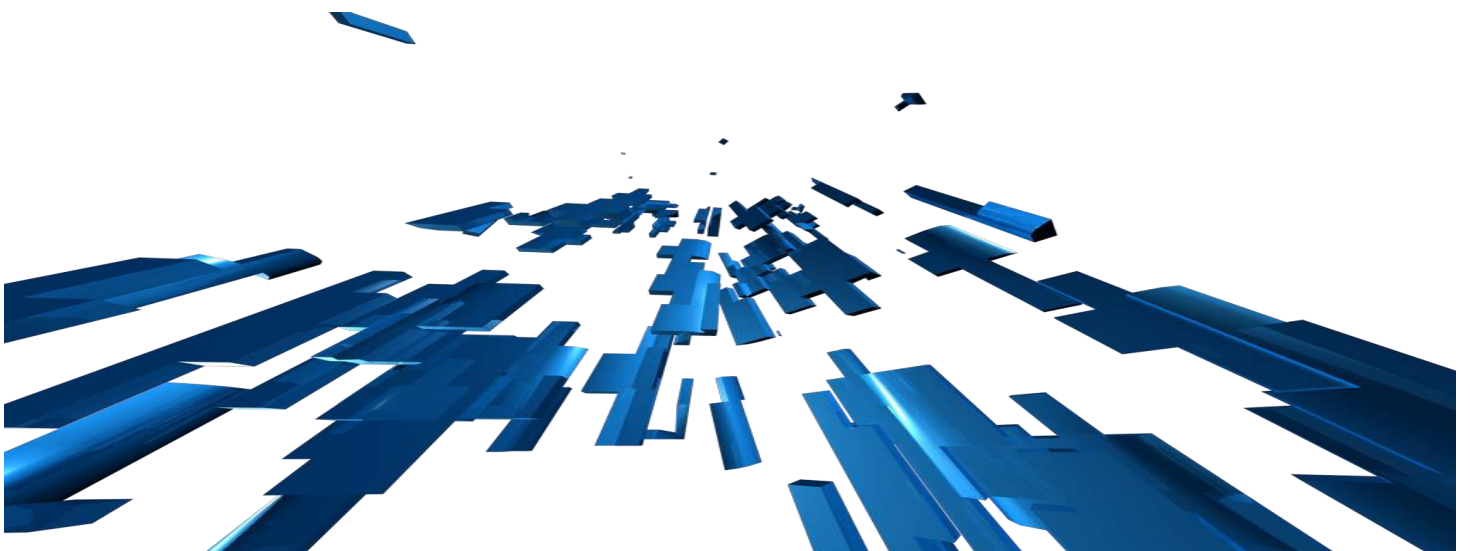
- If an amount falls to be credited to the defendant's account which exceeds the settlement value immediately before the sale of the returned vehicle, the plaintiff must remit such excess amount to the defendant together with the notice referred to in paragraph 20.3.3(b) above.

If an amount is credited to the defendant's account which is less than the settlement value before the sale, or an amount is debited to the defendant's account, the plaintiff may demand payment from the defendant of the remaining settlement value in the notice referred to in paragraph 20.3.3(b) above.

If the defendant fails to pay the amount demanded in terms of paragraph 20.3.6 above within 10 business days of receiving such demand, the plaintiff may commence proceedings against the defendant for any outstanding damages.

The defendant shall pay interest at the rate applicable to the credit agreement, on any outstanding amount demanded by the plaintiff in terms of paragraph 20.3.7 above, from the date of the demand until the date of payment of the outstanding amount.

- In the notice referred to in para 20.3.4, the consumer must also be notified, if applicable, that if there is a dispute in relation to any of the matters set out in 20.3.5-20.3.8, the mechanisms referred to in 20.3.4(a)-(b) are at his or her or its disposal.
- The respective plaintiff shall aver and prove in its action for any outstanding damages, that it has complied with the requirements set out in paragraph 20.3 above.



# S 67 Failure of Accused to Appear on Bail



**Dr VI Jameson**  
**District Magistrate**

Section 67(1) of the *Criminal Procedure Act*, 51 of 1977 (hereafter the CPA) provides that if the court released a criminal on bail, and he fails to appear on a subsequent date, the court shall cancel the bail money; provisionally forfeited to the state and issue a warrant for his arrest. The prescripts were *obiter dictum* confirmed in a number of cases (see *Terry v Botes and another* 2003 (1) SACR 206 (C); *Da Costa v The Magistrate, Windhoek, and another* 1983 (2) SA 732 (SWA); *S v Nkosi* 1999 (1) SA 581 (T) and *S v Engelbrecht* 2012 (2) SACR 212 (GSJ).

However, the stay of the execution of a warrant of arrest is a long-standing practice in the magistracy propagated at senior level of the lower court judiciary in circumstances where the criminal is unable to attend court because of ill-health or other compelling situations (see *S v Lerumo* (08/2017 [2017] ZAWHC 63; 2018 (1) SACR 202 (NWM) (10 August 2017) at para 2).

The court in *Lerumo* stopped the practice primarily because it was not within the purview of section 67 of the CPA (see para 17). The words of section 67 are unambiguous and obligatory and do not need any interpretation. The court in *Sulani v Mashiyi and Another Case 246/2018* (2 February 2018) disagree with *Lerumo* albeit conceding to the fact that under the provisions of section 67 of the CPA 'the magistrate had no discretion in issuing the warrant', but on the contrary said that the magistrate should have considered the representations made to her in court to justify the holding over of the execution of the warrant of arrest (see para 3.10). The court further read in, so it appears, that because section 67 is silent on the issue whether a court is entitled to stay the execution of a warrant of arrest, as a consequence of that silence, a court may order the stay of the implementation of such a warrant of arrest (see para 3.11).

However, Section 44 of the CPA provides that a warrant of arrest issued in terms of the CPA, the police has discretion whether to execute it or not. If a court issued an order of detention, there is no legal obligation on the state to explain to the court as to when and where it intends to execute or to affect an arrest based on that warrant of arrest (see *Brown & another v Director of Public Prosecutions and others* 2009 (1) SACR 218 (C) at para 224h-j). The logical inference is, the execution of a warrant is discretionary and not obligatory (see *Theobald v Minister of Safety and Security & others* 2011 (1) SACR 379 (GSJ) at 403d-e) and *Domingo v Minister of Safety and Security* [unreported, ECG case no CA 114/2012, 5 June 2012), and it is not for the court to dictate when and where the execution should take place.

Therefore, if common sense is to prevail, the view is that the *Sulani* case and the practice cannot be correct, because it usurps the provisions of section 44 of the CPA. It would also render its contents not only meaningless but superfluous. Any amendment or the revoke of any legislation lay within the powers of Parliament.

# Proper procedure for evictions in the Magistrates courts, in terms of section 4 of Prevention of Illegal Evictions and Unlawful Occupation of Land Act 19 of 1998 (PIE). *McNeill v Aspeling (A18/18) [2018] ZAWCHC 188, 28 June 2018* eradicating all confusion

11



**Ms Jinx Bhoola**

**Judicial Educator**

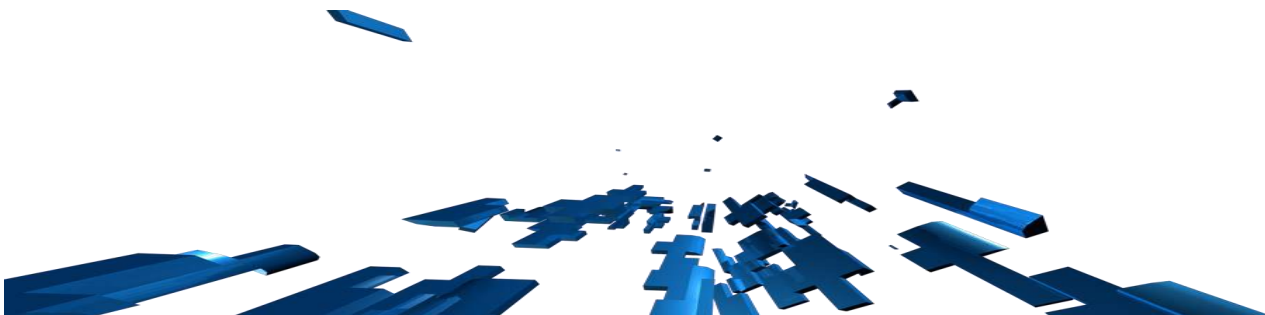
## Step by Step guide for evictions in the Magistrate's Court

1. PIE applications are usually initiated by attorneys in terms of Rule 55 of the Magistrates Court Rules. The applications are brought on Notice of Motion which is supported by a founding affidavit which states the facts upon which the applicant relies on for the relief that is sought. The respondent in terms of the Notice of motion has five (5) days from the date of service on him or her to oppose the substantive application for eviction and to appoint an address where 3 or more attorneys are practising interdependently on each other, within 15km from the court house. In the notice of motion, the respondent is informed that should he or she wishes to oppose the application an answering affidavit must be filed within ten (10) days from the service of the Notice of Motion. The respondent is also informed that should he or she not oppose the application, then the application for eviction will be heard on a date which is usually specified on the notice of motion.

2. The principles regarding the joinder of municipalities to the PIE proceedings can be summarised as follows:

- If the unlawful occupier is in occupation for less than six months and homelessness is not raised as a defence, it is not imperative that the Municipality be joined to the proceedings. Section 4(6) of PIE.
- However, there would be an exception to section 4(6) of PIE, if occupation by the unlawful occupier is for less than six months and homelessness is raised as a defence, then the Municipality must be joined to the proceedings to address the issue of homelessness. This instance will usually arise where there are large numbers of poor and indigent occupiers who are homeless and have nowhere to go. In such instances it is imperative that the Municipality be joined as an interested party to address the issue of alternative accommodation and assist the court in obtaining all the relevant circumstances. *Occupiers of erven 87 and 88 Berea v De Wet NO and another (Poor Flat Dwellers Association as Amicus Curiae) [2017] JOL 38039 (CC).*
- If the occupier is in occupation for more than six months, then the Municipality must be joined to the proceedings. (Section 4(7) of PIE.

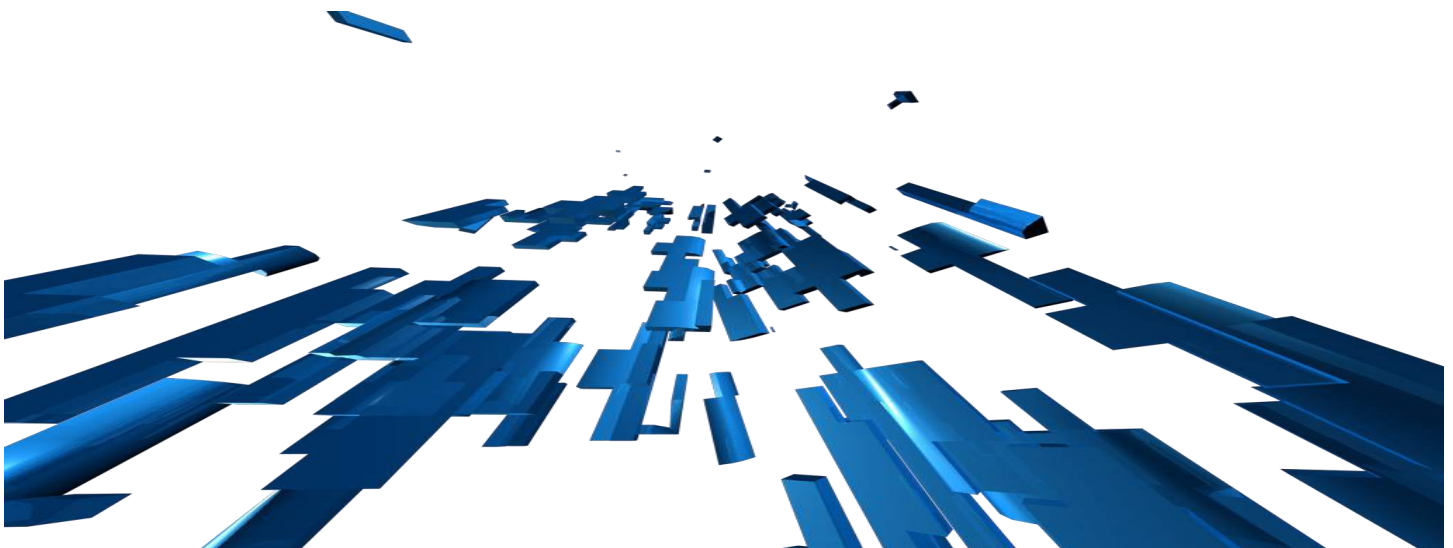
3. Once the application papers are drafted and signed by the applicant, the applicant's attorney approaches the clerk of the court in order to issue the application papers, which is done by providing a case number and a date when the substantive or main application for eviction will be heard. Due consideration must be given to the notice to be issued in terms of section 4(2) of PIE when requesting a date for the hearing of the application for eviction.
4. The substantive or main application for eviction is now ready for to be served by the sheriff; who is instructed to do so by the applicant's attorney. The service of the Notice of Motion is attended to in accordance with Rule 9 of the Magistrates Court Rules. (Section 4(3) of PIE). If the Notice of Motion cannot be served in terms of the Rule 9 of the Magistrates Court, service of the Notice of Motion can then be effected in the manner directed by the court. This will usually entail the Court being approached for an application for substituted service in terms of Rule 10 of the Magistrates court rules. This application for substituted service refers to the notice of motion and not the notice as directed in terms of section 4(2) of PIE.
5. Once service of the Notice of Motion is effected, Magistrates MUST be aware that South Africa is a signatory to the International Covenant of Economic Social and Cultural Rights, which was signed in 1994 and ratified in 2015. This places immediate and progressive obligation on the state similar to our Constitutional imperatives in terms of section 26 of the Constitution. At this stage it is imperative that Magistrates acquaint themselves with section 39 of the Constitution to understand their Constitutional mandate in application of Human Rights in the Magistrates Court. Attending to eviction matters means dealing with peoples Human Rights. Often in evictions the rights of the owner or person in charge must be balanced with that of the unlawful occupier. Before the next step follows, Magistrates would have read the entire application papers for eviction; whether opposed or not and would have made a finding applying judicial discretion and judicial oversight as to whether the Municipality should be joined to the proceedings or not.
6. When the matter is ripe for hearing, the applicant would have drafted and signed the notice in terms of section 4 (2) of PIE, and approached the court on an *ex parte* basis for an order for direction of service for the *ex parte* application. The prerequisite for considering such *ex parte* applications in terms of section 4(2) of PIE is that the substantive or main application for eviction and the sheriff's return of service MUST accompany the *ex parte* application. It is important to note that the *ex parte* applications should not be overlooked by Magistrates and the judicial discretion and oversight must be exercised when signing draft orders. Magistrates are cautioned to ensure that the section 4(2) notice contains the provisions as set out in section 4(5) of PIE. According to section 4 (5) of PIE, the section 4(2) notice **MUST**
  - (a) State that the proceedings are being instituted in terms of subsection (1) for an order for the eviction of the unlawful occupier.
  - (b) Indicate on what date and at what time the court will hear the proceedings;
  - (c) Set down the grounds for the proposed evictions; In practice attorneys usually make reference to the grounds for the proposed eviction is set out in the affidavits attached to the substantive application for eviction. This averment does not constitute proper compliance with section 4(5)(c) of PIE. The grounds for the proposed eviction must be specifically stated in the section 4(2) notice in order for the notice to be effective. The respondents whom are usually unsophisticated persons with limited knowledge should not be left to peruse documents which they do not understand in order to ascertain what are the grounds relied on for eviction. *McNeil v Aspeling Western Cape High Court (A18/18) [2018] ZAWCHC 188.*
  - (d) State that the unlawful occupier is entitled to appear before the court and defend the case and has the right to apply for legal aid.



7. The Magistrate when considering the application for the notice in terms of section 4(2), must request direct the manner in which service **MUST be effected for the second time**. Once the *ex parte* application order is granted, the Notice of Motion, together with the order granted in terms of section 4(2) application and application papers are served again on the unlawful occupier and all those occupying through the unlawful occupier. There is usually personal service on the unlawful occupier and all those occupying through the unlawful occupier. The Municipality having jurisdiction may be served in terms of rule 9 of the Magistrates Court Rules. The service **MUST** take place in accordance with the directions issued by the Court and must also be served fourteen (14) days before the hearing of the substantive or main application for eviction.
8. On the return date, the court will hear the application for eviction in terms of section 4(6), 4(7) and 4(8) of PIE and if the court finds that it is **just and equitable** to grant the eviction, it may grant the eviction only **after considering all the relevant circumstances** which include the equity provisions with regard to the rights and needs of the elderly persons, children, disabled persons and houses headed by women. It is important to note the provisions of section 4 (8) of PIE which states that if the court is satisfied that the requirements of section 4 are complied with and no valid defence has been raised by the unlawful occupier then the court must grant an order for the eviction of the unlawful occupier. Should the court grant eviction, the court must determine a date when the unlawful occupier should be evicted, and a date when the sheriff will carry out the eviction should the respondent and all those occupying through him or her fail to vacate the premises.

## Conclusion

Magistrates are urged to play an active role in advancing Human Rights when adjudicating eviction matters. According to the Constitutional Court in *Occupiers of Erven 87 & 88 Berea v De Wet NO and Another (supra)* it was held that where the granting of an eviction order triggers the risk of homelessness, the local authority must be joined in the proceedings since, in law, the local authority has a duty to provide temporary, emergency, alternative accommodation to those that might be left homeless as a result of an eviction. This is imperative because the court has to balance the competing rights of the owner vis-à-vis that of the unlawful occupier in determining whether it is just and equitable that an eviction order be granted. Magistrates must be progressive in applying judicial discretion together with precedent set by the superior courts and not merely rubberstamp draft orders. Eviction matters requires a thorough knowledge and understanding of sections 39 as well as section 26 of the Constitution of the Republic of South Africa, Act 108 of 1996.



# MAGISTRATES CELEBRATING WORLD AIDS 2019

SAJEI hosted the second Human Rights session from 1<sup>st</sup> to 4<sup>th</sup> December 2019. Regional and District Magistrates celebrated the World AIDS day on 1<sup>st</sup> December 2019 to recognize the departed, affected and infected people.

Our delegation in attendance were Justice Z. Tshiqi of Constitutional Court, Justice Effie Owour from Kenya. Other members of the judiciary were Mr M. Djaje and Ms V. Noncembu, Regional Court Presidents (RCPs), acting RCP of Western Cape, Dr J Lekhuleni, Mr E. Ngubane, Chief Magistrate of Durban, Regional Magistrates and District Magistrates.

Mr Ngubane and Ms T. Horne, SAJEI Judicial Educator and Senior Magistrate co-facilitated the session providing feedback on the HIV/AIDS Action plan developed at the Human Rights week in December 2018.



**Mr Ngubane**  
**Chief Magistrate**

Mr Ngubane indicated that Magistrates come into contact with HIV infected and affected individuals in the execution of their duties whereas they have no knowledge or tools to handle HIV related matters. He further stated that since the launch of the SAJEI HIV/AIDS training program in December 2018, knowledge of Magistrate's is improving on the subject.

Mr Ngubane also stated that Judicial officers as leaders in the society have an important role to play in addressing HIV/TB epidemic and as such are expected to deal with myths, stigma and discrimination surrounding HIV/TB in cases where this epidemic is a factor. HIV/TB as an epidemic presents various issues of law that are sensitive and not easy to resolve. It is therefore imperative for Judicial officers to familiarize themselves with this epidemic and its legal dimensions in order to facilitate access to justice.

Mr Ngubane furthermore reflected on the inaugural Judicial Training Programme on HIV/TB and Human Rights for Magistrates held from 29<sup>th</sup> November 2018 to 1<sup>st</sup> December 2018 that created a platform to share emerging issues, best practices and challenges on adjudication, sentencing, judicial case management and specific Human Rights related to HIV/TB.

#### **ODE by Mr Ngubane**

*"I am standing with my hands up and my feet on the snake. In my opinion the virus looks like a snake. You can't see it and it's moving in the secret ways and dark ways. Inkanyamba, a big snake that lives in the water, a destroyer like a hurricane that destroys everything on the earth and makes houses and trees fall down and kills people. But you see, I am standing on the snake. With ARV, I retard the functioning of this virus in my body, I close its big mouth not to bite me further". As a people, and as individuals, we must act to inform, to support and to encourage. No action is too small. No contribution is wasted. We must protect ourselves and those who are nearest to us. We must protect the vulnerable. We must combat the stigma and create an environment in which all can feel safe and comfortable to test and be treated. The end of HIV as a public health threat is, in sight".*

Ms Horne, Senior Magistrate & SAJEI Judicial Educator referred the delegates to the resolutions of the inaugural Judicial Training Programme on HIV/TB and Human Rights for Magistrates of 2018 with specific reference to:

- Enhance access to justice through participation in HIV/TB and Human Rights Judicial Education Programmes;
- Incorporate HIV/TB and Human Rights into all Judicial curricula on Children, Family, Sexual offences, Criminal and Civil Court skills; and
- Develop an HIV/TB and Human Rights Resource Book for Judicial Officers.

Ms Horne presented on the identified resources for HIV/TB and Human Rights Resource Book and highlighted the challenges experienced by the working team in the compilation and development of the Resource Book for Judicial Officers and made a compassionate plea for dedicated volunteers to join the working group and bring the HIV/TB and Human Rights Resource Book for Judicial Officers to fruition. I want to similarly extend an invite for any dedicated volunteers to put their hand up and be a part of this valuable tool for Magistrates.

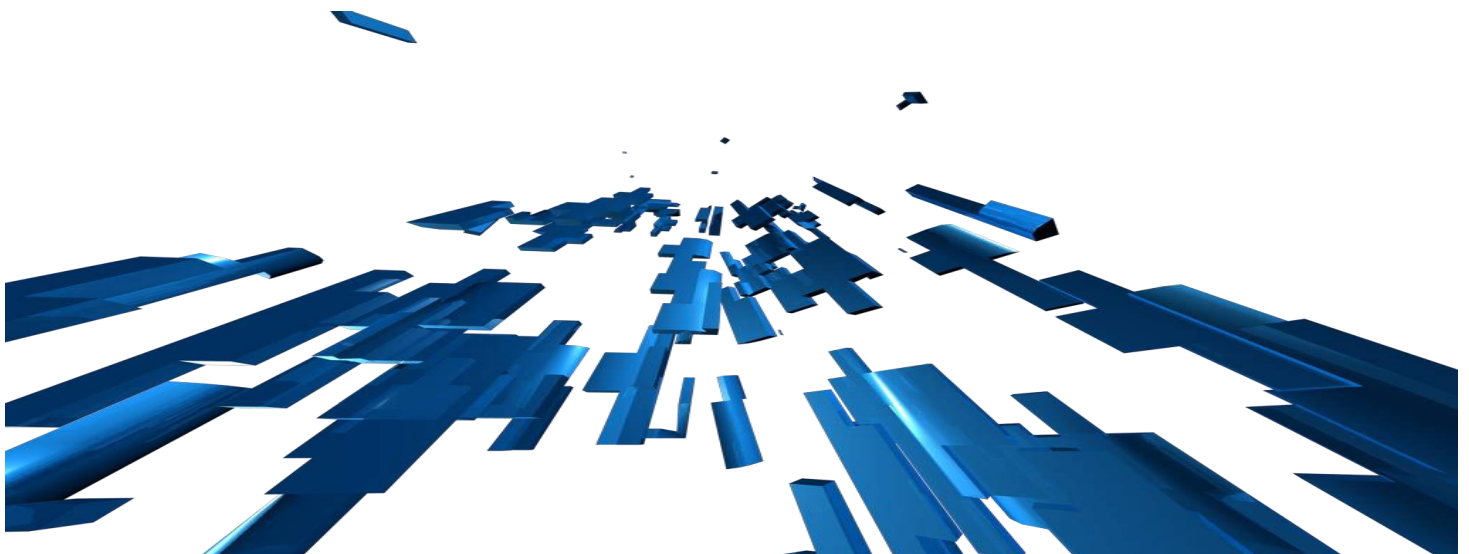


**Ms Horne**  
**Senior Magistrate**

The delegates shared their personal and work experience relating to HIV/AIDS. Of note was the traumatic experience of dealing with a matter where accused are terminally ill. Mr Djaje, RCP Gauteng shared his experience when he was a Regional Magistrate in North West. “The matter involved 10 accused charged with rape. During the trial, it emerged that five (5) of the accused were terminally ill suffering from AIDS. The health of the accused affected the smooth running of the trial. Before the close of the State case, five of the accused died. Others also passed away and the last one died before the court could hand down the sentence”



**Mr Djaje**  
**Regional Court President**





Ms Honwana, Regional Magistrate, Tzaneen dealt with a case involving “the accused who was HIV positive and had access to health facilities, decided to stop taking his ARVs as prescribed. The accused was in custody as bail was previously denied in the District court. His health condition deteriorated and he became terminally ill. When appearing in court he applied to be referred back to District court for application to be released on bail based on new facts (referring to his medical condition). The accused was then transferred back to the District court where bail was refused. Sadly, he passed on at the hospital under police guard. I was informed by the police that apparently a lot of remand detainees were informed by fellow detainees to stop taking the ARV’s in order to be released on bail due to ill-health.



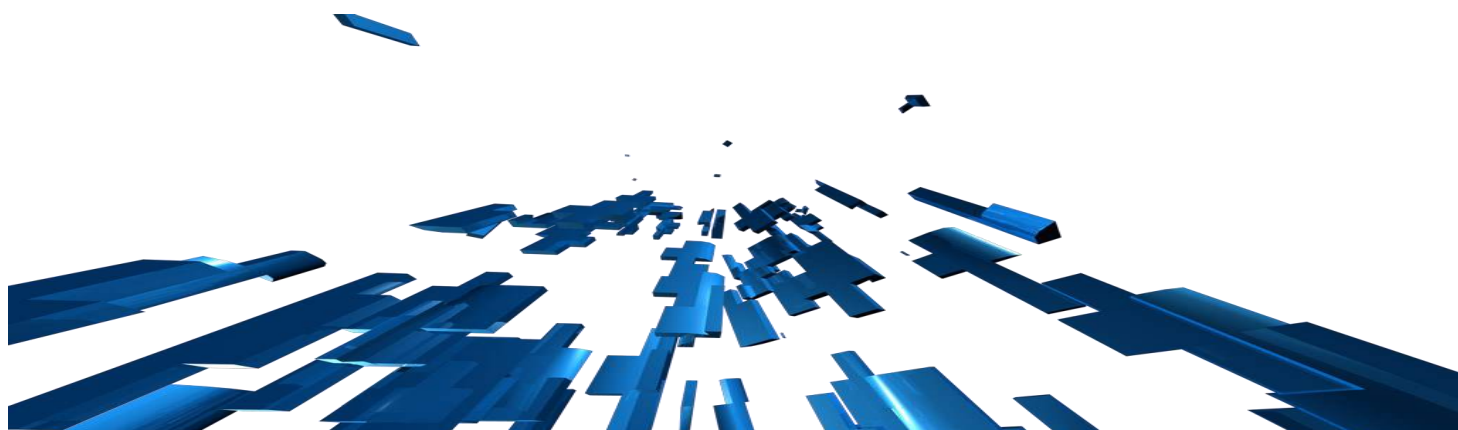
**Ms Noncembu**  
**Regional Court President**



**Ms Honwana**  
**Regional Magistrate**

Other delegates stated that there is still challenges of stigma attached to HIV/AIDS and proposed that ways should be sought on how to deal with it. Ms Noncembu facilitated the session on candle lighting. The theme for this year’s World AIDS day is “**Communities make the difference**”. Coincidentally, in South Africa this day is being commemorated during a period when our country is plagued with the scourge of sexual and gender-based violence. Considering the invaluable role played by communities in the fight against these evils in our society, this theme couldn’t have been more appropriate. If we stand together as communities, we stand better chances of winning this battle.

By: Dr Gomolemo Moshoeu



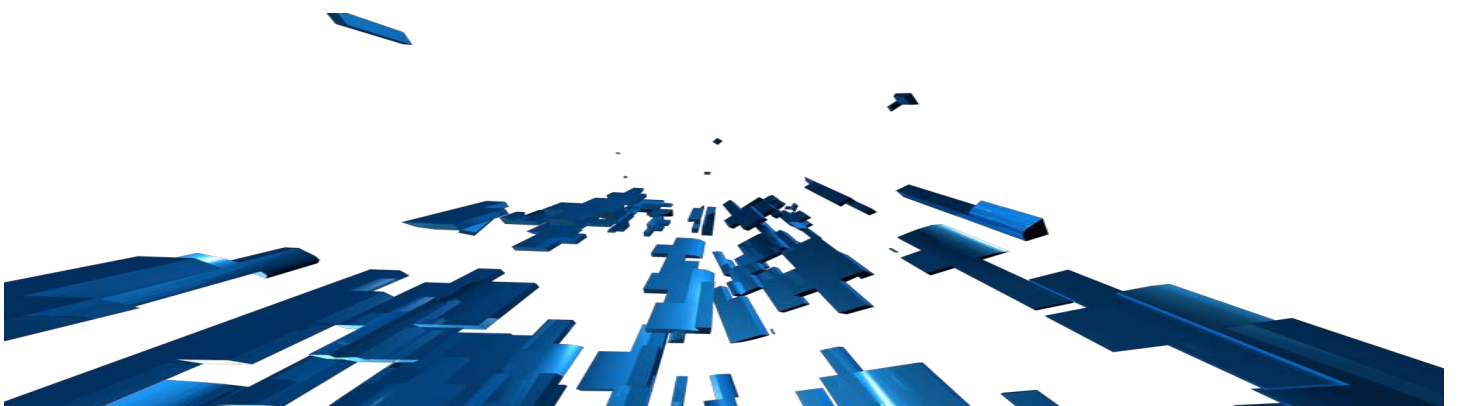


**Delegates from Mozambique**

On the functions of SAJEI as stated in the Act is to render support to foreign judicial institutions and courts. In 2019, SAJEI supported the following jurisdictions: Mozambique; Lesotho and Eswatini

In November 2019 SAJEI held a joint colloquium on wildlife organized crimes with the Centro de Formação Jurídica e Judiciária(CFJJ). The joint colloquim was held in Johannesburg, South Africa. Wildlife crimes are prevalent around the Kruger National Park area which is on the border of South Africa and Mozambique. The objective of the colloquium was to share best practices and challenges among members of the Judiciary in South Africa and Mozambique in dealing with cases on transnational Wildlife organized crime as well as to improve judicial training initiatives. The delegation from Mozambique comprised of Judges, Magistrates and Prosecutors while, South Africa was represented by Regional Magistrates.

Participants from various provinces and Mozambique presented on adjudicating wildlife crimes. Presentations also included '*A Ranger's perspective on the reality of poaching and trafficking*' by Dr Nicholas Funda, Chief Ranger at the Kruger National Park. His presentation was well received and participants recommended that there should also be photos and videos depicting crime scenes and various animal species.



# WILDLIFE TRAFFICKING COLLOQUIUM



**Dr Nicholas Funda**

**Chief Ranger at Kruger National Park**



**Ms Poso Mogale**

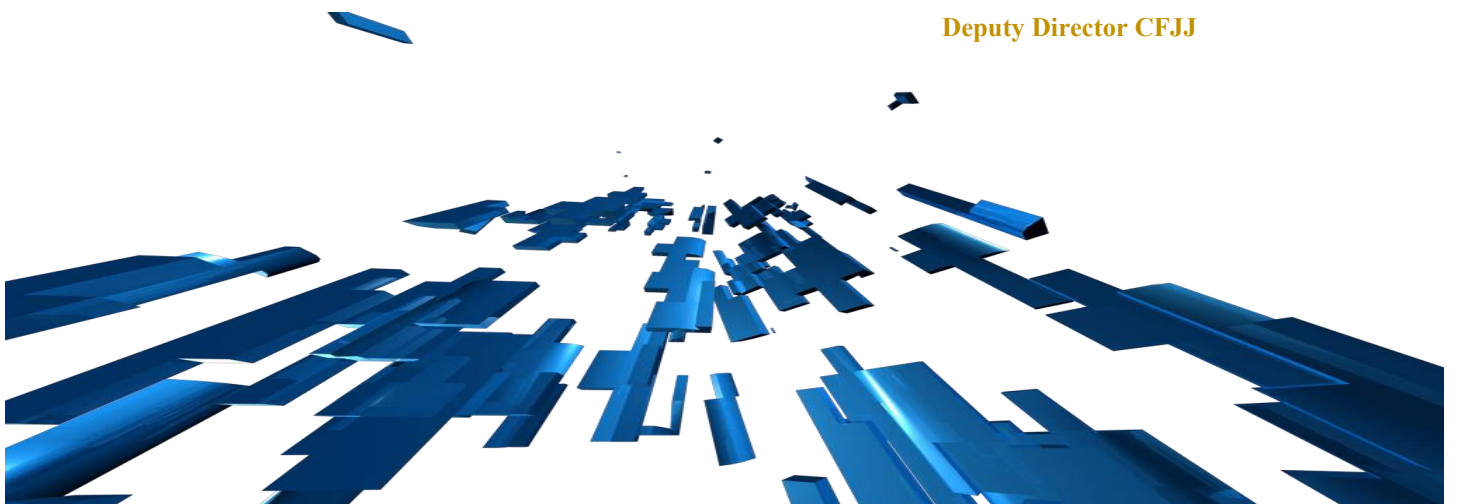
**Deputy Director SAJEI**

With regards to training related activities SAJEI and the CFJJ presented on the state of Judicial training on Wildlife organized crimes, curriculum, challenges and future plans. The presentations were delivered by Ms Poso Mogale, Deputy Director: Executive Support to the SAJEI Chief Executive Officer and Ms Farida Mamad, Deputy Director of the CFJJ. Both Institutes referred to the Johannesburg Plan of Action adopted in January 2017 as their point of departure.



**Ms Farida Mamad**

**Deputy Director CFJJ**





**Members of the Working Group with Chief Executive of SAJEI, Dr Gomolemo Moshoeu**

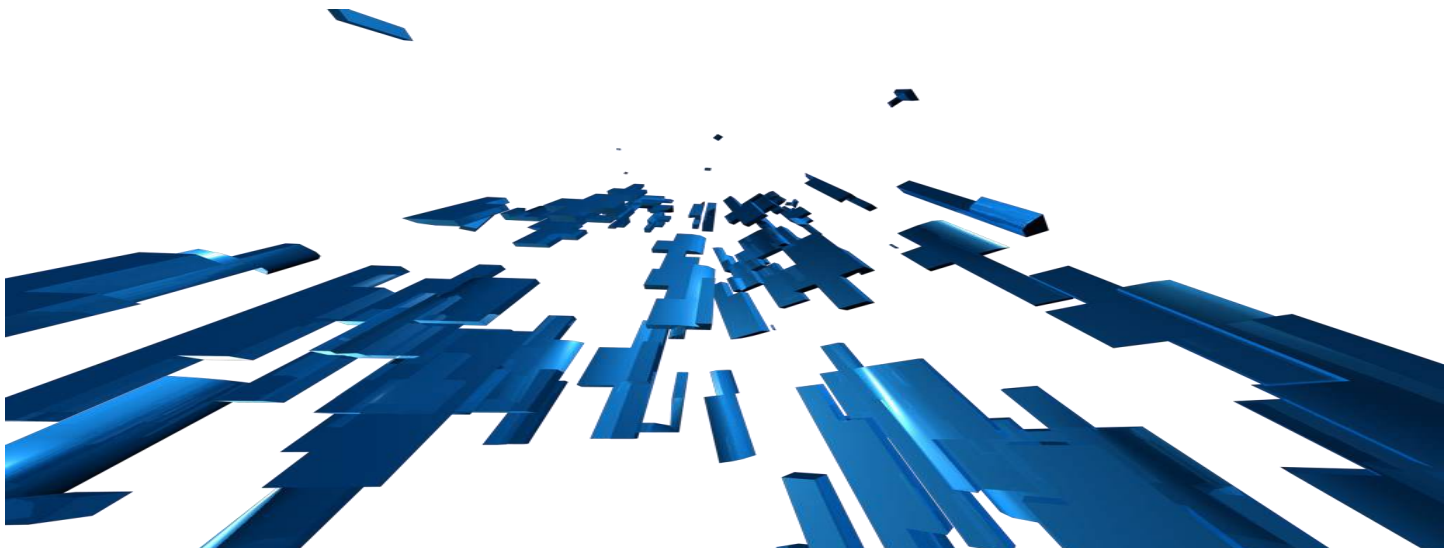
The joint colloquium also created an opportunity for the launch of the Resource Manual on Environmental Crimes and Wildlife Trafficking in South Africa.

At the end of the colloquium participants were requested to provide feedback. Below are some of the comments:

- I. The Resource manual is an excellent guide that will be valuable to all
- II. More African countries should be invited, as well as Asian countries
- III. These types of events should be extended to other transnational crimes
- IV. Although it was for two days, the level of knowledge acquired feels like it was for a week
- V. The discussions were vibrant and interactive and the topics were well selected
- VI. The colloquium broadened my horizons on this sensitive topic
- VII. The level of commitment of SAJEI and South African Magistrates is appreciated

Discussions with relevant stakeholders on how to take the project forward in a sustainable way are underway.

By: Ms P Mogale



20

# HUMAN RIGHTS WEEK 2019



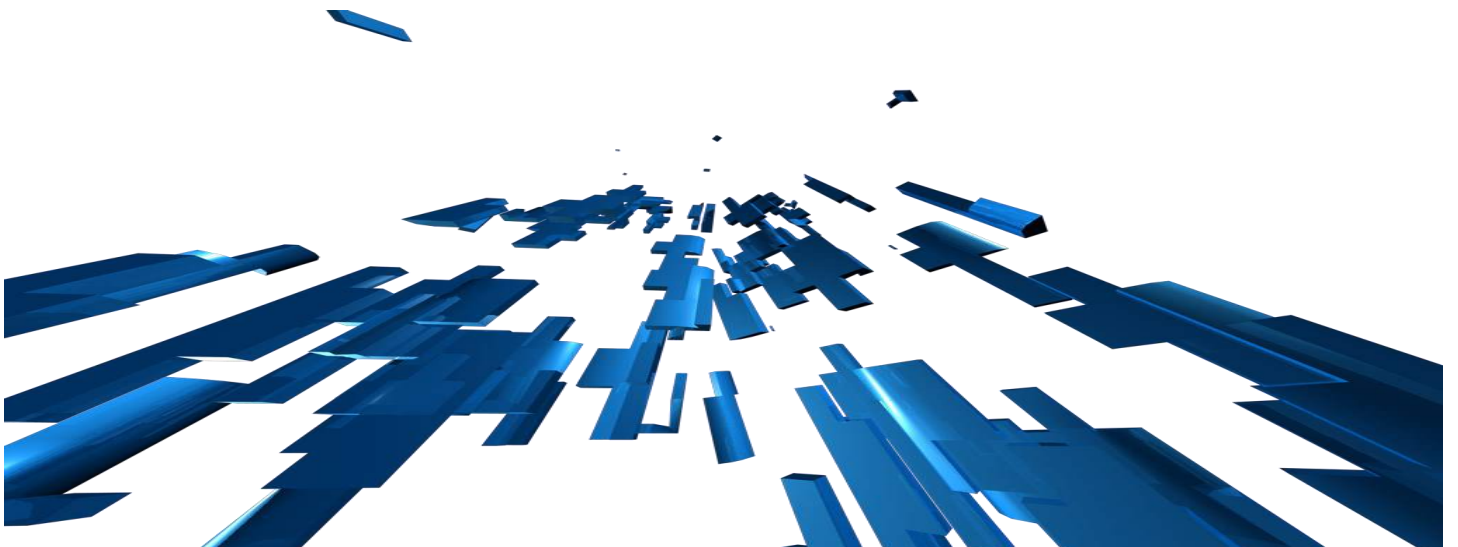
In December 2018, SAJEI held its inaugural Human Rights week for Magistrates. As a result of the positive feedback and the evident impact on Judicial Officers who participated it was resolved that the Human Rights week will be an annual event coinciding with World Aids Day which is commemorated on the 1<sup>st</sup> December annually.

The purpose of Human Rights week is to raise awareness among members of the Judiciary on Chapter 2 of the Constitution of the Republic of South Africa. In 2018, the focus was on HIV/TB, Human rights and Gender, Housing rights, Refugee rights as well as LGBTIQ+ rights. In 2019 the topic on HIV/TB, Human rights and Gender was maintained and Housing rights combined with Informal Trader's rights as part of Economic and Social Rights. Presentations on lived experiences by homeless people and informal traders were conducted with a view to giving a human face to related issues and challenges. A new topic was introduced, namely, Reproductive Health rights. The objective of the session was to recognize and identify harmful gender stereotypes and wrongful gender stereotyping in relation to gender-based violence cases and sexual and reproductive health and rights cases. Topics presented included gender stereotyping, women's access to justice and the role of the Judiciary.



**Ms Esther Eghobamien-Mshelia, a member of the CEDAW Committee presenting on key concepts and international frameworks**

Justice Zukisa Tshiqi of the Constitutional Court of South Africa and retired Justice Effie Owuor of the Supreme Court of Kenya led the discussions on unpacking Judicial stereotyping in gender based violence cases and sexual and reproductive health and rights cases.



# OTHER TRAINING INITIATIVES

## Human Rights Week



About 97% of the participants stated that the session met their expectations and was insightful. It was recommended that additional training on social context should be provided to all Judicial Officers and that more days should be allocated on the topic.

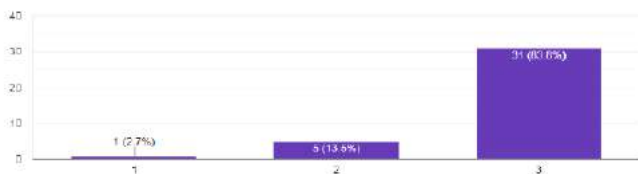
As Human Rights week also coincided with 16 days of Activism for no violence against women and children, there was a session on reviewing current curriculum on Sexual Offences as well as Domestic Violence, Protection from Harassment and Older Persons Act.

**Mr Mashau Ramalebana, SAJEI Judicial Educator presenting on Domestic Violence, Protection from Harassment and Older Persons Act**

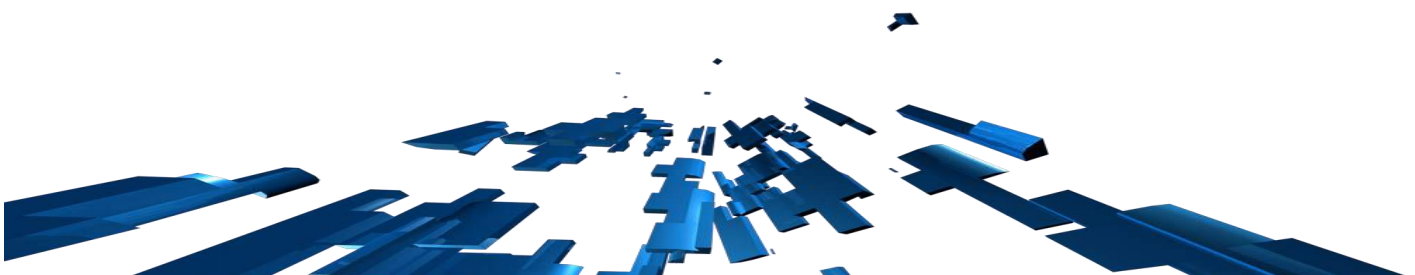
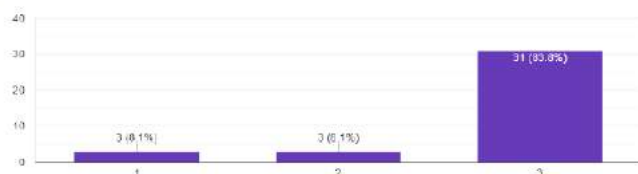
*Magistrates are kindly encouraged to attend the next Human Rights week scheduled to take place from 30<sup>th</sup> November to 4<sup>th</sup> December 2020. Details will be provided in due course.*

By: Ms P Mogale

Overview of SAJEI Training on Domestic Violence  
37 responses



Challenges encountered when presiding over Sexual offences matters  
37 responses





With the assistance of the International Commission of Jurists, two Judicial Officers from Lesotho (Her worship Polo Banyane and His worship Peter Murenzi) as well as Judge Bhekisisa Hlophe and His worship Musa Nxumalo from the Kingdom of Eswatini participated in the Human Rights week. They expressed gratitude for the opportunity to participate in SAJEI training and share experiences with other Judicial Officers. They committed to share what they learnt with their colleagues in their respective countries



**Her worship Polo Banyane of Lesotho**



**Judge Bhekisisa Hlophe from the Kingdom of Eswatini**



**His worship Peter Murenzi of Lesotho**



# REGIONAL TRAINING MANUAL ON HIV/AIDS, TB & HUMAN RIGHTS

23



On the 16<sup>th</sup> December 2019 SAJEI participated in a meeting of Judicial Education Sub-committee of the African Regional Judges Forum held in Johannesburg, South Africa. The objective of the session was to review and provide input on the Draft Regional Manual on HIV/AIDS, TB and Human Rights. The working session was attended by representatives of the following jurisdictions, namely, Kenya (Dr Freda Githiru), Tanzania (Mr Lameck Nyangi Samson), Uganda (Mr Angualia Moses), South Africa (Ms Shanaaz Mia and Ms Poso Mogale), Eswatini (Judge Muncy Dlamini) and Democratic Republic of Congo (Prof Ndomba Elie Leon).

In order to make the Draft Manual needs driven with the participation of users, a training needs assessment was conducted. Some of the questions included Gender, Age, Frequency of adjudicating of cases involving HIV/AIDS, TB and Human Rights, Frequency of attending training relating to HIV/AIDS, TB and Human Rights, Areas of training required as well as suggestions on Facilitators and training delivery methods. The feedback received served as a reference when compiling the Draft Manual which is divided into the following modules:

- I. Science and Medicine of HIV/AIDS and TB
- II. Promoting Human Rights within the context of HIV/AIDS and TB
- III. Adjudicating HIV/AIDS and TB cases in Criminal Law; and
- IV. Adjudication of Gender Based Violence within the context of HIV/AIDS and TB

Once input has been incorporated in the Draft Manual, it will serve as a prototype for domestication by various jurisdictions in accordance with their legal systems and legislation.

Plans are underway to finalise the South Africa specific Manual on HIV/AIDS and TB for District Magistrates in 2020. A workshop is scheduled to take place from 18<sup>th</sup> to 20<sup>th</sup> March 2020 in Kwa-Zulu Natal coinciding with the Human Rights Day.

By: Ms P Mogale







After consultation with the leadership of the Traditional leaders in respective provinces, SAJEI has conducted training on Judicial skills since 2014. The training is conducted by experienced Senior Magistrates and Traditional leaders.

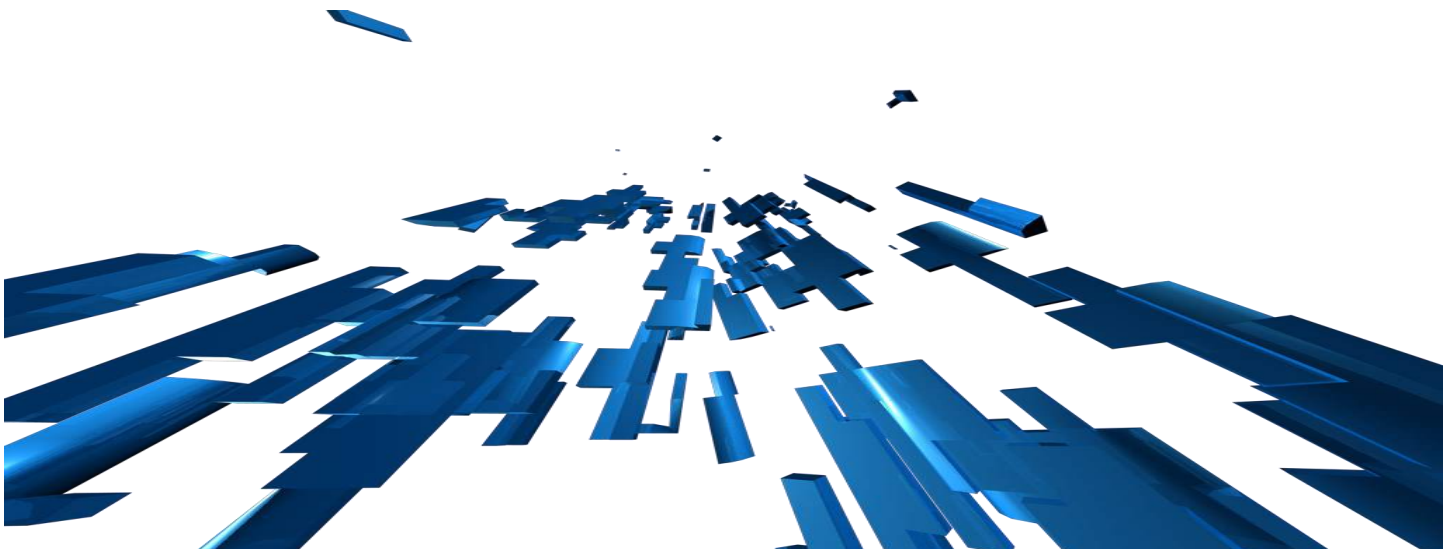
In November 2019, SAJEI in collaboration with CoGTA conducted training on Judicial skills for Traditional leaders in the Eastern Cape. The training was attended by 40 Traditional Leaders. The team of Facilitators comprised of Mr E. Ngubane (Chief Magistrate, Durban), Ms N Mviko (Chief Magistrate, Mthatha), as well as experienced senior Magistrates from Eastern Cape and Kwa-Zulu Natal, namely, Mr T Sishi (Senior Magistrate), Mr M Mnge, and Mr M Mtimkhulu.



#### Chief Magistrate S. Raphahlelo providing message of support

The training program included restorative justice, domestic violence, judgement writing, judicial ethics and moot court. From the evaluation feedback, the training will contribute towards positive change in their communities. The Facilitators were able to impart relevant experience as most of them are members of traditional leadership. It was recommended that the training should include more practical exercises with a view to ensure maximum participation by all Traditional Leaders.

By: Ms P Mogale





## WESTERN CAPE

| <u>PERSON</u>  | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>         |
|--|---------------|------------------|--------------------|---------------------|
| Barend Solomon<br>Terblanche<br>King William's<br>Town | •             |                  |                    | 27 November<br>2018 |
| Siyakudumisa<br>Mlunguza<br>Engcobo                    | •             |                  |                    | 28 November<br>2018 |
| Ronel<br>Swart<br>Betty's Bay                          | •             |                  |                    | 12 February 2019    |
| Derick William<br>Brown<br>Saron                       | •             |                  |                    | 20 March 2019       |
| Uvile Octavia<br>Siyo<br>Pinelands                     | •             |                  |                    | 10 June 2019        |



## KWAZULU NATAL

| <u>PERSON</u>            | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>       |
|--------------------------|---------------|------------------|--------------------|-------------------|
| Azgar Ally Khan          |               | •                |                    | 6 November 2018   |
| Christel Moodley         |               | •                |                    | 1 March 2019      |
| Bhekikazi Cyprian Poswa  |               | •                |                    | 18 March 2019     |
| Sifiso Wiseman Nkosi     |               | •                |                    | 29 April 2019     |
| Verusha Suchit           | •             |                  |                    | 14 June 2019      |
| Lekena Moleko            |               | •                |                    | 10 June 2019      |
| Siegfried Karl Heiriss   |               | •                |                    | 30 August 2019    |
| Bongekile Precious Mzila | •             |                  |                    | 13 September 2019 |
| Alwyn Eden Volsum        | •             |                  |                    | 20 September 2019 |



## GAUTENG

| <u>PERSON</u>                | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>      |
|------------------------------|---------------|------------------|--------------------|------------------|
| Andreas Johannes Oberlechner |               | •                |                    | 6 November 2018  |
| Musa Timonthy Sibiya         |               | •                |                    | 6 November 2018  |
| Matshobane Michael Kekana    | •             |                  |                    | 8 November 2018  |
| Peter Lesetja Nkoana         | •             |                  |                    | 13 November 2018 |
| Michael Masilo               | •             |                  |                    | 13 November 2018 |
| Yozan Bothma (Pretorius)     |               | •                |                    | 22 November 2018 |
| Monamodi Enock Bapela        |               | •                |                    | 27 November 2018 |
| Brandon Perumal              | •             |                  |                    | 27 November 2018 |
| Themba Benedict Langa        |               | •                |                    | 27 November 2018 |



## GAUTENG

| <u>PERSON</u>                     | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>         |
|-----------------------------------|---------------|------------------|--------------------|---------------------|
| Simon Nkuva<br>Mokone             |               | •                |                    | 4 December<br>2018  |
| Ignatius<br>Stefanus Le<br>Roux   | •             |                  |                    | 10 December<br>2018 |
| Barend<br>Oosthuizen              |               | •                |                    | 21 December<br>2018 |
| Lodwick<br>Makgahlela<br>Mashaba  |               | •                |                    | 8 January 2019      |
| Johannes<br>Petrus van<br>Niekerk |               | •                |                    | 31 January 2019     |
| Anton Fourie                      |               | •                |                    | 5 January 2019      |
| Virginia Sphiwe<br>Mbowane        | •             |                  |                    | 7 February 2019     |
| Obed Mhongo<br>Mtimbane           |               | •                |                    | 12 February<br>2019 |



## GAUTENG

| <u>PERSON</u>                        | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>         |
|--------------------------------------|---------------|------------------|--------------------|---------------------|
| Debbie Pretorius                     |               | •                |                    | 21 February<br>2019 |
| Michael Arthur<br>McLouglin          |               | •                |                    | 5 March 2019        |
| Matsobane<br>Nathaniel<br>Motlhasedi | •             |                  |                    | 5 March 2019        |
| Ramolangwana<br>Patrick Mariri       | •             |                  |                    | 14 March 2019       |
| Jacques Hendrik<br>Jansen            |               | •                |                    | 27 March            |
| Mafanela Petrus<br>Mashaba           | •             |                  |                    | 4 April 2019        |
| Lorraine<br>Vuyokazi Luke            | •             |                  |                    | 18 April 2019       |
| Tumelo Israel<br>Moagi               | •             |                  |                    | 18 April 2019       |



## GAUTENG

| <u>PERSON</u>                    | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>    |
|----------------------------------|---------------|------------------|--------------------|----------------|
| Makgweba Paul<br>Bally Chuene    | •             |                  |                    | 30 April 2019  |
| Madumetja<br>Lawrence<br>Kekana  |               | •                |                    | 28 August 2019 |
| Babatunde<br>Bamidele<br>Adeyeke | •             |                  |                    | 2 May 2019     |
| Johann George<br>Niehaus         | •             |                  |                    | 10 May 2019    |
| Louise Adriana<br>Ellis          | •             |                  |                    | 14 May 2019    |
| Isaac Rahube<br>Khunoana         |               | •                |                    | 14 May 2019    |
| Matome Alpheus<br>Mamorobela     | •             |                  |                    | 15 May 2019    |
| Thabiso Martin<br>Maseko         | •             |                  |                    | 16 May 2019    |



## GAUTENG

| <u>PERSON</u>             | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>   |
|---------------------------|---------------|------------------|--------------------|---------------|
| Phumo Gerald Macheka      | •             |                  |                    | 21 May 2019   |
| Terrence Nkuna            | •             |                  |                    | 21 May 2019   |
| Carike Van Der Westhuizen |               | •                |                    | 23 May 2019   |
| Selby Segopotse           | •             |                  |                    | 6 June 2019   |
| Peter Avhasei Mukoma      |               |                  | •                  | 18 June 2019  |
| Itumeleng Elizabeth Tlang | •             |                  |                    | 18 July 2019  |
| Phillipus Andries Coetzee | •             |                  |                    | 1 August 2019 |
| Hyman Chait               | •             |                  |                    | 6 August 2019 |





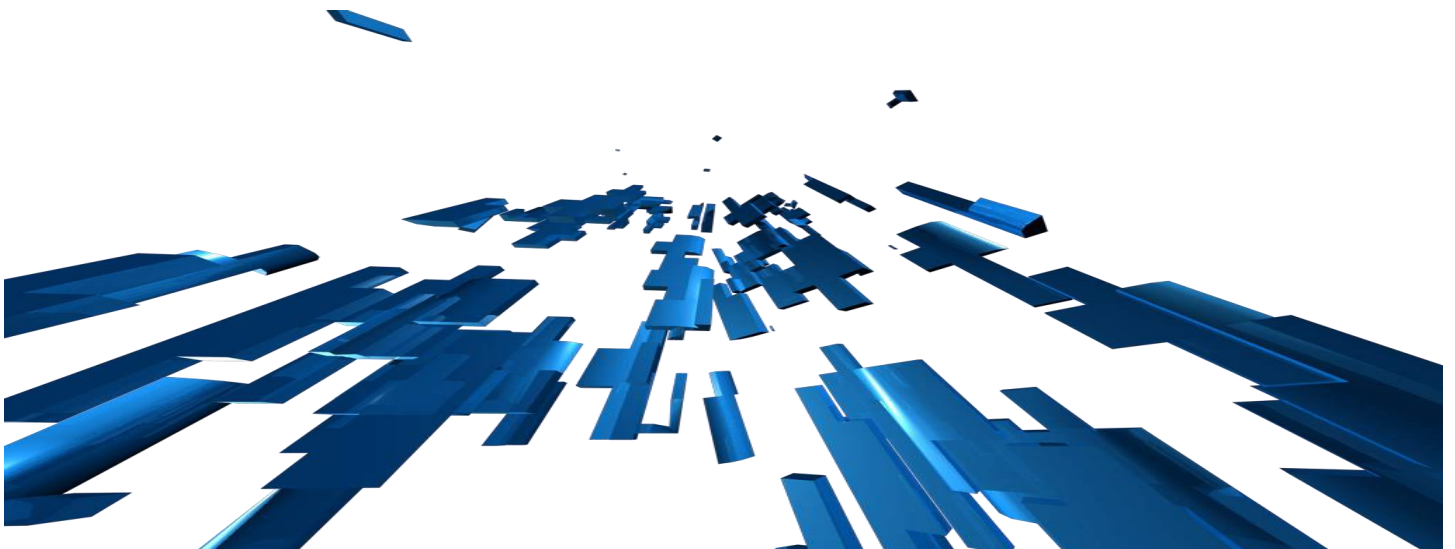
## GAUTENG

| <u>PERSON</u>                  | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>    |
|--------------------------------|---------------|------------------|--------------------|----------------|
| Claudius Chiyaka               |               | •                |                    | 8 August 2019  |
| Ntokozo Cedric Buthelezi       | •             |                  |                    | 15 August 2019 |
| Ockert Johannes Stoltz         | •             |                  |                    | 15 August 2019 |
| Logaragan Padayachy            | •             |                  |                    | 16 August 2019 |
| Ludwe Mbasu Biyana             | •             |                  |                    | 23 August 2018 |
| Sibusiso Vusa                  | •             |                  |                    | 23 August 2019 |
| Ngwako Auriel Phooko           |               | •                |                    | 29 August 2019 |
| Wycliffe Ernest Thipe Mothuloe |               |                  | •                  | 20 August 2019 |



## FREE STATE

| <u>PERSON</u>          | <u>STRUCK</u> | <u>SUSPENDED</u> | <u>INTERDICTED</u> | <u>DATE</u>      |
|------------------------|---------------|------------------|--------------------|------------------|
| Solomon Solly Kamati   | •             |                  |                    | 22 November 2018 |
| Siseko Leonard Cengani | •             |                  |                    | 20 June 2019     |

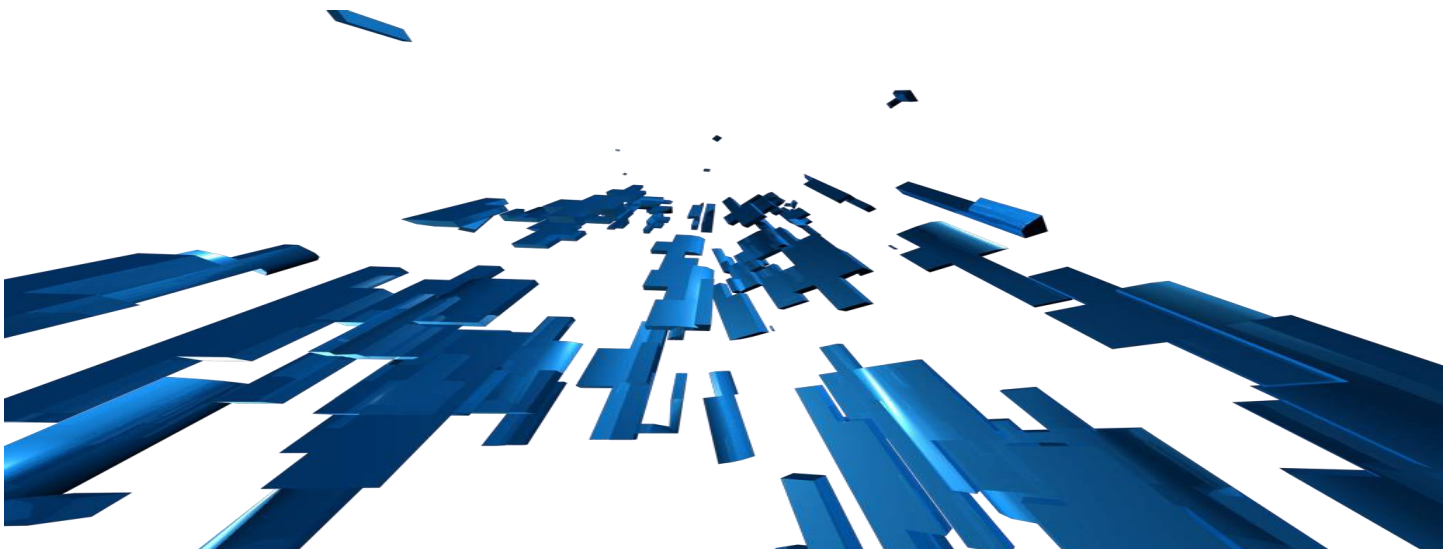


**DATE****WORKSHOP****PROVINCE****DISTRICT COURT MAGISTRATES**

|                    |  |               |
|--------------------|--|---------------|
| 23-24 January 2020 | Documentary Evidence & Contempt of Court | KZN Dbn       |
| 28-31 January 2020 | Civil Law and Procedure                  | North West    |
| 2 – 6 March 2020   | Application Procedure                    | Gauteng       |
| 4 – 7 March 2020   | Judicial Leadership and Management       | North West    |
| 11-13 March 2020   | PEPUDA                                   | Mthatha       |
| 16-20 March 2020   | Law of Evidence                          | Western Cape  |
| 18-20 March 2020   | HIV/TB, Gender and Human Rights          | KwaZulu Natal |
| 25-27 March 2020   | PAJA & PAIA                              | Gauteng       |

**REGIONAL COURT MAGISTRATES**

|                    |                      |                 |
|--------------------|----------------------|-----------------|
| 27-27 January 2020 | Environmental Crimes | LP,MP,GP and NW |
| 5-7 February 2020  | Environmental Crimes | FS & NC         |





*Enhancing Judicial Excellence*

**Telephone number:**

+27 (0)10 493 2500

**Website address:**

[www.judiciary.org.za](http://www.judiciary.org.za)

**Physical address:**

188 14th Road  
Noordwyk  
Midrand  
1685

**Postal address:**

Private Bag X10  
Marshalltown  
2107

