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THE JUDICIARY

ANNUAL GLOBAL FAMILY LAW

SONA 2026

JUDICIAL LEADERSHIP MEET

CCJA WOMEN 2026

LAND COURT: LAMOSA REPORT

LAUNCH OF THE ADVOCATE'S BUSINESS TOOLKIT

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FROM THE EDITOR

DEAR COLLEAGUES,

The March 2026 edition of the Judiciary Newsletter captures a period of remarkable dedication and progress within the South African Judiciary, showcasing our unwavering commitment to justice, transformation, and international collaboration. From keynote addresses and high-profile conferences to essential training programs, these efforts strengthen access to justice and judicial integrity across our nation.

Over the past quarter, the Judiciary has actively participated in both domestic and international platforms that reinforce its role within a dynamic and interconnected legal landscape. Notably, the participation of Chief Justice Mandisa Maya in the 19th Session of the Executive Bureau of the Conference of Constitutional Jurisdictions of Africa (CCJA), solidifying South African's commitment in participating in shaping global jurisprudence.

There is no better example of this than the 28th Annual Global Family Law Conference, which has over the years seen the participation of our dedicated judicial officers. This conference fostered discussions on the safeguarding of the rights of children and women across international borders, a subject which has in recent years become all the more pertinent in global discourse. Such engagements provide critical platforms for knowledge exchange and the development of jurisprudence in complex and emerging areas of law.

Capacity building and transformation remain central to the Judiciary's work. Through initiatives such as the Diversity and Inclusion Workshops, judicial training programmes, and seminars on evolving areas of law, the institution continues to invest in developing a judiciary that is both responsive and reflective of the society it serves. These efforts are guided by the South African Judicial Education Institute (SAJEI), providing opportunities for learning, discussion and fruitful exchanges amongst colleagues.

Equally significant are the ongoing engagements aimed at strengthening ethical conduct and professional standards within the Judiciary, reinforcing public confidence in the administration of justice. The continued emphasis on judicial ethics, accountability, and independence remains paramount to the integrity of our courts.

Looking ahead, this year marks the 30th Anniversary of the South African Constitution, an incredible milestone which will be commemorated throughout the year. In addition, the South African Judiciary, led by Chief Justice Maya will host the 2nd High-Level Meeting of Women Judicial Leaders of Africa from 21 to 23 April 2026 in Johannesburg. These engagements promise continued advancement in gender equity and continental judicial cooperation, building on our recent successes.

We wish the Chief Justice a successful hosting of the upcoming Women Judicial Leaders conference.

Till the next Edition.

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

Chief Justice Maya participated in the 19th Session of the Executive Bureau of the CCJA

Chief Justice Mandisa Maya participated in the 19th session of the Executive Bureau of the Conference of Constitutional Jurisdictions of Africa (CCJA) which took place from 21-24 January 2026, in Algiers. The Conference was hosted by the Constitutional Court of Algeria.

PanSALB CONVENES A LINGUISTIC HUMAN RIGHTS LECTURE

Chief Justice Mandisa Maya delivered a keynote address at the PanSALB Linguistic Human Rights Public Lecture at Walter Sisulu University, on 26 March 2026, in Mthatha.

The Pan South African Language Board (PanSALB) convened a Linguistic Human Rights Public Lecture at Walter Sisulu University in Mthatha, on 26 March 2026, bringing together leaders from the judiciary, academia and the language sector to interrogate the role of language in advancing access to justice.

Held under the theme "Language Rights as a Means to Accessing Justice: Understanding Court Proceedings, Including Judgments, in Your Own Language", the lecture underscored the constitutional imperative of ensuring that all South Africans are able to meaningfully participate in legal processes, regardless of the language they speak.

The attendance of Chief Justice Mandisa Maya and Constitutional Court Justice Zukisa Tshiqi, highlighted the judiciary's commitment to advancing linguistic inclusion within the justice system.

In setting the tone for the discussion, Mr Jeffrey Nkuna, Senior Manager at PanSALB emphasised that the lecture serves as a platform to elevate the importance of linguistic rights in South Africa's democratic dispensation. He reflected on the practical demonstration of these rights by Chief Justice Maya, noting her landmark use of isiXhosa in a judicial judgment during her tenure at the Supreme Court of Appeal—an act that illustrated the viability and legitimacy of indigenous languages within the highest levels of legal reasoning and adjudication.

Delivering the keynote address, Chief Justice Maya located language rights firmly within the broader framework of constitutional guarantees. She noted that the right of access to justice, as enshrined in section 38 of the Constitution, necessarily includes linguistic equity in court proceedings. This, she explained, requires deliberate and systemic interventions, including the provision of real-time, high-quality interpretation services, the availability of court judgments in litigants' preferred languages, and the training of judicial officers to uphold and advance the country's linguistic diversity.

Chief Justice Maya further called for concrete policy reform to give effect to these principles. She highlighted the need to amend the language policy of the Department of Justice and Constitutional Development to enable the incremental use of indigenous African languages as languages of record in court proceedings. Such reforms, she argued, are essential to building a judicial system that is not only accessible, but also reflective of the lived realities of the people it serves.

The lecture provided a critical platform for dialogue on both the opportunities and challenges associated with embedding multilingualism in the justice system. From questions of capacity and resources to issues of standardisation and legal terminology, stakeholders were encouraged to consider practical pathways for implementation. ■

WALTER SISULU UNIVERSITY, MTHATHA

Chief Justice Mandisa Maya and Justice Zukisa Tshiqi joined by the PanSALB board members and stakeholders during the Linguistic Human Rights public lecture, held at Walter Sisulu University.

Chief Justice Mandisa Maya, delivered the keynote address at the Linguistic Human Rights public lecture, hosted by PanSALB, at Walter Sisulu University.

Senior Manager at PanSALB, Mr Jeffrey Nkuna, unveiled to stakeholders, the importance of hosting the public lecture.

Vice-Chancellor and Principal of Walter Sisulu University, Dr Thandi Mgwebi.

Professor Lolie Makhubu-Badenhorst, PanSALB chairperson of the board, reflected on the milestone achieved by PanSALB.

Deputy Vice-Chancellor at the Walter Sisulu University, Professor Maggi Linington.

Dr Xolisa Tshongolo, Senior Manager for PanSALB, Eastern Cape province, facilitated the Q&A session during the public lecture.

28th Annual Global Family Law Conference

11 - 13 March 2026
Cape Town

The 28th Annual Global MDT/UWC Family Law Conference took place over three days, from 11 to 13 March 2026, in Cape Town, bringing together judicial officers and family law experts from both South Africa and international jurisdictions. The conference served as a key platform for dialogue on cross-border family law issues, with a strong focus on child protection, mediation, and international legal cooperation.

Among the prominent speakers was Justice Baratang Mocumie, who addressed delegates in her capacity as the Hague Convention Liaison Judge for the South African Judiciary. Her contribution highlighted South Africa's ongoing role in strengthening international frameworks that safeguard the rights of children in complex family law matters.

International perspectives were also central to the discussions. Philippe Lortie, The 1st Secretary of HCCH, Netherlands, emphasised the fundamental rights of children, particularly in cases of parental separation. He underscored that children have the right to maintain relationships with both parents and extended family, even when they reside in different countries.

Further reinforcing the importance of global cooperation, Lord Justice Andrew Moylan, Head of the International Family Justice and Hague Network, Judge for England and Wales, presented on the benefits of states joining the 1996 Hague Child Protection Convention, outlining how it strengthens legal protections for children across borders.

From a domestic perspective, President Mahube Molemela, Supreme Court of Appeal of South Africa, highlighted the importance of Mediation Practice Directives in family courts, noting their role in promoting more efficient, child-sensitive, and less adversarial dispute resolution processes.

Delivering a keynote address on behalf of Chief Justice Mandisa Maya, Acting Chief Justice Dunstan Mlambo reaffirmed the contribution of South Africa's Superior Courts to advancing the objectives of the Hague Convention on the Civil Aspects of International Child Abduction. He also commended Justice Mocumi for her continued efforts in promoting the Convention within the judiciary.

Adding a policy perspective, Deputy Minister of Women, Youth and Persons with Disabilities, Steve Letsike noted that conferences of this nature are essential for reflection and collaboration. She emphasised that family law plays a critical role in shaping society and the frameworks within which families function.

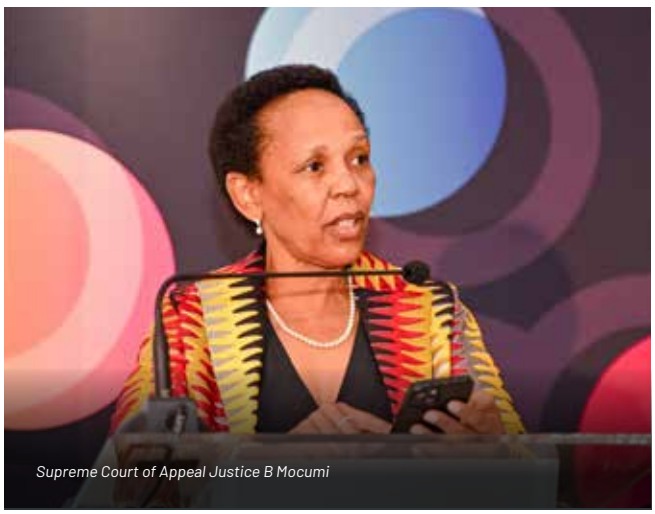
Overall, the conference underscored the importance of international cooperation, progressive legal frameworks, and child-centred approaches in addressing the evolving challenges within family law, both in South Africa and globally. ■

CAPE TOWN

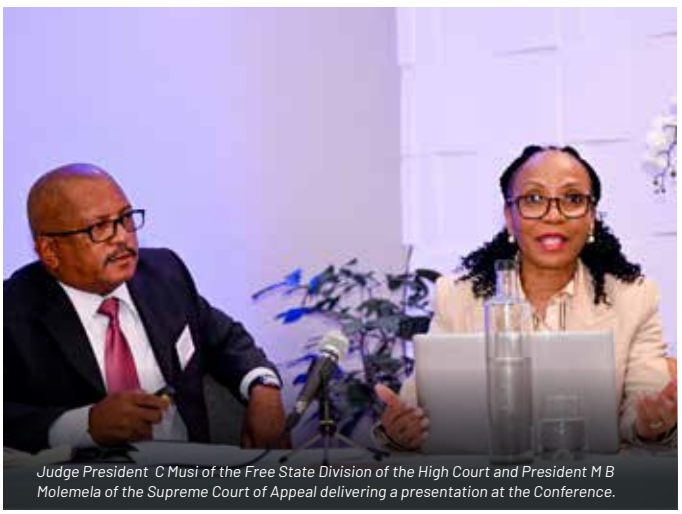
28th Annual Global Family Law Conference.

Acting Chief Justice D Mlambo

President M B Molemela , Supreme Court of Appeal RSA.



Supreme Court of Appeal Justice B Mocumi



Judge President C Musi of the Free State Division of the High Court and President M B Molemela of the Supreme Court of Appeal delivering a presentation at the Conference.

28TH ANNUAL GLOBAL FAMILY LAW CONFERENCE

By Justice Mandisa Maya

Chief Justice of the Constitutional Court

The 28th Annual Global MDT/UWC Family Law Conference took place over three days, from 11 to 13 March 2026, in Cape Town, bringing together judicial officers and family law experts from both South Africa and international jurisdictions. The conference served as a key platform for dialogue on cross-border family law issues, with a strong focus on child protection, mediation, and international legal cooperation.

Acting Chief Justice Dunstan Mlambo delivered a keynote address on behalf of Chief Justice Mandisa Maya, the speech was titled the " Approaches to The Hague Convention in South Africa as It Relates to Domestic Violence"

It is a privilege to be delivering this keynote address, and I am grateful for the opportunity to contribute to this important discussion on safeguarding the rights of children and women across international borders. Over the years, this conference has consistently brought together experts in this specialised field of law, creating a valuable forum for engagement and contributing meaningfully to the development of discourse in this important area. I am pleased to be able to take part in it today.

Today, we confront a pressing intersection of the Hague Conventions, particularly the Hague Convention on the Civil Aspects of International Child Abduction of 1980, and the alarmingly pervasive reality of domestic violence. In an era where increased global mobility intersects with profound human vulnerabilities, we must initiate a candid, inclusive conversation on South Africa's approaches to the Hague Conventions, most urgently their application amid our unrelenting battle against the scourge of domestic violence. These international frameworks demand not just compliance but thoughtful and practical adaptation to shield children from grave risks and the devastating impact of abuse. Today, let us broaden this vital dialogue to forge pathways to justice, protection and equity for all.

The Hague Convention

The Hague Convention on the Civil Aspects of International Child Abduction of 1980 (the Child Abduction Convention) is founded on the principle that the wrongful removal or retention of a child across international borders is inherently harmful to the child's welfare. It therefore aims to protect children internationally from the harmful effects of their wrongful removal or retention, and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.

The Child Abduction Convention firmly recognises that the interests of the child are of paramount importance in matters relating to their custody, which is a principle echoed in section 28(2) of our Constitution, here in South Africa. It is generally accepted that the child's best interests are usually served by returning the child to her country of habitual residence, where issues relating to custody and access can be properly adjudicated by competent authorities. Since its inception, this Convention has served as an effective, efficient and swift remedial instrument governing international child abductions by providing a clear procedure through which the prompt return of the children wrongfully removed or retained is facilitated.

> AS GUARDIANS OF JUSTICE AND VOICES FOR THE VULNERABLE, IT IS CRUCIAL TO STRESS THE IMPORTANCE OF STATE RATIFICATION OR ACCESSION TO THE CHILD ABDUCTION CONVENTION.

By ratifying this Convention, countries demonstrate their commitment to protecting children's rights and promoting their well-being, both within their borders and across the globe. As at the last update of the Hague Conference on Private International Law (the HCCH) in 2022, there are 103 contracting parties to this Child Abduction Convention. Disappointingly, the vast African continent, comprising 55 countries, has made very slow progress in ratifying this Child Abduction Convention. Currently, only 13 African countries have acceded or ratified this Convention.[1] The many reasons that cause countries to balk at making ratification commitments have been found to arise from issues of complex interactions including sovereignty concerns, domestic politics and strategic calculations. Although important to interrogate these reasons, they are not the focus of today's address.

South Africa has been a signatory to the Child Abduction Convention since 1997 and has incorporated the Convention in its domestic law, specifically under Chapter 17 of the Children's Act of 2005, ensuring a comprehensive framework for addressing these complex matters and facilitating cooperation with other signatory States. The Superior Courts in our country have played an important role in shaping the interpretation and application of the Convention, with landmark cases[2] informing our understanding of the 'grave-risk of harm" enquiry under Article 13(b) and generally what the Convention seeks to achieve in the global protection of children's rights.

I wish to take this opportunity to acknowledge the important work done by Justice Mocumie of the Supreme Court of Appeal, who is the South African Liaison Judge in the Hague Conference on Private International Law (the Hague Conference). Justice Mocumie has spearheaded efforts to bring South Africa's experiences and perspectives to the forefront of international discussions on private international law, thereby enhancing our country's contribution to the global development of law in this specialised area. She has done a remarkable job in encouraging and mobilising our judicial officers to actively participate in international forums as well as in judicial education and training, fostering a deeper understanding of the complexities of cross-border family law issues and promoting the Hague Conventions' objectives.

In June 2024 the Hague Conference successfully hosted its first ever Forum on Domestic Violence and the Operation of Article 13(b) of the 1980 Child Abduction Convention in our country which brought together experts and stakeholders from around the world to explore the intersection of domestic violence and international child abduction. This forum provided a platform where diverse and constructive perspectives were shared on the application of Article 13(b) of the Child Abduction Convention in judicial proceedings where domestic violence is raised as a defence in terms of the Article to prevent the return of internationally abducted children.

The timing of this inaugural forum was starkly relevant, given the shockingly escalating rates of gender-based violent crimes within families, communities and society at large, especially in this country which holds the ignominious title of world leader in gender-based violence and femicide. This significant gathering was the culmination of collaborative efforts between the Hague Conference, the South African Government and the University of Pretoria's Centre for Child Law, highlighting our country's commitment to addressing these complex issues and informing best practices in this area.

It is encouraging to see that the momentum of these critical discussions continued in the Second Forum which was held in Brazil last year October, building on the foundations firmly laid in the First Forum. According to the Hague Conference report, "the Second Forum once again brought together representatives from all relevant perspectives, including persons with lived experience and the participants focused their discussions on practical solutions – identifying concrete and workable approaches to ensure the effective operation of the Convention, in particular Article 13(1)(b), in cases where domestic violence has been alleged".[3]

The advantages of ratifying the 1980 Child Abduction Convention

As guardians of justice and voices for the vulnerable, it is crucial to stress the importance of State ratification or accession to the Child Abduction Convention. The Convention delivers concrete advantages: it mandates prompt judicial proceedings, typically within six weeks for the return of internationally abducted children to their habitual residence,[4] thereby reducing the emotional and psychological toll of prolonged uncertainty. The Convention further enforces the effective exercise of access rights to a child for the left-behind parent.

Ratification establishes dedicated Central Authorities in each signatory State to facilitate applications, coordinate evidence exchanges, and cover costs for indigent applicants, ensuring equitable access without financial barriers.[5] It fosters bilateral and multilateral agreements for mutual recognition of orders, streamlining enforcement and deterring abductions by signalling zero tolerance globally.

For lawyers, it provides clear legal pathways and precedents, reducing forum-shopping and jurisdictional battles, while for civil society it bolsters monitoring and reporting mechanisms to track compliance. Above all and importantly, ratification safeguards children's best interests by prioritising stability over unilateral parental actions, weaving a robust international safety net.

Disadvantages of not ratifying the Convention

Non-ratification of the Child Abduction Convention leaves States perilously isolated, denying abducted children the mandated swift returns contemplated in the Child Abduction Convention, and

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[1] *Botswana, Burkina Faso, Cabo Verde, Gabon, Guinea, Lesotho, Mauritius, Morocco, Seychelles, South Africa, Tunisia, Zambia and Zimbabwe. Available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=24.*

[2] *Sonderup v Tondelli 2001 (1) SA 1171 (CC); Ad Hoc Central Authority for the Republic of SA and Another v Koch N.O. and Another ZACC 37; 2024 (2) BCLR 147 (CC); 2024 (3) SA 249 (CC)*

[3] *Prel. Doc. No 8B of January 2026 - Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention.*

possibly exposing them to prolonged trauma, identity disruption, and psychological harm. Moreover, left-behind parents face insurmountable barriers, litigating custody matters in foreign courts lacking mutual recognition, where jurisdictional battles may drag on for years, financial burdens escalate, and abductions proliferate unchecked due to absent deterrence and lack of Central Authority support.

Article 13(b) as a defence to the primary objective of the Convention

As I mentioned earlier, the main objective of the Convention is to secure the expeditious return of a child who is wrongfully taken from the child's habitual residence to another country, to circumvent custody proceedings in respect of that child. Contracting States are unequivocally mandated to take all appropriate measures to secure the implementation of the Convention's objectives, using the most expeditious procedures available.[6] Article 12(1) of the Child Abduction Convention provides that: *"Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith."*

Notably, while the Convention prioritises the swift return of the abducted child, it has certain built in exceptions which our Constitutional Court[7] has held they are intended , in extreme circumstances, to protect the welfare of children. Article 13(b) provides one of such exceptions that can be raised in an application for the immediate return of a child that has been abducted to another country – it states that, in the relevant part:
"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that
(a) . . .;
(b) There is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."

Article 13(b) therefore recognises that children may be removed to escape harmful or violent domestic circumstances, and provides a safeguard that does not bind the judicial or administrative authorities to order the return of a child if the child will be placed in a harmful or intolerable situation. The prevailing challenge, however, is that the concepts of "grave risk", "physical or psychological harm" and "intolerable situation" mentioned in the Article 13(b) defence are not clearly defined in the Convention and this leaves the precise meaning and application of the defence open to disparate interpretation, especially in matters where the abuse is not directed to the child but to the abducting parent.

The Convention under Article 20 further provides a public policy exception to the mandatory return of the child. and it is framed as follows:
"The return of the child under the provision of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms."

Link between Domestic Violence and Child Abuse

Domestic violence and child abuse are often perceived as isolated problems when in actual fact they are deeply interconnected. Research has established that children exposed to domestic violence are at increased risk for physical abuse and other forms of child maltreatment.[8] Globally, children endure a silent epidemic of domestic violence and harmful circumstances, from physical assaults and psychological terror to coercive control that shatters their sense of safety - realities starkly acknowledged by Article 13(b) of the Convention. This vital exception recognises that abduction is often a desperate flight from peril, where returning a child to such an environment risks "grave harm" or an "intolerable situation", including indirect trauma from witnessing parental abuse, which inflicts profound, lasting psychological wounds on young minds.

Protection measures are paramount because exposure to domestic violence poses dire risks to a child's development, increasing the risk of psychological, social, emotional and behavioural problems, and in extreme cases, children face acute harm and even death.[9] Courts invoking Article 13(b) must weigh evidence rigorously, ensuring that repatriation does not place children back in environments that exposes them to violence that scars for life. The goal is to protect them from perpetuated trauma and break cycles of harm, ultimately encourage healthier relationships of trust with caregivers and authority.

If we, for instance, take a look at our backyard, South Africa grapples with one of the world's most severe gender-based violence epidemics, where lifetime physical violence afflicts 33.1% women aged 18 and older, equating to roughly 7.3 million victims, while 9.9% endure sexual violence, impacting about 2.15 million people.[10]

Police data reveals a near-doubling of reported domestic violence incidents against women, from 33,000 in 2020/21 to 63,000 in 2023/24[11] alongside 957 women murdered, with 1,567 women surviving attempted murders and 14,366 assaults with grievous bodily harm in just one quarter of 2024.[12]

These harrowing realities amplify the stakes under Article 13(b) of the Convention, where parents often at times "abduct" children to flee abusive homes rife with physical violence, coercive control and threats - precisely the "grave risk of harm" or "intolerable situations" the provision seeks to safeguard children against. It

[4] *Article 11 of The Hague Convention on the Civil Aspects of International Child Abduction*

[5] *Article 6 of The Hague Convention on the Civil Aspects of International Child Abduction*

[6] *Article 2 of The Hague Convention on the Civil Aspects of International Child Abduction*

[7] *Sonderup v Tondelli and Another 2001 (1) SA 1171 (CC) at para 32.*

[8] *CN Wathen, HI macmillan. Children's exposure to intimate partner violence: impacts and interventions. paediatr child Health 2013;18(8):419-422.*

[9] *CN Wathen, HI macmillan. Children's exposure to intimate partner violence: impacts and interventions. paediatr child Health 2013;18(8):419-422.*

[10] *Department of Science, technology and innovation New report highlights the stark reality of gender-based violence in South Africa*

[11] *GroundUp Domestic violence against women: More cases are being reported to police*

[12] *Human Science Research Council Violence against women in South Africa: intersecting vulnerabilities*

cannot be overstated that children exposed to violence of such a nature suffer intergenerational trauma, developmental setbacks, and eroded security. This demands courts to thoroughly scrutinise evidence before enforcing returns.

South African Courts' approach to harm

In South Africa, the seminal Constitutional Court decision in Sonderup v Tondelli and Another[13] provided an authoritative interpretation of the Convention's dual aims, which are to deter child abduction while ensuring that custody decisions are made by the appropriate authorities.[14] In doing so, retired Justice Goldstone emphasised that our courts should not trivialise the impact that violence against women has on children and families[15] and must ensure that the return of the child is not ordered where compelling evidence of harm is presented. The Court held:[16]

"Where there is an established pattern of domestic violence, even though not directed at the child, it may very well be that return might place the child at grave risk of harm as contemplated by Article 13 of the Convention."

This position was later affirmed in *Ad Hoc Central Authority for RSA and Another v Heidi Nicole Koch N.O. and Another*[17] where the Court further went on to confirm, following the Supreme Court of Appeal in LD v Central Authority RSA and Another,[18] that the threshold for invoking Article 13(b) should be high and the harm alleged must be grave, meaning serious and severe.

The Constitutional Court in *Koch,*[19] when addressing the harmful circumstances that an abducted child may be exposed to, said: *"If the child can be sufficiently protected from grave harm when returned, then the child does not in fact face a "grave risk"* of serious harm as contemplated by Article 13(b)." The Court further found this to be consistent with the underlying premise of the Convention that the judicial and social authorities of the home country are in a position to provide the necessary protection and support in dealing with any eventuality that may arise from the return of the child.

The Court went on to say:
"There must as a result be cogent evidence placed before the court by the person raising an Article 13(b) defence that establishes the absence of adequate or effective measures which may either reduce the risk of the harm from occurring or the seriousness of the projected harm itself. What the nature of such measures are, must inevitably be dictated by the nature of the harm and its accompanying risk that is established on the evidence in any particular case."[20]

With this in mind, let us for a moment delve into a recent landmark Supreme Court of Appeal decision in *N M v The Central Authority for the Republic of South Africa and Another*[21] which, drawing from the Constitutional Court's wisdom in Koch, exemplifies when an Article 13(b) defence truly meets the "grave risk" threshold: only with clear, compelling evidence of substantial harm, far beyond the usual pangs of relocation. In this case, the abducting parent, leaned heavily on a Social Worker's report stressing her bond with the child. Yet the Court dismantled it, stating that attachment belongs in custody hearings, not Hague summaries.[22] The Social Worker's report's flaws, including its ignoring of the father and Australian support structures rendered it evidentially frail. The abducting parent's own refusal to return self-sabotaged her claim, creating the very harm she decried. Domestic violence allegations, globally serious, were acknowledged by the Court but fell short, as no grave risk was proven, and the Court found the Australian custody courts, as the country of the abducted child's habitual residence, were better suited to address the challenges raised.

This judicious approach underscores South Africa's commitment to the Convention's core objectives – swift returns to stability – while honouring Article 13(b) as a vital safeguard against genuine peril. It demands rigorous evidence, ensuring defences are not wielded lightly amid domestic violence crisis. It places a level of trust on the home country mechanisms to mitigate risks upon return of the child.

Critically, this framework challenges us: How do we equip our courts with better resources for trauma-informed assessments? How do we integrate global best practices such as mirror orders, to bolster protections without eroding the prompt return imperative? By refining our jurisprudence, South Africa can model a humane balance: upholding international norms while shielding children from the shadows of abuse.

In a report by Justice Mocumie, statistics provided by the Office of the Family Advocate and the Designated Central Authority for 2023/2024 showed that South Africa had 60 (sixty) applications, incoming and outgoing combined. This increasing number of international parental child abduction cases and cross-border custody disputes within South Africa highlights the need for continuous judicial education and training on Family Law with a specific focus on the Hague Convention on Child Abduction.

Training will assist our courts align with the objectives of the Convection and international standards, ensuring the development of uniform jurisprudence on the application of the Convention and relevant legislation.

An important consideration in determining whether our courts are complying with the Convention's requirement to finalise these matters as speedily as possible to avoid prolonged harm is the capacity of our courts. Our Superior Courts are currently facing growing backlogs due to the explosion of litigation in recent times and yet the number of judicial officers remain very low. The proposals put forward in this regard is the establishment

[13] *Sonderup v Tondelli and Another 2001 (1) SA 1171 (CC)*

[14] *https://familylaws.co.za/hague-convention-child-abduction-defence-sa/*

[15] *Sonderup v Tondelli and Another 2001 (1) SA 1171 (CC) at para 34.*

[16] *Ibid.*

[17] *Ad Hoc Central Authority for RSA and Another v Heidi Nicole Koch N.O. and Another (CCT 150/22) [2023] ZACC 37 at paras 161 and 162.*

[18] *LD v Central Authority [2022] ZASCA 6; [2022] 1 All SA 658 (SCA) para 29.*

[19] *Ad Hoc Central Authority for RSA and Another v Heidi Nicole Koch N.O. and Another (CCT 150/22) [2023] ZACC 37 at para 66.*

[20] *Para 67.*

[21] *N M V The Central Authority for the Republic of South Africa and Another [2024] ZASCA*

[22] *Hague Summaries generally refer to concise overviews, case analyses, or statistical reviews related to the various international treaties and systems managed under the Hague Conference on Private International Law.*

of specialised Family Law Courts that will allow for the more efficient and expeditious handling of these complex cases or the introduction of mandatory mediation in an attempt to avoid the trauma caused to children in litigation.

The United Kingdom Courts approach to violence

I turn next to the position in the United Kingdom, where the courts have approached Article 13(b) through two developing methodologies: the "protective-measures approach" and the "assessment-of-allegations" approach.

Protective Measures Approach was pioneered in *Re E*[23] by the UK Supreme Court. This method takes domestic violence allegations at their height - assuming worst-case scenarios - without deep fact-finding, then pivots to whether the requesting State can deploy effective safeguards to mitigate the harm. Only if those measures falter does the court probe disputed facts, trusting the home jurisdiction to resolve merits later. This upholds the Child Abduction Convention's summary speed while prioritising child safety through proactive protections.[24]

Under the Assessment of Allegations Approach the court will first seek to determine, to the extent possible, the merits of the disputed allegations of domestic violence. In this exercise the court will understandably be confined by the summary nature of the return proceedings and, therefore, may not be able to make findings related to the disputed allegations. Once the assessment of allegations has been carried out, the court determines whether a grave risk of harm exists. Only afterwards, as part of the exercise of discretion, the court proceeds to assessing available protective measures. This approach is based on the premise that it is necessary to assess the disputed allegations in order to evaluate the risk.[25]

These approaches - protective, yet probing – complement South Africa's Koch framework, urging us toward hybrid models: swift assessment enriched by evidence.

The UK Supreme Court set out principles applicable in Article 13(b) defences, which have also been relied on by the South African Constitutional Court.[26] These are:

(a)

...

(b) The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance of probabilities but, in evaluating the evidence, the court will be mindful of the limitations involved in the summary nature of the Convention process.

(c) The risk to the child must be "grave". It is not enough for the risk to be "real". It must have reached such a level of seriousness that it can be characterised as "grave". Although "grave" characterises the risk rather than the harm, there is in ordinary language a link between the two.

(d) The words "physical or psychological harm" are not qualified but do gain colour from the alternative "or otherwise" placed "in an intolerable situation". "Intolerable" is a strong word but, when applied to a child, must mean "a situation which this particular child in these particular circumstances should not be expected to tolerate".

(e) Article 13(b) looks to the future: the situation as it would be if the child were returned forthwith to his or her home country. The situation which the child will face on return depends crucially on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home. Where the risk is serious enough, the court will be concerned not only with the child's immediate future because the need for protection may persist.

(f) Where the defence under Article 13(b) is said to be based on the anxieties of a respondent mother about a return with the child, which are not based upon objective risk to her but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise her parenting of the child to a point where the child's situation would become intolerable, in principle, such anxieties can found the defence under Article 13(b).

These principles illuminate a path: rigour tempered by humanity, urging us to equip home jurisdictions with tools that make returns safe, not perilous.

The Plight of Abducting Mothers

Amid this focus on children's swift returns and strengthening of the courts methods in assessing and preventing harm, we must confront a glaring void: the acute vulnerability of abducting mothers - often primary caregivers -who accompany their children back, frequently compromising their own safety in the process.

The Convention fails to safeguard the mother's welfare explicitly; Article 13(b) and Article 11(4) focus solely on the child's situation, side-lining their risks, despite Hague Conference nods to violence's intergenerational toll and the need to shield accompanying parents. Returning mothers face re-victimisation, financial dependence on abusive fathers, emotional isolation, and eroded credibility for not reporting prior abuse.

This gap demands evolution where there is mandatory enforceability of mirror orders protecting mothers, with integrated support via Central Authorities, and trauma-informed protocols. This aims to protect the child by fortifying the caregiver, lest we return them to fractured homes, perpetuating cycles of harm.

Closing remarks

As i conclude this discussion, it is necessary to confront the challenge before us. The Convention, while properly directed at the prompt return of children, must be applied with due care where domestic violence is alleged. Our courts, from Koch to the decisions of the Supreme Court of Appeal, have maintained a rigorous approach to Article 13(b), requiring proof of a grave risk and not mere disruption, while also recognising the role of mirror orders, undertakings and other safeguards in the State of habitual residence. The approaches that have emerged in the United Kingdom, including in Re E, similarly reflect the need to strike an appropriate balance between legal rigour and a proper appreciation of the human realities involved.

But the development of the law in this area requires more. It requires closer attention not only to the child, but also to the position of returning caregivers, particularly where domestic

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[23] *Re E [2011] UKSC 27 (n 20)*

[24] *Trimmings and Momoh Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings. Page 6*

[25] *Trimmings page 7.*

[26] *Ad Hoc Central Authority for RSA and Another v Heidi Nicole Koch N.O (CCT 150/22) [2023] ZACC 37 at para 158.*

violence gives rise to concerns about re-victimisation, financial hardship and the abusive use of legal processes. It may also call for the strengthening of protective mechanisms, including trauma-informed screening, effective cross-border safeguards, and more coordinated support through Central Authorities.

South Africa, confronted as it is by the serious and continuing reality of gender-based violence, is well placed to contribute meaningfully to the development of this area of law. That requires careful refinement of the jurisprudence, informed where appropriate by comparative and international best practice. It also requires continued engagement by legal practitioners, academics and civil society on the question whether further reform is needed. The task is to ensure that the Convention is applied in a manner that remains faithful to its purpose, while responding appropriately to the realities of cases involving domestic violence and the protection of children. In that way, the law may better serve those whom it is intended to protect.■

CAPE TOWN CITY HALL

The Heads of Court at the State of the Nation Address.

STATE OF THE NATION ADDRESS
SONA 2026

The Opening of Parliament marked the start of the annual legislative programme. This ceremonial occasion brought together all three Arms of State, the Legislature, the Executive and the Judiciary, and concluded with the President delivering the State of the Nation Address.

The Judicial Procession, led by Acting Chief Justice D Mlambo, entering the Cape Town City Hall for the State of the Nation Address.

President M B Molemela of the Supreme Court of Appeal, during the Judicial Procession.

Western Cape Division of the High Court Judge President, Judge N P Mabindla-Boqwana entering the Cape Town City Hall.

Judicial Members, led by Acting Chief Justice D Mlambo, inside the Cape Town City Hall for the State of the Nation Address.

CAPE TOWN

JUDICIAL LEADERSHIP MEET

On 11 February 2026, the Heads of Superior Courts convened to reflect on matters impacting the Judiciary, with a strong focus on improving court operations and ensuring access to justice for all South Africans. The session brought together the Acting Chief Justice, the President of the Supreme Court of Appeal, and Judges President from the various High Court Divisions.

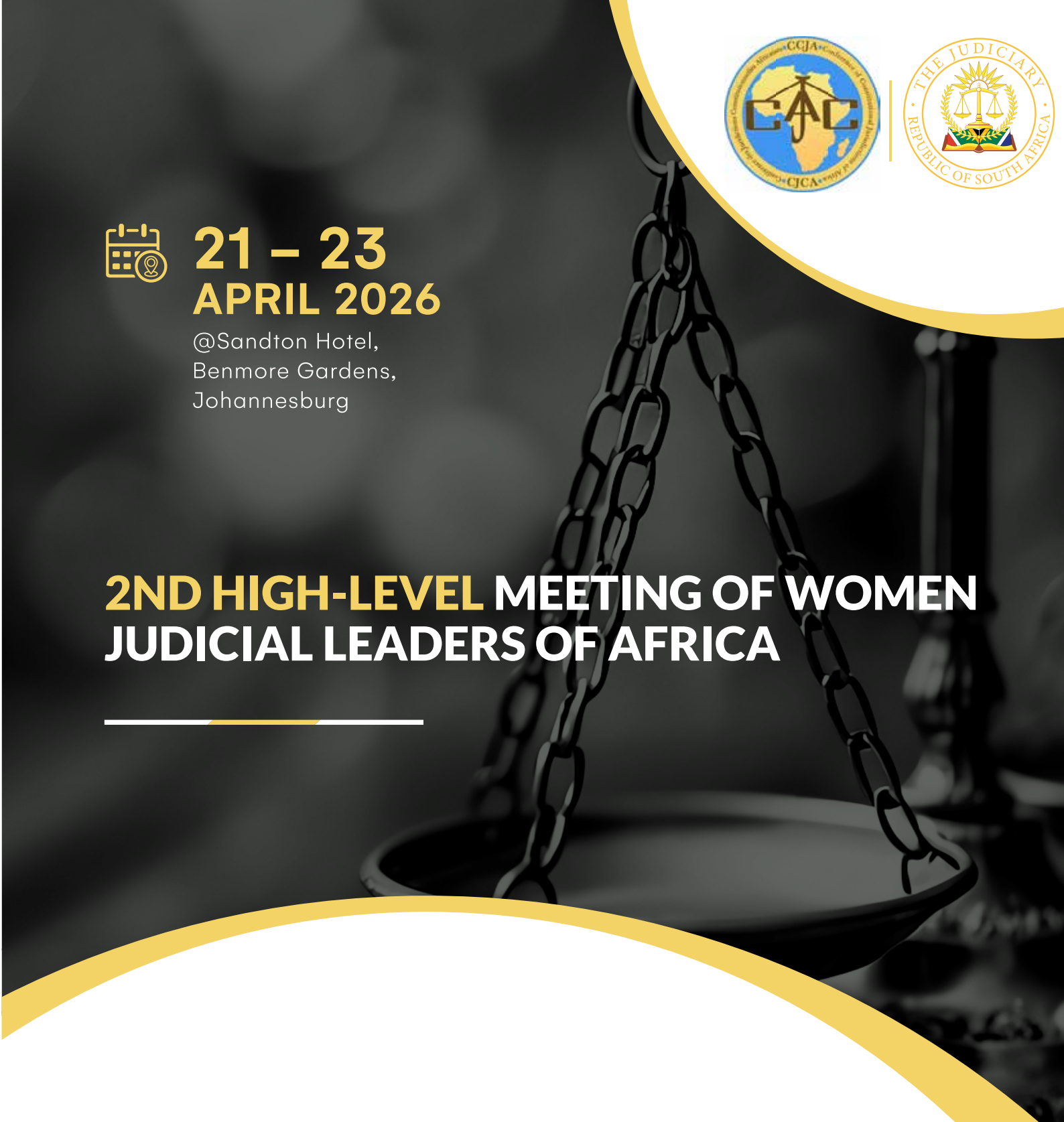
Acting Chief Justice D Mlambo chairs the Heads of Court meeting.

President M B Molemela of the Supreme Court of Appeal.

Judge President P L Tlaletsi of the Northern Cape Division of the High Court.

Judge President M G Phatudi of the Limpopo Division of the High Court.

Acting Judge President T V Ratshibvumo of the Mpumalanga Division of the High Court.



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KWAZULU-NATAL, DURBAN

DIVERSITY AND INCLUSION: A JUDICIAL COMMITMENT TO TRANSFORMATION

The Judiciary of the Republic of South Africa continues to deepen its commitment to justice through a dedicated Diversity, Equity, Inclusion and Belonging (DEIB) Programme, aimed at fostering a more inclusive and representative judicial environment.

As part of this ongoing effort, the KwaZulu-Natal Division, in collaboration with the South African Judicial Education Institute (SAJEI), hosted a three-day Diversity and Inclusion Workshop from 25 to 27 March 2026. The workshop creates a platform for judicial officers to engage in meaningful dialogue on fairness, dignity, and equality values that lie at the heart of South Africa's constitutional democracy.

The session was facilitated by TDCI Training and Development, led by Ms Elizabeth Dhlamini-Khumalo and Mr Marius Pretorius, with SAJEI providing strategic direction under the leadership of its Chief Executive Officer, Slindokuhle Shamase. Their combined expertise provides a structured and reflective engagement process designed to strengthen institutional culture within the judiciary.

Delivering the keynote address, Acting Chief Justice Dunstan Mlambo emphasised the importance of awareness among judicial officers regarding issues within their professional and social environments. He noted that such initiatives are essential in creating a safe and constructive space for conversation, reflection, and co-creation, enabling judicial officers to engage openly on matters of diversity and inclusion.

Guided by the leadership of Judge President Thoba Poyo-Dlwati, the programme placed a strong emphasis on building collegiality, mutual respect, and a shared sense of belonging within the judiciary.

Through initiatives such as this workshop, the judiciary continues to advance transformation efforts, ensuring that its structures and practices align with constitutional values while promoting unity and respect among those entrusted with upholding the rule of law. ■

Acting Deputy Chief Justice D Mlambo

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

South African Judicial Education Institute (SAJEI) CEO Ms Slindokuhle Shamase

| EKURHULENI, GAUTENG

MONTH-LONG TRAINING FOR NEWLY APPOINTED REGIONAL COURT MAGISTRATES

1 February 2026 marked the start of the month-long training for newly appointed Regional Court Magistrates, hosted by the South African Judicial Education Institute (SAJEI). The opening session, in Ekurhuleni, Gauteng was attended by the Acting Judge President of the Gauteng Division of the High Court Aubrey Ledwaba, as well as the Deputy Minister of Justice and Constitutional Development Mr Andries Nel, MP.

Acting Judge President A Ledwaba

Deputy Minister A Nel (MP)

DDG Mr L Mohalaba DoJ&CD

Gauteng Regional Court President M Djaje

Limpopo Regional Court President, J Wessels

JUDICIAL DELEGATION VISIT FROM ANGOLA

From 28 to 30 January 2026, the Constitutional Court of the Republic of South Africa hosted a judicial delegation from the Republic of Angola, led by Justice Dra. Paciência Dondeiro, Honorable Judge Counselor of the Supreme Court of Angola. The delegation was welcomed by Deputy Chief Justice D. Mlambo, alongside Justices S. Majiedt and Z. Tshiqi, where engagements focused on open dialogue, sharing of insights, and strengthening constitutional justice through mutual learning.

As part of the programme, the Acting Judge President of the Gauteng Division of the High Court, Judge Aubrey Ledwaba, together with members of the judiciary, hosted the delegation at the Johannesburg High Court. Discussions during this visit highlighted court operations and collaboration within the justice system, including a presentation by the National Prosecuting Authority (NPA) on coordination between the prosecution service and the Judiciary.

The delegation also visited the Randburg Magistrates' Court, where they were received by Regional Court President M. Djaje and Acting Chief Magistrate T. J. Mamburu. The visit featured a detailed briefing on the Audio Visual Remand (AVR) system, with presentations by representatives from the NPA and the Department of Justice and Constitutional Development (DoJ&CD).

The programme concluded with a guided tour of the court led by Senior Magistrate Mr A. Khan, during which officials demonstrated the operation of the AVR system in court proceedings, marking a fitting end to a productive and insightful visit. ■

Deputy Chief Justice D Mlambo, together with Justice S Majiedt (not pictured) and Z Tshiqi hosted a judicial delegation from the Republic of Angola, led by Justice Dra. Paciência Dondeiro, on 28 January 2026 at the Constitutional Court.

ANGOLA DELEGATES COURT VISITS

Gauteng Division of the High Court Judges and the Angolan delegation.

Deputy Chief Justice D Mlambo welcomed the Angolan judicial delegation to the Constitutional Court, marking the start of a programme of engagement and knowledge exchange between the two judiciaries.

Acting Deputy Judge President T P Mudau of the Gauteng Division of the High Court guided the Angolan judicial delegation through the history of the Court's Judges, offering insights into their legacy and contribution to the development of the Judiciary in South Africa.

Gauteng Division of the High Court hosted the judicial delegation from the Republic of Angola at the Johannesburg High Court on 29 January 2026.

The delegation also visited the Randburg Magistrates' Court, where they were welcomed by Regional Court President M Djaje and Acting Chief Magistrate T J Mamburu.

JUDGE PRESIDENT M G PHATUDI ADDRESSES ASPIRANT DISTRICT MAGISTRATES

Judge M G Phatudi
Judge President of the Limpopo Division of the High Court

On 7 February 2026, Judge President M G Phatudi addressed Aspirant District Magistrates in Polokwane on the subject of Judicial Ethics and the Judicial Code of Conduct.

What is meant by "Judicial ethics"?

The notion "judicial ethics" in legal parlance consists of the norms and standards that are brought to bear upon Judges and Magistrates as judicial officers, to maintain judicial independence and accountability.

1.1 Judicial accountability also covers aspects of impartiality and avoidance by a judicial officer of dishonourable conduct and impropriety.

1.2 Put in simple context, the concept "judicial ethics" generally entails on the one hand the moral compass and standards guiding judges' conduct, both inside and outside a courtroom, ensuring fairness, integrity and unfettered judicial independence in dispensing justice, while on the other hand also enhancing public trust through a prism of impartiality, honesty and avoiding actual or potential conflict of interests or engaging in impropriety.

1.3 The standard exacted for judges is akin to the standard set for the magistracy in terms of Regulation 54A of the Regulations for Judicial Officers in the Lower Courts, 1994, promulgated under the Magistrates Act, 1993,[1] which provides for a Code of Conduct for Magistrates within the Republic of South Africa.

1.4 The conduct of Presiding Officers in the Lower Courts is a subject of which the Magistrates' Commission plays an oversight role.

1.5 Judicial ethics as amplified by the Code of Judicial Conduct for Presiding Officers applies across the spectrum to all judicial officers who preside in the various hierarchy of courts of law of the Republic.

1.6 In our law what is often referred to as "judicial ethics" has since been codified by a proclamation in Government Gazette No. 35802 dated 18 October 2012. The judicial ethics referred to were adopted as a Code of Judicial Conduct for Judges pursuant to the provisions of Section 12 of the Judicial Service Commission, Act No.9 of 1994 (JSC Act). Section 12(5) of the JSC Act provides that the Code shall serve as the prevailing standard for judicial conduct which Judges must adhere to.

1.7 The concept of "judicial ethics" derived historically from the common law, but in the main, also involves such issues as honesty, integrity both inside and outside the courtroom, honour, dignity, independence and above all, accountability to the rule of law and the Constitution, which is the supreme law of the Republic.

1.8 Judicial rules of ethics inevitably impact on the judicial officer's private lives. In other words, a Judge or Magistrate is required to always exercise restraint in his/her private life as we socially interface with the public in general.

1.9 The majority of civilized jurisdictions around the world, do recognise in their Charters on Human Rights or Bill of Rights, that the concept of "private life" is a broad term not susceptible to exhaustive definition.

It is for this reason that it is hard to define with reasonable certainty the extent to which judicial ethics may stretch. But,

[1] *Act 90 of 1993.*

in my view, it suffices to mention that to uphold judicial ethics as a Judge/ Magistrate should not be an onerous exercise, for it merely entails the elements I have earlier referred to in the present discourse.

Examples of good ethical conduct:

Judicial accountability, and judicial independence, are in my view, fundamental elements that underpin judicial ethics for every single judicial officer.

2.1 In this discussion, an attempt will be made to lay a few relevant instances of conduct that would generally amount to morally or judicially acceptable norms and standards for judicial ethics. The list is, by no means exhaustive, but merely serves as examples of critical conduct applicable to all judicial officers. The examples of judicial ethos at issue also have constitutional undertones.

2.2 What follows are some of the relevant and useful examples:-

Judicial Independence:

A judicial officer must uphold and exercise fearlessly, without favour or prejudice the independence of his/her authority and decorum of the courts. This applies even when a Judge or Magistrate or a Chairperson of an administrative or quasi-administrative Tribunal performs judicial duties or administrative functions, as the case may be.

3.1 In terms of S.165 (1) of the Constitution, (RSA) the judicial authority of the Republic is vested in the courts.

3.2 The judicial independence referred to underscores judicial integrity and, therefore, good judicial ethical conduct is paramount. Such ethics denote freedom of conscience for judicial officers and non- interference in the performance of their judicial duties, unfettered

To act Honourably:

Judges and Magistrates are as judicial officers obliged to display uttermost honesty, integrity and honourable conduct at all material times when executing their judicial duties. For instance, judicial officers are required when making their decision, to confine themselves to judicial sphere, that is, to limit themselves to the underlying issues before them.

They must also desist from making findings against persons not called as witnesses before court. In short, Judges or Magistrates must refrain from injecting personal views or personal preferences in their judgment. To do so, will inevitably damage the esteem they are required to uphold.

See, NDPP v ZUMA 2009 (2) SA 277 (SCA)

Equality

It would offend good judicial ethics for a judicial officer to associate himself/ herself with undesirable comments or conduct by individual subjects to his/her control that are racist, sexist, or otherwise manifest discrimination in violation of the equality guaranteed by the Constitution. (S.9 (1)) The Constitution entrenches equality before the law and the right to equal protection and benefit of the law. Any conduct inconsistent with equality clause in section 9, is not only unconstitutional, but invalid.

Openness and Transparency:

It is not only ethically correct, but is also professionally sound and advisable to be judicially accountable as a court to promote public understanding and confidence in the complex judicial process. Hence, trials or hearings must take place in open court to ensure transparency. It is only in exceptional cases like sexual violations or where the interests of children are at stake that a court may sit in camera.

Furthermore, it would be unethical, in my view, for a presiding officer to play favouritism in respect of one of the litigants much to the detriment of his/her opponent. To do so, would be repugnant to the hallowed principle of impartially, openness and transparency required of a Judge or Magistrate.

7.1 To that extent, a Judge or Magistrate must apply the law in a fair and balanced manner, which covers the duty to observe the letter and spirit of the law, and of the maxim, audi alteram partem rule.

7.2 Crucially, providing adequate reasons for any decision is of uttermost importance.

The Constitutional court in the case of STRATEGIC LIQUOR SERVICES v MVUM BI N.O. & OTHERS 2010 (2) SA 92 (CC) para [15] held that **"it is elementary that litigants are ordinarily entitled to reasons for a judicial decision following upon a hearing, and, when a judgment is appealed, written reasons are indispensable".**

Diligence:

Any conduct that breach the required due diligence in the performance of judicial duties would be viewed as unethical, dishonourable or inpropriety. For instance, failure to perform assigned judicial duties, reasonably and diligently, and to deliver judgment/s promptly and without inordinate delay. To be astute, however, when analysing or evaluating the law and the facts, will certainly enhance the public confidence in the judiciary and thus enhance the court's decorum.

9.1 Unwarranted overly postponements, undue formalism and point-taking, boarders on unjudicial behaviour.

9.2 A pattern of intemperate or intimidating treatment of legal practitioners or conduct evincing arbitrariness and abusiveness, often gives rise to prejudice and subverts the effective administration of justice and should, therefore, be deprecated.

General provisions:

For avoidance of prolixity and in order to save the limited time allocated, I propose to enumerate briefly some of the conduct that would be deemed not consonant with good judicial ethics;-

A Presiding Officer must avoid –

10.1 To belong to any political or secret formations;

10.2 To publicly pronounce any controversial political or racist utterances;

10.3 To use his/her judicial office to advance private or commercial interests;

10.4 A conflict of interests;
10.5 To receive partisan treatment or special favour or dispensation from potential litigants or their lawyers;
10.6 Taking any appointment that is inconsistent with the independence of the judiciary or his/her office;
10.7 To engage in financial or business activities incompatible with a judicial officer, and finally
10.8 To accept, hold or perform any other office of profit or receive fees apart from the salary and/or allowances payable to a judicial officer.

A presiding officer is required to uphold the independence and decorum of the Judiciary as an equal arm of the state. Linked to this requirement is the need to be responsive to the authority of the courts as stipulated in section 165(1) of the Constitution, 1996;

11.1 To maintain an independence of mind in the execution of judicial duties which must be devoid of interference with the functioning of the courts, and
11.2 Not seek, procure, nor accept any special favour or dispensation from the executive or interest group, or head, or any political interference or pressure; and
11.3 Not to comment publicly on the merits of any case pending before or determined by that presiding officer or any other court, except in the discharge of judicial office, nor
11.4 To enter into public debate about a case irrespective of criticism levelled against the Judge, Magistrate, judgment, or any other aspect of the case.

Recusal:

A Judge or Magistrate must recuse him/herself from a case if there is (a) real or reasonable conflict of interest or (b) reasonable suspicion of bias based upon objective facts, and shall not recuse him/herself on unsubstantial grounds.

12.1 The requirement of constitutional fairness of the trial, the common law and established precedent, are the requisites that regulate the recusal. Whether a judge or magistrate ought to recuse him/herself for any reason that calls for disqualification to preside over the case allocated to him/her, is a matter of exercise of a judicial discretion.
12.2 A ruling or an application for recusal and the reasons for the ruling must be given in open court. In doing so, a judge or magistrate concerned must not defer to the subjective opinion of the parties or their legal representatives.

In applications of this nature, the general principle is that "judges have jurisdiction to determine applications for their own recusal".[2] A cornerstone of any fair and just legal order is the impartial adjudication of the underlying disputes presented to the courts and tribunals, including quasi-judicial and administrative proceedings. Nothing is more likely to impair public confidence in such proceedings, be it the general public or litigants, than actual bias or the appearance of bias in the presiding officer who is bestowed with authority to adjudicate on the disputes.

The weight of authority on the subject at hand is that "the test for apprehended bias is objective and the onus of establishing it rests on the applicant…the apprehension of bias must be a reasonable one, held by a reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information…[The] test is; what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude".[3]

The correct approach to a recusal application therefore is, required to be objective and the onus of establishing it, rests upon the applicant. "The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that a Judge has not or will not bring an impartial mind to bear on the adjudication of the case…".[4]

In applying the aforegoing test, courts have recognised a presumption that judicial officers are impartial in adjudicating disputes. This presumption stems from the fact that Judges carry out their judicial Oath of Office. This is one of the reasons why the threshold for a successful allegation of perceived judicial bias is high.

Equally important is that a balancing act by the judicial officer is required "because there is a thin dividing line between managing a trial and getting involved in the fray. Should the line on occasion be overstepped, it does not mean that a recusal has to follow or the proceedings have to be set aside".[5]

The Constitutional Court (ConCourt) in Bernert v ABSA Bank Limited[6] re-affirmed the test for recusal, which imposes a burden of proof on an applicant seeking recusal based on the "presumption of impartiality and the double requirement of reasonableness". This threshold was laid down in SACCAWU's[7] case, and was explained by the ConCourt that "not only must the person apprehending bias be a reasonable person, but the apprehension itself must in the circumstances be reasonable".

Conclusion:

All judicial officers must always bear in mind the independence of courts which is subject to the Constitution and the rule of law. No person or Organ of State may interfere with the functioning of the courts. (s 165(3))

What is more, is that the recognition of the right to access to courts or tribunals, and additionally, equal protection and treatment of all persons in an evenhanded manner, is fundamental to fairness and transparency in an open and democratic society. ■

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[2] *President of the Republic of South Africa and Others v South African Rugby Football Union and Others 1999 (4) SA 147 (CC) at para 31.*

[3] *Ibid p.175, para 45.*

[4] *Ibid p177, para 48. See also: re-affirmation of the test on recusal in Take and Save Trading CC and Others v Standard Bank of South Africa Limited 2004 (4) SA 1 (SCA).*

[5] *Ibid para 4.*

[6] *2011 (3) SA 92 (CC); 2011 (4) BCLR 329 (CC).*

[7] *South African Commercial Catering and Allied Workers Union v Irvin and Johnson Ltd Seafood Division Fish Processing 2000 (3) SA 705 (CC). The test was re-affirmed in Electoral Commission of South Africa v Umkhonto Wesizwe Political Party and Others Case CC92/2024, 2025 (5) SA 1 (CC)*

Land Court convenes stakeholder engagement sessions

The Land Court recently convened a number of stakeholder engagement sessions aimed at strengthening dialogue and collaboration on land rights and land justice in South Africa. The sessions brought together a broad range of stakeholders, including representatives from Labour Tenants, Land Tenure Reform structures, Legal Aid South Africa, private law firms, and the Office of the State Attorney in Pretoria. These sessions took place on 07 February 2026 at the Land Court in Randburg, and on 26 March 2026 at the Mpumalanga Division of the High Court, Mbombela.

The engagements provided a platform for stakeholders to reflect on persistent challenges affecting land-related litigation and reform processes. Key issues raised included concerns around the quality of research and expert reports, delays in the land restitution process, and ongoing difficulties in implementing legislation such as the Extension of Security of Tenure Act (ESTA) and frameworks governing labour tenants and restitution claims. Participants also highlighted challenges related to the appointment of legal representation, particularly in mediation processes.

During focused discussions on ESTA, Hans-Jurie Moolman of Moolman & Pienaar Inc outlined key procedural and institutional obstacles hindering effective implementation of the Act. His input underscored the complexity of tenure security cases and the need for improved coordination and clarity in legal processes.

Adding an academic perspective, Professor Peter Delius emphasised the importance of high-quality research and expert reporting in land restitution matters. He noted that deficiencies in these areas contribute significantly to delays and inefficiencies in resolving claims.

From an institutional standpoint, Adv Kabelo Matsane, Director: Legal at the Commission on Restitution of Land Rights, presented a report outlining systemic and procedural challenges within restitution cases. His presentation highlighted the need for strengthened institutional capacity and streamlined processes to improve outcomes.

Overall, the session reaffirmed the Land Court's commitment to fostering meaningful engagement with stakeholders, with the goal of addressing bottlenecks and advancing a more effective and responsive land justice system. ■

RANDBURG

The judicial bench of the Land Court of South Africa.

Judge President of the Land Court, Judge Z Carelse

Professor Peter Delius

Chief Land Claims Commissioner, Ms N Ntloko

Representing the Department of Rural Development and Land Reform, Ms Lulama Nkuna

Legal Aid South Africa's National Director, Mr T Mbhense

| LAND COURT, RANDBURG

LAND COURT:
LAMOSA REPORT

On 16 March 2026, a panel of Judges from the Land Court, led by Judge President Zeenat Carelse, received a progress report from the Land Rights Commission (LRC) on the implementation of the Constitutional Court's LAMOSA judgment handed down on 19 March 2019. This marked the presentation of the 13th LAMOSA Report.

Judge President of the Land Court, Judge Z Carelse

Deputy Judge President of the Land Court, Judge S J Cowen

Judge of the Land Court, Judge L Flatela

Acting Judge M Maluleke

Adv Kabelo Matsane, Director: Legal from the Commission on Restitution of Land Rights

Deputy Land Claims Commissioner, at the Land Rights Commission, Mr F Beukman.

Mr I Zanuzuko Peter, Director of Legal Services at the Land Rights Commission.

| BRAAMFONTEIN

XXX

LABOUR AND LABOUR APPEAL COURT LAUNCHES NEW ADMINISTRATIVE FLOOR

Access to justice is not only defined by laws and judgments, but by the spaces in which justice is delivered. At the Labour Court in Johannesburg, a newly renovated 5th floor stands as a practical response to the everyday needs of court users marking a shift towards improved service delivery within the justice system.

The Judge President of the Labour and Labour Appeal Court, Edwin Molahlehi, officially handed over the 5th floor, describing it as a culmination of a long-standing effort to improve conditions within the court. The space, he noted, is designed not only to meet operational demands but to ensure that members of the public are received in an environment that reflects the seriousness and importance of the justice system.

For years, limited space has posed challenges for both litigants and court officials, often affecting the efficiency of proceedings. The opening of the new administrative floor directly addresses these constraints, creating an environment that is better equipped to serve the public with dignity and efficiency. The development signals a clear intention to place the experience of court users at the centre of judicial infrastructure planning.

The Judge President of the Labour and Labour Appeal Court, Judge E Molahlehi

Officially handed over. Pictured: Judge President of the Labour and Labour Appeals Court, Judge Edwin Molahlehi, Acting Deputy Judge President Betty Mohalelo and Court Manager, Ms Thulisile Nzimande.

Judge President Edwin Molahlehi and Ms Nthumeni Nengovhela, Chief Director: Information and Communications Technology at the Office of the Chief Justice.

LAUNCH OF THE ADVOCATE'S BUSINESS TOOLKIT

By Dr Judge G Moshoana
Gauteng Division of the High Court

Basadi ba Molao hosted the launch of the Advocate's Business Toolkit in Johannesburg, on 13 March 2026. Gauteng High Court Division Dr Judge G Moshoana delivered an address on the critical importance of equipping advocates, particularly junior practitioners, with practical business skills to build sustainable and ethical practices while upholding the highest professional standards. Below is the speech as delivered by Judge Moshoana:

Ladies and gentlemen, we are gathered here today to witness the launch of a very valuable business toolkit designed for Advocates. In the course of today attendees of this auspicious occasion will be spoiled to satiable and yet gratifying *menu* encompassing the following items:

- Taxation
- Insurance
- Time management
- Technology
- Social media strategy

Ladies and gentlemen, you will agree with me that any restaurant that serves these items, is worth a visit. This restaurant does not serve *a la carte* but a set *menu*. The restaurant is called the advocates business toolkit dextrously managed and cheffed by Basadi ba Molao.

A disclaimer is apposite at this stage, since I am a bad cook, I am not part of the chefs. Mine is to salivate your appetite in order to invigorate your drool for the upcoming riveting and sufficiently engrossing session delivered to you by experts in the field and properly managed by intense panel discussions.

The primary purpose of the business toolkit is to:

- Equip advocates – special attention to junior advocates
- Provide practical business acumen
- To ensure building of sustainable and ethical practices
- To ensure upholding of the highest professional standards
- To enable advocates to run a practice as a business.

Ladies and gentlemen, before I ascended to the bench, I practised as an attorney for 22 years. Without fear of contradiction, let me share this, a practice is a business. The twenty two years I spent in practice was financially rewarding.

In order to sustain that practice, I maintained ethical and professional standards which are the key ingredients for a successful practice. Regarding ethical standards, let me share with you what I said in the case of *Zikode v Open Mic*.

This message must permeate every fibre of your being as an advocate. I said:

"Duties of counsel.

[1] In any proceedings before a Court, counsel functions as an officer of a Court. It is not the duty of a Court to, at every turn, remind counsel of his or her professional duties. Even where counsel is faced with a tough and challenging case before a Court, he must remain focused to his or her duties towards a Court. No musical chairs and vacillation of duties would be countenanced by a Court. Counsel, in as much as he or she owes a duty towards his or her client, robust and forceful persuasion should not be conflated with conduct dithering on contempt of Court.

[2] Counsel makes submissions to a Court with an honest intention to (a) persuade a Court to find in favour of his or her client and (b) assist the Court to arrive at a just decision. Statements like "judge has made up his or her mind" and "submissions are made for what it is worth" are in direct contradiction with the duties of counsel. This Court cannot put it any better than it was put by Ponnan JA in *Public Protector of South Africa v Chairperson of the Section 194(1) Committee and Others (Public Protector),*[1] when he quoted the former Chief Justice of the Supreme Court of Victoria, who said:

> "The duty requires that lawyers act with honesty, candour and competence, exercise independent judgment in the conduct of the case, and not engage in conduct that is an abuse of process. Importantly, lawyers must not mislead the court and must be frank in their responses and disclosures to it. In short, lawyers "must do what they can to ensure that the law is applied correctly to the case".

When a Court engages counsel and probes the legal correctness of some of the submissions counsel makes, a Court does not "make up its mind" but a Court seeks to apply the law correctly to the case. It is only when a Court delivers its judgment that a Court makes up its mind. Before then, it is unprofessional and inappropriate for counsel to cast an aspersion that a judge has made up his or her mind."

As I conclude Ladies and gentleman, allow me to say, as an advocate, you are a member of an honourable profession and you should carry yourself as such and maximise on the usage of the toolkit. Always carry with you the words of the Chief Justice of the Supreme Court of Victoria. ■

[1] *[2024] 4 All SA 693 (SCA)*

Judge Moshoana with the co-founder of Basadi ba Molao, M Hlaleleni Kathleen Matolo-Dlepu.

Dr Judge G N Moshoana

Adv A Platt SC

| KEMPTON PARK

SEMINAR ON THE AMENDED CHILDREN'S COURT RULES

The South African Judicial Education Institute (SAJEI) hosted a two-day Ad Hoc National Children's Court Seminar in Kempton Park. The seminar was attended by 154 District Court Magistrates from all nine provinces. The seminar aimed to train District Court Magistrates on the amended Children's Court Rules. Senior Magistrate and SAJEI Judicial Educator Ms T Bossert led the programme on topics including the application, purpose and interpretation of the amended rules. The discussion covered the additional functions and duties of the court, service and substituted service of Children's Court proceedings.

Senior Magistrate and SAJEI Judicial Educator Ms T Bossert

Chief Magistrate De Klerk

Chief Magistrate Sidlova

The seminar discussion covered the additional functions and duties of the court, service and substituted service of Children's Court proceedings.

GAUTENG DIVISION OF THE HIGH COURT

GAUTENG SWEARS IN NEWLY APPOINTED JUDGES

The Gauteng Division of the High Court held a swearing in ceremony for newly appointed Judges at the Gauteng Division of the High Court, Pretoria on 19 January 2026.

Judge N G M Mazibuko

Judge S M Wentzel

Judge R J A Moultrie

Judge K L M Manamela

Judge P A Van Niekerk

Judge D Mahosi

| POLOKWANE

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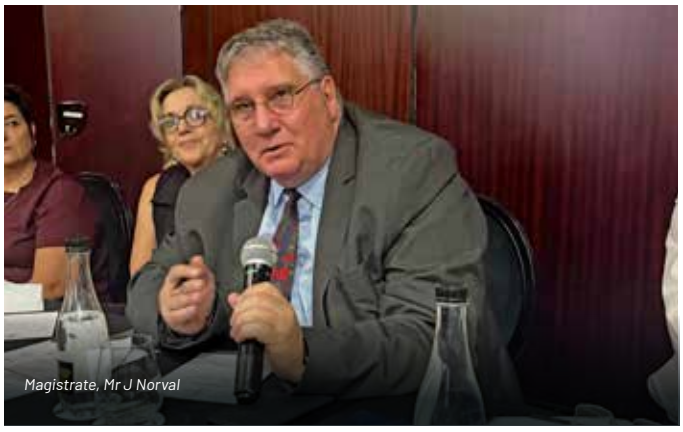
SEXUAL HARASSMENT POLICY WORKSHOP FOR MAGISTRATES HELD IN POLOKWANE

On February 19, 2026, the Limpopo judiciary convened a pivotal workshop in Polokwane, to address and unpack the Sexual Harassment Policy for the Judiciary. Initiated by the Judge President M.G. Phatudi of the Limpopo Division of the High Court. The event served as a critical platform for sensitizing the lower court judiciary on professional conduct and policy compliance.

The primary objective of the workshop was to ensure that those leading the Magistrates Courts are not only familiar with the policy document but also fully understood its practical application within their respective courts.

The workshop was met with a positive reception from the attending magistrates, who noted that such initiatives are essential for strengthening the integrity of the judiciary.

Judge President M G Phatudi



Magistrate, Mr J Norval

Magistrate, Mr K Molokomme

Magistrate, Mr T Mokgatle

JUDICIAL APPOINTMENTS & RETIREMENTS

JUDICIAL APPOINTMENTS

LABOUR COURT

Adv S J Harvey

Appointed as Judge of the Labour Court

As of: 02.03.2026

Retired Judge President B M Ngoepe

President of the Special Tribunal established by the Proclamation No.R.10 of 2019

As of 09 February 2026

JUDICIAL RETIREMENTS

SUPREME COURT OF APPEAL

Justice S E Weiner

Justice of the Supreme Court of Appeal

As of 01 February 2026

GAUTENG DIVISION OF THE HIGH COURT

Deputy Judge President R T Sutherland

Deputy Judge of the Gauteng Division of the High Court

As of 02 February 2026

NORTHREN CAPE DIVISION OF THE HIGH COURT

Judge C C Williams

Judge of the Northern Cape Division of the High Court

As of 31 March 2026

IN MEMORIAM

Retired Judge L I Goldblatt

Judge of the Gauteng Division of the High Court

Passed: 26.02.2026

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