

JUNE 2025 | Q1 ISSUE



THE JUDICIARY

30TH ANNIVERSARY OF THE ESTABLISHMENT OF
THE CONSTITUTIONAL COURT

JUDICIAL EXCHANGE SESSION

COURT ONLINE LAUNCHES

COMRADES MARATHON



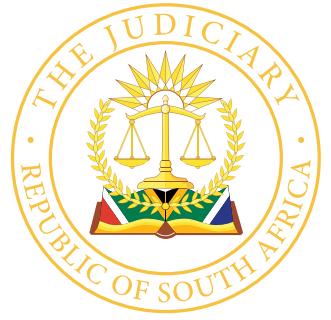


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FROM THE EDITOR

Importantly, reflecting on a recent meeting held between the Judiciary and the Executive, led by the President and Chief Justice Mandisa Maya, President Ramaphosa further reaffirmed the Government's commitment to putting measures in place to attain institutional independence of the Judiciary. The President stated:

"We reaffirm our commitment to providing all the necessary support to our courts as they administer justice. At our meeting with the Judiciary recently, we committed to taking steps to advance the independence of the judiciary and the future of our courts' administration. A joint committee will develop an action plan to be finalised 6 weeks from now. We will ensure the Judiciary is rightly constituted as an equal branch of government with the Legislature and the Executive."

The Judiciary welcomes this commitment and we look forward to the outcomes of the joint committee and the contributions they will make to advancing our national vision as set out in section 1 of the Constitution.

This edition of our Newsletter also provides updates from other activities of the Judiciary. These include the successful hosting by the South African Chapter of the International Association of Women Judges of the 17th Biennial Conference of the International Association of Women Judges; several engagements with colleagues from other jurisdictions on matters of mutual interest; and the continuing roll-out of the Court Online System in the Superior Courts, among others. Please also take time to read the tributes by Chief Justice Maya and Acting Deputy Chief Justice Madlanga to the late Judge C T Sangoni, the retired Judge President Eastern Cape Division of the High Court, who passed away on 10 June 2025.

We trust you will find the publication informative and enjoyable. Until next time...

Judge President Thoba Poyo Dlwati

Judge of the KwaZulu-Natal Division of the High Court and President of the SAC - IAWJ

DEAR COLLEAGUES,

It is a pleasure to present to you this winter edition of the Judiciary Newsletter. A number of major events have taken place over the past three months, not least of which was the commemoration of the 30th anniversary of the establishment of the Constitutional Court of the Republic of South Africa on June 20.

The Constitutional Court was inaugurated by then-President, Dr Nelson Mandela, on 14 February 1995, and our celebration of this occasion was momentous not only for the milestone it marked within the context of the country's constitutional democratic project, but for the important pronouncements made during this event that would further advance the country's founding values as outlined in section 1 of the Constitution (1996).

His Excellency President Cyril Ramaphosa, speaking during the commemoration, recommitted the Government to providing a range of institutional, infrastructure, financial, administrative, and legal support to the Judiciary to ensure that the Judiciary execute its duties independently, effectively, and with dignity. The President of the Republic noted that this support is crucial for maintaining judicial independence, which is a cornerstone of democracy and the rule of law.



CELEBRATING 30 YEARS OF CONSTITUTIONAL JUSTICE: SOUTH AFRICA MARKS A HISTORIC MILESTONE

South Africa recently marked a significant moment in its democratic journey as the Constitutional Court celebrated its 30th anniversary, marking three decades since it first opened its doors to serve as the guardian of the Constitution and the highest court in the land on constitutional matters.

The Constitutional Court was officially inaugurated on 14 February 1995 by the late President Nelson Rolihlahla Mandela, less than a year after the country's first democratic elections.

To commemorate this historic occasion, a formal celebration was held on 20 June 2025 at Constitution Hill in Johannesburg, in a ceremony led by Chief Justice Mandisa Maya and attended by representatives from all three arms of State, as well as dignitaries from other countries, including members of foreign judiciaries and international institutions.

Reflecting on the milestone, Chief Justice Maya said, "It was a proud moment for all of us serving in the country's Apex Court to be present at the time of marking this important anniversary. The occasion gave us an opportunity to look back with pride on the progress made in advancing South Africa's constitutional project. It also reminded us of the work that still lies ahead in realising the vision of a just, equal, and democratic society, as envisioned in section 1 of the Constitution."

Since its establishment, the Constitutional Court has delivered landmark judgments that have profoundly shaped South African society—from the abolition of the death penalty to the legalisation of same-sex marriage, and the enforcement of socio-economic rights such as housing, education, and healthcare. Its jurisprudence has not only transformed South African law but has also influenced constitutional courts around the world.

The 30th anniversary celebration served as a moment of reflection and renewal—a chance to honour the Court's legacy and reaffirm a national commitment to the Constitution's founding values. As South Africa continues to confront contemporary challenges, the Court's enduring role as a protector of democracy, justice, and human dignity remains as vital as ever.



30TH

ANNIVERSARY OF THE
ESTABLISHMENT OF THE CONSTITUTIONAL COURT

CONSTITUTION HILL



President Cyril Ramaphosa



Chief Justice Mandisa Maya



Minister of Justice and Constitutional Development, Ms Mmamoloko Kubayi, MP



Acting Deputy Chief Justice Mbuyiseli Madlanga



Retired Chief Justice Raymond M M Zondo



Retired Deputy Chief Justice Dikgang Moseneke



Retired Justice Albie Sachs



Retired Justice Catherine O'Regan



Justice N Z Mhlantla



Chief Justice Luke Malaba of Zimbabwe



Chief Justice Richard Wagner, P.C of Canada



Chief Justice G. Ketlogetswe of Botswana

CONSTITUTION HILL



President of the Supreme Constitutional Court of Egypt



Chief Justice of the Kingdom of Eswatini, Justice B Maphalala



The President of the Constitutional Council of Mozambique, her excellency President L Ribeiro



Chief Justice Peter Shivute of Namibia



Chief Justice of Nigeria, Justice K Kekere-Ekun



Justice P Mithal of the Supreme Court of India



Justice I Lenaola of the Supreme Court of Kenya



Advocate Tembeka Ngcukaitobi SC



Ms Franny Rabkin



Advocate Wim Tregrove SC



Advocate Gilbert Marcus SC



Acting Judge R. Bhika



Professor Sandra Liebenberg



THE JUDICIARY MEETS THE EXECUTIVE TO STRENGTHEN SOUTH AFRICA'S JUSTICE SYSTEM

Statement issued by the Presidency, Republic of South Africa on Friday, 6 June 2025.

President Cyril Ramaphosa supported by the Minister of Justice and Constitutional Development, Mmamoloko Kubayi and Deputy Minister Andries Nel, on 6 June 2025 hosted a high-level engagement with Chief Justice Mandisa Maya and Heads of Court at Mahlamba Ndlopfu, the President's official residence in Pretoria.

This important engagement brought together the Executive and the Judiciary to reaffirm their shared commitment to building a stronger, more effective justice system, firmly anchored in the values of South Africa's Constitution.

Also in attendance were Ministers Khumbudzo Ntshavheni, Minister in the Presidency, Enoch Godongwana, Minister of Finance, Inkosi Mzamo Buthelezi, Minister of Public Service and Administration, and Dean Macpherson, Minister of Public Works and Infrastructure. Chief Justice Mandisa Maya was supported by senior members of the Judiciary, including, Justice Mahube Molemela, President of the Supreme Court of Appeal, Judge Presidents, Cagney Musi of the Free State Division of the High Court, Dunstan Mlambo of the Gauteng Division and Pule Tlaletsi of the Northern Cape Division.

The meeting built on prior engagements between Chief Justice Maya and Minister Kubayi, who is spearheading a multi-departmental initiative to address critical issues that have been raised by the Judiciary.

In collaboration with the Ministers of Finance, Public Works and Infrastructure, and Public Service and Administration, Minister Kubayi has prioritised improvements in court infrastructure, human resources, security, and judicial independence.

"Within the principle of the separation of powers, each arm of the State has a responsibility to cooperate with, and provide support to, the other arms of the State in giving full effect to our Constitution. It requires, in particular, that we create conditions in which each arm of the State can fulfill their respective mandates without hindrance. It is an opportunity to develop common approaches on issues that are critical to the effective functioning of the Judiciary. At the core of our deliberations is our shared commitment to safeguarding and entrenching the independence of the Judiciary and ensuring that it has the space and means to administer justice", said President Ramaphosa.

Key discussions focused on advancing the process to ensure institutional independence and unification of a single Judiciary, and enhancing the capacity of the Constitutional Court, Supreme Court of Appeal, and High Courts.

President Ramaphosa and Chief Justice Maya, welcomed the collaborative tone of the engagement and reaffirmed their commitment to continued engagement between the Executive and the Judiciary.

"This meeting is significant in that it happened days before we are due to host dignitaries of the judiciary from across the globe, to celebrate the 30th Anniversary of the establishment of the Constitutional Court on the 20th of this month," added Chief Justice Maya.

The engagement marked a renewed determination to transform South Africa's justice sector into one that is resilient, secure, and accessible to all.

PRETORIA



President Cyril Ramaphosa, flanked by Chief Justice Mandisa Maya and Minister Mmamoloko Kubayi, MP, with Heads of Court, Cabinet Members and support officials.



President Cyril Ramaphosa pictured with Chief Justice Mandisa Maya



The engagement table - a meeting between the Judiciary and the Executive

South Africa Hosts Prestigious Global Conference on Gender Justice and Judicial Leadership – IAWJ Conference 2025



In April 2025, South Africa proudly hosted the 17th Biennial Conference of the International Association of Women Judges (IAWJ) in Cape Town, marking a historic moment for the country's legal landscape. Organised by the South African Chapter of the IAWJ (SAC-IAWJ), the conference ran from 9 to 12 April 2025 and brought together 900 delegates, including Judges, Magistrates, legal professionals, and policymakers from more than 143 countries. It was the first time South Africa hosted the event under the leadership of a female Chief Justice, Mandisa M L Maya, who also serves as the Vice President of the IAWJ.

Themed "Resilience: Women in Leadership to End Gender-Based Violence & Femicide," the conference focused on the pervasive global challenge of gender-based violence (GBV). With a sub-theme on "Resilient Leadership – Diversity, Equality and Inclusion," the event fostered a platform for meaningful engagement around judicial leadership, policy reform, and strategic activism to combat GBV and femicide. It also provided an opportunity for reflection on the transformative role of women in the justice system and the continued struggle for gender equality.

His Excellency President Cyril Ramaphosa delivered a keynote address at the opening session of the conference, on 9 April 2025. He lauded the efforts by the IAWJ to hold a conference with the aim of tackling issues around Gender-based violence and femicide, and finding judicial solutions to end this scourge on a global level. "This conference is an opportunity to sharpen our collective commitment to law that heals, courts that transform, and to systems that centre humanity," he said.

The Cape Town conference featured expert-led sessions that tackled a wide range of topics, from judicial responses to GBV and cyberviolence, to the mental health and self-care of judicial officers. Delegates also explored complex issues such as human trafficking, discriminatory laws, and gender bias within legal systems. These discussions highlighted the urgent need for gender-responsive courts and reaffirmed the judiciary's role in creating inclusive and equitable legal frameworks.

The event was attended by prominent legal figures including various Chief Justices and senior members of the judiciary from across the globe. Under the guidance of Chief Justice Maya, the conference served as a platform for peer learning, judicial collaboration, and cross-border solidarity among legal professionals committed to social justice. It underscored the critical importance of resilient judicial leadership in upholding human rights and advancing gender equity in a world marked by persistent inequalities.

About the IAWJ and SAC-IAWJ

Established in 1988 by 50 pioneering women Judges, the IAWJ has since grown into a powerful global network of more than 10,400 members across 143 countries. The organisation's mission has always been rooted in the advancement of women in the judiciary and the pursuit of equal justice for women and girls worldwide.

The SAC-IAWJ, founded in 2004, represents a strong regional voice within the global movement, with 350 members including both female and male Judges and Magistrates, as well as allied legal professionals. ■

IAWJ 17TH BIENNIAL CONFERENCE



L-R: Minister Mmamoloko Kubayi, MP, Chief Justice Mandisa Maya, President Cyril Ramaphosa, SAC-IAWJ President, Judge President Thoba Poyo Dlwati, and IAWJ President Justice Binta Nyako.



President Cyril Ramaphosa pictured with Chief Justice Mandisa Maya



President Cyril Ramaphosa pictured with the SAC-IAWJ President, Judge President Thoba Poyo Dlwati



Delegates from Ghana during the roll-call of nations.



Delegates from Philippines during the regional breakaway sessions.



South African delegates at the Conference

CHIEF JUSTICE MAYA CONDUCTS AN OVERSIGHT VISIT TO THE MTHATHA HIGH COURT

The Chief Justice of the Republic of South Africa, Chief Justice Mandisa Maya, on 13 May 2025, conducted an oversight visit to the Eastern Cape Division of the High Court, Mthatha.

The Chief Justice met with the Acting Judge President of the Division, Judge Z Nhlangulela, as well as senior OCJ officials from its National Office and Eastern Cape Division.

Subsequent to the visit by the Chief Justice, Acting Judge President Nhlangulela announced that the Mthatha High Court would implement the Court Online System from 4 June 2025.



Chief Justice Mandisa Maya welcomed by the Acting Judge President of the Eastern Cape Division of the High Court, Judge Z Nhlangulela



Chief Justice Mandisa Maya held an engagement with Judges and court staff



Acting Secretary General, Adv Mareelize Potgieter, with other support officials



Chief Justice Maya during the engagement with the Court's Judges



Chief Justice Mandisa Maya engaged with the community and court users.



Chief Justice Mandisa Maya was taken on a tour of the facilities at the Bityi Magistrate's Court during her ad hoc oversight visit.

CHIEF JUSTICE VISITS BITYI MAGISTRATE'S COURT, EASTERN CAPE

Chief Justice Mandisa M L Maya, ON 15 May 2025, conducted an over oversight visit to the Bityi Magistrate's Court in the Eastern Cape, conducted a walkabout of the court's facilities and interacted with both court users and members of the local community. The visit formed part of ongoing efforts to assess court operations, service delivery, and the lived experiences of those who rely on the justice system at grassroots level.

During the visit, the Chief Justice also made a stop at the Bityi Police Station, one of the Court's key stakeholders within the broader justice sector. Her engagement underscored the importance of collaboration between the Judiciary and other stakeholders in the justice system in ensuring accessible, effective justice for all.



Tribute to former Judge President C T Sangoni

The Chief Justice of the Republic of South Africa and the entire Judiciary solemnly mourn the passing of Former Eastern Cape Judge President Temba Sangoni, a jurist renowned for his towering intellect, unwavering principles, and dedicated service to justice. Judge Sangoni passed away peacefully in Johannesburg on 10 June 2025, after a short illness, leaving behind a profound legacy in South Africa's legal community. His career was marked by an enduring commitment to the rule of law and the transformation of the country's judiciary, most notably during his tenure as Judge President of the Eastern Cape High Court until his retirement in 2017.

Judge Sangoni's leadership was pivotal in addressing systemic challenges within the Eastern Cape Judiciary, particularly in improving case flow management and enhancing access to justice in historically marginalized areas such as Mthatha. Beyond his judicial role, he was also a respected senior traditional leader of the Qokolweni-Zimbane Traditional Council, skillfully bridging customary law with constitutional democracy. His dedication to justice extended beyond the courtroom, exemplified by his role as one of the three executors of Nelson Mandela's estate, alongside Advocate George Bizos SC and Justice Dikgang Moseneke.

On 21 June 2025, Judge Sangoni was laid to rest in his home village of Qokolweni, Mthatha in the Eastern Cape. In a statement, Chief Justice Mandisa Maya extended heartfelt condolences to the Sangoni family, the Eastern Cape Judiciary, and the AbaThembu community, praising Judge Sangoni as an inspiring figure who paved the way for many Black legal practitioners. "We are poorer for his passing but richer for his contributions," the Chief Justice remarked.

As is customary, the Judiciary will hold a ceremonial court sitting to honour Justice Sangoni. Details of memorial services will be shared in due course. ■

JUSTICE CLEMENT TEMBA SANGONI



TRIBUTE TO RETIRED JUDGE PRESIDENT C T SANGONI

Tribute by Mbuyiseli Madlanga
Acting Deputy Chief Justice

Mandibulele uNobetha, uNkosi uVulithuba kuba ethe wasusa uxanduva lokuba ndibulise ndibalule bonke aba bantu athe wababulisa wababalula ekuqaleni phaya. Ukuba kubo kukho athe wabashiya ngempazamo, ndiyababulisa ndiyababalula. Ngamafutshane, mandithi ndibulisa yonke le nginginya.

Mandixolisele uChief Justice Maya. Phezolo besinomsitho wokubhiyozela iminyaka engamashumi amathathu iConstitutional Court ikho. Ezinye zeendwendwe zethu ibingooChief Justice bamazwe ngamazwe. Namhlanje nangomso, uChief Justice Maya uneentlanganiso ezahluahlukeneyo nooChief Justice abo.

Sis' Ntobsie nabantwana bakho noBhut' Themba, uThembile, uVuyelwa kunye noFikiswa, kunye nalo lonke usapho ehlabaniseleyo kulo le ntlungu, mandibhekise kuni kuqala. Andifuni ukuthetha nani ekugqibeleni ngokungathi ndongezelela nje (a footnote, ngesiNgesi). Linzulu eli nxeba. Into eninzi ibumfiliba kuni ngalo mzuzu. Mna ke andihambisani nala ntetho eye ithi abantu abaswelekelweyo mabangalili. Mna ndiye ndithi, kwaye ndiyatsho nangoku, xa niva ngathi mhanilile, lilani. Ukulila kukodwa nje, kunendawo eyimpiliso (therapeutic effect, ngesiNgesi). Eli nxeba liza kuthatha ixesha elide ukuphola. Lilo kanye ixesha eliya kwenza de liphole. Incwadi endayifunda kuForm 5 (matric in today's terms), yayinendawo egxila kwinto yokokuba ixesha lisombulula nezinto esithi xa sizijonge ngalo mzuzu, kube ngathi

sokuze zisombululeke. Le ncwadi yayinomntu othi, "Oh time, thou must untangle this, not I. It is too hard a knot for me to untie." Ke ngoko, ndithi kuni de libe liyafika elo xesha lokuphola kweli nxeba, okwangoku ndithi zamani ukomelela. Uzamani lo ndimsebenzisa ngabom. NgesiNgesi ngendisithi I use it advisedly or designedly. Ndigqithe.

I believe that Bhut' Themba had a soft spot for me. Most if not all amongst us would have killed to dine with uTat'uMandela. Years back, uBhut' Themba invited me to a Christmas dinner at Tat'uMandela's Qunu home. I went with my wife, Nosisi. It was a small, intimate gathering; kukho uTat'uMandela, uMam'uGraca Machel, uBhut' Themba noSis' Ntobsie, MaMam'uGraca's daughter and, maybe, a couple of other people. To this day, I regret that I never captured that moment on camera. How and why Bhut' Themba had invited me, I have no idea. Of course, I just enjoyed the ride. What I must also highlight is that when, as mentioned before, a graduation celebration was to have been held in honour of Mthetho and a couple of others, Bhut Themba asked me to be the guest speaker. I was relatively young then and there were seniors who enjoyed prominence by far compared to me. And yet, Bhut' Themba asked me to perform this task. It was not to be because Mthetho tragically passed on, on a Tuesday when the celebration was to have been on the Saturday.

Judge Clement Themba Sangoni, the immediate past Judge President of the Eastern Cape, was a leading light in the legal field during the darkest days of apartheid. He was the senior partner of the Sangoni Partnership, later Sangoni Incorporated. At that time, the Sangoni Partnership enjoyed the distinction of being the largest black law firm in the whole of South Africa. Amongst his partners, were notable lawyers like the immediate past Deputy President of the Supreme Court of Appeal, Justice Xola Petse, Justice Dumisa Ntsebeza of the African Court on Human and Peoples' Rights based in Arusha, Tanzania, and Senior Counsel Mzwandile Ntsaluba, a former Director of Public Prosecutions in the Eastern Cape.

Many young advocates cut their teeth through a constant supply of briefs from the Sangoni Partnership. Some of those advocates have gone on to ascend to high office within the legal community. They include Chief Justice Maya, Justice Majiedt of the Constitutional Court, retired Constitutional Court Justice Chris Jafta, Judge President Selby Mbenenge, Judge Philip Zilwa, me, the Acting Deputy Chief Justice (it gives me serious discomfort to have to mention myself, but I owe a lot to the Sangoni Partnership not to acknowledge that publicly), and many others. The Sangoni Partnership, with Bhut' Themba at the helm, embodied the noble idea of empowerment even before the term was in vogue in South Africa.

The law firm was unafflicted by the disease of insularity unfortunately suffered by many. That is demonstrated by the fact that it briefed advocates from all over South Africa. Advocate Majiedt, whom I have just mentioned is an example. He practised in Cape Town, but got a lot of briefs from the Sangoni Partnership. To add to this list, the following names of advocates who are now well established come to mind: Ish Semenya SC, Vincent Maleka SC and Tshepo Sibeko SC, all Johannesburg senior counsel. They were regulars in the dusty streets of Mthatha.

No doubt, the Sangoni Partnership contributed immensely to the early development of all these young advocates. Because in any field of human endeavour, the system of apartheid denied black people opportunities, black attorneys' practices mainly comprised criminal work and road accident cases. That was not the case with the Sangoni Partnership. The firm commanded a variety of work. That too, was an important facet in the development, or rather speedy development, of the young advocates to whom I have referred.

Amongst his seniors, contemporaries or near contemporaries, Bhut' Themba briefed notable lawyers like Dullar Omar (the first Minister of Justice of a democratic South Africa), Tholie Madala SC (later a first-intake Justice of the Constitutional Court), Dikgang Moseneke SC (a former Deputy Chief Justice), Thembile Skweyiya SC (later a Justice of the Constitutional Court), Fikile Bam (later the Judge President of the Land Claims Court), Justice Poswa SC (later Judge of the Pretoria High Court), Marumo Moerane SC (an accomplished practising advocate), Chiman Patel SC (former Dean of Law, University of KwaZulu-Natal and former Judge President of KwaZulu-Natal), Denzel Potgieter SC (a Judge of the Eastern Cape Division of the High Court), and many others.

Lest it be thought that the Sangoni Partnership focussed only in moulding the careers of young advocates, the partners trained numerous candidate attorneys who grew to become notable practitioners. A few that come to mind are Ms Nomonde Yako, the Sangoni Partnership's first woman articulated clerk whom Advocate Zwayi Ntsaluba SC aptly called *umafungwashe* (first born girl child), Judge Buyiswa Majiki, Justice Dumisa Ntsebeza of the

African Court of Human and People's Rights, Judge Phakamisa Tshiki, Professor Christine Venter, a law professor at Notre Dame University, USA, Advocate Zuko Mapoma who has acted a few times as a judge and who looks set to become a judge soon, Advocate Philisa Mngandi who was a prominent attorney and is presently a successful advocate, Mr Sobantu Jojo who, up to his untimely passing, was an accomplished attorney, Mr Gugulethu Madlanga who runs a successful "boutique (as he calls it)" practice, and many others.

From the early days until the end of apartheid, the Sangoni Partnership unwaveringly and fearlessly fought for the rights of those who found themselves on the wrong side of apartheid's draconian security laws. The partnership was at the forefront of bringing court applications for the release of political detainees and representing accused charged under apartheid laws.

Themba Sangoni was an outstanding attorney in his own right. What a cross-examiner. What mastery and effective use of language. He was a natural when it came to the art of court advocacy. It used to be a marvel to watch him play his trade in court. And I did this a few times when I worked at the Mthatha Magistrate's Court in the early 1980s. I used to tell my friends within the legal community that, if I were ever to need an attorney, my obvious choice would be Bhut' Themba Sangoni.

Themba Sangoni was a private, personal advisor to President Nelson Mandela. It was no surprise that, together with the late George Bizos SC and retired Deputy Chief Justice Dikgang Moseneke, he became one of the three executors of the late President's estate.

An outstanding legal career was deservedly crowned by Themba Sangoni's ascension to the Judge Presidency of the Eastern Cape Division of the High Court. That, of course, after a sterling career as a Judge of the Bisho High Court.

In Bhut' Themba Sangoni, South Africa has lost a legal colossus. No questions need be asked about the legacy he leaves behind.



His legacy continues to live on in the many and varied legal endeavours of the many lawyers whose lives were touched by his legal practice. He rests having accomplished far more than many can ever wish for.

What pains me is that the name Sangoni Partnership or, indeed, Sangoni Incorporated died some years back. A law firm that has done and has achieved so much for South Africa should have lived forever. Its existence should have transcended the mortal lives of its individual partners. Why does a white law firm like Fairbridges, the oldest law firm in South Africa, which was established in 1812 continue to exist more than 200 years later? There are other white law firms that count their years of existence in more than a century. Examples are Webber Wentzel formed in 1868, Shepstone & Wylie founded in 1872 and Bowmans founded in 1885. The fact that we, black lawyers, cannot create and sustain our law firms is an indictment on us. It is time we did an introspection and asked ourselves tough questions. Once we have done that, let us create other Sangoni Partnerships and do the best we can to guarantee their longevity. I am sure Bhut' Themba would have been pleased by something like that. Perhaps not so much about the Sangoni Partnership itself, but about longevity becoming part of the DNA of black law firms in general. I say perhaps not about the Sangoni Partnership because Bhut' Themba did not like being celebrated or being the focus of attention. Whatever his wishes might have been, if there ever was a black law firm deserving of existing into eternity, it is Sangoni Incorporated. Founded, built and nurtured by Bhut' Themba. ■



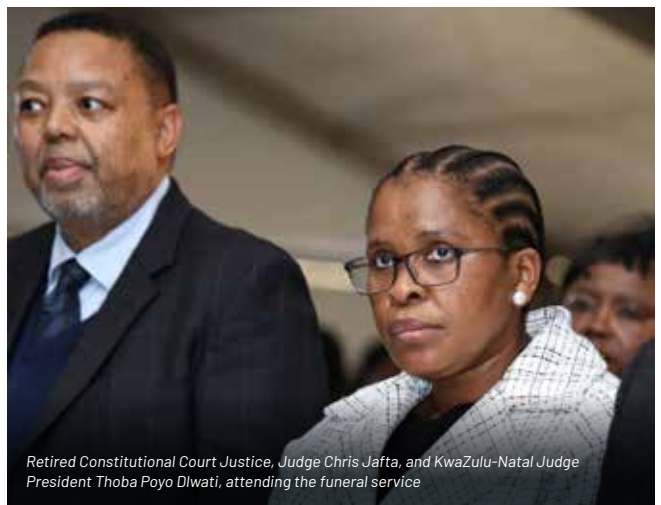
QOKOLWENI, MTHATHA, EASTERN CAPE



Family members and mourners paying their last respects to Judge Sangoni at his final resting place



Acting Deputy Chief Justice Mbuyiseli Madlanga paying tribute to Judge Sangoni on behalf of the South African Judiciary



Retired Constitutional Court Justice, Judge Chris Jafta, and KwaZulu-Natal Judge President Thoba Poyo Dlwati, attending the funeral service



Acting Deputy Chief Justice Mbuyiseli Madlanga led the Judicial delegation at the funeral service



Minister of Justice and Constitutional Development, Ms Nkhensani Mmamoloko Kubayi, MP paid tribute to Judge Sangoni during the funeral service.



Mrs Sangoni and other family members



Mrs Sangoni was presented with the South African flag by the Minister of Justice and Constitutional Development, Ms Nkhensani Mmamoloko Kubayi, MP

CONSTITUTIONAL COURT



The Justices of the Constitutional Courts of South Africa and Zambia who participated in the judicial exchange

A JUDICIAL EXCHANGE BETWEEN THE SOUTH AFRICAN AND ZAMBIAN CONSTITUTIONAL COURTS

On 24 April 2025, the Constitutional Courts of South Africa and Zambia embarked on a valuable judicial exchange, fostering an open dialogue aimed at enhancing court operations and strengthening constitutional justice across borders. This collaborative initiative provided a platform for both courts to share insights, experiences, and best practices in constitutional adjudication, enabling mutual learning and deeper understanding of challenges and innovations within their respective judicial systems.



Justice N Z Mhlantla



Honourable Justice Prof. Mulela M Munalula, President of the Constitutional Court of Zambia



Honourable Mr Justice Arnold Mweetwa Shilimi is the Deputy President of the Constitutional Court of Zambia



Justice N J Kollapen



Justice Z Tshiqi



Delegates at the judicial exchange between the Ugandan and South African Judiciaries, hosted by the South African Judicial Institute.

SAJEI HOSTS UGANDAN JUDICIARY FOR JUDICIAL TRAINING BENCHMARKING VISIT

The South African Judicial Education Institute (SAJEI) hosted a delegation from the Ugandan Judiciary on a two-day benchmarking visit to South Africa from 29 to 30 April 2025. The visit aimed to foster knowledge exchange and explore best practices in judicial education and training systems. During the engagement, SAJEI delivered presentations on its curriculum design methodologies, training techniques, and capacity-building programmes, with the goal of establishing collaborative synergies between the two institutions.

Judge President Cagney Musi delivered the opening remarks on behalf of Chief Justice Mandisa M L Maya at the inaugural session. The engagement underscored the importance of cross-border collaboration in enhancing judicial competence and promoting excellence in justice delivery across the continent.



Judge President of the Free State Division of the High Court, Judge President C Musi



Chief Magistrate Oswald Krieling, Northern Cape



Ms Sharon Lesa Nyambe, South African UNODC Country Representative



Justice Mike Chibita, Head of the Ugandan Judiciary and the Judicial Training Institute (JTI) Delegation



The Acting Judge President of the Gauteng Division of the High Court, Judge Aubrey Ledwaba, joined by other Judges of the Division, hosted a delegation of the Hubei Provincial Higher People's Court at the Johannesburg High Court.

HUBEI PROVINCIAL HIGHER PEOPLE'S COURT VISIT THE JOHANNESBURG HIGH COURT

On 26 June 2025, the Acting Judge President of the Gauteng Division of the High Court, Judge Aubrey Ledwaba, alongside fellow judges of the Division, warmly welcomed a delegation from the Hubei Provincial Higher People's Court to the Johannesburg High Court. This important meeting provided a valuable opportunity for both judicial bodies to share best practices in judicial administration, discuss their experiences with judicial reform, and explore prospects for future collaboration and exchanges aimed at strengthening their respective legal systems.

In addition to the productive discussions, the visiting delegation was given a guided tour of the Johannesburg High Court, led by Acting Judge President Ledwaba. This visit not only deepened the mutual understanding between the two courts but also showcased the operational workings of the Johannesburg High Court, further cementing the foundations for continued cooperation and knowledge sharing between South Africa and China's judicial institutions.



Acting Judge President Ledwaba led the engagement between the Gauteng Division of the High Court and the Hubei Provincial Higher People's Court



The Hubei Provincial Higher People's Court delegation being shown the facilities of the Johannesburg High Court



The delegations of the two Courts exchanging gifts



The Hubei Provincial Higher People's Court delegation being shown a court room at the Johannesburg High Court



STRENGTHENING JUDICIAL RESPONSES TO TERRORISM AND DRUG TRAFFICKING: INSIGHTS FROM THE MOZAMBIKAN COLLOQUIUM ON PROCEDURAL LAW

By Judge Mokgere B S Masipa

Judge of the KwaZulu-Natal Division of the High Court

Judge M B S Masipa attended the 3rd International Colloquium, on Procedural Law in Mozambique in February 2025. Below is the address she gave on 'Strengthening Judicial response to terrorism and drug trafficking.'

The 3rd International Colloquium on Procedural Law, held in Maputo, Mozambique, on 13 and 14 February 2025, provided a vital platform for judicial officials, legal experts, and policymakers to discuss the pressing challenges posed by terrorism and drug trafficking. Hosted by the Tribunal Supremo (Supreme Court) of Mozambique, the event brought together dignitaries, including the Chief Justice, government officials, and representatives from international legal bodies. This article synthesizes key discussions from the colloquium, emphasizing legislative frameworks, judicial cooperation, procedural challenges, and insights. The speakers included members of the judiciary, prosecution, academia and department of Justice from Mozambique, Brazil; Portugal and South Africa

The Growing Threat of Terrorism and Drug Trafficking in the Region

Africa continues to face an increasing threat from terrorism, with over 3,400 attacks recorded last year, resulting in nearly 14,000 casualties. The nexus of terrorism and drug trafficking exacerbates instability, fuels organized crime, undermines government authorities/national security and burdens judicial systems. Recently, Mozambique has seen heightened terrorist activity, particularly in Cabo Delgado province, where extremist groups exploit weak governance and porous borders. The colloquium underscored the need for a robust, interactive and

collaborative interstate judicial response to prevent these crimes from eroding national security.

Drug trafficking remains a significant challenge, and South Africa has been identified as a major transit hub, prompting the inclusion of the neighbouring country's judicial involvement in the discussions/colloquium. A combination of drug trafficking and terrorism highlights the urgency of integrated strategies, including intelligence sharing, cross-border cooperation, and policy alignment.

Legal Frameworks and Regional Commitments

Presenters at the colloquium highlighted the importance of legislative reforms and regional cooperation. It was acknowledged that the African Union (AU) has enacted several counterterrorism instruments, including the OAU Convention on the Prevention and Combating of Terrorism (1999) and its subsequent protocol (2004), ratified by 43 African nations. Mozambique has also strengthened its legal framework through the 2023 amendment to its national counterterrorism laws.

The following examples were cited as relevant legislation/practices from other African nations.:

- **Uganda's Anti-Terrorism Act 14 of 2002:** Like many other countries, it quite broadly defines an 'act of terrorism' and

lists the various activities which may constitute terrorism.¹ It further grants law enforcement officers the power to monitor bank accounts, and communications of suspected terrorists.

²The fact that the offence of terrorism can potentially attract the death penalty shows the seriousness with which this crime is viewed in Uganda.

- **Mauritius' Prevention of Terrorism Act 2 of 2002:** came into effect on 16 March 2002. It also defines an 'act of terrorism' together with the various activities which could constitute terrorism.³ An anomaly in this Act is the fact that a person suspected of terrorism may in certain circumstances be detained for 36 hours without having access to a legal practitioner.⁴ The Act provides for terms of imprisonment starting from 5 years up to a maximum of 35 years.⁵
- **Namibia's Terrorism Act 4 of 2014:** includes judicial oversight mechanisms to prevent abuses of power. It came into effect in July 2014, and repealed and replaced in its entirety the 2012 version of the Act. It too defines what 'terrorist activity' means in that country. Being found guilty of terrorism carries with it a sentence of life imprisonment.
- Unlike Uganda, Mauritius and Namibia have provisions which allow for judicial oversight in certain circumstances, for example when an association is declared to be a proscribed organisation and other instances. Uganda's legislation makes no provision for any judicial oversight at all.
- In addition to these Acts, these countries also have various legislation aimed at tackling and stopping the financing of terrorist organisations.
- The discussion on these three countries highlighted the fact that in some instances, some inroads into the rights of citizens are made.
- **South Africa's Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004** extends jurisdiction beyond national borders to prosecute international terrorism.
- This Act aims to prevent and combat terrorism and related activities, and acknowledges that such activities undermine democratic rights and values. The Act further acknowledges that these activities are international problems and need to be addressed through international co-operation. The one way through which the Act addresses international co-operation is to extend South African courts' jurisdiction to wherever the offences are committed. The Act contains a comprehensive definition of what is meant with 'terrorist activity'. The Act further makes provision for life imprisonment in certain circumstances. The constitutional rights granted to accused in section 35(3) of the Constitution remain available to an accused.
- Prosecution for terrorism offences in terms of the Act are rare in South Africa. The most notable is the trial of Mr Henry Emomotimi Okah, who was accused of masterminding and bankrolling car bombings in Nigeria. This matter went all the way to the Constitutional Court, where his conviction on 13 counts of terrorism was ultimately confirmed. Mr Okah was

sentenced to 24 years' imprisonment. What this case showed is that despite being tried for heinous crimes, Mr Okah throughout retained his rights to challenge any perceived unfairness in his case. Ultimately this case demonstrates our commitment to addressing terrorism.

- But terrorism is not the only struggle facing Africa. South Africa, like many of our neighbouring nations, finds itself at the epicentre of the drug and drug trafficking struggle. In recent months alone, we have witnessed the staggering scale of this crisis – with cocaine worth over R252 million seized in a single operation, crystal meth valued at R300 million seized just last month, and a fully operational drug factory uncovered in the Mpumalanga province. These are not isolated incidents nor mere statistics, but symptoms of a growing crisis that threatens to consume our entire region. When a drug factory operates in Mpumalanga, its products poison communities across our borders. When extortion syndicates terrorize businesses in one province, they soon expand their operations region-wide. More recently, the UN' Interregional Crime and Justice Research Institute has highlighted some troubling trends, which include a nexus between the drug trade providing sources of finance for terrorist groups.⁶

The colloquium emphasized that judicial officers must balance national security measures with civil liberties, ensuring fair trials and due process protections.

Key Discussions

The key discussions and challenges raised at the colloquium:

- **Investigative and Procedural Limitations:** The discussions emphasized the means of transport used by traffickers, limitations in investigative methods, and the necessity for legislative reviews.
- **Mozambique's Legal Framework:** Mozambique's Law 15/2023, as amended by Law 4/2024, was highlighted as a critical tool in combating drug trafficking and terrorism.
- **Judicial Training Needs:** Many magistrates in Mozambique come from civil law backgrounds and require additional training to handle complex terrorism and drug trafficking cases.
- **Criminal Procedure Delays:** Concerns were raised about outdated investigation timelines, leading to inefficiencies in prosecution.

Challenges of Interstate Judicial Cooperation:

1. Extradition Challenges in South Africa

Challenges of judicial co-operation became one of the subjects of discussion. Some such challenges observed include the decisions concluded in the following extradition cases:

1. **The Manuel Chang Case:** The controversy surrounding the

¹Section 7 of the Anti-Terrorism Act 14 of 2002.

²Section 19 of the Anti-Terrorism Act 14 of 2002.

³Section 3 of the the Prevention of Terrorism Act 2 of 2002.

⁴Section 27(1) of the Prevention of Terrorism Act 2 of 2002.

⁵See generally C Lumina 'Counter-terrorism legislation and the protection of human rights: a survey of selected international practice' (2007) 7 AHRLJ 35 at 44-48 for the discussion on Mauritius and Uganda.

⁶Presentation on the Increasing links between drug trafficking, corruption and other forms of organized crime, including trafficking in persons, in firearms, cybercrime and money-laundering and, in some cases, terrorism, including money-laundering in connection with the financing by L Villadsen, Deputy Director of the United Nations Interregional Crime and Justice Research Institute on 19 October 2021 (https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_64/thematic_discussions/statements_slides/Leif_Villadsen_Remarks_CND_Thematic_session1.pdf).

extradition of Mozambique's former Finance Minister, in whose case two extradition applications were received by South Africa from his home country and from the United States of America. South Africa responded by sending him to the United States instead of Mozambique. The decision was regarded by Mozambique as legally inconsistent and politically inconsiderate.

Shepherd Bushiri Case: Malawi's previous refusal to extradite the self-proclaimed prophet to South Africa, raised procedural and political concerns, exposed weaknesses in regional legal harmonization (the decision has since been reviewed and reconsidered in favour of the South African application).

These cases demonstrated the necessity for strengthened regional cooperation and the development of clear procedural frameworks to promote and improve interstate/regional judicial collaboration.

2. Asset Recovery and Coercive Measures in Drug Trafficking Cases between countries

Drawing insights from Brazil and Portugal, the colloquium explored the justification for preventive detention and state confiscation of assets upon conviction. Experts suggested that asset attachment procedures should run parallel to criminal trials to ensure that financial resources linked to criminal activities are effectively seized.

Application of the principle of Habeas Corpus and Procedural Safeguards

Habeas corpus was another central theme of the colloquium. Discussions focused on its applicability in terrorism and drug trafficking cases, conflicts between Mozambique's Criminal Penal Code and habeas corpus provisions, and whether habeas corpus findings could be appealed.

International examples highlighted the risks of overreaching counterterrorism laws, which, if unchecked, could suppress dissent and disproportionately target marginalized groups.

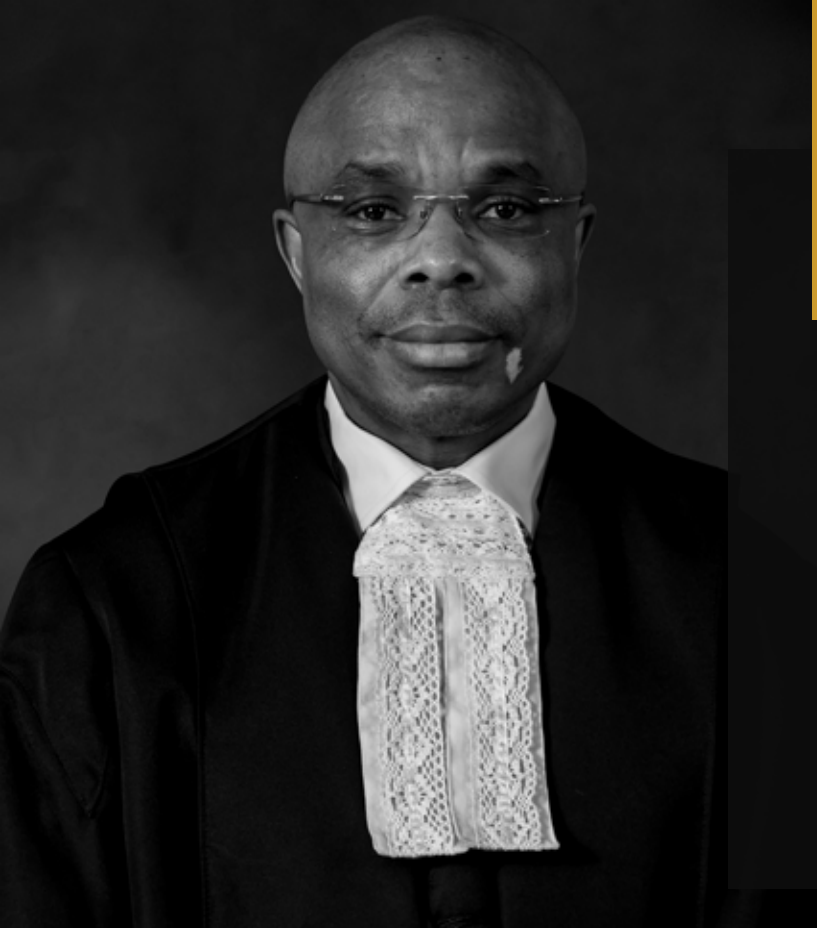
Conclusion and Way Forward

The Mozambican Colloquium on Procedural Law reaffirmed the judiciary's crucial role in combating terrorism and drug trafficking while safeguarding constitutional rights. Measures including but not limited to strengthening legal frameworks, enhancing judicial training, and improving regional cooperation, are said to be vital in addressing these threats effectively. It was agreed that moving forward, judicial systems must strike a delicate balance between enforcement and human rights, ensuring that justice remains at the core of each country's counterterrorism and anti-drug strategies.

The colloquium emphasized that while progress has been made, there remains a need for judicial capacity-building, improved procedural efficiency, and stronger extradition frameworks. The discussions held in Maputo set the stage for continued collaboration among African nations, legal practitioners, and international bodies. As emphasized throughout the colloquium, the judiciary must remain steadfast in its commitment to justice, fairness, and the rule of law in the face of evolving global security challenges. Continuous discussions and engagements are necessary to strengthen relations in the region and internationally to combat these offences. ■



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REVISITING THE APPRAISAL REMEDY IN SECTION 164 OF THE COMPANIES ACT 71 OF 2008 AND ITS CHALLENGES

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The adoption of the Constitution with the Bill of Rights marked the dawn of a new era in South Africa. The Constitution is the Supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.¹ Consistent with the constitutional framework, in 2004 the Department of Trade and Industry published a policy paper, the South African Company Law for the 21st century – Guidelines for Corporate Law Reform,² which promised the development of a clear, predictable and consistently enforced law to provide a protective and fertile environment for economic activity. The policy paper emphasised that the principles enshrined in the Constitution have played a vital role in shaping the policies that influenced legislative reform processes since 1994.³ Legislative and other measures, which reflect these constitutional principles, include the attempt to balance the interests of employees and employers and to enhance equity in employment, as captured in labour legislation, particularly the Labour Relations Act,⁴ the Employment Equity Act⁵ and the Skills Development Act.⁶

The paper emphasised that no area of South African law (including Company law) can be analysed or evaluated

without recourse to the Constitution, which is the supreme law of the country.⁷ The policy paper stressed that the Bill of Rights regulates the relationship between economic citizens and thus may have fundamental implications for company law. Furthermore, the paper emphasised the importance of having effective remedies in place to enable shareholders and investors to exercise their basic rights.⁸ Of great importance, the paper stated that exit and appraisal rights should be identified and given content to allow smaller investors to make informed choices where they cannot influence company direction and decision effectively or pursue private actions against the company in civil courts.⁹

Pursuant to the policy paper, the Companies Act 71 of 2008 (the Companies Act) was passed and came into effect on 1 May 2011.¹⁰ The Act repealed the Companies Act 61 of 1973. It is a new-order legislation which brought with it several innovative concepts not previously part of South African corporate law.¹¹ Importantly, and unlike its predecessor, the Companies Act has detailed provisions which are designed to enhance an understanding of its purpose.¹² The purposes of the Companies Act are stipulated in s 7 of the Act, and they mirror the guidelines of the policy paper discussed

¹Section 2 of the Final Constitution.

²Government Gazette 26493 of 23 June 2004.

³South African Company Law for the 21st Century – Guidelines for Corporate Law Reform (Published in Government Gazette 26493) General Notice 1183 dated 23 June 2004) at 15.

⁴ Act 66 of 1995.

⁵ Act 55 of 1998.

⁶Act 97 of 1998.

⁷South African Company Law for the 21st Century – Guidelines for Corporate Law Reform (Published in Government Gazette 26493) General Notice 1183 dated 23 June 2004) at 14 and 20.

⁸South African Company Law for the 21st Century – Guidelines for Corporate Law Reform (Published in Government Gazette 26493) General Notice 1183 dated 23 June 2004) at 39.

⁹South African Company Law for the 21st Century – Guidelines for Corporate Law Reform (Published in Government Gazette 26493) General Notice 1183 dated 23 June 2004) at 39.

¹⁰Government Gazette 34249 of 26 April 2011.

¹¹Nedbank Ltd v Bestvest 153 (Pty) Ltd; Essa and Another v Bestvest 153 (Pty) Ltd and Others 2012 (5) SA 497 (WCC) at para 16.

¹²See s 7 of the Act.

above. Among others, the Companies Act aims to balance the rights and obligations of shareholders and directors within companies and to encourage the efficient and responsible management of companies.¹³ Significantly, s 7(a) of the Companies Act provides that the purpose of the Act is to promote compliance with the Bill of Rights as provided for in the Constitution in the application of company law. Expressed differently, s 7(a) of the Act requires that the Companies Act be interpreted through the prism of the Constitution.

The introduction of the Appraisal Remedy into our law

One of the innovations for which the Companies Act is renowned and celebrated is the introduction of a new shareholder right into South African company law popularly known as the Appraisal Remedy in s 164 of the Act. The Companies Act introduced the Appraisal Remedy as a right for dissenting shareholders in fundamental transactions to have their shares appraised and to be compensated for the fair value of those shares.¹⁴ The appraisal rights of dissenting shareholders is an innovative safeguards for dissenting shareholders.¹⁵ Yeats notes that the Companies Act introduced appraisal rights into South African company law for the first time.¹⁶ These rights originated and developed in the United States of America and have been on the statute books there for more than a century. They are also recognised in the company law regimes of, inter alia, Canada, Australia and New Zealand. In South Africa, they are a completely novel and unknown quantity.¹⁷

The appraisal remedy may best be described as the right of dissenting shareholders who do not approve of certain triggering events (the disposal of all or greater part of assets, mergers and proposal for scheme of arrangements) in a company to have their shares bought out by the company in cash, at a price reflecting the fair value of the shares which value in certain cases may be determined judicially. In terms of the remedy, disgruntled shareholders who disapprove of and dissent from a fundamental transaction are granted appraisal rights as an exit strategy, so that effectively they are not compelled to go along with the decision of the majority shareholders.¹⁸ The appraisal right enables the

dissenting minority shareholders to choose to opt out of the company, by giving up their shares in exchange for their fair value in cash. The appraisal right is essentially a minority buy-out right or a put option.¹⁹ The appraisal remedy is aimed at maintaining the equilibrium between minority shareholders and controlling shareholders.²⁰ The appraisal remedy is not intended to dilute or negate the power of majority shareholders but seek to provide minority shareholders with equitable protection and fairness.²¹

Mudzamiri correctly argues that there are several policy rationales for adopting the appraisal remedy in the Companies Act.²² In the first instance, the remedy can be used as an exit mechanism for disgruntled minority shareholders.²³ Secondly, the appraisal remedy provides opposing shareholders with the right to demand payment of the 'fair value' of their shares from the company that has engaged in a substantial change of ownership and control.²⁴ Thirdly, the appraisal remedy can be used by dissenting shareholders to force payment of the fair value of their shares through court proceedings in certain circumstances.²⁵ Fourthly, the remedy effectively compels the company involved to purchase the shares of the shareholders who oppose the implementation of any of the said triggering events.²⁶

It is worth noting that our company law was primarily predicated on the English law majority rule principle. The English law majority rule principle can be very much oppressive to the minority shareholders. The principle of the supremacy of the majority can be demonstrated in the following example: If Company 'A' decides to merge or acquire Company 'B', it could do so by passing a special resolution for the merger. According to the Companies Act 1973, the minority shareholders who voted against the resolution for the merger transaction were obligated to accept the decision of the majority in favour of the fundamental transaction (merger) even if they voted against such a resolution.²⁷ In *Sammel v President Brand Gold Mining Co Ltd*,²⁸ Trollip JA, as he then was, held that the principle of majority shareholder supremacy dictates that minority shareholders, through their contract, undertake to be bound by lawful corporate decisions. Thus, the Appraisal Remedy in s 164 of the Companies Act aims to address this imbalance.

¹³See s 7(1) and (j).

¹⁴See Explanatory Memorandum to the Companies Act of 2008 at 193.

¹⁵Cassim HI Cassim MF and Cassim R *Contemporary Company Law* (2012) 3 ed 715.

¹⁶Yeats J 'Putting appraisal rights into perspective' 2014 Stell LR 328.

¹⁷Yeats J 'Putting appraisal rights into perspective' 2014 Stell LR 328.

¹⁸Cassim FH (ed), Cassim MF and Cassim R *The Law of Business Structures* (2012) at 18.3.1

¹⁹Cassim FH (ed), Cassim MF and Cassim R *The Law of Business Structures* (2012) at 18.3.1

²⁰Cassim 'The appraisal remedy and the oppression remedy under the Companies Act of 2008, and the overlap between them' 2017 SA Merc LJ 305 at 306.

²¹Cilliers v LA Concorde Holdings Ltd and Others 2018 (6) SA 97 (WCC) para 44.

²²Mudzamiri J 'A reflective assessment of selected problematic aspects of South Africa's appraisal remedy regime against the backdrop of Cilliers v La Concorde Holdings Ltd' 2020 SA Merc LJ 389.

²³Standard Bank Nominees (RF)(Pty) Ltd & others v Hospitality Property Fund Ltd 2020 (5) SA 224 (GJ) at para 35.

²⁴Loest v Gendac (Pty) Ltd & another 2017 (4) SA 187 (GP) para 40.

²⁵Section 164(14). Cassim, 'The introduction of the statutory merger in South African corporate law: Majority rule offset by the appraisal right (2008) 20 South African Mercantile Law Journal 147.

²⁶The triggering events are out in section 112, 113 and 115 of the Companies Act. Beukes, 'An introduction to the appraisal remedy as proposed in the Companies Bill: Triggering actions and the differences between the appraisal remedy and existing shareholder remedies' (2008) 20(4) SA Merc LJ 479 at 494-495;

²⁷See section 311 of the Companies Act 1973.

²⁸1969 (3) SA (A) 678 at 678H.

The majority rule principle was often very much repressive to the minority shareholders.²⁹ The new Companies Act introduced the appraisal remedy in section 164 of the Act, which aims to balance the interest of the minority shareholders against the majority, especially in fundamental transactions in line with the purpose of the Act found in section 7. In *Standard Bank Nominees v (FR) (Proprietary) Ltd and Others v Hospitality Property Fund Ltd*,³⁰ the court held that section 164 balances two interests: on the one hand, the rights of the dissenting shareholders to opt out of the scheme of arrangement by exiting its shareholding, and on the other hand, the interests of the company to implement the scheme that enjoyed the support of the majority shareholders.³¹ This remedy is not only limited to mergers and acquisitions. It is also available to shareholders in transactions that aim to dispose a greater part of the company's assets, or any change to the Memorandum of Incorporation that may materially affect the rights of the relevant shareholders.

The procedural steps for invoking this novel remedy

Section 164 sets out a number of procedural steps that a shareholder wishing to exercise its appraisal right must follow. Once a company has given notice to the shareholders to consider adopting a resolution, for instance, of a merger, the minority shareholders disgruntled by the proposed fundamental transaction must send a written notice of objection to the resolution proposing the merger at any time prior to the shareholding meeting.³² The shareholder must vote against the resolution at the meeting.³³ If the resolution is subsequently adopted, the company must notify the dissenting shareholder of this fact within ten days.³⁴ Shareholders who have objected to the resolution and have voted against it may within 20 days after receiving a notice that the resolution has been adopted, demand that they be paid the fair value for their shares.³⁵ Shareholders who have sent a demand have no further rights in respect of those shares other than to be paid their fair value unless the company by a subsequent special resolution, revokes the adopted resolution that gave rise to the shareholders' demand under this section.³⁶

The dissenting shareholders' voting rights and rights to future dividends are thus forfeited.³⁷ However, in *Juspoint Nominees (Pty) Ltd v Sovereign Food Investments Limited (BNS Nominees (Pty) Ltd)*, Trustees for the Time Being of the Cilliers Family Trust, Cilliers, Cilliers Intervening Parties,³⁸ the court held that, should the resolution which triggered the appraisal rights be revoked or lapse after having been approved, all rights of the dissenting shareholder are immediately reinstated, provided that the shareholder has not accepted the offer to have his/her shares repurchased by the Company. Within 5 days of receipt of the demand, the company must make an offer to dissenting shareholders to acquire their shares at what the company's directors deems fair value.³⁹

If the shareholders accept, they tender their shares which are then acquired by the company and that is the end of the matter.⁴⁰ A shareholder who has made a demand as stated above, who is not happy with the value of share determined by the board of directors, may apply to court to determine a fair value in respect of the shares that were the subject of that demand and for an order requiring the company to pay the shareholder the fair value so determined.⁴¹ All dissenting shareholders who have not accepted the offer from the company as at the date of the application must be joined as parties, and are bound by the decision of the court.⁴² The court will then decide the matter and may make an order as to what constitute fair value for the shares and may make an appropriate order of costs.⁴³ The court must make a further order requiring dissenting shareholders to withdraw their demands or tender their shares in return for payment by the company, and an order requiring the company to pay the fair value of their shares to each shareholder who complies.⁴⁴

In *Cilliers v LA Concorde Holdings Ltd and Others*,⁴⁵ Papier J, gave section 164 of the Companies Act a purposive interpretation and availed the remedy to a dissenting shareholder of a holding company against the disposal of assets by a subsidiary company finding that the disposing company may not proceed with the transaction unless a special resolution of the holding company approved it. The court stated that when shareholders choose to exit in the

²⁹See Nkoane, 'Corporate law: Mandatory offer regime in need of precise exemptions and leeway' (2016) 37(1) *Obiter* 64 at 66.

³⁰2020 (5) SA 224 (GJ).

³¹At para 65.

³²See section 164(3) of the Companies Act.

³³See section 164(5) of the Companies Act.

³⁴See 164(4) of the Companies Act.

³⁵See section 164(7) of the Companies Act.

³⁶See section 164(9). Contrary to the provisions of section 164(9), it is submitted that the shareholders can still invoke their rights in terms of section 115(3) of the Act and apply to court for the review of the resolution or invoke the oppressive remedy in terms of section 163 of the Companies Act.

³⁷Cassim 'The Appraisal remedy and the Oppression remedy under the Companies Act of 2008, and the overlap between them 2017 SA Merc LJ 305 at 315.

³⁸2016 JDR 0773 (ECP).

³⁹See section 164(11).

⁴⁰See section 164(13).

⁴¹See section 164(14).

⁴²Section 164 (15) (a).

⁴³See section 164(16).

⁴⁴Section 164(15)(c)(v). See also Yeats J 'Putting appraisal rights into perspective' 2014 Stell LR 328 at 333.

⁴⁵2018 (6) SA 97 WCC).

context of sections 112, 115 and 164, they too must have the right and entitlement to be paid fair value for their shares.⁴⁶ To treat the dissenting shareholder in the holding company any differently in the circumstances of this case, the court stated, would undermine the clear purpose of minority-shareholder protection embodied in the policy and Act.⁴⁷ It is submitted that the court was spot on in its interpretation of the Act. Its purposive interpretation aligns with the established rules of interpretation set forth by the Constitutional Court and the Supreme Court of Appeal in various decisions.⁴⁸

Determination of fair value (as consideration) for the shares of dissenting shareholders

It is interesting to note that the Companies Act does not specifically set out the rubric on how the court should determine fair value. One of the greatest challenges concerning the appraisal remedy is the meaning and interpretation of the key phrase the 'fair value' of the shares of dissenting shareholders and the appropriate valuation method that the court should adopt when valuing these shares.⁴⁹ The courts in foreign jurisdictions have emphasised that 'fair value' is related to 'fair market value' and that these terms are not, always equivalent.⁵⁰ For instance, in *Carlock v ExxonMobil Canada Holdings ULC*,⁵¹ the Court of Appeal of Yukon in Canada held that the meaning of 'fair value' is related to fair market value. Fair market value, according to the court, means the highest price available in an open and unrestricted market between informed and prudent parties, acting at arm's length and under no compulsion to act.⁵²

The Companies Act directs the court to determine 'a fair value' of the shares of dissentients in terms of section 164(15)(c)(ii) read with section 164(16). To this end, the Act provides that the court may in its discretion appoint one or more appraisers to assist it in determining the fair value in respect of the shares. The Act is, however, entirely silent on the meaning of 'fair value' and the method of valuation that should be adopted in judicial appraisal proceedings.⁵³ The legislature has left these challenging issues for the judiciary to provide guidance through interpretation of this concept in disputes referred to them by litigants.

For instance, in *Loest v Gendac and Another*,⁵⁴ the applicant approached the court with regard to the determination of fair value of his shares. The applicant sought an order in terms of the Promotion of Access to Information Act 2 of 2000, (PAIA) compelling the respondents to allow the applicant access to information, in the form of copies of bank statements, management-account statements and contracts entered into by the respondents with third parties so that the fair value of his shares could be determined.⁵⁵ Essentially, the dispute between the contending parties was whether the applicant was entitled to the information sought in terms of the provisions of PAIA in order to exercise or protect his rights in terms of s 164 of the Companies Act.⁵⁶ In considering the issues, the court observed that there is no provision for a dissenting shareholder to approach the court for access to information for purposes of determining fair value.⁵⁷ The court held that what is allowed in terms of s 165(14) is for a dissenting shareholder to approach the court, on application, for determination of the fair value of the shares and that this relief is available where no offer is made by the company in respect of the dissenting shareholder's shares or the dissenting shareholder considers the offer made to him in respect of his shares inadequate.⁵⁸

After considering the matter, the court acknowledged that since courts would not necessarily have the relevant technical expertise to determine the fair value of the shares, the court hearing an application to determine the fair value of the shares may appoint one or more appraisers to assist the court in this regard.⁵⁹

In *BNS Nominees (RF) (Pty) Ltd and Another v Arrowhead Properties and Another*,⁶⁰ the court was called upon to determine the fair value of shares for dissenting shareholders. The court noted that the appraisal right afforded to dissenting shareholders in terms of s 164 of the Companies Act despite its far-reaching and novel implications, attracted little judicial scrutiny to date.⁶¹ In considering the dispute, the court had regard to the meaning of 'fair value'. The court noted that no definition was provided in the Act.⁶² The court also acknowledged the 'elusive' quality of the concept.⁶³ The court found that a number of methodologies could be used

⁴⁶At para 47.

⁴⁷At para 47.

⁴⁸*Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others 2004 (7) BCLR 687 (CC) at para 91; Natal Joint Municipal Pension Fund v Endumeni Municipality, 2012 (4) SA 593 (SCA) para 18.*

⁴⁹Cassim MF 'The shareholder's appraisal remedy under the Companies Act: How should the courts gauge 'fair value'? 2024 SALJ 293 at 293.

⁵⁰*Nixon v Trace 2012 BCCA 48 paras 10 -13; Grandison v NovaGold Resources 2007 BCSC para 152.*

⁵¹2020 YKCA 4 (CANLII) para 4.

⁵²At para 7 of judgment. McGuinness KP *Canadian Business Corporation Law 3 ed (2017) at 1016 (Toronto:LexisNexis).*

⁵³Cassim MF 'The shareholder's appraisal remedy under the Companies Act: How should the courts gauge 'fair value'? 2024 SALJ 293 at 293.

⁵⁴2017 (4) SA 187 (GP).

⁵⁵At para 1 of judgment.

⁵⁶At para 12 of judgment.

⁵⁷At para 22 of judgment.

⁵⁸At para 22 of judgment.

⁵⁹At para 23 of judgment.

⁶⁰2023 (1) SA 478 (GJ).

⁶¹At para 1 of judgment.

⁶²At para 13.

to determine fair value; no one method should be considered superior to the others.⁶⁴ As far as the appointment of appraisers to assist the court in determining the fair value of shares is concerned, the court stressed that it did not amount to a general principle to resort to expert appraisers simply because there was a dispute over fair value between the dissenters and the company. The court noted that it would indeed be tempting for courts to exercise the discretion in terms of s 164(15)(c) to appoint appraisers when faced with appraisal disputes.⁶⁵ But to resort to this 'outsourcing' of a judicial obligation would not only amount to an improper use of a discretion, but would also amount to the abdication of a judicial function to an expert.⁶⁶ The court noted that each case must be determined on its own record and merits.⁶⁷ Importantly, the court observed that where there is enough material before it, the court must decide and not refer the matter to an appraiser. The court eventually found that the respondent (the company) herein, had put up evidence to support its offer that relied on the valuations of expert parties with no interest in the matter and dismissed the applicant's case and upheld the values of shares as determined by the company.⁶⁸

However, in *BNS Nominees (RF) (Pty) Ltd and Another v Zeder Investments Ltd and Another*,⁶⁹ the applicants approached the court in terms of section 164(14) of the Companies Act and asked the court to determine the fair value of its shares and also requested the court to appoint an appraiser in terms of section 164(15)(c)(iii)(aa) to assist it in doing so.⁷⁰ The court noted that the term 'fair value' is not defined in section 164 of the Companies Act or anywhere else in the Act and no other legislative guidance is provided as to the meaning, application or content of the term.⁷¹ The court acknowledged that it is evident from the jurisprudence of foreign jurisdictions with appraisal statutes that a wide range of possible valuation methodologies may be applied in determining fair value and that different methodologies may yield differing results.⁷² Moreover, the court noted that a valuation methodology which is appropriate in one case may not be appropriate in another.⁷³ Significantly, the court observed that the legislature has therefore called upon the Court, in circumstances envisaged in s164(14), to exercise a value judgment in determining what a fair value would be taking all of the relevant circumstances into account.⁷⁴

The court consequently concluded that the fair value of the dissenters' shares could be set only after considering all of the relevant circumstances, and only with the assistance of an independent appraiser. The court eventually made an order for the appointment of an appraiser, in terms of s 164(15)(c)(iii)(aa) of the Act, to assist the court in determining the fair value of share of the applicants. Contrary to the view expressed in *BNS Nominees (FR) Proprietary) Limited and Another v Arrowhead Properties Limited and Others*,⁷⁵ the court stated:

'I pause to mention that this in no way equates to this Court delegating its responsibility to determine a fair value; the appointment of an appraiser, and the opinion he or she expresses, simply equips this Court to make such a determination with all the relevant facts at hand.'⁷⁶

Conclusion

Given that the appraisal remedy is relatively new to South African company law, no significant body of jurisprudence has been developed to serve as a guide to determining the fair value of shares. It is submitted that the proverbial one size fits all approach does not find application in the determination of fair value in appraisal proceedings. The common theme emerging from the cases discussed above is that the court must consider all evidence that could assist it in determining the fair value of shares. In other words, the court must consider all the relevant evidence that might be helpful, and to consider the particular factors in the particular case, and to exercise the best judgment that can be brought to bear on all the evidence and all the factors in the determination of fair value. Each case is unique, and not every methodology can be applied universally. It is submitted that courts are expected to take a nuanced approach to each matter that comes before them. In this way, the appraisal remedy would fulfill its purpose of protecting minority shareholders, when a company engages in fundamental transactions. ■

⁶³At para 19.

⁶⁴At para 25.

⁶⁵At para 59.

⁶⁶At para 59.

⁶⁷At para 59.

⁶⁸At para 60.

⁶⁹2025 (4) SA 134 (WCC).

⁷⁰At para 1 of judgment.

⁷¹At para 15.

⁷²At para 15 – 17.

⁷³At para 16.

⁷⁴At para 37.

⁷⁵2023 (1) SA 478 (GJ).

⁷⁶At para 50 of judgment.

NATIONAL OFFICE



HEADS OF COURT CONVENE FOR QUARTERLY MEETING AT THE OCJ

On 25 April 2025, the Heads of Court convened at the Office of the Chief Justice (OCJ) in Midrand for their quarterly meeting. The gathering brought together senior members of the judiciary, led by Chief Justice Mandisa Maya to discuss pressing issues affecting the functioning of the courts.

As part of the agenda, the Heads of Court met with various government leaders, including the Minister of Justice and Constitutional Development, Ms Mmamoloko Kubayi, MP, Deputy Minister of of Public Works, Mr Sihle Zikalala, MP and Deputy Minister of Justice and Constitutional Development, Mr Andries Nel, MP to engage on matters related to court infrastructure and security. These discussions form part of a broader commitment to ensuring that courts across the country are safe, well-resourced, and equipped to deliver justice effectively and efficiently.



Chief Justice Mandisa Maya



Minister of Justice and Constitutional Development, Ms Mmamoloko Kubayi, MP



Deputy Minister of Justice and Constitutional Development, Mr Andries Nel, MP



Deputy Minister of Public Works and Infrastructure, Mr Sihle Zikalala, MP



Attendees at the National Efficiency Enhancement Committee (NEEC) meeting, 24 April 2025

NATIONAL EFFICIENCY ENHANCEMENT COMMITTEE MEETS TO DISCUSS COURT INFRASTRUCTURE AND SECURITY – 24 APRIL 2025

On 24 April 2025, the National Efficiency Enhancement Committee (NEEC) met to discuss infrastructure and security matters in the Courts. The NEEC brings together, at the highest level, the leadership of the Judiciary and other key stakeholders in the justice system.



Acting Deputy Chief Justice M R Madlanga



Judge President of the Gauteng Division of the High Court, Judge President D Mlambo



Judge President of the Mpumalanga Division of the High Court, Judge President S S Mphahlele



Judge President of the Western Cape Division of the High Court, Judge President N P Mabindla-Boqwana



Advocate Doctor Mashabane is the Director-General of the Department of Justice and Constitutional Development in South Africa

NATIONAL OFFICE



Constitutional Court Justice, Judge J Kollapen, making a presentation

SEMINAR FOR NEWLY APPOINTED JUDGES

The South African Judicial Education Institute (SAJEI) hosted a three-day seminar for newly appointed Judges in Midrand from 2 to 4 April 2025. The seminar aimed to equip new members of the judiciary with critical knowledge and tools to navigate their roles effectively. Acting Deputy Chief Justice, Justice Mbuyiseli Madlanga, officially opened the seminar with a presentation on "Adjudicating Constitutional Matters," setting the tone for a programme focused on judicial ethics, constitutional interpretation, and the principles underpinning South Africa's legal system.



Acting Deputy Chief Justice M R Madlanga addressing the seminar



Justice R S Mathopo of the Constitutional Court



Judge R B Mkhabela of the Gauteng Division of the High Court



L-R: Judges of the Western Cape Division of the High Court: Judge N E Ralarala, Judge M Pangarker, and Judge M Holderness



L-R: Judges of the KwaZulu-Natal Division of the High Court: Judge S Jikela SC, Judge G M Harrison, and Judge R Singh



**COURT
ONLINE**

OCJ COURT ONLINE

The Judiciary continued to roll out its Court Online System across various High Court Divisions in South Africa in the first quarter of 2025/26 financial year, marking a significant milestone in the modernisation of the country's justice system. On 1 April 2025, the KwaZulu-Natal Division of the High Court officially launched the Court Online System in the province, ushering in a new era of digital case management.

Shortly thereafter, on 14 April 2025, the Labour and Labour Appeal Court began its rollout of Court Online with the Judge President announcing in a court directive that all new petitions and appeal cases be filed exclusively through the Court Online Portal. This forms part of a broader commitment to standardise electronic court processes across the Superior Courts. Further implementation followed swiftly on 6 May 2025, when the Limpopo Division of the High Court went live with the Court Online System, joining three other Divisions already using the platform. In the Mpumalanga Division of the High Court, the Court Online System was launched in Mbombela on 21 May and in Middelburg on 23 May 2025. The platform was welcomed as a transformative tool that supports faster document processing, secure file management, and improved transparency in court proceedings.

The Eastern Cape Division of the High Court has also made progress in this regard. Following the scheduled implementation of the System in the Mthatha High Court on 4 June 2025, the Division launched its second Court Online site at the Bhisho High Court on 25 June 2025.

The expansion aims to improve efficiency and enhance access to justice within the Superior Courts. The system is designed to enhance court efficiency, reduce reliance on manual processes, and improve access to justice by enabling electronic document filing and digital case handling.

Through the phased implementation of the Court Online System, the Judiciary and the Office of the Chief Justice continue to promote efficiency, accountability, and inclusivity in the judicial system. The initiative reflects the Judiciary's determination to harness technology in service of constitutional justice. For more information, members of the public and legal practitioners can visit

<http://www.judiciary.org.za>.

Byline: Lusanda D.Ntuli

KWAZULU-NATAL DIVISION OF THE HIGH COURT



OFFICIAL LAUNCH OF THE COURT ONLINE SYSTEM IN THE KWAZULU-NATAL DIVISION OF THE HIGH COURT

The KwaZulu-Natal Division of the High Court officially launched the operationalisation of the Court Online System in the Division on 1 April 2025.



LIMPOPO DIVISION OF THE HIGH COURT



COURT ONLINE SYSTEM LAUNCHED AT THE LIMPOPO DIVISION OF THE HIGH COURT

The Court Online System went live at the Limpopo Division of the High Court on 06 May 2025. The system is designed to enhance efficiency and improve access to justice in the Superior Courts. With this launch, the Limpopo Division joined three other High Court Divisions who are already using the system.



Limpopo Division of the High Court Judge President, Judge M G Phatudi, conducting a demonstration of the Court Online System

MPUMALANGA DIVISION OF THE HIGH COURT



Judge President S S Mphahlele, leading the launch of Court Online at the Mpumalanga High Court

COURT ONLINE SYSTEM LAUNCHED AT THE MPUMALANGA DIVISION OF THE HIGH COURT

On 21 May 2025, the Court Online System was launched at the Mpumalanga Division of the High Court. The system is intended to enhance court efficiency and improve access to justice within the Superior Courts.



EASTERN CAPE DIVISION OF THE HIGH COURT



COURT ONLINE SYSTEM LAUNCHED AT THE EASTERN CAPE DIVISION OF THE HIGH COURT

The Eastern Cape Division of the High Court, led by Acting Judge President Z Nhlangulela, launched the Court Online System on 4 June 2025. Acting Deputy Judge President R Brooks said of the implementation of Court online in the Division: "What a privilege it is as Mthatha Judges to be the first to have this system launched in our Court. With the new system, we will be able to see how a matter is progressing. In a way, access to justice will be reinforced by technology."



Acting Juge President Z Nhlangulela, leading the launch of Court Online in the Eastern Cape Division of the High Court



JUDGE PRESIDENT UNDERTAKES FIRST OVERSIGHT VISIT TO SOUTHERN CAPE AND OPENS INMATE-BUILT FACILITY

The Judge President of the Western Cape Division of the High Court, Nolwazi Mabindla- Boqwana, recently conducted her first official oversight visit Oudtshoorn, in the Southern Cape. As part of her mandate to engage with courts and stakeholders within the jurisdiction, this visit marked an important milestone in her leadership of the Division.

During the visit, officials at the Oudtshoorn Correctional Centre seized the unexpected opportunity to invite the Judge President to open their newly completed administrative wing – a project built by inmates of the facility.

The construction forms part of a broader skills development programme of the Correctional Services Department, aimed at equipping inmates with practical, marketable skills. ■

JUDICIAL OUTREACH: NORTHERN CAPE



JUDGE PRESIDENT TLALETSI HOSTS LEARNERS ON TAKE A CHILD TO WORK DAY

On 23 May 2025, the Northern Cape Division of the High Court welcomed 15 learners to the court as part of the national 'Take a Child to Work' initiative.

Judge President Pule Tlaletsi welcomed the learners during a brief session in his chambers, where he spoke to the learners about his journey as a legal practitioner and member of the South African Bench, the function of Superior Courts and the role of Judges in the court system.

The participating learners came from Tshireleco, Greenpoint, and Emang-Mmogo High Schools. The visit provided them with a first-hand glimpse into the workings of the High Court and offered a unique opportunity to learn about the legal profession and the role of the judiciary in upholding the rule of law.



The Judge President of the Northern Cape Division of the High Court, Judge Tlaletsi, spoke to pupils who visited his chambers about the rights of children as enshrined in the Constitution, the role of the Judiciary, the difference between Lower Courts and Superior Courts.



Director of Court Operations in the Northern Cape, Adv De-Alto Plaatjies addressing the learners during the visit.





The Mpumalanga Division of the High Court in Mbombela hosted law students from Eduvos on 5 June 2025. Deputy Judge President T V Ratshibvumo, together with Judge L D Vukeya, engaged the students on the journey to becoming a legal professional and explored the various career paths available within the legal field.

MBOMBELA HIGH COURT JUDGES HOST LAW STUDENTS

As part of its ongoing judicial outreach efforts, the Mpumalanga Division of the High Court in Mbombela hosted law students from Eduvos on 5 June 2025. The visit formed part of the Court's commitment to fostering awareness and education among young people, and more pointedly law students, providing them with valuable insights into the functioning of the Judiciary, the importance of access to justice whilst inspiring what could be future jurists.



Deputy Judge President of the Mpumalanga Division of the High Court, T V Ratshibvumo, and Judge L D Vukeya



MAGISTRATES' COMMISSION INTERVIEWS



SEVEN CANDIDATES INTERVIEWED FOR REGIONAL COURT MAGISTRATE POST IN KWAZULU-NATAL

The Magistrates' Commission, on 27 May 2025, conducted interviews in Pretoria to fill a single Regional Court Magistrate position in the KwaZulu-Natal province.

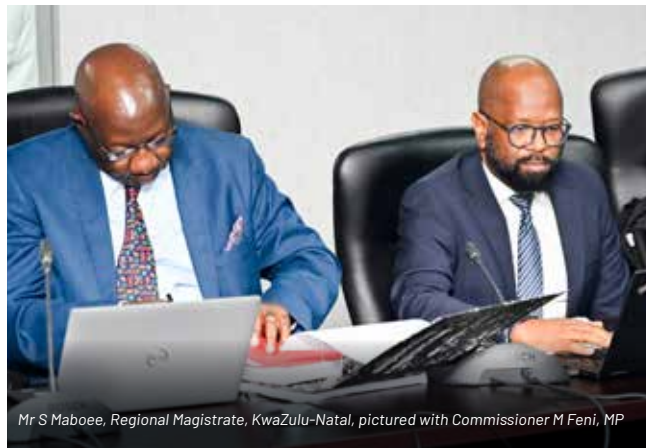
Seven candidates were shortlisted and interviewed as part of the rigorous selection process aimed at appointing a suitably qualified individual to strengthen the Regional Court's capacity. The Commission's process reflected its ongoing commitment to upholding judicial integrity and advance transformation within the Magistracy.



Regional Court President for the Free State Province, Commissioner Ms Z Mbalo



Chief Magistrate, Commissioner Y P Sidlova of the Randburg Magistrate's Court



Mr S Maboe, Regional Magistrate, KwaZulu-Natal, pictured with Commissioner M Feni, MP



Commissioner Dr C September and Mr M J Finger, Secretary of the Magistrates' Commission



Mr V Manell, HR Official, Magistrates' Commission



SPOTLIGHT ON JUDGES WHO RAN THE **COMRADES** **MARATHON**



JUDGE MAAKE FRANCIS **KGANYAGO**

Race number: 41995

Run time: 11:56:47

Province and Court: Limpopo Division of the High Court

JUDGE MOLEBOHENG **MDALANA-MAYISELA**

Race number: 53529

Run time: 11:56:42

Province and Court: Gauteng Division of the High Court



BOSTON MARATHON 2025

JUDGE BOISSIE **MBHA**

Retired Justice Boissie Mbha is currently acting at the SCA. He participated in the Boston Marathon on 21 April 2025, thereby completing his 6th major in 5 continents.



JUDICIAL APPOINTMENTS & RETIREMENTS

JUDICIAL APPOINTMENTS



Mr Justice L R Adams

Title: Judge of the Electoral Court

Date: 01 May 2025

JUDICIAL RETIREMENTS



Photo Credit: Sowetan Live

Judge T A Maumela

Title: Judge of the Gauteng Division of the High Court, Johannesburg
Date: 01.04.2025



Judge W L Wepener


Title: Judge of the Gauteng Division of the High Court, Johannesburg
Date: 21.04.2025



Judge M I Samela

Title: Judge of the Western Cape Division of the High Court
Date: 07.06.2025



 www.judiciary.org.za

IN MEMORIAM



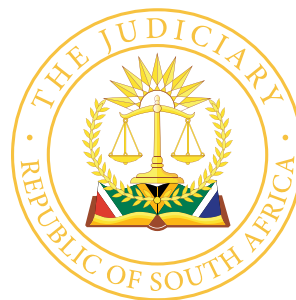
**Retired Judge President
C T Sangoni**

Eastern Cape Division of the High Court

Passed: 10.06.2025







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MIDRAND, 1685




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