

THE JUDICIARY

CHIEF JUSTICE'S ENGAGEMENTS
JUDICIAL LEADERSHIP MEET
OPENING OF PARLIAMENT
NEW GAUTENG JUDGES SWORN IN
A TRIBUTE TO JUDGE N J YEKISO



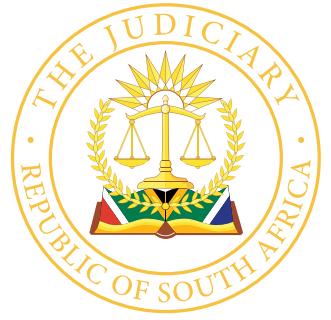


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FROM THE EDITOR

DEAR COLLEAGUES,

The transition from the 2024/25 to the 2025/26 Financial Year marks an important period in the South African Judiciary. Over the past twelve months, the Judiciary participated in a number of key activities that underscore the importance of the Judicial Arm of State in safeguarding democracy and advancing the rule of law.

Notable among these was the role played by the Judiciary in the transition period that ushered in the 7th Administration of the Republic, following the May 2024 National and Provincial elections. This included overseeing processes to swear-in members of National and Provincial Legislatures, as well as presiding over the election and swearing-in of the President and Provincial Premiers by the Chief Justice and Judges President, respectively.

The year 2024 also marked a change of guard in the uppermost echelons of the Judiciary, with Chief Justice Mandisa M L Maya receiving the baton of Head of the Judiciary from former Chief Justice R M M Zondo in September last year. The added significance of this transition also lay in the fact that Chief

Justice Mandisa M L Maya became the first female Chief Justice of the Republic. This was a momentous milestone in the national project for gender equity, more so as 2024 marked 100 years since women were admitted to the legal profession. Other changes in Judicial leadership we can mention were the appointment of Justice M Madlanga as the Acting Deputy Chief Justice, as well as the retirement of former Deputy President of the Supreme Court of Appeal (SCA), Justice X Petse, who was succeeded by Justice D H Zondi.

The South African Judiciary also participated in a number of international initiatives aimed at strengthening the role of judiciaries regionally and globally. One of these initiatives was the International Conference on Artificial Intelligence and its Impact on Judicial Activities, hosted by the International Association of Judges (IAJ) in co-operation with the Judicial Officers Association of South Africa (JOASA). The South African Judiciary was also represented at the 2024 World Intellectual Property Judges' Forum. We were also represented at a gathering of esteemed legal minds for a Conversation on Constitutionalism and the Rule of Law, presented by the New York School of Law in collaboration with the Historical Society of the New York Courts and the New York State Supreme Court Appellate Division, First Department.

As we look ahead, the South African Judiciary will continue in the new Financial Year to make contributions in various fora aimed at strengthening judiciaries around the world. To this end, we look forward to the J20 engagements, which will form part of the G20 Summit to be hosted in our country later this year, where exchanges on ideas and initiatives concerning contemporary legal topics will take place. A meeting of the African Female Chief Justices to discuss related matters is also expected this Financial Year.

Lastly, but not least, we look forward to celebrating the 30th Anniversary of the Establishment of the Constitutional Court in the coming months. The doors of the Constitutional Court of the

Republic of South Africa were first opened by then-President, Dr Nelson Mandela, on 14 February 1995. Marking this occasion is significant within the context of the history of the Republic of South Africa as it signifies the success of the country's constitutional democratic project, underpinned by the country's founding values as outlined in section 1 of the Constitution (1996).

For now, however, please read about developments in the Judiciary in the past quarter. We have important inputs on the Challenges in the Digital Age to Media Freedom and the Judiciary, by President M B Molemela; the Role of the Judiciary in Promoting the Constitutional Values of Equality and Human Dignity, by Deputy Judge President P Goliath; as well as an input on Unlocking the Potential of People-Centred Justice in Africa, by Deputy Judge President N M Mbhele; among many other great contributions in this edition.

Enjoy the newsletter!

Judge President Thoba Poyo Dlwati

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



CHIEF JUSTICE'S ENGAGEMENTS



CHIEF JUSTICE MEETS WITH FINANCE AND JUSTICE & CONSTITUTIONAL DEVELOPMENT MINISTRIES

Chief Justice Mandisa M L Maya recently met with the Minister of Finance, Mr Enoch Godongwana, MP, and the Minister of Justice and Constitutional Development, Ms Mmamoloko Kubayi, MP, to discuss issues related to the effective functioning of the Courts. The Deputy Minister of Justice and Constitutional Development, Mr Andries Nel, MP, also attended the meeting.



Chief Justice M M L Maya with the Minister of Justice and Constitutional Development, Ms M Kubayi, MP.



Chief Justice M M L Maya pictured with Deputy Minister of Justice and Constitutional Development, Mr A Nel, MP.



L-R: Deputy Minister A Nel, MP; Chief Justice Mandisa M L Maya; Minister E Godongwana, MP; and Minister M Kubayi, MP, in conversation.



CHIEF JUSTICE'S ENGAGEMENTS



ADVOCATES FOR TRANSFORMATION COCKTAIL DINNER - 11 MARCH 2025

Chief Justice Mandisa M L Maya honoured an invitation to a cocktail evening hosted by Advocates for Transformation, Johannesburg, to welcome the 2025 Johannesburg Society of Advocates pupils. This was an opportunity for the newest members of the legal profession to engage with experienced advocates and to introduce themselves to their peers.



Chief Justice Mandisa M L Maya delivered a keynote address on the importance of transformation in the Judiciary, legal profession and society.



Chief Justice Mandisa M L Maya being received by Advocates for Transformation General-Secretary, Adv B Morris, at the event.



Chief Justice Mandisa M L Maya meeting the leadership of Advocates for Transformation ahead of the event.



The 2025 Johannesburg Society of Advocates pupils.



CELEBRATING AND ADVANCING THE ROLE OF WOMEN IN AFRICAN JUDICIARIES

The International Commission of Jurists, together with the University of Witwatersrand School of Law and the African Judiciaries Research Network convened a workshop on 17 – 18 March 2025 in Johannesburg to discuss ways to confront gender-related challenges facing women Judges. Chief Justice Mandisa M L Maya opened the event with a keynote address titled “Women’s Representation and Experiences in African Judiciaries”. The event also served to celebrate the contribution of the late Justice Yvonne Mokgoro, who was an ICJ Commissioner and one of the first two women appointed as a Judge of the Constitutional Court of South Africa.



Chief Justice Mandisa M L Maya delivering a keynote address at the event.



Justice F Kathree-Setiloane making an input during a panel discussion paying tribute to the late Justice Yvonne Mokgoro.



Dr Nyoko Muvangua also paid tribute to the late Justice Yvonne Mokgoro.



Judge President T P Poyo Dlwati of the KwaZulu-Natal Division of the High Court, facilitating a panel discussion on the experiences of women Judges in Africa.



Justice Z Ntaba making an input as a panelist in the panel discussion on the experiences of women Judges in Africa.



Chief Justice M M L Maya, together with the Heads of Superior Courts, following their quarterly meeting

JUDICIAL LEADERSHIP MEET

The Heads of Superior Courts came together on 05 to 07 February 2025 to discuss matters concerning the Judiciary as well as the effective and efficient administration of the Courts and delivery of access to Justice to all South Africans. The Heads of Court meeting is attended by the Chief Justice along with the President of the Supreme Court of Appeal, the Judges President of the various High Court Divisions, the Heads of the Competition Appeal Court, Labour and Labour Appeal Court, Land Court, as well as the Electoral Court.



Chief Justice Mandisa M L Maya chairs the Heads of Court meeting.



Acting Deputy Chief Justice M Madlanga



Judge President P L Tlaetsi of the Northern Cape Division of the High Court



Judge President R D Hendricks of the North West Division of the High Court.



Judge President Z Carelse of the Land Court



The Heads of Court at the State of the Nation Address



The Judicial Procession, led by Chief Justice Mandisa M L Maya, entering the Cape Town City Hall for the State of the Nation Address.

OPENING OF PARLIAMENT

The Opening of Parliament is an annual event that marks the start of the legislative programme. This ceremonial event is marked by the participation of all three Arms of State, the Legislature, the Executive and the Judiciary, and culminates in the President giving the annual State of the Nation Address.



Heads of Court ahead of the start of the State of the Nation Address at the Cape Town City Hall.



The Judge President of the KwaZulu-Natal Division of the High Court, Judge T P Poyo Dlwati, followed by the Judge President of the Mpumalanga Division of the High Court, Judge S S Mphahlele, during the Judicial Procession.



Limpopo Division of the High Court Judge President, Judge M G Phatudi, with Land Court Judge President, Judge Z Carelse, entering the Cape Town City Hall.



CHALLENGES IN THE DIGITAL AGE TO MEDIA FREEDOM AND THE JUDICIARY

By Justice M B Molemela

President of the Supreme Court of Appeal

The South African National Editors' Forum (SANEF) hosted President Mahube Molemela on 26 October 2024, where she gave an address under the theme 'Challenges in the Digital Age to Media Freedom and the Judiciary'. Below is the full text of President Molemela's address.

[1] It is a profound honour to stand before you this evening as you celebrate 30 years of democracy and media freedom in South Africa. I have been requested to say a few words on 'Challenges in the Digital Age to Media Freedom and the Judiciary'. I stand here as a substitute for the Chief Justice, who could unfortunately not accept your invitation to be the keynote speaker on account of the exigencies of her office at this point in time. I must confess that although I have previously made speeches on a variety of topics, I am filled with a measure of trepidation because the audience largely consists of members of the media. I have always shied away from the media, largely because back in the day, as youngsters, our teachers used to caution us that 'the media will make you and then break you', so obviously I wanted none of that. But of course, I could not refuse when my boss (and I say this fondly) requested me to do the honours. So apprehensive or not, here I am.

[2] I must, as I usually do, start this speech with what I call a 'disclaimer', and it is this: from my point of view, asking a Judge in active service to give a keynote address may sometimes be a disservice to an audience because he/she may not meet the expectation of the audience [because the audience might feel that the Judge is pulling punches]. Since Judges are known to squarely deal with issues raised in their cases and mince no words when doing so, (I mean, in the text of our judgments we really call a spade a spade), the expectation might be that a Judge would not, in the course of giving a keynote address, pull any punches in giving an opinion on topical issues. That said, this does not mean that we as Judges do not have personal views, of course we do, because in the course of executing our jobs, we hear things, we see things, but some of them cannot be mentioned in our judgments simply because they were not legitimately brought to our attention in compliance with the constitutional imperative of a fair trial. Under those circumstances, we bite our tongues and wait for the right case with the right facts and evidence, before

we can formally express ourselves on the issues raised. This is simply because the judiciary is reactive, by its very nature, in the sense that it reacts to legal disputes that have been brought by litigants to the courts, and even then, pronounces itself only on the issues raised in the specific case.

[3] As I see it, our Judicial Code of Conduct¹ does not allow Judges a lot of room to manoeuvre in relation to what they can say ‘off the bench’, as it were. So, depending on the circumstances, when we are invited as keynote speakers, we end up erring on the side of caution by saying less than what we otherwise would, with the attendant risk of merely stating the obvious. There is a view that the judiciary should be ‘ring-fenced or quarantined from conflicts’ and refrain from being involved in controversies through extra-curial statements made by judges, except in relation to proven facts which are already in the public domain. I subscribe to this cautious approach, even though I am aware that journalists have divergent views regarding the circumstances under which judges may safely make extra-curial statements; I guess the ‘jury’ is still out on that aspect. I know that was quite a long preamble, but it needed to be put forward, in my view.

[4] Ladies and gentlemen, I am aware that the relationship between the media and the judiciary and the interdependence of these two institutions is an aspect that was comprehensively traversed on this platform last year. I will therefore not cover the same ground, save to acknowledge that without an independent judiciary and media, our democracy would probably collapse. Today, the theme of this auspicious event is ‘30 years of democracy: A journey of freedom and the unyielding power of the media in South Africa’. Even in moments like these, when we can pat ourselves on the back for what media freedom has achieved for our country in the past 30 years, we still remember the tyranny that preceded this freedom, and rightly so, for it is these sad memories that make us appreciate the true value of media freedom. So, allow me to go back in time for a bit.

[5] We remember a time, before 1994, when accurate and truthful information about the state of our country was not as accessible as it is today, and how media crackdowns and calculated propaganda were the norm. We recall how attempts at disseminating accurate information regarding abuses of power, inequality and the atrocities that a significant part of our nation was subjected to, were met with swift crackdowns.

[6] We remember Donald Woods and Steve Biko, and how these two anti-apartheid activists were targeted by the apartheid government, tragically leading to Biko’s death and Woods being banned from reporting and later having to flee the country, rightly acknowledging that there are many more journalists and activists

who suffered similar and worse fates. We recall how having access to accurate information and sharing it, displaced people and resulted in detentions without trial and had deadly consequences with impunity. But despite the apartheid government’s best efforts to eradicate the journalistic efforts of those activists, the information still reached the target audience in one way or another. We recall the time when the dissemination of truthful and accurate information would lead to the banning of publications. Yes, there was a time when media freedom was merely a dream that existed alongside our dream for freedom from all other forms of oppression, and a deep yearning for a democracy.

[7] Today, we live in a country in which media freedom is, by all accounts, jealously guarded. Given our history, we can indeed attest to how a free press (press used in the loose sense) is a vital tool to the sustenance of democracy. What an arduous journey it has been to get where we are today, and how privileged we are to live in a country in which freedom of expression² is enshrined in its Constitution.

[8] In the context of the media, freedom of expression seeks to balance the rights of reporters and those being reported on so as to ensure continued access to accurate information for all. This means that journalists must present news in context, ensuring balanced reporting that contains no distortion and exaggeration. In particular, they must give all sides of a story a fair hearing. This is what ethical journalism dictates. I cannot over-emphasise the importance of hearing both sides of the story. This principle is so sacred. Acutely aware that this is a ‘secular audience’, I will still mention that based on my reading of the Bible, I know at least two examples of how God was prepared to hear the other side of the story in circumstances when He obviously, already knew the answers. In the first chapter, it is stated that after Cain had killed his brother, Abel, God asked him where his brother was, despite knowing what had happened. Furthermore, even when he knew that Adam and Eve had eaten the forbidden fruit, He nevertheless asked them why they were hiding. Beyond the religious realm, I think it is also of significance that long before the advent of the Constitution, our law recognised the *audi alteram partem* rule (ie ‘listen to the other side’) as one of the primary principles of natural justice. As to whether this principle was consistently applied by our courts in the past, is a debate for another day.

[9] We are truly privileged to have a Constitution that discourages propaganda, incitement of violence and any attempts to promote hate-centred advocacy based on race, ethnicity, gender or religion that constitutes the incitement to cause harm.³ In *Khumalo and Others v Holomisa*, the Constitutional Court described the right to freedom of expression as follows:

¹ Code of Judicial Conduct adopted in terms of Section 12 of the Judicial Service Commission Act 9 of 1994, GG 35802, 18 October 2012.

² Section 16(1) of the Constitution of the Republic of South Africa, 1996 provides that:

‘Everyone has the right to freedom of expression, which includes—

(a) freedom of the press and other media;

(b) freedom to receive or impart information or ideas;

(c) freedom of artistic creativity and;

(d) academic freedom and freedom of scientific research.’

³ Section 16(2) of the Constitution provides that advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm, is not protected by the right to freedom of expression contained in section 16(1). This form of excluded expression is commonly known as “hate speech”.

*'Freedom of expression is integral to a democratic society for many reasons. It is constitutive of the dignity and autonomy of human beings. Moreover, without it, the ability of citizens to make responsible political decisions and to participate effectively in public life would be stifled.'*⁴

[10] Over the years, we have had to move with the times. Alas, with the advent of the digital age, a fly landed in the ointment. In this modern era, we face a new challenge, the social media terror of misinformation, disinformation, propaganda and threats for speaking up. The courts' acute awareness of the shift that came with the dissemination of information in the digital age was captured as follows in *Van Breda v Media24 Limited and Others*; *National Director of Public Prosecutions v Media 24 Limited and Others*:⁵

'For, even as we grapple with television in the courtroom, there are many (particularly younger viewers) who are increasingly turning to the internet to keep up to date with news and current affairs. Many people now use social media as their main source of information, resulting in a shift in how information is disseminated and received.

As McLachlin CJ observed:

*'The explosive growth of new media signals a shift in who reports on legal proceedings. Court decisions may no longer be the preserve of trained professional journalists. Anyone with a keyboard and access to a blog can now be a reporter. And who is to say they are not? Some bloggers will be professionals and academics providing thoughtful commentary and analysis. Others will fall short of basic journalistic standards. Will accuracy and fairness be casualties of the social media era? What will be the consequences for public understanding of the administration of justice and confidence in the judiciary? How can a medium such as Twitter inform the public accurately or adequately in 140 characters or less? If witness or juror contamination is a concern with television, is it not even more so with ubiquitous social media accessed or received automatically via a hand-held device?'*⁶

[11] It is indisputable that the abundance of data in the online space, which has increased exponentially due to algorithm-based technologies, poses serious risks to privacy. Indeed, the reality is that a click of a button potentially makes us vulnerable to misinformation and disinformation. This brings to mind a statement attributed to Winston Churchill, which still rings true today, that 'a lie gets halfway around the world before the truth has a chance to get its pants on'. Misinformation and disinformation are so easily disseminated in the digital space that no matter how strong our Constitutional safeguards may be, we may still fall prey to the snares of propagandists who seek to undermine the Bill of Rights that constitute the fruits of our hard-won democracy. An example that comes to mind is 'fake news' on social media platforms. It is concerning to see the ease with which falsehoods are circulated on social media platforms without any real consequences. Lately,

we have seen an increase in AI-generated deepfake content. Fake news is worrisome, to say the least, because it has the propensity to threaten not only the very essence of media freedom, but to reverse the gains that were made in respect of the right to privacy, which in turn impacts the enjoyment of all other freedoms enshrined in our Constitution.

[12] In her book, *The Smear*, which was authored in 2017, Sharyl Attkinon, an American journalist, alludes to some of the digital age challenges that allegedly bedevilled previous election campaigns in America. She says the following in relation to how social media can be used for ulterior motives:

'As social media has become an unavoidable part of modern life, it's proven the perfect conduit for mass astroturf campaigns. But in truth, astroturf has been a part of the smear playbook for years. Plainly speaking, astroturf is when political, corporate, or other special interests disguise themselves and try to represent their causes as being genuine groundswells of support by ordinary people. Astroturfers write blogs, use social media, publish ads and letters to the editor, pay people to form protests or demonstrate as crowds, or simply post comments online to try to fool you into thinking an independent or grassroots movement is speaking. They use college professors and scientists; nonprofits; government; doctors and university researchers; public officials; news; and scientific publications. If there's a way to co-opt a mode of communication or a group of communicators, they've figured out how to do it. The whole point of astroturf is to try to give the impression that there's widespread support for or against an agenda when there is not. Astroturf seeks to manipulate you into changing your opinion by making you feel as if you are an outlier when you are not. It magically transforms the media into propaganda agents. . . . Today fake accounts and pseudonyms are tools of trade for propaganda and smear groups, corporations and special interests. They covertly inundate and dominate the social media landscape, with assistance from strategic planners and special software. Data and technical firms specialize in this technical skill set for hire.

We like to think of social media as a place where ideas are freely exchanged. Where controversial voices and ideas can be heard. A fast-paced, Wild West dynamic where manipulation of the message would be difficult to accomplish. But a peek behind the curtain exposes a reality that's far different. And the plain fact that people don't think they are as easily fooled on social media ... makes them easier to fool. In reality the Internet and social media have given astroturf campaigns the opportunity to flourish. While ideas may flow freely online, they are often anonymous, with no sense of who's actually behind the account. After all it is easier to smear someone when you never have to show your face or as it often turns out, you don't even have one.⁷

[13] Although one cannot vouch for the veracity of all the writer's statements, we know for a fact that the judiciary has in the past

⁴ *Khumalo and Others v Holomisa* (CCT53/01) [2002] ZACC 12; 2002 (5) SA 401; 2002 (8) BCLR 771 (14 June 2002) para 21.

⁵ *Van Breda v Media 24 Limited and Others; National Director of Public Prosecutions v Media 24 Limited and Others* (425/2017, 426/2017) [2017] ZASCA 97; [2017] 3 All SA 622 (SCA); 2017 (2) SACR 491 (SCA) para 64.

⁶ Remarks of the Right Honourable B McLachlin PC the Chief Justice of Canada 'The Relationship between the Courts and the Media' Carleton University Ottawa, Ontario 31 January 2012 available at: <http://www.scc-csc.ca/court-cour/judges-juges/spe-dis/bm-2012-01-31-eng.aspx>.

been a victim of social media smear campaigns, and that criminal investigations revealed that fake accounts and pseudonyms were used to besmirch the judiciary. Fortunately, the media did not add fuel to the fire, and so the fake news did not gain the traction that the propagandists had hoped for. For this display of ethical journalism which puts a high premium on verification of information, in compliance with the Press Code, our journalists must be commended. However, we should not drop our guard as misinformation continues to be an ever-pervasive threat.⁸ It behoves our journalists, regardless of the media agency or house to which they might be affiliated in whatever form, to respect the rights of individuals, and by extension, the right of the judiciary, with accurate reporting practices.⁹

[14] The rapid spread of false information before any remedial interventions can be made undermines both the credibility of the media and the judicial process. Journalists and other institutions, including the judiciary, face hacking, cyberattacks, and harassment online, which constitute an existential threat to our democracy. The reality is that despite constitutional safeguards, the media and the judiciary still face challenges emanating from the widespread use of digital platforms, as many individuals feel entitled to take advantage of anonymity by saying anything they wish, fact and myth alike, from behind a screen. What should we do about this? Our recourse is the Constitution. These challenges require a fair balance between allowing technological innovation to flourish and safeguarding democratic principles like free speech.

[15] Although the right to freedom of expression is a cornerstone of our democracy and fosters informed public discourse and constructive debate, it is evident that there is still considerable contestation over the exercise of the right to freedom of expression. Section 16(1) of the Constitution protects the right and provides that everyone has the right to freedom of expression.¹⁰ Section 16(2) provides, however, that the right does not extend to three categories of excluded expression, namely propaganda for war, incitement of imminent violence and the 'advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm' – colloquially known as 'hate speech'.¹¹ Thanks to the judgments of the Constitutional Court, all courts are now consistent on the interpretation of this right.

[16] It is an added victory to freedom of speech that the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023 came into operation on 14 May 2024. One of its many objects is to provide for the prosecution of persons who propagate hate speech. In terms of this Act, any person who intentionally publishes, propagates, advocates, makes available or communicates anything to one or more persons in a manner that could reasonably be construed to demonstrate a clear intention to be harmful or to incite harm and to promote or propagate hatred, is guilty of the

offence of hate speech. Although criminal prosecutions have, in the past, been instituted successfully based on other pieces of legislation, it is hoped that the express criminalisation of hate speech in terms of this Act will serve as a deterrent and stem the tide of fake news.

[17] Despite the challenges I alluded to earlier, some benefits have been derived from social media. A practice that has become common in many high-profile cases is for journalists and members of the public attending a hearing to use social media to share information about the legal proceedings on platforms like X and Facebook in real time. Live-streaming of proceedings such as those of the State Capture Commission were beneficial as the nation could, in real time, get a first-hand account of all allegations that were made at that forum. This, to an extent, denied propagandists an opportunity of distorting facts on social media in-between news bulletins. The useful side of social media platforms must therefore be embraced. Indeed, there have been instances in which it rightly puts a spotlight on oppressive tendencies in other countries in which the right to freedom of expression does not enjoy the same protection as in our country. We should therefore be careful not to throw the baby out with the bathwater.

[18] Although the transborder nature of the internet has in the past presented significant legislative and judicial challenges for legal and institutional frameworks in relation to complexities such as disinformation resulting from fake posts, cyber threats and e-violence which results from trolling and hate speech, I believe that our Constitution, together with principles laid down in our country's Press Code and provisions of various statutes have provided us with the necessary armaments to meet these challenges head on. It is evident that judgments of the Constitutional Court including the recent judgment *Qwelane v South African Human Rights Commission and Another*¹² serve as sufficient jurisprudential backdrop against which claims based on violation of rights in the digital space will be adjudicated. Recent judgments from our courts in respect of claims predicated on the violation of the right to freedom of expression through social media platforms attest to the fact that South African courts have managed to keep up with global developments in the digital space.

[19] Moreover, the conversations that the South African judges have with their counterparts from other jurisdictions at international seminars give us an opportunity to contextually scan the global environment, thereby assisting us in navigating some of these complexities by forging our own solutions which are in conformity with our constitutional values. It has also been gratifying to hear from our colleagues in other jurisdictions, that some of the judgments of our courts have given them useful insights on how to resolve their own challenges.

⁷ *The Smear*, Sharyl Attkisson 2017 Harper Collins Publishers p119-122.

⁸ <https://www.sanews.gov.za/south-africa/fake-news-destroys-democracy>.

⁹ *International Commission of Jurists, The Madrid Principles on the Relationship between the Media and Judicial Independence (1994)* available at: madrid-principles-on-media-and-judicial-independence-publication-1994-eng.pdf (icj2.wpenginepowered.com).

¹⁰ See footnote 2 above.

¹¹ See footnote 3 above.

¹² *Qwelane v South African Human Rights Commission and Another* ZACC 22; 2021(6) SA 579 (CC); 2022(2) BCLR 129 (CC).

This means that South African courts are up there with those considered to be the best of the best in the world. From my point of view, there is no lacuna in the legislative framework as seen from the prism of our Constitution. Our courts have already demonstrated in a plethora of judgments that they continue to uphold free expression and that they take seriously the responsibility to protect the media from SLAPP¹³ suites designed to impair their freedom of speech. This it will do while also protecting individuals and institutions from privacy violations, thus ensuring that the media's reporting is accurate and unbiased. No one should have the carte blanche to undermine our Bill of Rights with impunity. We are also aware that online access to information has resulted in many newspapers struggling to adapt to the new digital landscape, leading to a decline in print sales, which in turn led to the withdrawal of certain publications. It is for this reason that there is a need for a fair allocation of state subsidies in the media markets to support independent media, and for such allocation to be subject to judicial review.¹⁴ Today, I stand here to reaffirm that as the guardian of the rule of law and the last line of defence of democracy, the judiciary is fully committed to its role in supporting media freedom.

Conclusion

[20] As I conclude, I consider it to be incumbent on us all to ensure that the information we share is accurate, helpful and aimed at the development of society instead of polarising it. We know that the job that you, as journalists do, is no small feat. As the foot soldiers

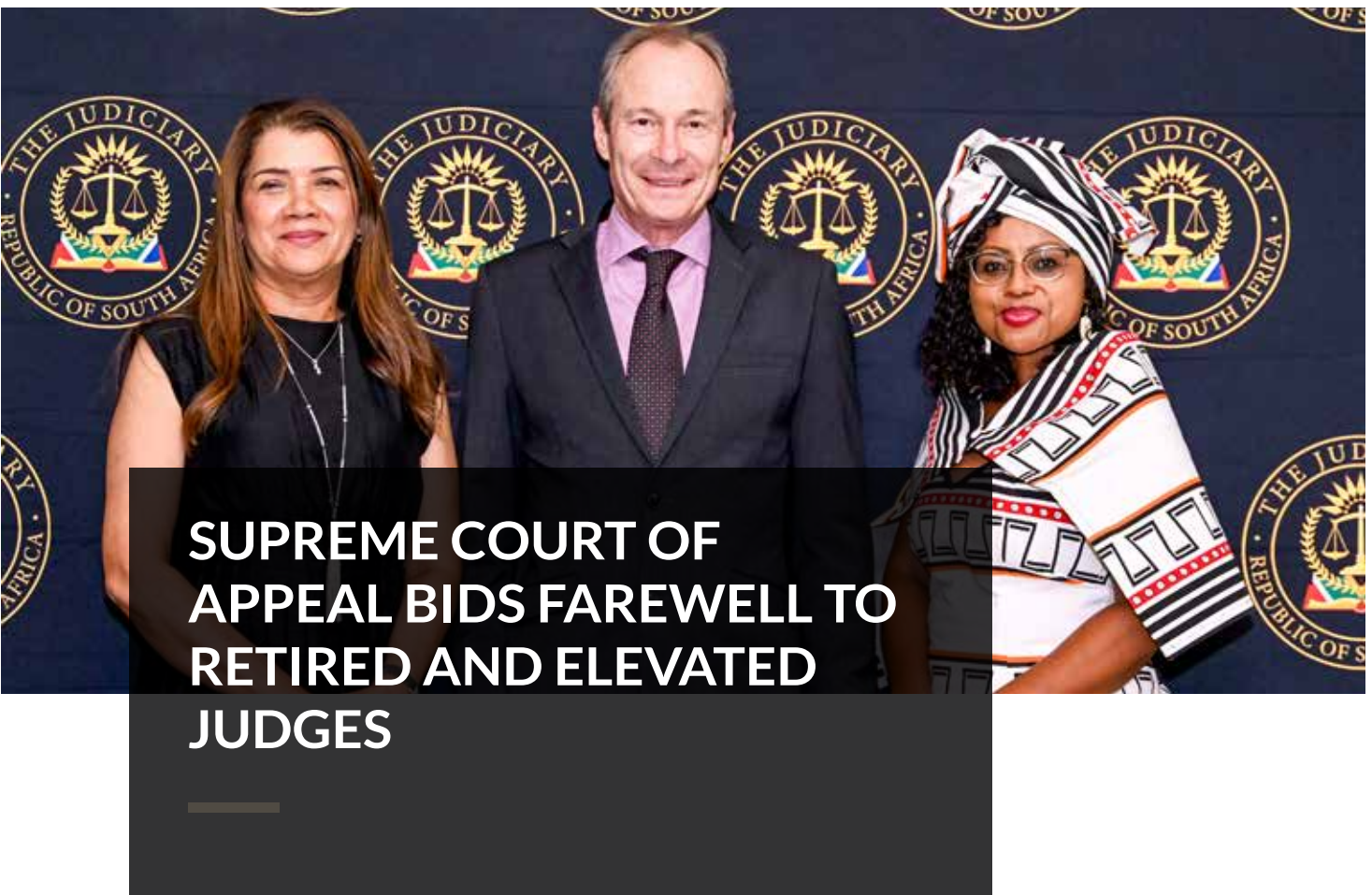
on the ground, we urge you to continue to follow your vocation and help us as a society to stay on track and not allow our nation to be sidetracked by malicious individuals who have an agenda to misuse social media platforms by peddling narratives that are intended to destabilise our democracy. I trust that this speech has reaffirmed the judiciary's commitment to the protection of the right to media freedom and that those who seek to abuse that right will be held accountable. This augurs well for the achievement of the 17 United Nations Social Development Goals to be achieved by 2030. It bears reiterating that Opinion No 7,¹⁵ which was issued by Consultative Council of European Judges noted that the media can sometimes intrude on people's privacy, damaging their reputation or undermining the presumption of their innocence. My gentle reminder to you is that as journalists, you are enjoined to be impartial. I dare say that in that role, you have less constraints than Judges when it comes to speaking out. That said, in 'telling it like it is', be careful not to use your pen or keyboard to unjustifiably publish information that is bound to harm or destroy. ■



¹³ Strategic Lawsuit Against Public Participation (SLAPP suit) refers to lawsuits brought by individuals and entities to dissuade their critics from continuing to produce negative publicity.

¹⁴ United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, The Organization for Security and Co-operation in Europe Representative on Freedom of the Media, The Organization of American States Special Rapporteur on Freedom of Expression and The African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information in Africa, Joint Declaration on Media Freedom and Democracy (2023) available at: [2023-JD-Media-Freedom-and-Democracy.pdf](https://www.ohchr.org/en/press-releases/2023/05/2023-JD-Media-Freedom-and-Democracy.pdf) (ohchr.org)

¹⁵ CCEJ (2005) OP no. 7, Part C, available at: [TE0501002](https://www.coe.int/en/treaties/2005-OP-no-7-part-c) (coe.int).



SUPREME COURT OF APPEAL BIDS FAREWELL TO RETIRED AND ELEVATED JUDGES

On 15 February 2025, the Supreme Court of Appeal (SCA) held a celebratory farewell event in honour of Judges who have retired and those who have been elevated to leadership positions within the Judiciary.

The honourees were Justices T Gorven, who retired from active service; Judge President Z Carelse, who was elevated to the position of Judge President of the Land Court; and Judge President N P Mabindla-Boqwana, who was elevated to the Judge President of the Western Cape Division of the High Court.

The Deputy President of the SCA, Justice D H Zondi, delivered a tribute on behalf of President M B Molemela, expressing gratitude to the honourees for their contributions and dedicated years of service to upholding justice. The Deputy Minister of Justice and Constitutional Development, Mr A Nel, MP, reflected on their invaluable role in shaping jurisprudence, emphasising their impact on social justice, human rights, and the evolution of the legal profession.

The Premier of the Free State, Ms M Letsoha-Mathae, also addressed the gathering, while Justice T Gorven, Judge President Z Carelse, and Judge President N P Mabindla-Boqwana shared heartfelt responses, acknowledging the warm tributes from their peers.

As a token of appreciation, Justice W Hughes and Justice P A Meyer presented commemorative gifts to the honourees, recognising their lasting contributions to the SCA. Justice C Nicholls led a celebratory toast, honouring their distinguished careers, while Justice F Mokgohloa concluded the event with a moving vote of thanks, reflecting on the collective efforts of all Judges in strengthening the Judiciary.

This farewell was not just a moment of reflection, but also a celebration of excellence, service, and an enduring commitment to justice. ■



JUSTICE D H ZONDI PAYS TRIBUTE TO FORMER COLLEAGUES

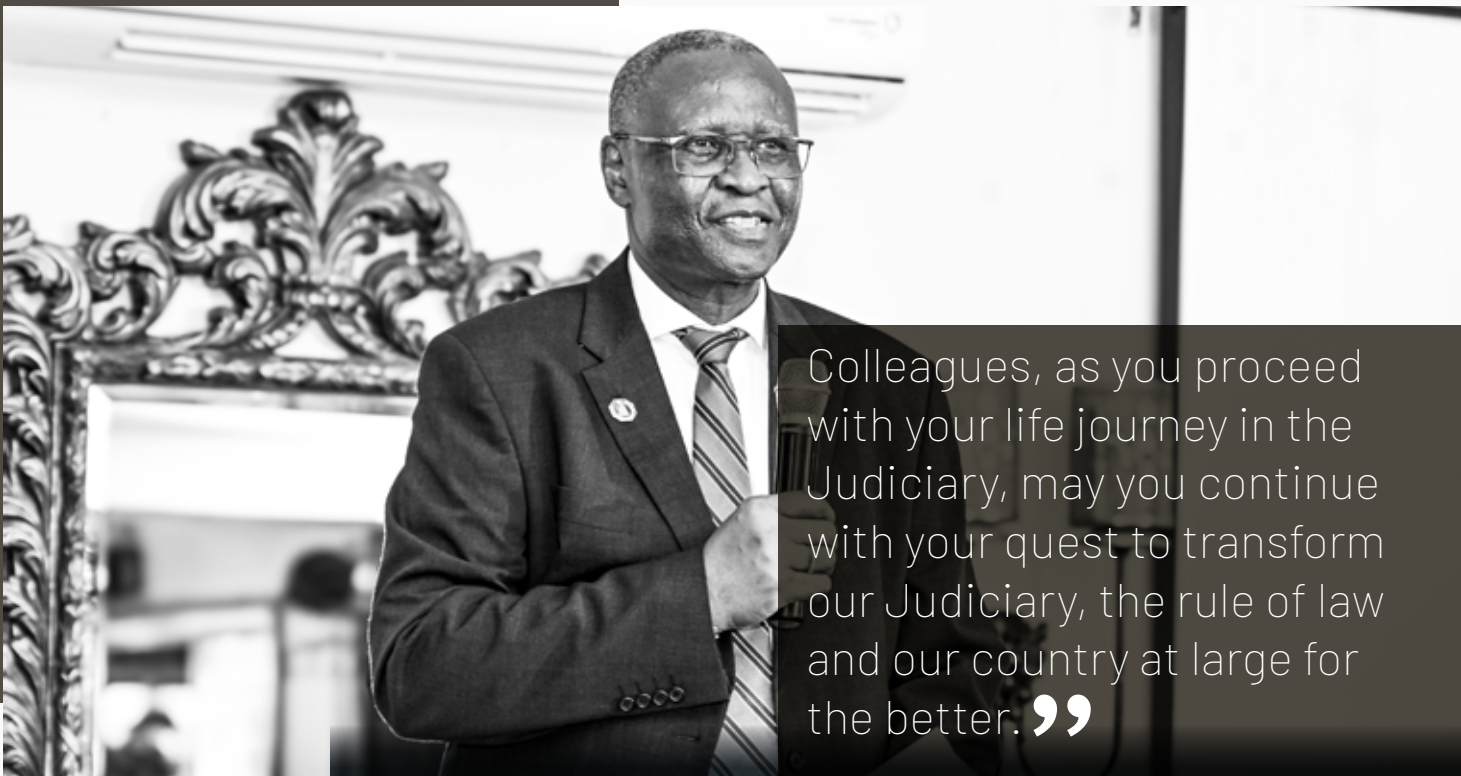
This is the full text of the remarks made by the Deputy President of the Supreme Court of Appeal, Justice D H Zondi, on behalf of the President of the Court, President M B Molemela, during a celebratory farewell event in honour of Judges who have retired and those who have been elevated to leadership positions within the Judiciary.

John C Maxwell once said that: "A great leader is one who knows the way, goes the way, and shows the way."¹ In relation to this, former President Nelson Mandela correctly observed that: "What counts in life, is not the mere fact that we have lived. It is what difference we have made to the lives of others that will determine the significance of the life we lead."²

With these words in mind Ladies and Gentlemen, today serves as a bittersweet moment for the Supreme Court of Appeal (the SCA) as we mark the retirement of our colleague, Justice Trevor Gorven and the departure of Justices Zeenat Carelse and Nolwazi Mabindla-Boqwana who have heeded the Judiciary's call and accepted appointments as Judges President of the Land Court and the Western Cape Division of the High Court, respectively. The moment is indeed a bittersweet one in that the SCA, as an institution, has lost great jurists who have served the SCA, and the public at large, with great distinction. However, in the same breath, the SCA cannot help but be grateful for and appreciate the exceptional, exemplary and impactful service that the Justices have rendered and continue to render. At the same time, the moment is one that evokes pleasure tinged with sadness because, although the SCA has lost three Justices, the Land Court and the Western Cape Division of the High Court have gained two outstanding leaders who have demonstrated a commitment to justice through their determination, hard work and collegiality.

It would be an injustice if this speech was only limited to the bittersweet taste this institution has felt regarding the departure of our fellow colleagues. We all know and have witnessed the contribution that Justice Gorven, Justice Carelse and Justice Mabindla-Boqwana have made, generally, to the Judiciary and, specifically, to the SCA.

Justice Gorven served in the Supreme Court of Appeal between July 2021 and April 2024. Before his elevation to this Court, he served in the KwaZulu-Natal Division of the High Court between December 2008 to July 2021. Justice Gorven contributed to the Judiciary by



Colleagues, as you proceed with your life journey in the Judiciary, may you continue with your quest to transform our Judiciary, the rule of law and our country at large for the better. ”

ensuring that the judicial system is one that guarantees access to justice for all. He was a trainer at an Advanced Trial Advocacy Training Course; has been a delegate to the Judicial Forum on Transformative Adjudication; and has chaired the KZN Judges' Information and Communication Technology Sub-Committee. All this, taken cumulatively, speaks directly to Judge Gorven's dedication, determination and immense contribution which he has brought to the Judiciary, the legal field and the country at large. In support of this, members of the legal community who had nominated him for appointment as a judge did so because of the profound role Justice Gorven had played in mentoring both lawyers and acting judges in KwaZulu-Natal; his sharp judicial mind and empathy for the marginalised; and his boundless work ethic. The SCA, Judiciary and country at large has equally witnessed this first-hand and extends its utmost appreciation to Justice Gorven for his priceless contribution, humility, hard work and dedication.

Justice Gorven has definitely been a leader who not only knew the way but showed it to others as well. As a testimony to his belief that "judges need to write judgments expeditiously and 'in a clear way' so that they are accessible to the general public and that the judiciary should not shirk its responsibility of delivering firm and swift justice", Justice Gorven exactly did this in the matter of *Minister of Home Affairs and Others v Saidi and Others* [2017] ZASCA 40; 2017 (4) SA 435 (SCA); [2017] 2 All SA 755 (SCA). This matter, which concerned the powers of a Refugee Reception Officer in terms of the Refugees Act 130 of 1998 in relation to an asylum seeker, was urgent given the nature of the rights affected. After hearing the matter on 7 March 2017, Justice Gorven, regardless of the matter's complexity, ensured that the judgment was delivered on 30 March 2017. This is one of the many instances where he demonstrated great dedication to his cause.

Justice Gorven, as you formally depart, we wish you well in all your future endeavours and hope that we can still call and count on your wisdom, experience and knowledge (like we did in the third term of 2024) as your judicial career has moulded you into a priceless well of knowledge.

Judge President Carelse, who left the SCA to take up the position of Judge President of the Land Court in 2024, is a living testimony to the fact that "behind every great woman, is another great woman". Before joining the SCA, she was a judge in the Gauteng Division of the High Court between 2009 and 2021. From her permanent appointment as a high court judge in 2009, Judge President Carelse has portrayed nothing but commitment, not only to the Judiciary, but also to gender and land equality, having been a member of the CMJA gender committee and having actively participated in Equality Court and domestic violence training. Her ability to logically empathise and correctly apply the law to sensitive land matters, given our country's past, was captured in the important judgment of *Florence (Dodgen) v Broadcount Investments (Pty) Ltd and Others* [2012] ZALCC 11.

This matter, having been appealed to the Constitutional Court, whose majority decision agreed with Judge President Carelse, is one of the many indicators of her capabilities as a judicial officer and, as many would agree, is probably one of the major reasons why the SCA had to let her go and assume a leadership position at the Land Court which specialises in land matters. Justice Carelse, in her stay at the SCA, proved to be an exceptional leader who made a huge difference in the lives of her fellow judges and those she generally worked with. In addition to her specialist knowledge of land matters which she generally shared with her colleagues, she was one of the founding members of the SA Chapter of the International Association of Women Judges and served in its

provincial leadership since 2004. She is also a network judge for the Hague Conference on Private International Law. Her appellate experience, coupled with her extensive legal expertise, plus the decade spent in the Land Claims Court definitely placed Justice Carelse as the perfect candidate for Judge President of the Land Court, which is why, tonight, we formally let her go with a heavy, yet grateful and confident heart. Judge President Carelse, as we show and voice our appreciation for all your hard work, dedication and contribution to the Judiciary, we equally wish you all the best in running the Land Court and have no doubt in our minds that your work ethic and commitment to equality will follow you wherever you go!

Lastly, and just as is the case with Judge President Carelse, the latest member of our team who heeded the Judiciary's call and accepted appointment as Judge President of the Western Cape Division of the High Court, is Judge President Mabindla-Boqwana. Judge President Mabindla-Boqwana joined the Judiciary as a judge of the Western Cape Division of the High Court in December 2013. After a few acting stints in the Competition Appeal Court and in the Labour Court, she was appointed as a judge of the Competition Appeal Court in January 2017 and subsequently elevated to the SCA in July 2021. As someone who has worked with her, both at the Western Cape Division and the SCA, I would easily describe her career as one that reflects her deep commitment to justice, equality, the rule of law and importantly, development. She is not only a leader, but a team-player who has always been able to deliver work of exceptional quality.

Recently I sat with her in the matter between Director of Public Prosecutions, Eastern Cape, *Makhanda v Coko* [2024] ZASCA 59; 2024 (2) SACR 113 (SCA); [2024] 3 All SA 674 (SCA) which concerned the meaning of consent in relation to the charges under the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. In the judgment she emphasised the point that ". . . consent to penetrative sex must be communicated by the complainant to the accused [and that] consent to 'foreplay' does not constitute consent to 'an act of penetration'." The decision demonstrates how evidence of consent in sexual offences should be scrutinised and approached. This judgment not only demonstrates Judge President Mabindla-Boqwana's ability to collaborate with her fellow colleagues in Court, but also her ability to critically and flexibly apply her legal mind to the issue at hand. Judge President Mabindla-Boqwana has been a vocal advocate for transformation within the Judiciary and has lamented the lack of black female advocates appearing in commercial matters before her, highlighting the slow pace of change at the Cape Bar.

Her commitment to mentoring young, black female lawyers is evident in her public statements and professional engagements. This not only demonstrates her efforts in pursuing transformation, but speaks to her leadership qualities which, not only focus on issues of transformation on the bench, but also on these issues in the legal field generally. As was the case with Judge President Carelse, we have nothing but confidence in Judge President Mabindla-Boqwana and believe that her work, commitment and contribution to the Judiciary has undoubtedly paved the way leading up to her appointment as the Judge President of the Western Cape Division.

In conclusion Ladies and Gentlemen, I leave you with these words of wisdom by Justice Langa, the former Chief Justice of the Republic of South Africa:

"Transformation is a permanent ideal, a way of looking at the world that creates a space in which dialogue and contestation are truly

possible, in which new ways of being are constantly explored and created, accepted and rejected, and in which change is unpredictable, but the idea of change is constant. This is perhaps the ultimate vision of a transformative, rather than a transitional Constitution.

This is a perspective that sees the Constitution as not transformative because of its peculiar historical position or its particular socio-economic goals, but because it envisions a society that will always be open to change and contestation, a society that will always be defined by transformation.”³

Colleagues, as you proceed with your life journey in the Judiciary, may you continue with your quest to transform our Judiciary, the rule of law and our country at large for the better. ■



Justice W Hughes (right) presenting Judge President Z Carelse with a gift on behalf of the Judges of the SCA.

¹Published by LLC Meadow's Edge Group Life Wisdom: Quotes from John Maxwell: Insights on Leadership (2014).

²Address by Nelson Mandela during the 90th birthday celebration of Mr Walter Sisulu on 18 May 2002, http://www.mandela.gov.za/mandela_speeches/2002/020518_sisulu.htm (accessed on 13 February 2025).

³Prestige lecture delivered by Chief Justice Langa at Stellenbosch University on 9 October 2006; also reported as: Justice P Langa 'Transformative constitutionalism' (2006) Stellenbosch Law Review 351 at 354.

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Justice P A Meyer delivered the opening remarks at the official farewell event held in honour of former Supreme Court of Appeal Justices in Bloemfontein.



Deputy President of the SCA, Justice D H Zondi, paid tribute on behalf of President M B Molemela at the official farewell event, thanking and acknowledging the efforts of the retired Judges and those who had been elevated.



Deputy Minister of Justice and Constitutional Development, Mr A Nel, MP, making remarks during the event.



Premier of the Free State, Ms M Letsoha-Mathae.



Justice T Gorven (retired)



Judge President Z Carelse of the Land Court.



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

THE ROLE OF THE JUDICIARY IN PROMOTING THE CONSTITUTIONAL VALUES OF EQUALITY AND HUMAN DIGNITY

Judge P L Goliath

Deputy Judge President of the Western Cape Division of the High Court



The International Network for Hate Studies (INHS) held its fifth conference “Dynamics of Hate: Examining Interdisciplinary Perspectives” recently. Co-hosted by the University of South Africa (Unisa) and the Psychological Society of South Africa (PsySSA), this was the first INHS conference to be held in the Southern Hemisphere, in Cape Town. The Acting Judge President of the Western Cape Division of the High Court of South Africa, as she was then, Judge Patricia Goliath, made a presentation on the role of the Judiciary in promoting the constitutional values of equality and human dignity. The following is the full text of Judge Goliath’s input.

We come together today to acknowledge a profound and significant duty entrusted to the judiciary, namely the safeguarding and advancement of the fundamental principles embedded in our Constitution. Among these, equality and human dignity shine as the guiding stars, illuminating the trajectory towards a just and equitable society. These rights, expressed with sophistication and determination, serve as imperatives, a reminder of our collective humanity and the intrinsic value of each person.¹

The Judiciary as Guardian of Constitutional Values

At the heart of any vibrant democracy lies an independent judiciary. It is the judiciary that breathes life into the Constitution, interpreting, safeguarding, and advancing its tenets, ensuring that each generation reaps the benefits of these enduring values. The judiciary serves not merely as a body of legal interpretation but as a beacon of justice, tasked with protecting citizens’ rights from encroachment be it from other branches of government, societal forces, or prejudices embedded within the fabric of tradition. The judiciary’s mandate to promote equality and human dignity does

¹ National Coalition for Gay and Lesbian Equality v Minister of Justice and Others 1999 (1) SA 6. See also A Chaskalson ‘Human Dignity as a Foundational Value of our Constitutional Order’ (2000) 16 South African Journal on Human Rights 193 at 196.

² Before South Africa’s accession to full democracy in 1994, the country had a weak constitutional structure dominated by the political minority in the white parliament. Since 1994, with the adoption of the first an Interim, and thereafter in 1996 final Constitution, the country acquired a Grundgesetz and achieved the status of a true Rechtsstaat. The Constitutional Court, a totally novel state institution, played a decisive role in assuring the Constitution’s compliance with fundamental democratic principles. Until now, the Court delivered impressive judgments to give effect to the Constitution’s provisions. However, there are at the present moment, some warning signals of factors which could affect the Court’s role as protector and guardian of the Constitution. These factors relate to the Court’s place in the hierarchy of the South African judiciary, the racial and gender composition of the Court, the nature and depth of the Court’s jurisprudence, the legal force of its decisions and the overall independence and dignity of the Court.

³ Anderson Ngulube. Paper presented at a Judicial Colloquium entitled Working towards just, peaceful and inclusive societies: Promoting rule of law and equal access to justice, held at Twangale Park Hotel, Lusaka, on 21 and 22 April 2016. Also see Role of Judiciary in Developmental South African State / Transformation of Judicial System: <https://pmg.org.za/page/role-judiciary> Accessed on 27 November 2024.

⁴ Anne Smith Equality constitutional adjudication in South Africa (2014) 2 AHRLJ 609-632. Also see Qwelane v South African Human Rights Commission and Another (CCT 13/20) [2021] ZACC 22; 2021 (6) SA 579 (CC); 2022 (2) BCLR 129 (CC) (31 July 2021) (1989) 87 Michigan Law Review 2320 at 2320. See also C Albertyn and D Davis Legal “Realism, Transformation and The Legacy Of Dugard” SAJHR (2010) 2 188.

not operate in isolation but rather in dialogue with the people, the legislative framework, and the Constitution. These pillars uphold a framework where no person is deemed superior or inferior by virtue of race, gender, religion, or socioeconomic status.²

Equality: The Core of Judicial Decision-Making

At its core, equality signifies that no person ought to face discrimination or exclusion due to inherent traits. It compels us to engage with entrenched biases and systemic inequities that may, whether consciously, or unconsciously, sustain disparities. The judiciary has frequently served as a platform for the recognition of historical wrongs, facilitating the deconstruction of laws that previously sanctioned discrimination, and providing a means for the lived realities of marginalised communities to receive appropriate remedies. In important rulings, the judiciary has employed the principle of equality to deconstruct inequitable legislation and promote societal advancement.³ Through the analysis of cases with a focus on equality, the courts engage in more than mere legal interpretation; they establish a benchmark for the equitable treatment of every individual.⁴ Such assessments serve to reinforce the principles that bind us together while dissuading the elements that seek to create division.

Human Dignity: The Inviolable Right

Inextricably linked to the principle of equality, the concept of human dignity underscores the intrinsic value possessed by each person. The essence of human dignity surpasses mere material wealth, societal ranks, and individual distinctions.⁵ This statement underscores an individual's entitlement to dignity, self-governance, and personal achievement. The judiciary's affirmation of human dignity conveys a powerful statement. Every individual, irrespective of their societal standing, holds an inherent worth that remains untarnished.

Judicial rulings that uphold human dignity frequently transcend mere protection; they serve to empower individuals.⁶ They enable individuals to pursue justice, to maintain their dignity, and to engage comprehensively in societal affairs. In rulings that safeguard individual liberties, the judiciary recognises that legislation should benefit the populace rather than subjugate it, cultivating an environment where dignity flourishes, not in solitude, but in harmony with the collective societal framework.⁷

The Prevention and Combating of Hate Crimes and Hate Speech Act in South Africa⁸

Often referred to as the Hate Crimes Act, was enacted to enhance the legal frameworks for tackling hate crimes and hate speech within the nation. This legislation seeks to safeguard individuals from being targeted or victimised due to their identity or affiliation with vulnerable groups. The South African Hate Crimes and Hate Speech Act was enacted on May 9, 2024, when President Cyril Ramaphosa signed it into law. This legislation specifically criminalizes hate crimes and hate speech, with the goal of addressing prejudice and intolerance in various forms, including racism, xenophobia, and other types of discrimination.⁹

The Act delineates hate crimes as offences driven by bias or prejudice towards multiple aspects of an individual's identity, encompassing race, religion, ethnicity, gender, sexual orientation, nationality, and other safeguarded characteristics.¹⁰ It further examines the concept of hate speech, defining it as any expression that incites harm or fosters animosity based on shared characteristics.

The legislation delineates legal safeguards by criminalising both hate crimes and hate speech, instituting penalties for transgressors that fluctuate according to the gravity of the offence. The legislation empowers prosecutors to incorporate "hate crime" classifications into charges, resulting in heightened penalties when it is established that bias served as a motivating element. Beyond punitive actions, the Act encompasses measures for victim support services, including counselling and legal assistance, acknowledging the profound psychological and social ramifications that hate crimes impose on victims and their communities.¹¹

The Act requires the provision of training for law enforcement, legal professionals, and community workers to enhance their capacity to identify, document, and prosecute hate crimes effectively. The initiative seeks to enhance public consciousness, prompting society to acknowledge the detrimental effects of bias. The Act's rigorous penalties serve as a formidable deterrent to hate-motivated violence and intimidation, unequivocally signalling that offences rooted in prejudice are regarded with utmost seriousness by the legal system.¹²

²Despite dissensus regarding the widespread use of the concept, dignity has come to display three elements in constitutional adjudication post World War Two: the ontological element which entails that human beings have equal inherent human dignity that cannot be waived or diminished; the second element being the claim that inherent human dignity has to be recognised and respected; and the limited-state claim as the third element which entails that states have a positive obligation to progressively realise human dignity through the mechanism of socio-economic rights. It is widely accepted that these elements root in Kantian moral ethics which holds that man's autonomy is based upon universal dignity, as a result of which man should never be used as a means to an end, but only as a means in himself. See Steinmann R "The Core Meaning of Human Dignity" PER/PELJ 2016(19) DOI <http://dx.doi.org/10.17159/1727-3781/2016/v19i0a1244>

⁶See the remark made by Dennis Davis, a South African law professor and judge, that South Africa's Constitutional Court "has given dignity both a content and a scope that make for a piece of jurisprudential Legoland - to be used in whatever form and shape is required by the demands of the judicial designer" ("Equality: The Majesty of Legoland Jurisprudence" 1999 SALJ 398, 413. See also Botha. H Human Dignity in Comparative Perspective STELL LR 2 (2009). Also see Ackermann "Equality and the South African Constitution: the Role of Dignity" 2000 Heidelberg Journal of International Law 537-556.

⁷Christopher McCrudden "Human Dignity and Judicial Interpretation of Human Rights" European Journal of International Law, Volume 19, Issue 4, September 2008, Pages 655-724, <https://doi.org/10.1093/ejil/chn043>.

The Act provides focused safeguards for marginalised communities by specifically addressing crimes driven by identity-based prejudices. This fosters a feeling of safety for individuals who may otherwise experience apprehension regarding discrimination or violence stemming from their identity.¹³ The advancement of social cohesion is significantly enhanced through the active confrontation of hate crimes and hate speech, as it cultivates an environment of mutual respect and tolerance among various cultural, religious, and ethnic communities. This is in accordance with the constitutional principles of dignity and equality upheld by South Africa.

The Act recognises the profound emotional and psychological impact of hate crimes, offering avenues for victim support that facilitate recovery from traumatic experiences and mitigate the broader consequences of harm within communities. This process guarantees that those who perpetrate hate crimes or partake in hate speech face appropriate consequences, thereby reinforcing the rule of law and advancing the cause of justice.¹⁴ The Act further enhances public confidence in the legal framework, demonstrating the government's dedication to safeguarding the rights of all individuals.

The initiatives for awareness and training mandated by the Act contribute to the development of a society that is increasingly sensitive to the ramifications of bias and discrimination, fostering a culture of inclusivity and respect across educational institutions and professional environments. The Hate Crimes Act signifies a noteworthy progression in South Africa's pursuit of a more just and dignified society, harmonising with constitutional principles and offering safeguards that serve the interests of all citizens.

A Delicate Balance of Freedoms and Protection

In advancing equality and dignity, the judiciary often finds itself at a critical juncture—where the right to free speech encounters the need to protect individuals and communities from hate speech. Hate speech, defined as expressions that demean, harm, or incite violence against others based on race, gender, religion, sexual orientation, or other protected characteristics, strikes at the heart of both equality and human dignity. The judiciary's role here is both complex and vital.

While freedom of expression is foundational in a democratic society, hate speech tests its boundaries by threatening the very principles of respect and unity. Hate speech does not merely harm the targeted individual, it undermines societal cohesion, perpetuates divisions, and erodes trust within communities. Left unchecked, it has the potential to normalize discrimination and intolerance, unravelling the social fabric that holds diverse societies together.

The judiciary's response to hate speech involves a delicate balance. Courts must ensure that any restrictions on speech do not infringe upon the core democratic value of free expression, while also recognizing that freedom of speech is not an absolute right when it comes at the expense of another's dignity and safety. Through carefully reasoned judgments, the judiciary can delineate the line between free speech and harmful rhetoric, fostering an environment where dialogue is encouraged, but hate is not.¹⁵

In landmark rulings on hate speech, courts have established that the preservation of human dignity and equality often necessitates certain limitations on speech that seeks to demean,

¹³Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 Act 16 of 2023 Published in Government Gazette 50652 on 14 May 2024 Assented to on 6 May 2024

¹⁴See preamble to the Act To give effect to the Republic's obligations in terms of the Constitution and international human rights instruments concerning racism, racial discrimination, xenophobia and related intolerance, in accordance with international law obligations; to provide for offences as hate crimes and the offence of hate speech and the prosecution of persons who commit those offences; to provide for appropriate sentences that may be imposed on persons who commit hate crime and hate speech offences; to provide for the prevention of hate crimes and hate speech; to provide for the reporting on the implementation, application and administration of this Act; to effect consequential amendments to certain Acts of Parliament; and to provide for matters connected therewith.

¹⁵The Prevention and Combating of Hate Crimes and Hate Speech Act, 2023 (Act 16 of 2023) signifies a significant legislative accomplishment in South Africa's ongoing endeavour to eradicate social divisions and promote inclusivity rooted in the ideals of equality and human dignity as defined by the Constitution. The Act aims to reduce the occurrence of hate crimes and hate speech, which have historically weakened social unity in the nation. The Act establishes specific offences and outlines a legal framework for their prosecution, with the goal of promoting a society that respects diversity and actively fights against prejudice.¹¹The legislation significantly strengthens the prosecutorial approach regarding hate crimes by enabling prosecutors to incorporate "hate crime" classifications into current charges, thus ensuring that the bias-motivated component of an offence is clearly acknowledged. This classification leads to increased penalties, highlighting the serious effects of prejudice and the greater societal harm inflicted by these actions. Along with punitive measures, the Act embraces a victim-centred approach, acknowledging the deep psychological and social impact that hate crimes inflict on individuals and their communities. The provision of support services is mandated, encompassing counselling to assist victims in managing with trauma as well as legal assistance to empower them in effectively navigating the justice system. The legislation aims to provide justice while promoting healing and resilience, ensuring that victims obtain the thorough support necessary for their recovery from the harm they have suffered. This comprehensive approach highlights the twofold goals of the Act: to discourage hate crimes with strong penalties and to tackle their profound human effects through significant victim support programs. See also Prevention and Combating of Hate Crimes and Hate Speech Bill: public hearings day 2 available at <https://pmg.org.za/committee-meeting/37553/> Accessed on 27 November 2024

¹²The Act effectively deters by imposing strict penalties that enhance the consequences of offences motivated by prejudice, communicating a powerful message regarding the seriousness of hate crimes. The Act explicitly differentiates hate crimes from regular offences and associates stricter penalties with the bias or prejudice that motivates the behaviour, highlighting that these motivations enhance the seriousness of the crime. This ensures that justice corresponds appropriately to the harm inflicted and serves as a deterrent, discouraging individuals from participating in hate-driven violence or intimidation. The optimised sentencing provisions aim to express society's rejection of bias-motivated actions, reinforcing the contention that prejudice-fuelled behaviour erodes social unity and fairness. Furthermore, by criminalizing hate speech alongside physical acts of violence, the Act establishes a broader legal framework that tackles hate at its roots, addressing the verbal and ideological expressions that often precede physical harm. These measures collectively emphasise that the legal system addresses hate-motivated offences with great seriousness, deterring potential offenders while promoting a culture of accountability and respect.

incite violence, or propagate hate.¹⁶ Such decisions reflect the judiciary's commitment to creating a society where individuals are protected from expressions that threaten their safety and diminish their humanity. Through these rulings, the judiciary reinforces the constitutional promise of a community built on respect and tolerance.

Hate Speech as an Assault on Equality and Dignity

Hate speech not only infringes upon individual dignity but also challenges our collective commitment to equality. It serves as a reminder of the judiciary's role in setting boundaries that protect vulnerable groups, affirming that every person's dignity deserves safeguarding. When courts uphold restrictions on hate speech, they send a powerful message: that equality is not merely a legal ideal but a lived reality, one in which no one should fear exclusion or denigration based on who they are. The judiciary's role in addressing hate speech thus underscores its broader mandate to protect constitutional values. By acting as an arbiter in cases where hate speech conflicts with human dignity and equality, the judiciary strengthens the promise of a democratic society grounded in respect and mutual recognition.

Balancing Equality and Dignity in Judicial Decisions

Yet, the task is seldom simple. In some cases, promoting equality may seem at odds with safeguarding individual dignity. The judiciary must carefully navigate these complexities, ensuring that one principle does not eclipse the other. In this delicate balancing act, courts often grapple with policies that, while aiming for equality, may inadvertently compromise the dignity of particular groups.¹⁷

In achieving this balance, judicial discretion and reasoned analysis become paramount. Through carefully reasoned judgments, the judiciary can harmonize these values, ensuring they coalesce

rather than collide. This process underscores the judiciary's role not only as interpreters of the law but as moral compasses guiding society toward ethical coherence.¹⁸

The Judiciary's Role in Societal Transformation

The judiciary possesses a transformative power, capable of reshaping societal attitudes and guiding moral progress. When courts issue rulings that support marginalized groups, they do more than correct individual injustices, they challenge the broader societal biases that allowed such injustices to flourish. Such decisions foster a climate where citizens and institutions alike reflect on their roles in promoting equality and respect for human dignity.

By challenging discriminatory practices, the judiciary fosters a more inclusive society where each person can exercise their rights without fear. Through this transformative role, courts remind citizens and lawmakers alike of the unyielding power of our constitutional principles to reshape and uplift our society.

Challenges and Responsibilities

Despite its noble role, the judiciary is not immune to challenges. Political pressures, limited resources, and societal resistance to change can impede its ability to fully realize constitutional values. In these moments, the judiciary must rely on its independence and its commitment to principles rather than popular opinion. In cases of great controversy, the judiciary must exhibit courage, defending constitutional values even when they stand in opposition to prevailing societal norms.¹⁹

The judiciary's responsibility extends beyond the courtroom. Through educational outreach, public transparency, and engagement, the courts can help citizens understand the importance of equality and dignity as cornerstones of justice.

¹⁶Section 4 of the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023, seeks to address the negative consequences of hate speech by rendering it a criminal offence to intentionally express words or communications that incite harm or promote prejudice towards individuals or groups based on their protected characteristics. These attributes encompass race, gender, sex, sexual orientation, religion, disability, and other categories specified in the Act. The main objective of this section is to prevent harmful rhetoric that promotes division, violence, and social alienation, recognising that hate speech has the capacity to escalate into broader societal harm, such as physical violence or systemic discrimination. Section 4 effectively balances its objective with the constitutional right to freedom of expression by excluding legitimate forms of communication, including fair reporting, academic and artistic expression, or religious teachings, as long as they do not incite harm. This thoughtful approach aims to maintain democratic values while firmly addressing hate speech that endangers social unity and the dignity of marginalised groups. Section 4 creates a setting in which diversity is honoured, and hate speech is clearly rejected.

¹⁷The Prevention and Combating of Hate Crimes and Hate Speech Act, 2023, particularly in Sections 5 and 6, emphasises the importance of comprehending the emotional and psychological impact of hate crimes on both victims and communities. These provisions require the establishment of support systems, which includes access to psychological counselling, legal aid, and victim empowerment and support programs, to aid the recovery of individuals who are impacted by hate crimes or hate speech. The Act recognises that these offences inflict harm not only on individuals, but also develop fear, division, and alienation in communities. It ensures that victims are offered with personalised support to help them restore their lives and reclaim a sense of security and belonging. At the same time, the Act strengthens accountability by guaranteeing that individuals who perpetrate hate crimes or participate in hate speech encounter increased penalties that correspond to the serious nature of their actions. This combined strategy of providing assistance to victims while imposing stringent penalties on offenders, strengthens the rule of law, indicating that bias-motivated crimes are treated with the highest level of severity by the legal system. The Act strengthens public trust in the judiciary and encourages societal healing by confronting both the short-term and lasting impacts of hate-fuelled actions. The legislation promotes the overarching aim of justice and equality by integrating punitive measures with restorative interventions, thereby decreasing the chances of future offences driven by prejudice. See also National Policy Guidelines for Victim Empowerment available at Handbook <https://static.pmg.org.za/docs/090713victimempowerguide.pdf> Accessed on 27 November 2024.

¹⁸See footnote 6. See also South African Litigation Center. Litigation Manual Series Freedom of Expression: Litigating Cases of Limitations to the Exercise of Freedom of Speech and Opinion 2016 available at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Freedom-of-Expression-Manual.pdf>. Accessed on 27 November

¹⁹*Owelane v South African Human Rights Commission* See also *In the case of Herselman v Geleba (ECG)* (unreported case no 231/2009, 1-9-2011) (Dawood J), the court held that the use of the word 'baboon' amounted to hate speech as defined in s 10 of the Equality Act. Also see Michel Rosenfeld, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis*, 24 *Cardozo L. Rev.* 1523 (2003). Available at <https://larc.cardozo.yu.edu/faculty-articles/148> Accessed on 27 November 2024

By cultivating an informed society, the judiciary promotes an environment where these values are not simply ideals but integral elements of the nation's collective identity.

An Enduring Commitment to Justice

As we look to the future, we must recognize that the journey toward a society truly grounded in equality and human dignity is ongoing. Each judgment and every decision serve as a stepping stone, drawing us closer to the vision enshrined within the Constitution. The judiciary's commitment to this cause will continue to inspire, challenge, and uplift the legal profession and society at large. The promise of our Constitution is not a passive one; it demands active engagement, reflection, and, at times, courage in the face of adversity. It is a promise that we make not only to ourselves but to generations yet to come—a promise that every individual will be seen, heard, and valued.

Conclusion

As I bring this address to a close, I want to emphasize the importance of our shared responsibility in upholding the principles of justice, equity, and respect for the rule of law. Each of us, in our professional capacities, has a unique role to play in fostering a legal system that not only adheres to these values but also contributes to a broader culture of fairness and respect. In reflecting on our work, we see how deeply interconnected our roles are with the lives of individuals and communities. This conference on Hate Studies, for instance, highlights the profound need for a legal framework that addresses contemporary issues with compassion and insight. Hate and discrimination challenge the core of our legal principles and social cohesion, and it is upon us to use the law as a tool for justice, dignity, and healing.

Let us also remember that our work extends beyond the courtroom and into every sphere of society.²⁰ Whether we're advocating for the rights of individuals, addressing complex property disputes, or exploring innovative areas like intellectual property, each case

we take on, each piece of advice we offer, contributes to a greater narrative. This narrative is about law as a living force that shapes and responds to the evolving needs of society.

In conclusion, I urge each of us to commit to a legal profession defined by integrity, intellectual curiosity, and an unwavering dedication to justice. Let us serve as advocates for truth, and mentors to those entering our field, instilling in them the values that will continue to strengthen our legal system for generations to come. ■

¹⁷An example here is the noteworthy ruling by the European Court of Human Rights (ECtHR) in *Eweida v. United Kingdom* (2013). This case tackled the conflict between a person's right to express their religious beliefs and an employer's policies that advocate for equality and non-discrimination. Nadia Eweida, an employee of British Airways, experienced limitations on wearing a visible cross as part of her uniform, which she maintained violated her right to express her religion under Article 9 of the European Convention on Human Rights. The court determined in her favour, indicating that the employer's policy, although intended to uphold a corporate image, unfairly limited Eweida's ability to express her faith. The ruling emphasised the necessity of guaranteeing that equality policies do not excessively infringe upon individual dignity or freedom. This case illustrates how courts address the intricate task of balancing conflicting rights, confirming that policies aimed at fostering equality must also honour the personal identities and beliefs of individuals, ensuring that no principle dominates the other.

¹⁸See Dyzenhaus, D. (1997). "Judicial Reasoning and the Rule of Law." *Oxford Journal of Legal Studies*, 17(1), 63-78. This article examines the relationship between judicial discretion and the rule of law, demonstrating the value of reasoned analysis in balancing competing principles such as equality and dignity. Dyzenhaus maintains that judges, through the application of their reasoning, act as intermediaries of societal values, guaranteeing that legal principles are in harmony with moral and ethical consistency. Through the careful formulation of judgements that harmonise seemingly conflicting rights, the judiciary effectively serves its dual purpose as both interpreters of the law and protectors of justice. This source offers a more profound theoretical framework for comprehending how courts manage the complex issues of maintaining varied, and at times contradictory, societal values.

¹⁹Tushnet, M. (2008). "The Political Conditions of Judicial Independence." *Harvard Law Review*, 121(2), 352-383. Also see Ginsburg, T., & Moustafa, T. (2008). "The Judicialization of Politics in Asia." *International Political Science Review*, 29(3), 365-388. Also see Melton, J. (2014). "The Role of Courts in Democracies: A Comparative Perspective." *Law & Society Review*, 48(3), 745-778. These articles enhance and contribute to the discussion regarding judicial independence, the challenges encountered by courts, and the strategies they employ to address these issues while still upholding fundamental rights and constitutional principles.

²⁰Friedman, L. M. (2002). "The Judiciary and Public Policy." *Yale Law Journal*, 111(8), 1775-1792. Also see Barrett, C. (2010). "The Role of Judges in Creating Public Norms." *California Law Review*, 98(4), 1275-1300. Also see Tushnet, M. (1999). "Taking the Constitution Away from the Courts." Princeton University Press.

UNLOCKING THE POTENTIAL OF PEOPLE-CENTRED JUSTICE IN AFRICA

Judge N M Mbhele

Deputy Judge President, Free State Division of the High Court



The Deputy Judge President of the Free State Division of the High Court, Judge N M Mbhele, addressed the Knowledge Platform Annual Conference and the launch of the African Alliance for People Centered Justice, in Dakar, Senegal, recently. Her address was given under the title 'Unlocking the Potential of People-Centred Justice in Africa'. Below is the full text of Judge Mbhele's address.

The world we live in is a “law thick” world: all aspects of life are impacted by laws, regulations, rights and responsibilities. From the moment a person is born, through education, housing, employment, transport, health, to the end of life, the law impacts their day-to-day life and economic and social well-being.

As such, legal and justice needs are common in the lives of most people. Addressing legal and justice needs demands access to public justice services and other dispute resolution mechanisms in order to recognise and obtain a remedy to the legal need in question, thus giving place to justice needs.

The ability of the legal and justice system to effectively respond and address those needs for all people and generate fair outcomes is critical to ensure well-being, equal opportunity and access to public services.

Conversely, the inability of justice systems to prevent or resolve people's legal issues can weaken the social contract and lead to unresolved grievances, instability, or even violence.

Let me begin my remarks with a story. A horrible story in the history of South Africa's young democracy. The life Esidimeni tragedy.

144 mental health care users died after the government moved them out of a private health care facility called Life Esidimeni after 1 October 2015.¹ The patients were moved to facilities around Gauteng which were found to be ill-equipped, understaffed and less ideal. These facilities were operating as non-governmental organisations (NGOs). Many NGOs appeared to have problems in accessing the medication that mental health care users required – for both psychiatric and physical conditions. It was found that there was significant understaffing or inappropriate staffing at some NGOs. Some NGOs had insufficient security.² The patients were moved from a private health care facility to less ideal sites.

The death of 144 people was a catastrophe no matter how one looks at it. It fittingly shocked the whole nation and the world.

The Life Esidimeni Arbitration was established following Recommendation of the Health Ombudsperson's “Report into the circumstances surrounding the deaths of mentally ill patients.”

¹Arbitration Award in Families of Mental health care users affected by Gauteng Mental Marathon Project

v National Minister of Health of the Republic of South Africa (Moseneke, J) at 2

²Ibid at 32

Legal Aid SA funded and represented the affected families. In March 2018, the Arbitrator, Former Deputy Chief Justice, Dikgang Moseneke found that the decision to move the patients had been “irrational and in blatant breach of the law and the Constitution,” an “irrational and arrogant use of public power. He ruled that families of the affected patients should each be paid around R1.2 million. In April 2017, 144 dockets were referred to the National Prosecuting Authority, and on 19 July 2021, a judicial inquest commenced in the Pretoria High Court to determine the legal cause of each patient’s death.

Legal Aid SA funded Section 27 Non-Governmental Organizations (NGO’s), which represented 63 families of the deceased while Legal Aid SA represented 67 families of the surviving victims, including assisting with the disbursement of the compensation funds from the Gauteng Department of Health to the families of the victims.

This is just one story showing how people experience justice problems and what happens when policies are designed without the real needs of the people at the center.

Justice services also often remain fragmented or inadequate. In many jurisdictions there is no fully developed continuum of options for identifying, anticipating, preventing and resolving legal issues, often owing to weak referral and triage systems among the institutions involved. The focus on court and litigation-centred “silo” models can further undermine the ability of justice systems to enable access to justice for all.

It is illustrative of millions—even billions—of people’s experience of justice problems the world over. According to a 2019 World Justice Project study aimed at measuring the justice gap, globally, 2.1 billion people are employed in the informal economy; 1.1 billion are victims of non-violent crimes such as burglary or theft annually; 2.3 billion lack proof of secure housing or land tenure rights; and 1.4 billion have unmet civil or administrative justice needs. Many of these circumstances are overlapping and compounded disproportionately in impoverished and otherwise marginalized populations.

We are here today to explore a reorientation of our justice policy making, in order to take as a point of departure the experience of people like the Life Esidimeni victims. For far too long and in too many jurisdictions, we have approached the justice system strengthening from the perspective of institutions. We have asked what judges, lawyers, prosecutors, and bar associations need to do their jobs better, without fully understanding the needs of the people those institutions and actors are meant to serve.

By contrast, people-centered justice flips that approach on its head. It begins with a mapping of people’s justice needs, the ways in which they solve their justice problems, and the obstacles they face in doing so. Armed with this understanding of what has been referred to as people’s “justice journeys,” we can design justice institutions and policy interventions to meet people’s needs more effectively.

The importance of transforming justice to center on people was acknowledged in the 2018 Riga Statement on “Investing in Access to Justice for All!”.

The statement strongly recommended that action be taken to invest in access to justice for all to foster inclusive growth and implement the 2030 Agenda.

It emphasised the importance of measuring progress in access to justice from the people’s perspective and called on the international community to develop tools to support countries’ efforts to better understand and address legal and justice needs.

The statement also called for a deeper understanding of the needs of disadvantaged people who face particular barriers in accessing justice. It highlighted the importance of innovative approaches in the delivery of people-centred justice services to meet diverse legal and justice needs and empower individuals, communities and businesses. Participants called for concerted action at the local, national and global levels to achieve equal access to justice for all, specifically for women, Indigenous communities and vulnerable groups.

The application of people-centred concepts to justice systems is relatively new. First appearing as ‘client-centred’ services in the early 2000s, a number of similar and/or related terms have been used – including citizen-centred, person-centred, human-centred and people-centred design. It is necessary to define these terms in the attempt to define “people-centred access to justice”, and it is important to note that other sectors, such as health, have a longer and deeper history in the application of similar concepts

What do I mean by people centred justice?

“People centricity” means taking the needs and voices of people into account when designing, delivering, implementing and evaluating public policies and services. People-centered services are inclusive, tailored to people’s needs and high quality.

This differs from justice systems whose reforms are primarily inspired by the needs or views of the service providers.

What difference does this shift in perspective make in our justice policy? A big difference

The World Justice Project (WJP), an independent, multidisciplinary organization working to advance the rule of law worldwide released groundbreaking survey results on access to justice around the world, representing the voices of more than 100,000 people in 101 countries.

This data reveals the scope and depth of legal problems ordinary people face all over the world, including problems related to employment, housing, education, health, and family life,

Key findings from the study include:

Justice problems are ubiquitous and frequent. Approximately half (49%) of people surveyed experienced at least one legal problem in the last two years. While the prevalence and severity of problems varies by country, the most common problems relate to consumer issues, housing, and money and debt. These can include problems with a landlord over rent, repairs, or payments; problems with neighbors over noise or litter; becoming homeless; disputes over poor or incomplete professional services; problems with a utility bill or supply; insurance claims being denied; threats from debt collectors; extortion from a gang or other criminal organization; difficulty collecting money owed to you; and more.

Global Insights on Access to Justice 2019 Justice problems negatively impact people’s lives. 43% of those surveyed reported that their legal problem adversely impacted their lives. More than 1 in 4 people (29%) reported that they experienced physical or

stress-related ill health as a result of their legal problem, and more than 1 in 5 people (23%) reported that they lost their job or had to relocate.

Most people do not turn to lawyers and courts. Less than a third (29%) of people who experienced a legal problem sought any form of advice to help them better understand or resolve their problem, and those who did seek assistance preferred to turn to family members or friends. Even fewer (17%) took their problem to an authority or third party to mediate or adjudicate their problem, with most preferring to negotiate directly with the other party.

People face a variety of obstacles to meeting their justice needs, beginning with their ability to recognize their problems as having a legal remedy. Indeed, fewer than 1 in 3 people (29%) understood their problem to be legal in nature as opposed to “bad luck” or a community matter. As mentioned above, less than a third of those surveyed obtained advice from a person or organization that could help them better understand or resolve their problem, and 1 in 6 (16%) reported that it was difficult or nearly impossible to find the money required to resolve their problem. About the same proportion (17%) reported that their justice problem persists but they have given up any action to try to resolve it further, with another 39% reporting that their problem is still ongoing.

Justice policy that takes on board this data about people’s justice journeys looks very different. Rather than reinforcing institutions to which people do not turn, a people-centered justice policy focuses on understanding people’s justice needs and transforming justice institutions and other services to meet those needs. Let me mention just 4 ways in which a people-centered approach looks different.

A people-centered approach to justice will emphasize: A strengthened data ecosystem to capture through legal needs surveys and administrative data a clear picture of people’s justice needs and experiences. Imagine a health care system where we did not know the prevalence of illnesses we were trying to prevent or treat. That’s where we are with respect to data about justice needs in most jurisdictions.

A people-centered approach will employ: Preventive strategies to address the root causes of prevalent justice problems. Again, imagine a public health system where we poured resources into hospitals but not vaccination programs.

A people-centered approach will emphasize: Information and education about legal rights and remedies, so people can come to understand the justice services available to them; and

A people-centered approach will focus on: Removing barriers to assistance, including issues such as language, the physical location and cost of services, as well as excessive regulatory restrictions on the provision of basic legal services. It will take advantage of cross-sectoral collaboration—collaboration between the justice system and the health, education, and other social services systems—to meet people where they are with the justice services they need.

People centered justice emphasizes our commitment to Social justice which is the bedrock on which a thriving and coherent society is built. It is not merely a concept but a commitment to ensuring that every individual, irrespective of conditions that make them vulnerable for example racism, gender inequity, or economic status, enjoy the same rights and opportunities.

The Framework for People-Centred Justice

Pillar 1: Designing and delivering people-centred services:

This pillar focuses on the design, establishment and maintenance of legal and justice service delivery, in line with 2019 OECD criteria for people-centred design and delivery of legal and justice services. For example, it deals with how the justice system focuses on people in identifying the legal and justice needs of society, the most vulnerable groups, the barriers they face to accessing justice, and leveling the playing field for all through the appropriate service.

Pillar 2: Governance enablers and infrastructure:

This pillar concerns the role of government and other key justice actors and governance enablers in establishing justice systems that are accessible and ensure legal and justice needs of people are effectively addressed. This pillar incorporates approaches to establishing whole-of-government systems; systems to ensure access to technology and to justice services; justice system simplification; and people-centred reorientation of justice service.

Pillar 3: People empowerment

This pillar recognises the importance of strengthening people’s capabilities on both sides of the justice service delivery system. It considers how to empower people through co-designing and contributing to legal and justice needs identification and solutions, and through increasing capacity, legal literacy and awareness. This pillar also includes developing the capabilities of those working in the justice sector to design and deliver people-centred legal and justice services, engaging with non-governmental and private providers, and communication and outreach strategies.

Pillar 4: Planning, monitoring and accountability

This pillar focuses on establishing and maintaining evidence-based mechanisms to support decision making, delivery and monitoring of people-centred justice services. It covers the establishment of processes, governance and infrastructure to ensure that key data are available; that systems of ongoing evaluation exist to fill the gaps in what is known about what works cost-effectively to improve access to justice for individuals and specific groups; and to ensure accountability and progress can be monitored by governments through an appropriate range of indicators.

Conclusion:

Taking a people-centered approach to justice requires a major change in the way we do justice system strengthening here in Africa. The good news is that—as evidenced by this conference—that shift is well under way.

African Alliance for People-Centered Justice (AAPCJ) serving as the leading voice of the legal profession on the continent and undertaking rule of law development assistance across the continent – is uniquely positioned to drive forward this paradigm shift in justice sector policy making. I commend you for convening us for this important discussion about just how we go about a pivot to people-centered justice. ■



NEW GAUTENG JUDGES SWORN IN

Newly appointed Judges of the Gauteng Division of the High Court were sworn in during a ceremony held on 20 January 2025, in Johannesburg. The ceremony was led by Judge President D Mlambo and Deputy Judge President A Ledwaba. The newly appointed Judges were joined by members of their families, who shared in the significant and special occasion as they took the judicial oath of office.



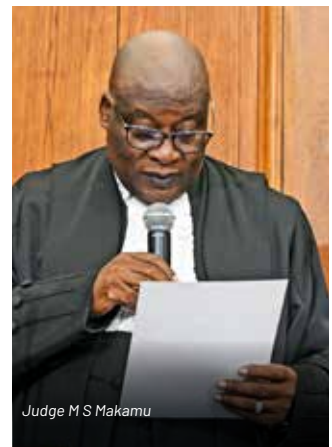
Judge President D Mlambo of the Gauteng Division of the High Court



Deputy Judge President A Ledwaba



Judge J G N Moshwana



Judge M S Makamu



Judge R B Mkhabela



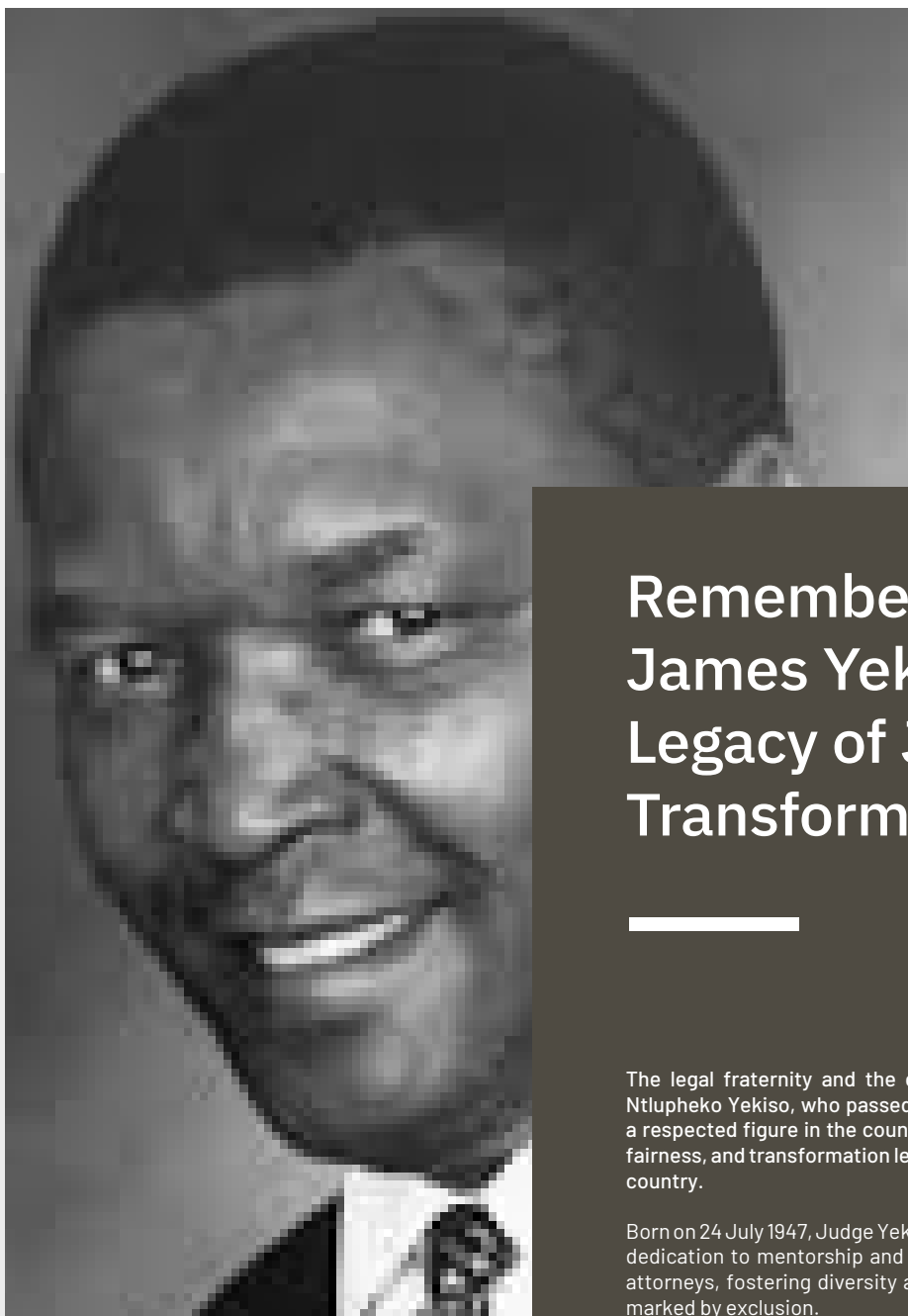
Judge S A B Mahomed



Judge E C Labuschagne



Judge W E J du Plessis



Remembering Judge James Yekiso: A Legacy of Justice and Transformation

The legal fraternity and the country mourn the passing of Judge James Ntlupheko Yekiso, who passed away on 24 January 2025. Judge Yekiso was a respected figure in the country's Judiciary, whose commitment to justice, fairness, and transformation left an indelible mark on the jurisprudence of the country.

Born on 24 July 1947, Judge Yekiso was a pioneer in the legal profession, whose dedication to mentorship and empowerment saw him train numerous Black attorneys, fostering diversity and transformation in a profession historically marked by exclusion.

His time on the bench was underscored by a fervent dedication to justice, equality before the law and fairness. Judge Yekiso's colleagues fondly recall Judge Yekiso as a "gentle giant" who treated all with respect while maintaining firm control of his courtroom. Judge Yekiso's sharp intellect and fairness earned him widespread admiration.

A funeral service was held for Judge Yekiso on 31 January 2025, where the Judge President of the Western Cape Division of the High Court, Judge Nolwazi Mabindla-Boqwana, addressed mourners in tribute to Judge Yekiso.

On 20 February 2025, the Western Cape Division of the High Court held a memorial court sitting in honour of Judge Yekiso. The Western Cape Judiciary, together with representatives from the legal profession – including the National Prosecuting Authority, the Legal Practice Council, the National Bar Council of South Africa, the Law Society of South Africa and attorneys of the Western Cape, and the Black Lawyers Association – paid tribute to Judge Yekiso. Judge Siraj Desai delivered an address at the memorial court sitting on behalf of the Western Cape Judiciary.



JUDGE YEKISO PLAYED AN ENORMOUS ROLE IN THE TRANSFORMATION OF THE LEGAL PROFESSION AND THE BENCH

By Justice N P Mabindla-Boqwana

Judge President of the Western Cape Division of the High Court

Judge President Mabindla-Boqwana delivered a eulogy at the funeral of Judge N J Yekiso, on 31 January 2025, on behalf of the Western Cape Judiciary.

The passing of our dear colleague and friend, Bra Jimmy came as a shock to all of us. One of our colleagues, Judge Andre le Grange, bumped into him at the hospital, Friday last week, waiting for his lift. He tells us that bro Jimmy was his happy self, with no sign that he would depart from this world later that day.

Bro Jimmy was one of the most pleasant, caring, warm, open, light-hearted and lively colleagues in our Court. He joined the judiciary as an acting judge in 2002 and was later appointed permanently in 2003 as the judge of the Western Cape Division of the High Court. He served the bench with distinction, dedication and commitment until his retirement in 2018.

He helped develop our jurisprudence with some ground-breaking judgments, including one in which he sat with Judges Saldanha and Cloete, *S v Jezile*. This case dealt with rape and violence within the alleged custom of *ukuthwala*, where a 14-year-old girl who was abducted under the notion of an arranged customary marriage, escaped after she was locked up, beaten and raped.

The bench found that these violent and coercive practices, which were committed under repugnant forms had no protection under our law. In this case the law had to protect women and young children who were victims of abuse and violence. In *S v Damoyi*, Yekiso J highlighted the importance of the use of official languages in court. He also wrote numerous judgments in other

areas of the law such as tax, constitutional law, administrative law, commercial law, delict and others.

Yekiso J was a teacher at heart and always keen to share from his wealth of experience as a lawyer and as a judge. When you visited his chambers, with a legal question to discuss, he would sit you down, and he would gently say 'Molo Ntombi'. Before discussing the issue, he would ask how you were, after which he would provide practical guidance to whatever complex issue you sought his wisdom on. He was a wise jurist with a big heart.

Judge Yekiso was passionate about ensuring that constitutional values were a lived reality. He served as an Inspecting Judge heading the Judicial Inspectorate for Correctional Services (also known as JICS) from 2007 to 2008. This is the body that monitors and reports on the treatment of inmates and the conditions of correctional centres, ensuring that human dignity is observed.

Judge Yekiso played an enormous role in the transformation of the legal profession and the bench. He paved a way for black lawyers in the Western Cape as the first African person to open an attorney's practice. One of my colleagues, Judge Saldanha reflected on the struggles bro Jimmy had faced during those days, when we heard about his passing. He highlighted that, bro Jimmy had to endure much discrimination and disrespect, but it never wore him down. He was always resilient and steadfast.

He played a pivotal role in the lives of colleagues, many of whom looked up to him and wanted to emulate and follow in his footsteps. One of our acting judges, currently in our Court, sent me a message reflecting on how she became a member of the BLA member through Bra Jimmy. Bra Jimmy used his pioneering role to pull others along to where he was. Through him some were invited to act as judges.

He was committed to ensuring that people who had no legal representation would get assistance by acting for them pro-bono. The legal landscape is not the same without him.

To many of us Bra Jimmy was like a father figure. He had this tall and imposing stature. Always well dressed and calm. During tea, he would sit in his dedicated corner in the tea-room, where he would concentrate steadfastly on the newspaper, opposite the then Deputy Judge President Traverso. He often told stories and made people laugh. You would sometimes find him tapping and nodding his head to a song to which he would be singing or whistling softly.

At one of our year-end functions a few years ago, just before he retired, Bra Jimmy, Judge Owen Rogers and I gave a rendition of an old and famous tune Meadowlands, with Owen Rogers on the guitar and Bra Jimmy faithfully keeping the beat with his foot-tapping.

It is fitting that I refer to some lighthearted moments that my colleagues have shared with me. The first one is from Judge Judy Cloete, a colleague with whom he shared a floor, she says:

'I have known Jim (as I was allowed to call him) since 1986 when we first met on the third floor of the Wynberg Magistrates Court. We spent many hours together in those criminal courts (not in the dock!) appearing for co-accused, but we probably spent even more hours sitting on the benches in the adjoining passage waiting for our matters to be called, smoking (which was permitted inside buildings in those days), talking and laughing a lot. (We shared the same offbeat sense of humour).

After he was appointed as a Judge, I had a number of cases in which he presided. What always struck me was that he remained exactly the same person as he was before his elevation to the Bench. Jim always told it like it was, and never suffered even a tiny bout of self-important "*Judge-itis*".

After I came to the Bench our shared enjoyment of smoking, talking and laughing continued. Our chambers were close to each other, and along with Judge Nathan Erasmus and a few others, Jim had corralled an area upstairs (commonly known as the naughty corner) in which he decreed we were all to smoke as much as we liked. When a former court manager decided this would no longer be permitted – it was announced in a Judges' meeting – Jim's response to me as we walked down the passage together was 'we are returning upstairs immediately for a smoke and we will be taking a Full Bench decision ex parte overturning her'. And that is exactly what we did!

Shortly before Jim retired he announced to me (in the naughty corner of course) that he had decided, who he was going to give his personal edition of the first South African Bill of Rights to. This was in the form of a scroll.

Feeling hopeful, I said 'Oh, to who?' and he replied 'to your husband, Pierre'. In typical wife-fashion I retorted 'But why him?'. Jim's response was he had never forgotten that during the 1970's when Pierre was a prosecutor in the Bishop Lavis Magistrates Court,

he was one of the few white people who always treated him with dignity, collegiality and respect.

There are many other memories I could share, but I'll leave it there with this one.

Thank you, darling Jim, for everything. I will miss you dreadfully and will always try to keep your flag flying.'

The next one message is from Judge Nathan Erasmus, who says: 'Reflections at the time of the passing of one close to you are often strange and difficult. One thing to remember is the part played in your world by your colleague and how he shaped your own being.

Bra Jimmy and I go back for more than 40 (forty) years. We met at a time when neither of us ever contemplated being Judges. What struck me over the years was his strong character and how it would influence everyone around him. I received a note from the children of Fadiyah Davids. For those who do not know, she joined him in his attorney's practice directly after leaving school. For her whole working life, she had two persons that she reported to, being Bra Jimmy and I. I was aware of the relationship between him and her family and therefore sought their views at the time of his passing. These views I favored the Judge President with. Their experience of him and my own is no different.

His commitment to often offer service to the indigent was well known. Importantly, this was long before a formal pro-bono service.

After my elevation to the bench we kept in contact and later on he became my close colleague. As it turned out we were neighbors in chambers for his full judicial career, having chambers a few meters apart, across a passage. Our daily interactions enforced my initial impressions of 40 (forty) years ago.

Upon his retirement we discussed the future of Fadiyah and that she will move across the passage to my chambers until her retirement.

On the occasion of Fadiyah's 60th birthday we traveled together to the function and caught up on the period we didn't see each other. We both spoke at the function albeit that he was reluctant. Her children, however, insisted that they wanted to hear from him.

On October 30th he informed me of his illness and we reminisced about the past. My words to him were "*Bra Jimmy, you've given your whole life to others, it's time to look after yourself*" to which he responded "*my brother it's now just the Lord's will*".

That was my brother, Bra Jimmy.

Rest well my brother, you've run the race. We hope we can carry the baton further.

Thank you ””

The last is the note from Fadhia 's children (his long-serving secretary). This note says it all about who Bra Jimmy was and I have to read it:

'Our fondest memories of Judge Yekiso date back to our childhood, when our mom would take us to the office during school holidays.

He will generously allow us to play and run around, showing kindness and warmth to a curious five or six year old.

Judge Yekiso's unwavering support for my mom, played a significant role in shaping her, into the strong-willed mother she is today. Her love for working with him, gave her something to look forward to every day.

Even years later, Judge Yekiso continued to show his care and support for our family. He graciously attended our family funerals and gatherings, including our mom's 60th celebration.

Judge Yekiso was an extraordinary individual-humble, caring and humorous. His passing leaves a void, but his legacy lives on through the countless lives he touched.

Rest well, Judge Yekiso. Thank you for being an incredible mentor, friend, and pillar of strength for our family.'

I went through all these messages because the life of a judge is not just about writing judgments. A judge is a human being who builds relationships with people. Bra Jimmy was that kind of a judge.

Many colleagues, both retired and actively in service have asked me to convey their condolences to the Yekiso family. I am not able to read all of them but I want to say to the Yekiso family, on behalf of the Judiciary of the Western Cape and South Africa as well as our court and provincial staff from the Office of the Chief Justice, we have lost a gem and a gentle giant in bro Jimmy. We share your loss. ■

May your hearts be comforted by our Heavenly Father and may Bra Jimmy's soul rest in peace. ”



“IT WAS A PRIVILEGE TO KNOW HIM” – JUDGE DESAI PAYS TRIBUTE TO JUDGE YEKISO

By Judge S Desai (Retired)

Judge S Desai (retired) delivered a memorial address on 20 February 2025 during the memorial court sitting held in honour of Judge N J Yekiso.

Judge Ntlupheko James Yekiso, known to us as Jimmy, was born in 1947 in Rouxville, Free State. His father worked for the SAR&H and his job entailed moving from place to place but, it seems, when Judge Yekiso was 9 years old they settled in Zweletemba, Worcester.

Judge Yekiso completed his matric at the Healdtown High School, Fort Beaufort, where he was also a first team soccer player. Shortly thereafter, and for about a year, he worked as an administrative clerk and interpreter at the Worcester Magistrate’s Court. This experience probably led him to enrol at the University of Fort Hare to study law. Three years later he was permanently expelled from the university because of his involvement in student politics.

In 1974 he moved to Cape Town to commence his Articles of Clerkship with George Werner – then the doyen of criminal lawyers – and to commence his studies de novo with the University of South Africa. He obtained the B.Proc degree in 1977 and completed the last year of his articles with Mr Herbie Fischat, a well known political activist in Port Elizabeth (now Gqeberha), and after his admission as an attorney he stayed on for a while as Mr Fischat’s professional assistant.

Justice Yekiso returned to Cape Town in or about 1980 to practice at various times in partnership with Rashaad Khan, Johannes Groepe and Trevor De Bruyn. However, from 1984 onwards he practised solely for his own account. Shortly before the dawn of democracy, he was joined as an associate by Mr Bulelani Ngcuka, fresh out of prison and soon to become South Africa’s inaugural NDPP.

Judge Yekiso was not the first person in the Western Cape of African descent to practise as an attorney for his own account. This was stated by the president of AZAPO at Judge Yekiso’s funeral. If it is important, Mr C.M. Kobus – known to us as Caddy Kobus – practised in District Six in the 1960’s. He was the milkman who became an attorney.



In any event, Judge Yekiso was deeply committed to the Black Consciousness Movement and this was reflected in how he practised law. He worked tirelessly to assist all living under the yoke of apartheid. He was, on one occasion, humiliated by a magistrate and had to wheel a tyre into a courtroom to convince the magistrate that his car actually had a puncture. It is wholly understandable that he was an early, if not founder member, of the Black Lawyer's Association (BLA) in order to advance a different vision of society and the law. Yet he remained a dignified and amiable colleague to all. He was liked by everyone.

In 1998, when I was already a judge and Judge Yekiso was then still in practice, he joined us on the board of the Foundation for Human Rights. For the next 19 – 20 years we were in regular contact. We were tasked with distributing large sums of money to enhance democracy in the country. He flourished in this task and we frequently took different positions on what was to be done. He was passionate about the constitution and the values it sought to uphold. Some of us sought to temper his views with the objective reality on the ground. The result was a foundation which continued to function effectively.

Judge Yekiso was always a student. Whilst a judge he completed his LL.B degree and then pursued a Master's degree in constitutionalism. When appointed as the Acting Inspecting Judge of Prisons by then Minister Balfour, he applied himself fully to the task and quickly updated himself on prison law and regulations. I worked with him in my capacity as chair of the National Council for Correctional Services (the NCCS) and I was aware of the humanity he extended to the offenders.

We were all delighted when Judge Yekiso was elevated to the bench. As expected, he dealt with colleagues and counsel with courtesy and fairly. Above all, his judgments reflects his studiousness, his strong views on constitutionalism and his commitment to a more humane society.

He wrote the majority judgment in the well known "Clicks case" (New Clicks (Pty) Ltd v Tshabalala et al 2005(2) SA 530 (C)). This case may have become well known for a variety of different reasons. It was eventually reversed by the Concourt – but in essence it reflected tentative steps to initiate universal health care.

Judge Yekiso wrote :

"One of the unexpressed objectives in both the Act and the Regulations promulgated thereunder is everyone's right to healthcare as contemplated in Section 27 of the Constitution. The discounting and the subsequent markup of pharmaceutical products that characterized the sale of such products in the past, had the effect of negating the right to healthcare enshrined in Section 27(1) of the Constitution. In terms of Section 27(2) of the Constitution, the State has a Constitutional obligation to take reasonable Legislative and other measures to achieve the progressive realization of the rights contained in Section 27, which include the right to healthcare. It is against this background that section 22G and the Regulations promulgated thereunder should be interpreted."

He was acutely aware of the lack of proper healthcare for the majority of our citizens.

He wrote an interesting judgment with regard to the right to enter and remain in the country (see B.D. Johnson and 2 others vs The Minister of Home Affairs et al case no. 10454/2014).

In the Minister of Police and 6 Others vs The Premier of the Western Cape ZAWCHC 216 he was impervious to the political chatter. That was the case in which a Commission of Inquiry was set up by the Premier to investigate policing and a plague of what appeared to be vigilante killings. In a majority judgment Judge Yekiso wrote that in establishing the Commission in the manner the Premier did, did not violate any one of the provisions relating to the concept of inter-governmental relation as set out in section 41 of the Constitution.

There are several other judgments which reflect Judge Yekiso's world view and his commitment to constitutionalism.

The cases highlight Judge Yekiso's involvement in a diverse array of legal matters. They demonstrated his ability to effectively preside over complicated matters and deliver impactful judgments.

His commitment to legal practice and his commitment to justice and the rule of law are paramount in all he said in his role as a judge.

On a personal level, Judge Yekiso was a thorough gentleman always willing to assist and unafraid to share his views. His singing contributed to the success of social occasions. It was a privilege to know him both as a colleague and as a friend.

I extend my deep condolences to his family. ■



Family, friends and members of the legal fraternity attending the Western Cape Division of the High Court memorial court sitting in honour of Judge Yekiso. ”





SAJEI'S ASPIRANT WOMEN JUDGES' PROGRAMME – JANUARY 2025

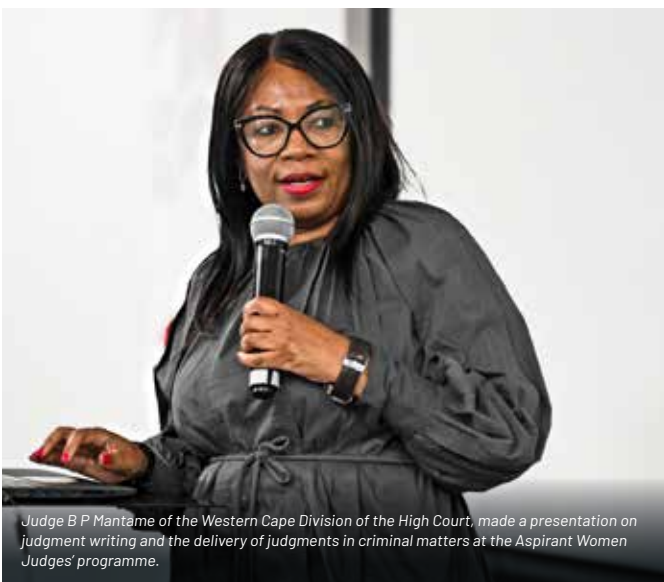
The South African Judicial Education Institute in January 2025 held a week-long training for the 2024 cohort of the Brigitte Mabandla Aspirant Women Judges' Programme. The aspirant Judges began their twelve-month programme in September 2024. Led by retired Judge President Frans Legodi, the training presented various subjects including judgment writing, sequestrations and liquidations, and section 147 of the Criminal Procedure Act. These lectures, presented by Judges, are meant to provide trainees with the working knowledge of Judicial work and application of the law. During these week-long sessions, trainees also visit courts to interact with Judges, and court staff and further familiarise themselves with the behind-the-scenes court environment.



Retired Judge President F Legodi



Judge President T P Poyo-Dlwati of the KwaZulu-Natal Division of the High Court



Judge B P Mantame of the Western Cape Division of the High Court, made a presentation on judgment writing and the delivery of judgments in criminal matters at the Aspirant Women Judges' programme.



Judge N P Mali of the Gauteng Division of the High Court made an insightful presentation on the topic of sequestrations and liquidations in courts.



COURT ONLINE TRAINING FOR ASPIRANT WOMEN JUDGES

During the January 2025 week-long training of the Brigitte Mabandla Aspirant Women Judges' Programme cohort, the Office of the Chief Justice's Court Online Project team provided training to aspirant women Judges on the Court Online System.

The Court Online System is an end-to-end digital case management and evidence management system for the High Court of South Africa. It provides legal practitioners the opportunity to file documentation electronically online without being physically present at court and allows Judges the ease of managing court evidence instantaneously online.

The system is currently being implemented across the Superior Courts, with the aim of enhancing efficiencies for both the Judiciary and court users. The system is currently in use in the Gauteng Division of the High Court, Western Cape Division of the High Court, Labour and Labour Appeal Court, and the Land Court.



Retired Judge President F Legodi



Judge N G Beshe



Mr Tebogo Musana, Acting Chief Registrar at the Johannesburg High Court, led a session on the Court Online system.



Judge M M Munzhelele



JUDICIAL RETIREMENTS



Judge D Van Zyl
Eastern Cape Division of the High Court
Discharged: 11.01.2025



Judge N G Beshe
Eastern Cape Division of the High Court
Discharged: 01.02.2025

IN MEMORIAM




Retired Judge N J Yekiso

Western Cape Division of the High Court,
Cape Town

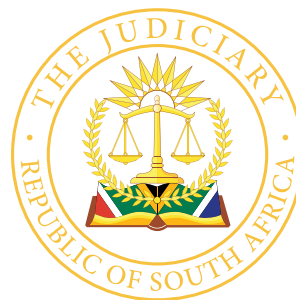
Passed: 24.01.2025



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