JUDICIAL EDUCATION NEWSLETTER
SOUTH AFRICA

March 2021 | Issue 11

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10 YEARS
2011 - 2021

SAJEI South African Judicial Education Institute
Enhancing Judicial Excellence

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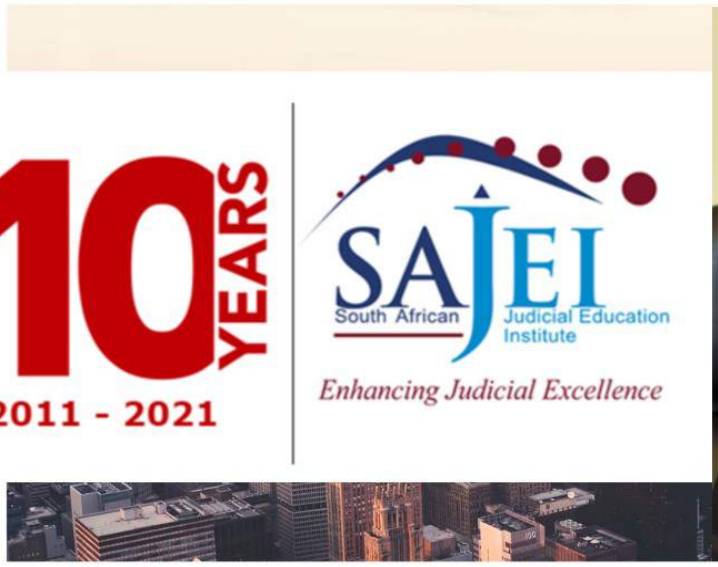
FROM THE DESK OF THE CEO



Dr. Gomolemo Moshoeu

CEO of SAJEI

Welcome to issue 11 of the SAJEI Newsletter and thank you for your unwavering support. COVID-19 has been with us since March 2020, and we have lost a number of the Judicial Officers. May their souls rest in peace and rise in glory.

SAJEI would like to express gratitude for your participation in the webinars. We acknowledge your sacrifice and commitment to participate in judicial education despite your workload. Please continue to participate in order for SAJEI to contribute towards enhancing judicial excellence.

The contributions from the authors are also much appreciated. They make time to prepare the articles in the midst of their hectic court rolls. SAJEI is looking forward to more contributions from Judicial officers in order to ensure continued publication of the Newsletter.

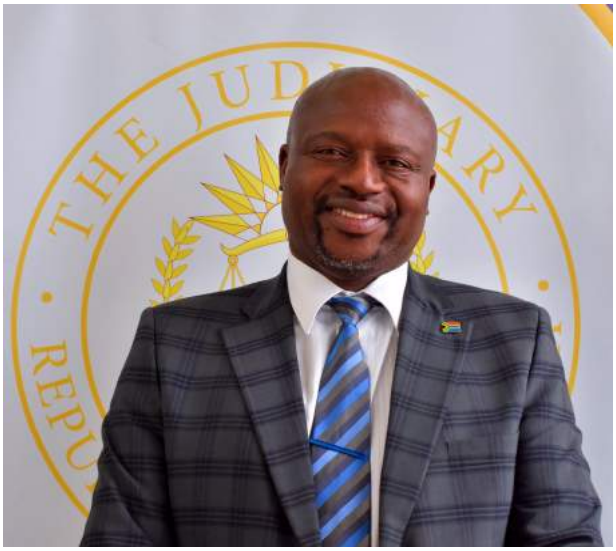
Since the inception of the Institute 9 years ago, several members of the SAJEI governance structures who are Magistrates are being elevated to the High Court.

Of note, are members of the Editorial Committee for this Newsletter. SAJEI is proud to be associated with Mr Vincent Ratshibvumo, Regional Magistrate who has recently been recommended to be a Judge of the Mpumalanga High Court. He has served with distinction as the Editor-in-Chief of this Newsletter. He worked very hard to ensure that the Newsletter is published within agreed timeframes. His humility, competence and passion will be sorely missed. SAJEI is looking forward to the services of the new Editor-in-Chief who will be announced in due course.

It is with great pride to announce that Ms. Jinx Bhoola, SAJEI Judicial Educator for Civil Court skills has been invited to act at the High Court. SAJEI wishes her well and looks forward to welcoming her back.

In November 2021, SAJEI will be reaching a milestone of being 10 years in operation. You are invited to submit articles reflecting on this period and providing guidance, where possible. There will be a special issue focusing on this milestone before the end of October 2021.

FROM THE DESK OF THE EDITOR-IN-CHIEF



Mr. T.V. Ratshibvumo

Editor-in-Chief

It is often said there is no good in goodbye. I think I understand that better now with the pain of me writing this farewell message. Some of you are probably aware that following an interview, the Judicial Service Commission has recommended my appointment to a position of a Judge in Mpumalanga Division of the High Court. As a result, this publication will be the last with me as its Chief Editor. Leaving the Magistracy is a bittersweet moment for me because I have been part of it from the first day I worked in court as a Public Prosecutor in 1996. When I was elevated to the District Court bench four years later at the age of 27, my name became synonymous with the title of a magistrate. I have held that title for just over 20 years now, dispensing justice to our people in South Africa. Just to imagine a day I would wake up and not be a magistrate feels unreal and painful. I however have to embrace the new role that awaits me.

It feels like yesterday how I would be irritated by negative publications about the Magistrates. I still do and hope to carry this feeling to my grave. It started around 2004 when a certain Magistrate unknown to me at the time, sent a matter to a High Court on review. The Judge who received it sent it back to the Magistrate to attend to several “inaudible” entries on the record, which made it difficult for him to review the matter. The Magistrate used his notes to edit out “inaudible” entries and sent it back to the High Court. The same Judge was not impressed with the developments. He demanded of the Magistrate to explain why he should not be reported to the Magistrates’ Commission for tampering with the record. I did not believe that such was tampering with the record, especially when he was invited to do it. I wrote to the Commission explaining how unfair the process was. I finally indicated that if this was seen as tampering with the record, a number of us should be charged too. The Commission’s chairperson, Ngoepe JP then wrote a Circular in which he agreed with me. No steps were thus taken against this Magistrate. It was from this incident that I was lobbied to avail myself to serve the Magistracy through the Judicial Officers Association of South Africa (JOASA). I served through its provincial structures culminating to the presidency thereof.

Through JOASA and the Association for Regional Magistrates of Southern Africa (ARMSA), I have been to the trenches - to Parliament, the Union Buildings and many international forums in Africa, US and Europe in defending the good name of the Magistrates. When Magistrates were labelled as “thieves and murderers” by a Sunday newspaper, I took it upon myself to complain to the Press Ombudsman and the newspaper was ordered to publish a retraction.

FROM THE DESK OF THE EDITOR-IN-CHIEF

I was part of the delegation that negotiated salaries for Magistrates from 2007 until today, first, as a JOASA delegate and later, as a member of the Lower Court Remuneration Committee. Now I have to say goodbye. Indeed, there is no good in goodbye, especially when parting with what has become part of your life.

I have been inundated with messages from well-wishers, some of whom wanted to know how I managed to get to where I am. My little secret, which could be a little advice to anyone who wishes to tread the same route is: Be the best in your little corner in dispensing justice to our people. Let your goal be service delivery in the form of justice. With time, your dedication will be recognized and rewarded. I am carrying my secret with me to my new destination.

I am grateful to JOASA and ARMSA, the two sister associations that represent the majority of the Magistrates in the country, for giving me the platform to serve our community, the profession and the Magistrates as a whole. I do not profess to be the best. I have seen and worked with the best from whom I learned so much. They however remain obscured because they never had the platforms I had through these associations. My strengths would not have been spotted had it not be for these associations. I managed to grow as a judicial officer and a leader and gained knowledge and confidence through them.

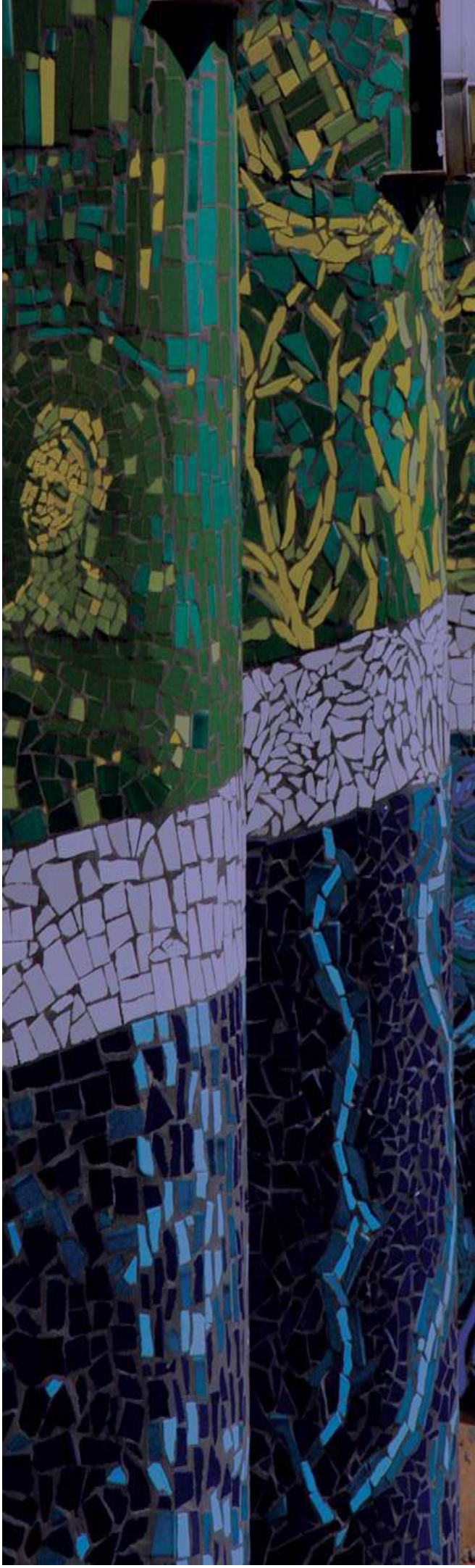
I would not have done it had it not been for the support and faith that Mr. Djaje, the Regional Court President for Gauteng had in me. Within the first six months of me acting in the Regional Court, he told me that I was High Court material. These are the words he told a number of others who are today serving as Judges.

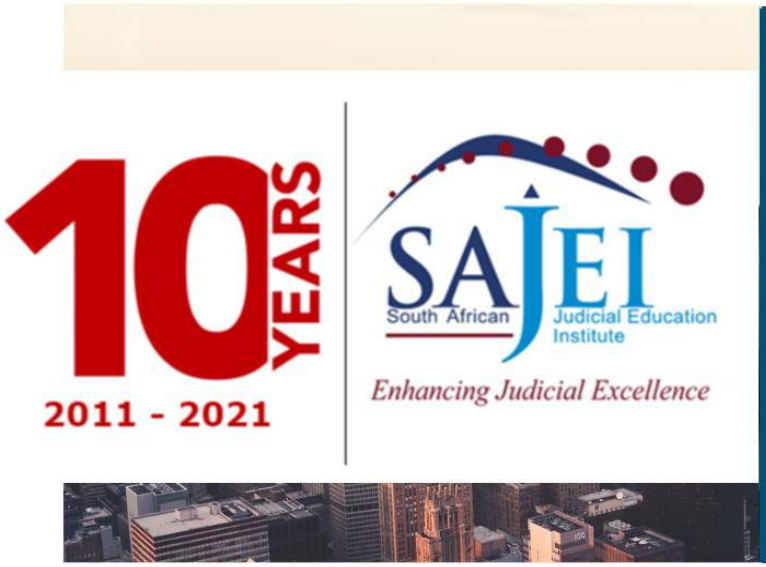
Lastly, I am grateful to the whole SAJEI family including the Editorial Committee, under the leadership of Dr. Gomolemo Moshoeu. This Newsletter took our views to new heights. It was time consuming, but it was worth it. I learned a lot from this publication and that experience will stay with me as long as I live. Thank you.

To the other Magistrates who were also interviewed and recommended for positions of Judges of the High Court, we congratulate you. They are **Ms. Mashudu Munzhelele** from Thohoyandou in Limpopo, recommended for Gauteng; **Mr. Andre Petersen** from Johannesburg in Gauteng, recommended for North West and **Ms. Lindiwe Vukeya** from Middelburg in Mpumalanga recommended for the same province. As for me, I will be leaving Johannesburg in Gauteng heading to Mpumalanga. You are the torchbearers for all those who come behind you. You are proving that even Magistrates can make it to the High Court bench. You are the hope to the Magistrates as a whole. Go and lift the Magistracy flag even higher. I know you can make it. Some have walked this path ahead of you and you can just look to them for guidance. I am referring to legal giants such as Mocumie JA, Mokgohloa JA, Musi JP, Carelse J (soon to be JA), Semenya J (soon to be DJP), Le Grange J, Raulinga J, Henney J, Gura J, Kgoele J, Maumela J, Pillay J, Windell J, Beshe J, Naidoo J, Mudau J, Djaje J, Mahalelo J, Collis J, Makhoba J, Daniso J, Mia J and others who are no longer in active service. Guided by your performance, I have no doubt that more Judges will be appointed from our ranks in years to come.

I conclude by pleading with the rest of the Magistrates out there to take the opportunity to avail themselves to fill up the open space left by Judge Mia and myself. I further encourage colleagues to write and send articles for publication, as this is a newsletter for the Magistrates and by the Magistrates. Unless we do it for ourselves, nobody will do it for us.

Reminder: Every Magistrate is welcome to contribute by writing articles on law, judgments analysis or any topic that can enhance the judiciary. Articles will be edited by the editorial team before publication. Articles need not exceed 600 words (not more than two pages). You are all encouraged to take part in this, for it is your newsletter.





NORMS AND STANDARDS

5.2.5 FINALISATION OF ALL MATTERS BEFORE A JUDICIAL OFFICER

All Judicial Officers must strive to finalise all matters, including outstanding judgments, decisions or orders as expeditiously as possible. It is noted that some case may, due to the complexity and magnitude thereof, take longer to finalise than the norms set out herein.

(i) Finalisation of civil cases:

High Courts – within 1 year of date from the date of issue of summons.
Magistrates' Courts – within 9 months from the date of issue of summons.

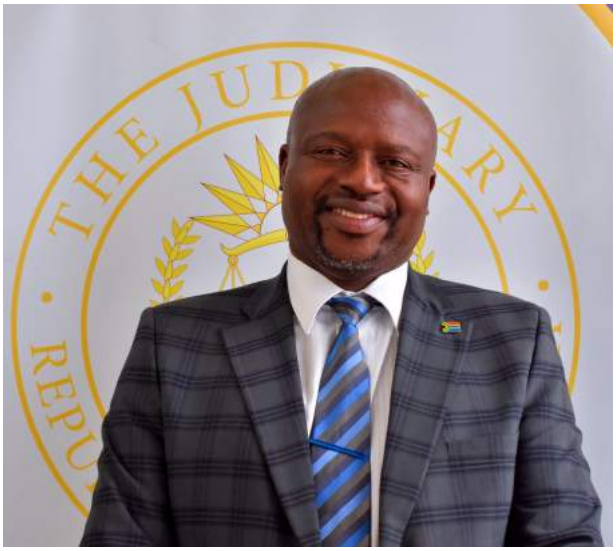
(ii) Finalisation of criminal cases:

(a) In order to give effect to an accused person's right to a speedy trial enshrined in the Constitution, every effort shall be made to bring the accused to trial as soon as possible after the accused's arrest and first appearance in court.

(b) The Judicial Officer must ensure that every accused person pleads to the charge within 3 months from the date of first appearance in the Magistrates' court. To this end Judicial Officers shall strive to finalise criminal matters within 6 months after the accused has pleaded to the charge.

(c) All Judicial Officers are enjoined to take a pro-active stance to invoke all relevant legislation to avoid lengthy periods of incarceration of accused persons whilst awaiting trial.

RECENT CASES OF INTEREST TO JUDICIAL OFFICERS



Mr. T.V. Ratshibvumo

Regional Magistrate

I.

***S v Bezuidenhout* (Case no. 41/2020, ZASCA, Date: 23 April 2021).**

Right to a fair trial of unrepresented accused.

The duty on a judicial officer to assist an unrepresented accused in a criminal trial can be demanding. What to explain varies from case to case. What may be explained in case A could suffice while the same explanation may not be sufficient for case B.

The Supreme Court of Appeal set aside a conviction and remitted the matter back to the Regional Court for trial before a different judicial officer. The appellant was convicted of murder following a trial in which expert evidence was led regarding the proximity of the firearm from the deceased. The court did not explain to the accused that he had a right to rebut the expert evidence through his own experts. It was only after he was convicted that he wanted to call expert witnesses. The court refused saying it had already convicted him. The SCA held that the failure to explain these rights rendered the whole trial unfair.

II.

***Mc Millan v Bate Chubb & Dickson Inc* (Case no. 299/2020, ZASCA, Date: 15 April 2021).**

Prescription

The respondent was the firm of attorneys that attended to the drafting of an antenuptial contract between the appellant and his ex-wife in 1998. While the appellant gave the instructions in terms of which the marriage regime was to be out of community of property that excluded the accrual, the respondents drafted a vague and contradictory agreement which on divorce, in 2016, was declared void *ab initio*. As a result, the estate was divided and the wife left the marriage R4 million richer. Upon realising this, the appellant sued the attorneys for breach of mandate, summons of which was issued in October 2017.

The Respondent raised a special plea of prescription in that during divorce proceedings, as soon as the ex-wife raised that the antenuptial contract was invalid, the respondent immediately informed him to find another attorney as he might have a claim against their firm. This advice was in writing and was in May 2014. In terms of the Prescription Act 68 of 1969, the claim prescribes three years from the date on which the creditor becomes aware of the facts that give rise to the claim. The question before the trial court was when is that date: Is it the date on which the contract was declared void *ab initio*, or the date the respondent warned the appellant that he might have a claim against their firm? The trial court held that it was the later. Aggrieved by this finding, he appealed. Appeal was dismissed by the SCA which confirmed that the claim had prescribed.

RECENT CASES OF INTEREST TO JUDICIAL OFFICERS

III.

First National Bank Limited v The Spar Group Limited [2021] ZASCA 20. Date: 13 March 2021).

Banks' duty over deposits in clients' accounts

Deposits were made by the Spar Group into the FNB held accounts belonging to FNB customer. The Spar Group immediately informed the bank of the deposits and that the same were not due to their customer. The bank took no steps to prevent the client from accessing the funds. Instead, the bank set off the deductions to settle the credit overdraft it had extended the client.

In a claim against the bank, the full court found against the bank. On appeal, the SCA held that a bank which is aware that a third party has deposited funds into its client's bank account and is aware that the client has no legitimate claim to the funds is under a duty to take steps to prevent harm to the third party by way of the misappropriation of those funds by its client. The bank's failure to prevent harm to the third party renders it a co-wrongdoer with the client for the theft. The appeal was dismissed.

IV.

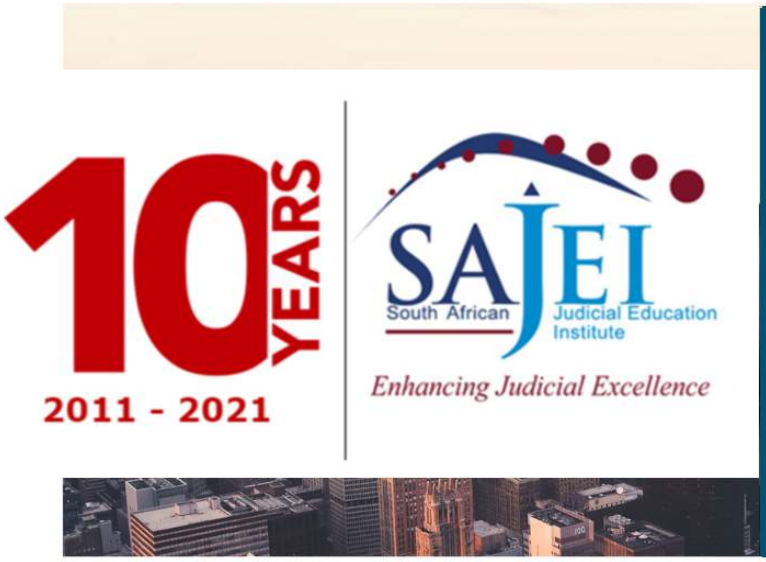
DPP Gauteng, Pretoria v Pooe (Case no. 348/2019, [2021] ZASCA Date: 30 April 2021).

The State's right to appeal against an acquittal.

Two High School learners who were friends asked for a lift from a female teacher at their school who allowed them into her motor vehicle. Moments later, she was forced to drive to her final destination where she was tied on her hands by one learner while the other fired the fatal shot. They left the scene in her motor vehicle having taken her other belongings. The learner who fired the shot pleaded guilty and was sentenced to 25 years' imprisonment. He was a State witness against his friend who pleaded not guilty in a later trial before the High Court, Pretoria.

For the reason that there was no prior agreement between the two learners to kill and rob the deceased, the trial court found there was no common purpose between the two friends. Furthermore, two years earlier, the respondent had befriended the learner who fired the shot, to avoid being bullied by him. Somehow the trial court managed to make a finding of necessity based on this, thereby justifying the respondent's role in tying the deceased's hands, and acquitted him. In so doing, the trial court relied on *S v Goliath* 1972 (3) SA 1 (A) which held that everyone's life is more important to him/herself than any other's. Aggrieved by this, the State asked for a question on law to be reserved which was refused.

On appeal, the SCA was alarmed that with the facts above, the trial court still acquitted the respondent. But the right of the State to appeal is limited to points of law not factual findings. "While the court misdirected itself by focusing solely on prior agreement, which need not be shown to prove common purpose, the trial court proceeded to make a finding that the respondent 'feared for his life and that of his family'. This was a factual finding, albeit scant..." Application for leave to appeal was as such dismissed.

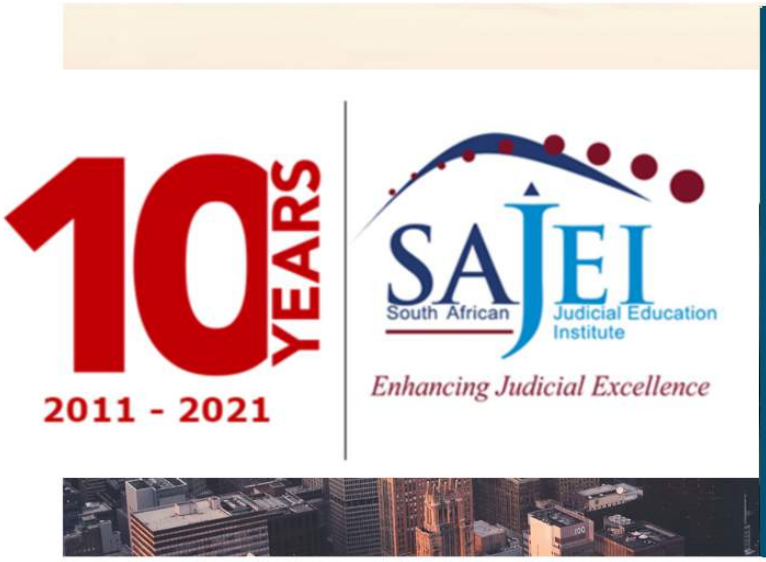


MAGISTRATES RECOMMENDED FOR APPOINTMENT AS JUDGES

Article by:
Ms. J. Bhoola

Mr. Takalani Ratshibvumo

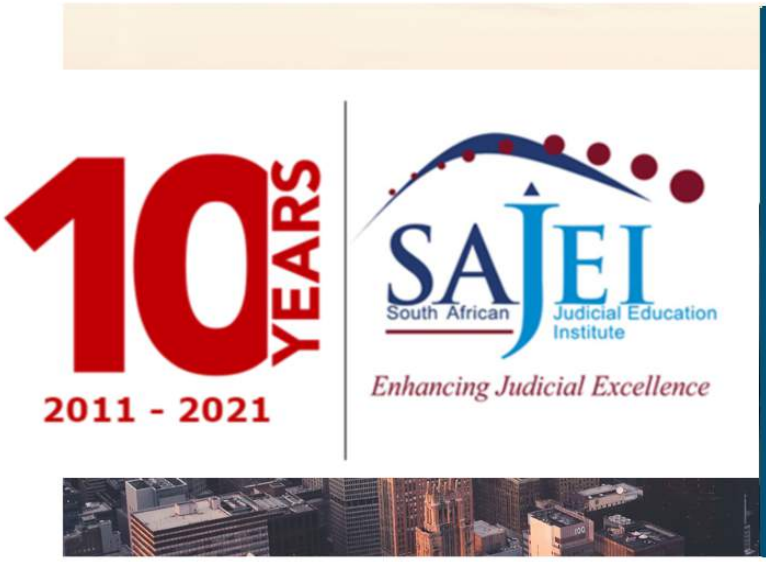
The Mpumalanga High Court is quite literally, a new court. It was declared a division of the High Court in 2016, and officially opened its new building in 2019. After this round of interviews, the Judicial Service Commission has recommended the appointment of its first crop of three permanent Judges amongst them, Mr Takalani Vincent Ratshibvumo. He is currently a Regional Court Magistrate and editor of the SA Judicial Education Institute's monthly newsletter. He started his legal career in 1996, as a lecturer at the University of Venda, before becoming a Public Prosecutor. He joined the Magistracy in 2000, rising to the rank of Regional Magistrate in 2009. Since 2013, he has held several acting stints as a Judge in Gauteng and Mpumalanga. Mr Ratshibvumo is perhaps most well-known for his activism in the legal profession. He was the chairperson of the Gauteng branch of the National Union of Prosecutors of SA, the Vice President and later President of the Judicial Officers Association of SA, and now sits as a national executive member of the Association of Regional Magistrates of South Africa. He is an avid writer and is known for his insightful lectures. He has contributed to the advancement of Judicial Officers through engaging in lectures with SAJEI. We have no doubt he will do a sterling job on the bench in Mpumalanga.



MAGISTRATES RECOMMENDED FOR APPOINTMENT AS JUDGES

Ms. Lindiwe Vukeya

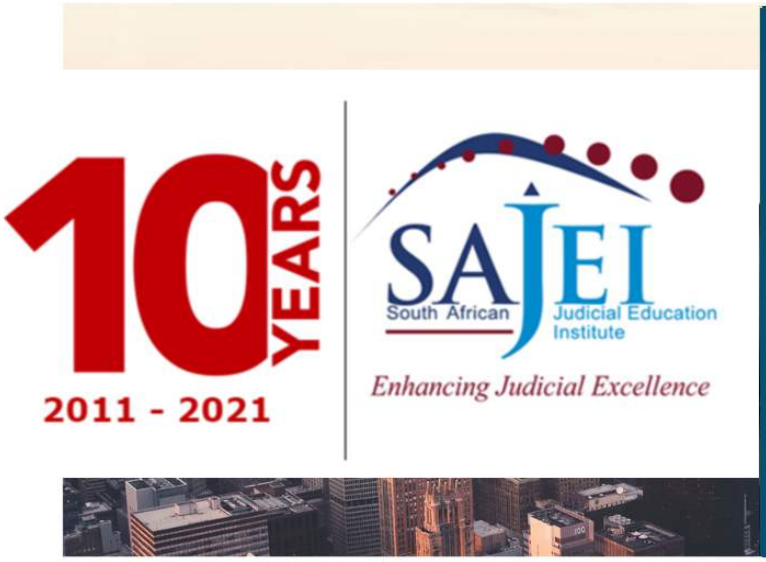
Ms Lindiwe Dorothy Vukeya was one of the three women shortlisted for permanent posts at the Mpumalanga High Court. Amongst the women interviewed, she was the only Magistrate. Ms Vukeya started her career in the legal profession in 1990 as a messenger at an attorneys' firm. She later became a candidate Attorney in the same firm, and then spent four years as a public prosecutor. She joined the Magistracy as an additional Magistrate in 2003, rising through the ranks to become head of court, and in 2015 Regional Magistrate. From 2016, Ms Vukeya has held several stints as an acting Judge in the Gauteng High Court. Ms Vukeya has been recommended for appointment to the Mpumalanga High Court.



MAGISTRATES RECOMMENDED FOR APPOINTMENT AS JUDGES

Mr. Andre Henry Peterson

In a legal career spanning nearly 30 years, Mr Andre Henry Peterson has slowly climbed the ranks of the Magistrates' courts. While completing part-time studies, Mr Peterson worked as an Administration Clerk in the Justice Department. He rose to the ranks of being a Public Prosecutor in 1995, additional Magistrate in 2000, and Regional Magistrate from 2010. Since 2015, he has held several acting stints as a Judge, in both the High courts in Gauteng and North West. Mr Petersen has been a Regional Court Magistrate from 2010 until now. He served as an Acting Judge in the Gauteng and North West Divisions from 2015 to 2020 (various terms), where he presided over civil and criminal law matters. Mr Peterson has also assisted SAJEI in the training of newly appointed Regional Court Magistrates. Mr Petersons judgments are thorough and well drafted. Mr Peterson is recommended for appointment to the High Court Division of North West.



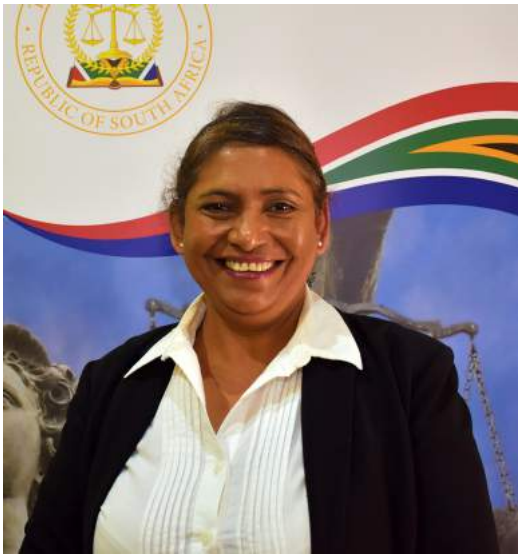
MAGISTRATES RECOMMENDED FOR APPOINTMENT AS JUDGES

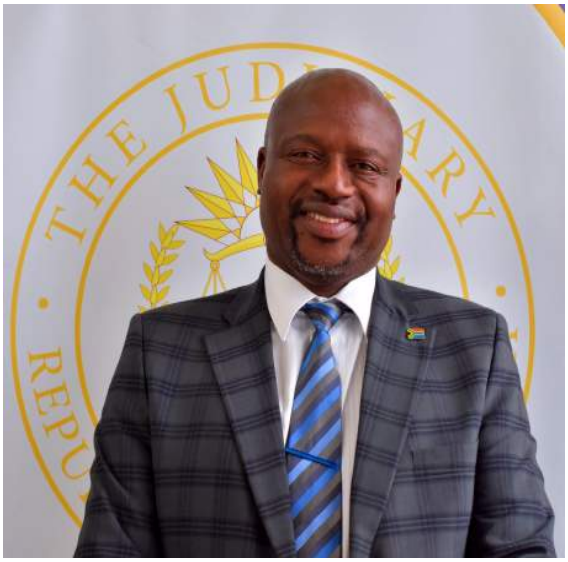
Ms. Mashudu Munzhelele

Ms Mashudu Munzhelele was shortlisted for the position as a Judge in the Gauteng Division. She had an excellent interview and made the Magistracy very proud. She is a Regional Magistrate at Sibasa, Thohoyandou from November 2013. She served as a Magistrate at the Polokwane Magistrate's Court from October 2006 - October 2013. Prior to that she prosecuted in the Regional Court in Loius Trichardt from April 2004- September 2006 and as a District Court Prosecutor from May 2000-March 2004. She served as a Candidate Attorney at the firm known as Khathu Mulovhedzi Attorneys from October 1997-September 1999. She is currently a member of Black Lawyers Association as has been since 2013. She is an active member of ARMSA since 2014, JOASA since 2006 – 2014 and was the Provincial Coordinator for the SAC-IAWJ during 2007. She serves as the Vice Chairperson of Luvhaivhai Community drop-in Centre in Mutangari village since 2014 and is the Vice Chairperson of the women's league, Apostolic Faith Mission Church of Southern Africa since 2012. Ms Munzhelele has been recommended for appointment as a Judge to the Gauteng Division.

THE BINDING NATURE OF STARE DECISIS AS APPLIED IN SOUTH AFRICA

Article by:





Ms. J. Bhoola
Senior Magistrate

Mr. T.V. Ratshibvumo
Regional Court Magistrate

What does Judicial precedent mean?

Judges create legal rules in the process of deciding cases and they make laws as cases are brought before them. In terms of Judicial precedent, Judges should follow the legal rules created by other Judges in earlier cases. These earlier cases contain legal rules known as precedents.

Judicial precedent is derived from English Law and means the process whereby Judges follow previously decided cases where the facts are of sufficient similarity. The doctrine of judicial precedent involves an application of the principle of *stare decisis et non quieta movere* i.e. literally interpreted to mean 'stand by the decisions and not disturb what is settled – (previous decision)'. In practice, this mechanism postulates that lower or inferior courts are bound to apply the legal principles set down by higher or superior courts in earlier cases.

Judicial precedent is made by the judicial authority of South Africa, which is vested in the courts. Whilst the legislative authority is responsible for making rules in the form of statutes and other forms of the law such as regulations, ordinances or bylaws, the judiciary is responsible for resolving disputes by applying the statutes and other forms of the law by hearing the matter and delivering judgments.

As a general rule, the High or Superior Courts are bound by their own judgments and Lower Courts are bound by all decisions of the High Courts. A court is bound by precedent unless the facts of a matter are not materially the same. In other words, where the facts of a particular matter are distinguished from those of a previous matter from which a precedent exists, the existing precedent will not be applicable to the distinguished facts.

THE BINDING NATURE OF STARE DECISIS AS APPLIED IN SOUTH AFRICA

In such circumstances, a judicial officer would be expected to distinguish the facts before him or her from those in the precedence. See for example, *S v Ncheche* 2005 (2) SACR 386 (W). In this judgment Goldstein J, writing for the full court, considered *Rammoko v Director of Public Prosecutions* 2003 (1) SACR 200 (SCA), a judgment of the Supreme Court of Appeal (the SCA), which was binding on him as a Judge of the High Court. *Rammoko* dealt with rape of a child under the age of 16 in which a sentence of life imprisonment was imposed by the trial court. The sentence was set aside and the matter was remitted back to the trial court for resentencing. While Goldstein considered himself bound to follow *Rammoko*, he went on to confirm a sentence of life imprisonment for rape of a child. In doing so, he first had to distinguish the facts before him from those in *Rammoko*.

The system of precedent implies the reporting of cases as a way of publishing the precedents across the different jurisdictions. If a case is unreported it can be brought to the attention of the Court by the parties and can still be used as judicial precedent. Judicial precedence applies even when cases are not reported. A judicial officer bound to follow it cannot just ignore the binding effect of that case without even distinguishing the facts. Failure to observe judicial precedence has always been seen a ground of appeal and in some instances, a reason for misconduct inquiry by the Magistrates' Commission.

See in this regard, *S v Matroos* [2005] 2 All SA 404 (NC) para 19-20 where Majiedt J (as he then was) said the following, "The Magistrate's remarks smack of a contemptuous disregard of the *stare decisis* rule, which is firmly established in our justice system. See: *Ex parte Minister of Safety & Security and others: In re S v Walters and another* 2002 (4) SA 613 (CC) at 646D–H. Having regard to the aforegoing cases and the present matter, I am of the view that the Magistrate's conduct requires the scrutiny of the Magistrates' Commission."

A Superior Court is bound by its earlier decisions unless the same are revisited and changed by that court or a court with higher jurisdiction. *S v Molaudzi* 2015 (2) SACR 341 (CC) is a good example not only because the Constitutional Court ('the CC') revisited its earlier decision and reversed it, but because it was in respect of the very same parties after they had exhausted the appeal remedies. The appellant was thus successful in his appeal before the CC after he had failed before that very court some years earlier, causing the apex court to change the principle of *res judicata.*

THE BINDING NATURE OF STARE DECISIS AS APPLIED IN SOUTH AFRICA

A frustrating conundrum is created when a Superior Court fails to observe its own precedence and simply deviates without revisiting its earlier decisions. The courts otherwise bound by such decisions are left to choose between the two binding authorities as the latter would not have considered the earlier. In *S v Mahlase* [2015] JOL 32894 (SCA), the SCA found that an accused convicted of multiple rapes could not receive the mandatory minimum sentence of life imprisonment if his co-perpetrators or accomplices had, as yet, not been apprehended and convicted. This approach was in sharp contrast with the decision by that court in *S v Legoa* 2003 (1) SACR 13 (SCA) where it held that once the jurisdictional facts which trigger the mandatory sentence have been proved, a court is obliged to impose the prescribed sentence unless substantial and compelling circumstances are found to exist. A number of judgments refused to be bound by *Mahlase* for the reason that it was wrongly decided. See in this regard, *S v Ndlovu* [2020] 2 All SA 556 (GJ), *Cock v S, Manuel v S* 2015 (2) SACR 115 (ECG). It is our view that the breakthrough in this conundrum could not have been spelt any better than was done by Carelse J in *S v Khanye* 2020 (2) SACR 399 (GJ) when she chose to follow the earlier decision by the SCA (*Legoa*) and not *Mahlase* since Legoa was simply not followed without it being revisited properly.

The *stare decisis* principle exists to preserve order in a judicial system that observes the jurisdictional hierarchy. Without it legal practitioners would not be able to give legal advice to members of our society as each judicial officer would be deciding each case as he/she deems fit without the need to follow earlier precedence.

THE IMPACT OF SECTION 35(3) OF THE CONSTITUTION ON THE PROVISIONS OF SECTION 108 OF THE MAGISTRATES' COURTS ACT 32 OF 1944

Dr. V.I. Jameson

District Magistrate - Hartswater

Section 35(3)(a)-(o) of the Constitution lists a number of fair trial rights to which a person is entitled to in a court of law. The list is not an exhaustive list, but a minimum set of guarantees which allows for the acknowledgement and expansion of further rights under the comprehensive aegis of right to a fair trial (*S v Zuma* 1995 4 BCLR 401 (CC) para 16). The right of every offender to a fair trial lies at the core of the criminal justice system. It strives to afford procedural fairness before the state encroaches upon essential rights of a person, namely dignity (the public denouncement as guilty in a status degrading ceremony), liberty (detention or imprisonment) and property (the imposition of a fine or forfeiture) (Steytler *Constitutional Criminal Procedure* 208).

Section 108 of the *Magistrate Court Act,* 32 of 1944 (hereafter MCA), provides courts with a summary procedure in *self-protection and to secure the decorum of its proceedings (S v Mitchell* 2011 (2) SACR 182 (ECP)).

A court may invoke these procedures when any person willfully insults any court official or interrupt court proceedings (*S v Lavhengwa* 1996 (2) SACR 453 (W) and *S v Mathoho: In Re Da Silva Pessegueiro v Tshinanga* 2006 (10 SACR 388 (T). However, courts must use these procedures very sparingly and invoke them only when absolutely necessary (*S v Nel* 1991 (1) SA 730 (A) 749F-750F).

In an unreported case of S *v Motaung* (29/2014 [2014] ZAFSHC 108 (7 August 2014), the review court confirmed the conviction of the court *a quo* for someone who contravened the provisions section 108(1) MCA. The review court satisfied itself that the court *a quo* observed the constitutional rights of the accused person, *inter alia,* the right to legal representation, the accused knew about the charge, he was provided with the opportunity to call a witness.

In several cases; (*S v Burger* (Case R15/20) [2020] ZANCHC 73 (30 October 2020) the review court questioned the constitutionality of section 108 procedures; (*S v Mashaba* (Review Case 27/2020 Gauteng Local Division, Johannesburg Date: 22 October 2020), the review court found no evidence of contempt of court against the prosecutor; (In re *Ms. December* (Case no CA & R 207/2020, EC Division Grahamstown. Date: 27 November 2020) the review court also found no contempt of court committed by the Legal Aid South Africa attorney.

THE IMPACT OF SECTION 35(3) OF THE CONSTITUTION ON THE PROVISIONS OF SECTION 108 OF THE MAGISTRATES' COURTS ACT 32 OF 1944

The cases illustrate the inherent problems with the application of summary procedure which may perceive courts to be biased and unfair towards the offender. On many occasions, the sentenced accused person had already served his sentence (*Motaung* case; *S v Nxane* 1975 (4) SA 433 (O) or serving part of it by the time the case reaches the review court (see *Burger* case *supra,* which was heard in the regional court), also in an unreported case of the same accused previously that time in the district court, *The State v Jeffrey Kevin Burger* Case no. 28/17 NC (08 November 2017).

Although a clear case may have been set out as a contravention of section 108 (see Jones and Buckle: *The Civil Practice of the Magistrates' Court in South Africa* 10th ed Vol 1 at 668), it is a drastic deviation from the most fundamental principles of our legal system that it cannot be permitted other than in in the most exceptional circumstances (*Nel supra* 732H-I). The Constitutional Court in *S v Mamabolo E TV and Others Intervening* 2001 (1) SACR 686 (CC) paras 54-57 denounced a summary procedure as unsatisfactory in several material respects. The Court held that:

> … there is no right to particulars of the charge and no formal plea procedure with the right to remain silent, thereby putting the prosecution to the proof of its case. Witnesses are not called to lay the factual basis for conviction, nor is there a right to challenge or controvert their evidence. Here the presiding Judge takes the initiative… at the hearing, there need be no prosecutor, the issue being between the Judge and the accused.

Further, the Court cast doubt whether the summary procedure is saved by section 36(1) of the Constitution where Kriegler J stated:

> … the question is whether the limitation they pose is reasonable and justifiable in an open and democratic society. If one keeps in mind that the inquiry is limited to the use of the summary procedure in cases of alleged scandalizing of the court, there can be only one answer. In such cases, there is no pressing need for firm or swift measures to preserve the integrity of the judicial process. …, there is no reason why the ordinary mechanisms of the criminal justice system cannot be employed.

The *Mamabolo* case *supra,* did not deal with a summary process as provided for in section 108 of MCA, but it is a useful case because it extensively discusses the pitfalls of a summary process similar to that mentioned in the MCA that undermine the basic rights of offenders which are guaranteed in the Constitution.

THE IMPORTANCE OF DE KLERK MINISTER OF POLICE 2019 (12) BCLR 1425 (CC) FOR PURPOSES OF FIRST APPEARANCES OF ACCUSED PERSONS IN COURT

Dr. V.I. Jameson

District Magistrate - Hartswater

The judgment of the Constitutional Court in the case of *De Klerk v Minister of Police* 2019 (12) BCLR 1425 (CC), places a sharp focus on the duties of not only police officers when they effect a warrantless arrest, but also judicial officers when they deal with offenders at the first appearances of accused persons. The Constitutional Court concurred with the Supreme Court of Appeal, that Assault with the intent to do grievous bodily harm is not a Schedule 1 offence for which the police officer is empowered to effect a warrantless arrest which resulted in the subsequent further detention of the offender by the court. A common sense understanding of the judgment is that judicial officers must play an active role at first appearances, establish whether an accused person is proper before the court and apply its mind judiciously to determine whether a further postponement in detention or otherwise is necessary (section 168 CPA).

The protection of the human rights of the accused person is paramount at this stage (*De Klerk* case paras 66 and 88).

The *Criminal Procedure Act, Act* 51 of 1977 (hereafter CPA), provides different ways to bring an offender before the court which is an arrest, summons, written notice, or indictment (section 38). The CPA further sets out specific procedures in which these methods are executed to legally bring the offender before the court (section 39 for arrest; section 54 for summons, section 56 for written notice section 144 for indictment). If one of these processes is not properly followed, it cannot be said that the offender is properly before the court (*De Klerk* case).

It is well established that Magistrates courts deal with the bulk of criminal matters at first instance. The most commonly used method to arraign a criminal before the court is by way of a warrant or warrantless arrest. The focus is primarily on the latter because it is from where the most civil claims emanate. Section 40 and Schedule 1 of the CPA enumerates several offences for which peace officers may effect a warrantless arrest. It is therefore imperative that not only police officials, but prosecutors and judicial officers have knowledge of these provisions to ensure that criminals are properly before the court where it concerns warrantless arrests to avoid civil claims against the state and Magistrates.

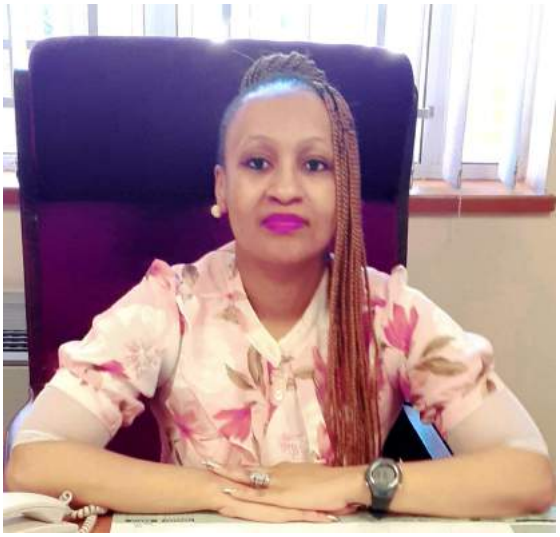
THE IMPORTANCE OF DE KLERK MINISTER OF POLICE 2019 (12) BCLR 1425 (CC) FOR PURPOSES OF FIRST APPEARANCES OF ACCUSED PERSONS IN COURT

The provisions of section 168 of the CPA clearly authorize the court to adjourn a matter to any date and place if it is necessary or expedient, provided that such postponements are not inconsistent with any provisions of the CPA. It follows that if a case is not made out to justify a postponement, by implication of law, the matter may be removed or struck from the court roll.

The Constitutional Court in the *De Klerk* case by implication requires courts to know the basics of the law applicable when the accused person appears for the first time before the court. At a minimum, the offences listed in section 40 and Schedule 1 for which a criminal may be arrested warrantless. Further, it is the court's responsibility to establish whether the accused person is proper before the court and not merely execute postponements in a perfunctory manner.

The courts must guard against becoming an extended arm of an unlawful arrest and cause further harm by unnecessarily incarcerating an accused person (section 12 Constitution).

IS SOUTH AFRICA BACKSLIDING FROM ITS DOMESTIC AND INTERNATIONAL LEGISLATIVE OBLIGATIONS IN FIGHTING CORRUPTION?



Ms. Z. Siwisa– Thompson

Acting Magistrate - Port Elizabeth

Corruption globally, and South Africa in particular, has been morphed into an endemic and highly institutionalized criminal enterprise by those involved. This is a far cry from the days when corruption was perceived as a "so-called victimless crime." The fight against corruption has been evangelically pursued and metamorphosed into a global enforcement eco-system. In South Africa's modern legal hybrid system, fraud and corruption constitute both common law and statutory offences respectively, which undermine the core values of the Republic's Constitutional imperatives. On the basis of such recognition, the post-1994 State has built-up a kaleidoscope of anti-corruption strategies that take on a trifecta approach. The first of such approach entails the promulgation of an elaborate legislative regime. To start with, the Constitution in Chapter 9 introduces the so-called chapter 9 institutions such as the Office of The Public Protector, to act as a control against unlawful enrichment and corruption.

The Prevention and Combating of Corrupt Activities Act (PRECCA); is South Africa's quintessential legislation on corruption, which frames the over-all offence of corruption. The said legislation in sections 4 and 26 (1) (a) makes provision for the prosecution of State officials who commit acts of fraud and corruption.

Other legislations include the Financial Intelligence Centre Act 38 of 2001 (FICA) and the Prevention of Organised Crime Act 121 of 1998 (POCA).

The second approach encompasses the establishment of government institutions that would mainstream the Republic's anti-corruption efforts, through controlling, investigation and punishing perpetrators. Such institutions include the Special Investigating Unit, the South African Police Services, and the Directorate for Priority Crime Investigation (the Hawks).

The third approach in the trifecta sees South Africa ratifying a number of continental, regional and international anti-corruption agreements. These include:

- At the international level, South Africa ratified in 2004 the United Nations Convention Against Corruption (UNCAC) of 2003.
- On a continental level, South Africa ratified the African Union Convention on Combating and Preventing Corruption of 2003.
- Concomitant to the above, at the regional level South Africa also ratified the Southern Africa Development Community (SADC) Protocol Against Corruption in 2001.

IS SOUTH AFRICA BACKSLIDING FROM ITS DOMESTIC AND INTERNATIONAL LEGISLATIVE OBLIGATIONS IN FIGHTING CORRUPTION?

The enactment of domestic legislation and the ratification of international legally binding instruments on paper signal that there is sufficient political will; and that the State is not indifferent to the fight against corruption, especially in the public sector. However, notwithstanding the seemingly administrative and legislative anti-corruption drive; South Africa would seem to be backsliding from its domestic and international anti-corruption commitments. My assertion is informed and framed by the healthy diet of corruption newscasts, either electronically and or in the country's major Sunday newspapers; which highlight the magnitude of what Peter Genger calls "a hydra headed monster" (corruption) and which is quite staggering.

The avalanche of judicial commissions of enquires in South Africa including: Seriti Commission into the Arms Deal, Commission of Inquiry into allegations of corruption at the Public Investment Corporation (PIC) and the Commission of Enquiry into the allegations of state capture and impropriety by state officials, is indicative of South Africa's failure to bring this "hydra headed monster" under control.

The recent COVID-19 personal protection equipment procurement scandal is a timely reminder that South Africa is tightly locked in the jaws of conspiring private and public corrupt actors. In spite of the mounting evidence that South African society is being suffocated by corruption, it is worth noting that slow progress is being made in holding individuals to account for their breach of trust and impropriety, and in the process ensuring that South Africa does not become characterized as a State where there is deficit of a rule of law.

REVISITING THE DISCLOSURE OF DEFENCE IN TERMS OF SECTION 115 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977

Dr. J.D. Lekhuleni

Regional Magistrate - Cape Town

1. Introduction

Ever since the advent of our constitutional democracy in South Africa, the Constitution has guaranteed the protection of the fundamental rights to all people, which included the right to a fair trial. The adoption of the Interim Constitution with a Bill of Rights, marked the beginning of a new era founded on the supremacy of a Constitution to which all laws were made subordinate.

The Criminal Procedure Act 51 of 1977 (the CPA) regulates criminal procedure in the criminal courts and its provisions are subject to the Constitution including the right to a fair trial as entrenched in the Bill of rights. The CPA, promulgated on 22 July 1977, introduced s 115. This section was the brain child of Judge Hiemstra in the early 1960s who opined that in order to curtail protracted criminal proceedings, there should be a judicially controlled pre-trial interrogation of an accused person. (See *Abolition of the Right not to be questioned*' (1963) 80 *SALJ* 187; *Abolition of the Right not to be questioned: A Report on Progress* (1965) 82 *SALJ* 85). Judge Hiemstra proposed that an accused person would be brought before a Magistrate as soon as he is arrested, in order to be interrogated by a prosecutor, in the presence of a Magistrate, on the content of statements made by witnesses to the police.

Judge Hiemstra believed that this would ensure that the accused person would be expected to disclose his defence immediately upon his arrest. Pursuant to Judge Hiemstra's proposals, the government at the time established the Botha Commission of inquiry into the Law of Criminal Procedure and Evidence (Government Notice No. 1037, G.G. No. 2739 of 26th June, 1970). The proposals of Judge Hiemstra were refined and to some extent accepted by the Botha Commission. This led to the enactment of the CPA with the current section 115. The introduction of section 115 was seen as a radical departure from the accusatorial system in South Africa, as the judicial questioning of the accused was seen as the importation of inquisitorial elements into the criminal trial process.

REVISITING THE DISCLOSURE OF DEFENCE IN TERMS OF SECTION 115 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977

2. The purpose and application of section 115

There is a plethora of case law and commentaries on the application of section 115 of the CPA. A discussion of all those cases and commentaries goes beyond the scope of this article. As adumbrated above, the main objective of section 115 finding its way into the CPA was to shorten criminal trials where an accused pleaded not guilty. The section is couched in permissive terms. It provides that where an accused at a summary trial pleads not guilty to the offence charged, he ***may*** be asked by the court whether he wishes to make a statement indicating the basis of his defence. The accused may elect to remain silent. He must however be apprised of his right to remain silent especially in the situation of an accused person appearing in person. The nature and purpose of section 115 was succinctly set out by Judge Eksteen, immediately after the CPA was enacted in the case of *S v Mayedwa* 1978 (1) SA 511. He opined that it allows the Magistrate, on a plea of not guilty being tendered, to ask the accused whether he wishes to make a statement indicating the basis of his defence.

He observed that the accused is not obliged to accede to this request but may do so if he wishes. Judge Eksteen believed that the object of such a request would be to allow the accused to disclose at the outset what the crux of his defence would be, and such a disclosure would obviously tend to shorten the trial, in that the State would then be appraised as to the aspects of the case on which its evidence would be concentrated.

Section 115 proceedings are completely dependent upon the cooperation of the accused. At the time when this section was introduced, the South African Constitution did not recognize constitutional rights for accused persons. There was a blanket docket privilege which was entrenched by the Appellate Division in the case of *R v Steyn*1954 (1) SA 324 (A).

It is now a well-established principle of our law that an accused person is entitled to the contents of the docket. The statements of witnesses must be furnished to the accused in order for him to prepare for trial, unless the prosecution can prove that the disclosure of such documents would compromise its case.

REVISITING THE DISCLOSURE OF DEFENCE IN TERMS OF SECTION 115 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977

Even before the accused can plead to the charge, he would now know the case that he is facing, as well as all the witnesses that would be called by the prosecution. Notwithstanding all this information at the disposal of the accused, section 115 and the Constitution gives the accused the right to remain silent and not to disclose the basis of his defence. It is submitted with respect, that the section is no longer fit for purpose, as it is in conflict with the objectives of curtailing and shortening the criminal proceedings.

3. The proposed way forward

As explained above, section 115 is couched in permissive terms. However, our courts have over the years unwittingly applied the section as if it is peremptory. Where an accused pleaded not guilty, our courts applied section 115 almost as if it is compulsory. In *S v Herbst* 1980 (3) SA 1026 (E) at 1031, Judge Eksteen stated that no judicial officer is obliged to ask an accused person whether he wishes to make a statement indicating the basis of his defence, nor is he obliged to question the accused in order to establish which allegations in the charge are in dispute. The same approach was endorsed in the case of *S v Khumalo* 1979 (3) SA 708 (7).

It is submitted that on a closer examination, section 115 is no longer relevant and its application needs to be revisited. In fact, it protracts proceedings because in most cases where accused persons are legally represented, they opt to exercise their right to remain silent and wait to see the weaknesses in the State's case. The main objective for its introduction into the CPA was to curtail proceedings and for the accused to disclose his defence right at the beginning of the trial, so that the State could know which witnesses to call and what evidence to present. It is submitted that instead of a section 115 disclosure of defence at the whim of the accused, the legislature should consider introducing a pre-trial disclosure before court by both the State and defence. This will equally balance the scales of justice. As the law stands, the prosecution is expected to disclose its case as contained in the docket. Notwithstanding this disclosure on the part of the prosecution, the prosecution on the other hand is left in the dark as far as the defence of the accused is concerned. Quite often, the accused's defence is tailored as the prosecution's case progresses and the evidence is tendered by the prosecution's witnesses.

REVISITING THE DISCLOSURE OF DEFENCE IN TERMS OF SECTION 115 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977

At times, this prompts the prosecution to apply for the reopening of its case in order to rebut an unexpected version that an accused raised during the trial. It is submitted that a reciprocal disclosure by both the State and the defence would alleviate this problem. It is further submitted that the right to a fair trial applies equally between the State and the defence. See *S v Jaipal* 2005 (5) BCLR 423 (CC) para 29. In my view, the one sided system of disclosure is unconstitutional and offends against the State's right to a fair trial.

The time has come that the legislature considers the disclosure by the defence. This will go a long way in ensuring that issues are narrowed at the pre-trial stage. In 1995 the SALRC took a dim view and disapproved a proposal that the defence's disclosure should be mandatory or obligatory. The argument raised at the time was based on the view that such a duty was in conflict with an accused's right to be presumed innocent and the right to remain silent. As the law then stood, that view was undoubtedly correct. However, since the right to the prosecution's disclosure has been firmly entrenched and established in our law, it is submitted that the disclosure by the defence is justifiable where full prosecution disclosure has taken place. See Steytler 'Making South African Criminal Procedure More Inquisitorial' *Law, Democracy and Development* vol 5 (2001) 1at 28.

In 2002 the SALRC also rejected persuasive proposals of the NDPP who argued for the pre-trial disclosure by the defence (see Project 73 Fifth Interim Report on Simplification of Criminal Procedure). In my view, there must be parity between the arms of the State and the Defence, which is key in an adversarial system, in order that both parties may enjoy a fair trial envisaged by our Constitution. More importantly, this will ensure that criminal trials are properly managed and dealt with expeditiously and in a fair manner.

I am aware that an accused person has a right to be presumed innocent and to remain silent. However, it must be stressed that these rights are not absolute. They are subject to limitations in terms of section 36 of the Constitution. They must also be weighed against the right to a fair trial for both the accused and the prosecution. In addition, it is submitted that the rights in the Bill of rights, in particular, the right to a fair trial, the right to remain silent and to be presumed innocent, are intrinsically interdependent and mutually support each other.

REVISITING THE DISCLOSURE OF DEFENCE IN TERMS OF SECTION 115 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977

To the extent that it is necessary, guidance can be sought from International and comparative jurisprudence. For instance, in *Murray v United Kingdom,* (1996) 22 EHRR 29 (*"Murray"*) the European Court of Human rights had to consider whether provisions in the Criminal Evidence - Northern Ireland Order 1988 which permitted adverse inferences to be drawn from silence during interrogation infringed Article 6(1) and (2) of the European Convention of Human Rights, which implicitly protected the right to remain silent. The court held that drawing adverse inferences from pre-trial silence was not necessarily incompatible with the right to remain silent, as the right was not absolute. The court held further that the way the accused behaved or has conducted his defence was relevant in evaluating the evidence against him.

Pursuant to the guidelines set out in the case of *Murray* (*supra*), it is submitted that at the pre-trial judicial conference, it would be expected of the prosecution to disclose its case against the accused. In turn, it would be expected of the accused to disclose his defence fully, if any. This should not be limited to specific defences like an alibi, or a defence of insanity etc. The reciprocal disclosure will assist both parties in narrowing the issues and to manage the case more effectively.

It is further submitted that this will be in keeping with the equality of arms principle. In a scholarly treatise, Judge Van Dijkhorst as he then was, considered defence disclosure and states as follows:

> "I fail to see how the full disclosure of the versions of both State and defence at the outset and the elimination of evidence on that which is common ground can be regarded as unfair. We are, after all, attempting to arrive at the truth, not to obfuscate it." ((1998, November) "The criminal justice system in jeopardy. Is the Constitution to blame?" *Consultus* 136.

In conclusion, it is submitted that to the extent that the right to prosecution disclosure has been firmly entrenched in our jurisprudence, defence disclosure during pre-trial proceedings would also be reasonable and justifiable. This will ensure that a balance is maintained in the criminal justice system and cases are finalised fairly and expeditiously. To this end, I agree with the views expressed by Steytler (*supra*) who argues that with the weight of opinion that the English legislation on defence disclosure will not fall foul of the European Convention on Human Rights, a similar provision may pass constitutional muster in South Africa.

SAJEI CONDUCTS ITS FIRST JUDICAL SKILLS PROGRAMME FOR ASPIRANT WOMEN JUDGES

Article by:

Ms. P.P. Mogale

Since the commencement of SAJEI operations in November 2011, Judicial Skills for Aspirant Judicial Officers has always been on the Annual Training Schedule. This was in fulfilment of the legislative mandate enshrined in Section 2(b) of the SAJEI Act 14 of 2008.

From the 29th March to 01st April 2021, SAJEI made history by holding its first Judicial Skills programme for Aspirant Women Judges.

The programme was attended by 38 women arcoss the legal fraternity, five of whom were from the Magistracy i.e Ms Jinx Bhoola (Senior Magistrate/SAJEI Judicial Educator), Ms Loyiso Mzana (Additional Magistrate), Ms Johannah Mthimunye (Regional Magistrate), Ms Anneline Africa (Regional Magistrate) and Ms Mosidi Moleleki (Regional Magistrate). These Magistrates' experience on the High Court bench ranges from a few weeks to none.

Experienced Judges of the Constitutional Court, Supreme Court of Appeal and High Courts presented on topics such as Judgment writing, Managing Civil and Criminal trials, Managing opposed and unopposed motions, Appeals and Reviews, Assessment and evaluation of expert evidence, Caseflow Management and Judicial ethics. The seminar included pre-course and overnight assignments on judgment writing. The Judges assessed the assignments and provided constructive feedback. There was noticeable improvement on the overnight assignment, which was issued after the presentation on Judgment writing.

In summarising the various presentations, the following pertinent issues were mentioned in relation to soft skills required:

- Acting women Judges usurp various roles especially in the family space and therefore time management is critical.
- Acting Judges should not be shy or afraid to consult with other colleagues especially Senior Judges
- The importance of preparation could not be over emphasized
- Acting Judges should embrace challenges especially when allocated seemingly difficult cases
- Maintain credibility of the Judiciary through writing good judgments

SAJEI CONDUCTS ITS FIRST JUDICAL SKILLS PROGRAMME FOR ASPIRANT WOMEN JUDGES

When asked whether the programme met their expectations and prepared them for acting at the High Court, their comments were as follows:

"Attending this course helped me to appreciate the level of diligence, commitment and perseverance needed to become a Judge"

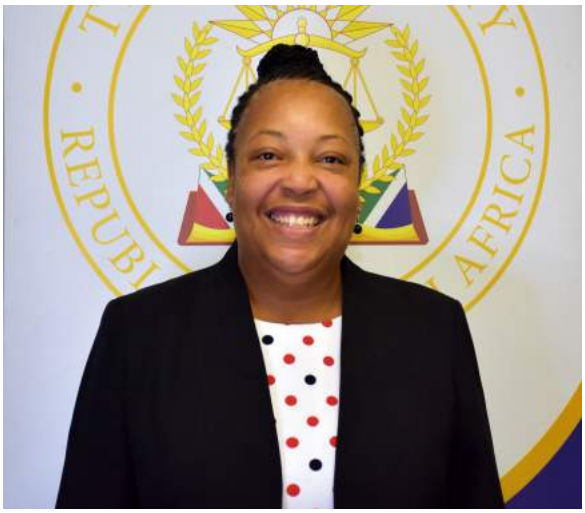
"I found the training to be informative and engaging. Facilitators were highly skilled and eagerly imparted their knowledge"

"I learnt lot from the seminar. The environment was comfortable, relaxed and suitable for peer learning. The Facilitators shared a wealth of knowledge and we are grateful for sacrificing their time from their busy schedules"

"The seminar was an eye opener. It revealed dynamics that I did not consider before. What made it more valuable was that experienced Judges shared both the theoretical and practical perspectives. I now have a better understanding on how to manage the Court."

On the last day of the seminar, participants were requested to suggest topics for future Judicial Skills programme for Aspirant women Judges. The general view is that the programme should be compulsory for all acting Judges.

ACHIEVEMENT OF 100% VIRTUAL TRAINING FOR THE 2020/21 FINANCIAL YEAR



Ms. P.P. Mogale

Deputy Director: Executive Support To SAJEI CEO

Since 26 March 2020, South Africa was on lock down due to the Covid-19 Pandemic. The lock-down levels varied based on the number of infections.

Training is the core business of SAJEI and has been conducted on a face-to-face basis since inception.

At the time of the announcement, SAJEI E-Learning Administrator was with SAJEI for just under six months. With the advent of the 4IR implementation of virtual training was, therefore, somewhere in the horizon.

In a quest to fulfil its core mandate, accelerated efforts/sprint towards virtual learning became inevitable for SAJEI. The first webinar titled Virtual Court Appearances for Regional Magistrates was held in June 2020.

SAJEI intends to provide virtual Facilitation Skills to all Facilitators. The first batch of about 35 Facilitators participated in a two-week virtual training programme in January 2021.

To date, over 101 courses have been conducted through virtual platforms. This is despite challenges of data, connectivity, load shedding and outdated laptops. Some Judicial Officers utilized their mobile phones to participate in the training.

Although face-to-face training cannot be completely ruled out, Judicial Officers provided positive feedback on virtual training in that they can participate from their offices or at home and do not have to spend a lot of time travelling and away from home. The other benefit of virtual training is that there is no limit on the number of participants and geographical location without compromising on court performance. With the current platform, the ability to go into virtual breakaway room is the cherry on top. The breakaway rooms allows for smaller group discussions and maximum participation. It also saves time as participants can go back to plenary within seconds.

Beyond Covid-19, things will not be the same again. Technology is the future

LIST OF ADVOCATES & ATTORNEYS STRUCK OFF THE ROLL GAUTENG

Name of Legal Practitioner	Attorney	Advocate	Status	Date of Action
Catharina Johanna Van Der Merwe (Bester)	Yes	-	Struck From Roll	18 December 2020
Thabo Mamokgalake Chuene	Yes	-	Struck From Roll	22 December 2020
Keith Elwyn Lutchmia	Yes	-	Struck From Roll	02 February 2021
Philip Fantisi	Yes	-	Struck From Roll	11 February 2021
Bianca Mostert	Yes	-	Suspended	11 February 2021
Muthuhathonwi Ramabulana	Yes	-	Struck From Roll	18 February 2021
Moses Morokwe Letsoalo	Yes	-	Struck From Roll	23 February 2021
Andre Stephanus Marais	Yes	-	Suspended	25 February 2021
Mokgohloe Phyllis Phaladi	Yes	-	Suspended	25 February 2021
Ingrid Meyer	Yes	-	Struck From Roll	26 February 2021
Wendy Darvall	Yes	-	Struck From Roll	04 March 2021
Riaan Roux	Yes	-	Struck From Roll	04 March 2021
Estelle Lydia De Jager (Van Wyk)	Yes	-	Struck From Roll	09 March 2021
Sibongile Leonora Khoza (Zungu)	Yes	-	Suspended	09 March 2021
John Martin Keevy	Yes	-	Suspended	18 March 2021
Debbie Pretorius	Yes	-	Struck From Roll	18 March 2021

LIST OF ADVOCATES & ATTORNEYS STRUCK OFF THE ROLL KWAZULU-NATAL

Name of Legal Practitioner	Attorney	Advocate	Status	Date of Action
Cyril Welcome Bongukuphila Mbatha	Yes	-	Suspended	08 December 2020
Hiloshini Moodley	Yes	-	Struck From Roll	12 March 2021
Kirsten Ray Smith	Yes	-	Suspended	12 March 2021

LIST OF ADVOCATES & ATTORNEYS STRUCK OFF THE ROLL WESTERN CAPE

Name of Legal Practitioner	Attorney	Advocate	Status	Date of Action
Lichakane Patrick Phori	Yes	-	Suspended	15 December 2020
Moses Sipho Mziako	-	Yes	Struck From Roll	25 March 2021
Zeenat Mohamed	Yes	-	Suspended	01 April 2021

10 YEARS
2011 - 2021

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