

The background of the cover features a close-up, black and white photograph of a pair of scales of justice and a gavel. The scales are on the left, and the gavel is at the bottom left. The right side of the cover has a dark blue vertical band and a large orange rectangle containing the title.

# THE JUDICIARY

2023 JUDGES' CONFERENCE

TOWARDS A SINGLE, EFFECTIVE AND FULLY  
INDEPENDENT JUDICIARY

STRENGTHENING JUDICIAL INDEPENDENCE

THE HAGUE REPORT

FAREWELL TO JUDGES OF THE KWAZULU-NATAL  
DIVISION

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# 2024

## COURT TERMS FOR SUPERIOR COURTS

### CONSTITUTIONAL COURT

#### Terms

15 February - 31 March 2024

01 May - 31 May 2024

15 August - 30 September 2024

01 November - 30 November 2024

### SUPREME COURT OF APPEAL

#### Terms

15 February - 31 March 2024

01 May - 31 May 2024

15 August - 30 September 2024

01 November - 30 November 2024

### HIGH COURT

#### Terms

22 January - 31 March 2024

15 April - 23 June 2024

22 July - 22 September 2024

07 October - 08 December 2024

## SPECIALISED COURTS

### LABOUR APPEAL COURT

#### Terms

15 February - 31 March 2024

01 May - 31 May 2024

15 August - 30 September 2024

01 November - 30 November 2024

### LABOUR COURT

#### Terms

22 January - 31 March 2024

15 April - 23 June 2024

22 July - 22 September 2024

07 October - 08 December 2024

### LAND CLAIMS COURT

#### Terms

22 January - 31 March 2024

15 April - 23 June 2024

22 July - 22 September 2024

07 October - 08 December 2024



#### ELECTORAL COURT TERMS 2024

##### Terms

The court has no fixed terms. Sittings of the Court is governed by Rule 2 of the Rules Regulating the Conduct of the Proceedings of the Electoral Court which provides that: ***“The court conducts its business in the manner determined by the Court and at the times and places determined by the Chairperson with due regard to the need for the expeditious disposal of matters”.***

#### COMPETITION APPEAL COURT TERMS 2024


##### Terms


The court has no fixed terms. Sittings of the Court is governed by Rule 14 of the Rules for the Conduct of the Proceedings of the in the Competition Appeal Court Court which inter alia provides that: ***“The Court will sit at a venue to be determined by the Judge President from time to time”.***

 The South African Judiciary

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# FROM THE EDITOR

## *Dear Colleagues,*

It is an honour and privilege for me to assume the role of Editor-In-Chief of the Judiciary Newsletter. I take over from the Judge President of the Gauteng of Division of the High Court, my brother Judge Dunstan Mlambo, who has outstandingly undertaken this work since September 2018. We thank him for the contribution he has made over the years and for growing the publication to what it is today. Maphisa!

We produce this year-end edition on the back of a successful Judges' Conference, held at Sun City in the North West Province between 5 and 7 December 2023. Our appreciation goes to the Chief Justice of the Republic, Chief Justice R M M Zondo, for having the vision to convene the Conference. I am sure I speak for all Judges and Magistrates who attended the Conference when I say that we had very fruitful engagements. We eagerly await the publication of the final Conference resolutions that were presented in draft format on the last day of the Conference. There is more to read about the 2023 Judges' Conference in this newsletter.

The KwaZulu-Natal Division of the High Court said its farewells to three senior colleagues who have hung their robes. These are Deputy Judge President M I Madondo, Judge M S Moodley and Judge G Lopes. We held a send-off event for them in November as they go on retirement. Some of the remarks made on this occasion are published in this edition. We wish our colleagues enjoyable and restful retirement years.



Our colleague, Justice B C Mocumie of the Supreme Court of Appeal has been South Africa's Primary Liaison Judge in The International Hague Network of Judges since 2015. Periodically, Justice Mocumie publishes reports from the activities of The International Hague Network of Judges. In this edition, Justice Mocumie provides a Preliminary Report on the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention, held from 10 to 17 October 2023, at the Peace Palace in the Hague, Netherlands. We thank Justice Mocumie for her continued work in representing the South African Judiciary in this important forum.

We trust you will enjoy this holiday edition of the Judiciary Newsletter. We take this opportunity to wish all of you a restful, peaceful and safe holiday season. Until 2024...

### **Judge President Thoba Poyo Dlwati**

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



# JUDGES' CONFERENCE LOOKS INTO PERTINENT JUDICIAL MATTERS

**The Constitution of the Republic of South Africa, 1996, provides that the Judiciary is independent and subject only to the Constitution and the law.**

The Chief Justice is the Head of the Judiciary and exercises responsibility over the establishment and monitoring of the Norms and Standards for the exercise of judicial functions of all Courts. The Chief Justice, with the support of the Heads of Court, convened a Judges' Conference from 5 to 7 December 2023 to discuss matters of interest to the Judiciary in relation to its constitutional role and mandate.

From time to time, the Judiciary, as an independent arm of State, meets to discuss important matters related to the efficient functioning of the courts and enhancing access to justice. The last time the Judiciary met for this purpose was in 2012.

The 2023 Judges' Conference was attended by Judges from across the country and by representatives of Magistrates.

The Conference was held under the theme: "Towards a single, effective and fully independent Judiciary".

In line with this theme, one of the purposes of the 2023 Judges' Conference was to provide Judges and Magistrates with a platform to, amongst others, reflect on Judicial independence including institutional independence which will ensure that the Chief Justice receives adequate support in order to fulfil his functions and other matters concerning the functioning of the Courts in order to ensure that Courts serve the people better.

The Judges' Conference also discussed issues pertaining to efficiencies in the court system, resourcing and capacitation of the Judiciary, as well as judicial accountability, integrity and ethical conduct of Judicial Officers (Magistrates and Judges).

The Conference was open only to invited Judges and Judicial Officers from the Lower Judiciary. However, the opening session of the Conference was open to the public and the media. ■





# TOWARDS A SINGLE, EFFECTIVE AND FULLY INDEPENDENT JUDICIARY

Chief Justice R M M Zondo

Chief Justice R M M Zondo delivered the opening address at the 2023 Judges' Conference which took place 5 to 7 December 2023 in the North West. The following is the text of the Chief Justice's address:

Good morning.

I feel privileged and honoured to stand before you this morning to deliver this opening address at this very important conference. Let me begin by thanking the Heads of Court who gave the idea of holding this conference this year their unconditional and unequivocal approval when the suggestion was made to them. Let me also thank them for the support they have given to the Organising Committee of this conference. But before I move further, I would like to take this opportunity to express our gratitude and appreciation to our Colleagues from Kenya, Tanzania and Namibia who have agreed to grace this conference and to address us. In particular I express my deep appreciation to the former Chief Justice of Kenya, Justice David Maraga who accepted our invitation without any hesitation when I called him for the first time to ask him to come and address us. CJ it is good to see you again. We met for the first time when you were attending the CCJA conference which was hosted by South Africa in Cape Town in 2017 and it's good to see you back in South Africa. Thank you. We are also grateful to Dr Twaib as well to Judge Prinsloo from Namibia for agreeing to come and address us.

I also take this opportunity to express my gratitude to the Judges' Conference Organising Committee, which is ably led by the Judge President of Gauteng Division of the High Court, Judge-President Dunstan Mlambo. I thank this Committee for their hard work, for their dedication and their absolute commitment to ensuring that this conference would be a resounding success. I would like the members of this Committee to please stand up to enable everybody to see them because they have made a very important contribution to us being here and for the conference to look as good as it does.

The individual independence of the Judiciary may be easily abused by some unless there are clear systems and mechanisms in place to ensure judicial accountability ”

I have no doubt that due, in large measure, to their hard work this conference will be a great success. I accept that the work is not done as yet but the fact that we are here and that the conference is so well attended speaks to very high organising skills on the part of this Committee.

I also want to take this opportunity to thank the Secretary-General of the Office of the Chief Justice and her entire team for the hard work that she and her team have put into the preparations for this conference, the support they've given to the Judges' Organising Committee, to me as Chief Justice and to the Judiciary in making sure that this conference takes place and in doing everything they've done up to now to make sure that we have the success that we see at this stage in this conference. SG, thank you very much!

This conference is a response to many calls for a conference from various colleagues. You will recall that, even in interviews in the JSC, there were calls that it was high time that we should have a Judges' conference. Therefore, this is your conference, use it to ensure that our Judiciary is a strong Judiciary, use it to ensure that decisions are taken that will ensure that the administration of justice in South Africa is put at a higher level. Nobody should feel small, all of us are judicial officers, all of us have a contribution to make, and speaking for myself, I want to hear every view, I want to hear everyone, I want to hear whatever you think about the issues that we will be discussing over the next three days.

The theme of this conference is "Towards a Single, Effective and Fully Independent Judiciary". It takes place 12 years after the conference of July 2011 which happened during the term of office of Chief Justice Sandile Ngcobo which was on access to justice and whose theme was "Towards delivering accessible and quality justice to all". However, the difference between that conference and this conference is that the 2011 conference was not a conference of members of the Judiciary only but involved other stakeholders, including the Executive. This conference is a conference of the Judiciary. It is an opportunity for us to talk about issues that affect us. It is an opportunity for us to put our heads together to shape the future of our Judiciary to the extent that we can. As we shape that future, we must be alive to the fact that we will be contributing to the shaping of the future of this country.

I've said that this conference takes place 12 years after the 2011 conference. However, more importantly, it takes place on the eve of this country reaching a very important milestone, namely, 30 years since it achieved constitutional democracy. We are about 6 months away from that very important milestone for our country and our constitutional democracy.

In a recent speech that I made at GIBS a few months ago I said, and I wish to say today as well, that the fact that next year our constitutional democracy will complete 30 years requires that all of us as a people should, ahead of that milestone, reflect on the journey that we have travelled, identify what we have done right in the 30 years that deserves to be taken into our

4th decade of democracy and identify all that was wrong that has been done in the past 30 years that should have no place in the 4th decade of our democracy. We must make sure that in the 4th decade of our democracy and beyond we do not repeat the mistakes that we may have made in the past 30 years and as a country and, not speaking about the Judiciary, there are many mistakes that have been done. There are many mistakes that have pulled us back as a country, there are many mistakes that have put us where we are. The least we can do is not repeat them; the least we can do is not take them with us into the 4th decade of our democracy.

One cannot in a speech such as this deal with all issues that may need to be dealt with when one reflects on a period of 30 years. Therefore, one has to choose and identify those matters that appear to be quite important for the occasion and reflect on them. I propose to reflect on some of the features of our journey as the Judiciary. In doing so I do not propose to look at negative features only, but I propose to look at positive features as well. I also propose to look at some of the features for which the Judiciary might not necessarily be responsible but are found within the space of the Judiciary and that affect the Judiciary.

As I stand in front of you this morning, I'm very pleased at seeing the diversity that is reflected in all of you as the audience this morning. Because of that diversity you are such a beautiful audience. If a Judges' Conference was held immediately before the 1994 elections, it would have been a complete opposite of what I see in this room because it would have been a conference of almost white males only. There would have been two white women. There would have been two black males. Other than that, it would have been white men only. The contrast between the diversity that is reflected in this room and the conference that would have been held immediately before the 1994 elections reflects, in my view, the opposites that apartheid and democracy represent respectively. With democracy we see inclusiveness that is reflected this morning. With apartheid we saw the exclusiveness where the majority was excluded, where women were excluded but, when you look at this conference today, 30 years later, we see a lot of our sisters, we see a lot of black men, a lot of white men and it's beautiful.

As was reflected in the Deputy Chief Justice's speech last night, great progress has been achieved in building a Judiciary that broadly reflects the people of this country both in terms of race and gender. We might not have reached our ultimate goal but there's no doubt that a lot of progress has been made. The success attained so far on the transformation of the Judiciary did not come about on its own. It came about as a result of hard work by various stakeholders including Heads of Court, especially the first group of black Judges-President including the former Judge-President of Gauteng, Judge Bernard Ngoepe, who is here with us and others. In fact when I see him and in the context of talking about transformation I'm reminded of a part of his book "Rich pickings out of the past" where he narrates the story that, when he was interviewed



for the position of Judge– President by the Judicial Service Commission where he was competing with two white candidates, one of the members of the JSC, suggested to him that he should withdraw from that race because age was not on his side, and would be able to become Judge–President later. That member of the JSC suggested that he should wait and be patient and Judge Ngoepe says in his book that his answer effectively was “I can’t wait any longer. I’ve waited for 300 years”. What needed to be done in order to reach the point that we have reached on transformation in terms of race and gender included that kind of determination.

Indeed, Judge–President Ngoepe, being Judge–President of the biggest Division of the High Court in the country, went on, after appointment, to play a very critical role in transforming, not only the Gauteng Division of the High Court but also, as a member of the JSC for many years, the Judiciary in general. I was appointed to the then Transvaal Provincial Division of the High Court in 1999 and I remember very well that at tea, if I didn’t count acting Judges, often there would be two black Judges out of about 30 or 50 Judges, but with his style of leadership, slowly but surely he transformed that Division. There are other Judges–Presidents and other Heads of Courts who did the same in other courts.

Many of us called on the government and the private sector to change briefing patterns in order to ensure that black practitioners and female practitioners got diverse work so that, ultimately, they would have exposure to different branches of law and so that, when they get appointed to the bench, that would enrich and enhance diversity in the Judiciary. Despite the progress that we made on transformation in the first 14 years of our democracy, the Heads of Court remained only men. However, in 2010 Judge Monica Leeuw was appointed as the first female JudgePresident and she joined the Heads of Courts. At the moment there are three female Heads of Courts who are permanent members of the Heads of Courts. Those are the President of the SCA, Judge–President of the KZN Division of the High Court and Judge–President of Mpumalanga Division of the High Court. If we include Acting Judges–President, that number doubles to 6 because then we add the Acting Judge–President of the Limpopo Division of the High Court, the Acting Judge–President of the Western Cape Division of the High Court and the Acting Judge–President of the Land Claims Court.

Apart from transformation we have over the past 30 years ensured that certain institutions are established which are important to the Judiciary. I remember many years ago when I was still Judge–President of the Labour Appeal Court and Labour Court when Justice Arthur Chaskalson was the Chief Justice and we began to talk about the need for the establishment of an institute for training Judges which was to be controlled by Judges. There was at the time a lot of resistance to the idea that Judges needed training but, over time, attitudes began to change and it was resolved that an institution be established that would provide training to Judges and other Judicial Officers. Hence, we now have the South

African Judicial Education Institute (SAJEI) which provides such training to members of the Judiciary. It has a Director or CEO. In the 2022–2023 financial year that Institute provided training to 3799 delegates. SAJEI gives us the opportunity to provide training to members of the Judiciary, offered by the Judiciary and controlled by the Judiciary. This is very important because it enables us to ensure that we do not send Judges to receive training in institutions which are not controlled by us as the Judiciary and where we are not in control of what kind of training is given to them and we might not know where the funding comes from which makes the training possible and what agendas those who provide funding might have. Of course, there may be lots of places which provide training which is genuine and legitimate but, where we provide the training ourselves and, we determine what is taught in the institution, we stand a better chance of avoiding a situation where there might be allegations that the Judiciary is captured because of who may be behind the training that Judges get in places that are not controlled by the Judiciary.

We have already been accused of being captured but it is an accusation that we reject with the contempt it deserves because, as Chairperson of the State Capture Commission for four years I called for everybody who had evidence that the Judiciary in South Africa was captured to come forward with the evidence and nobody came with any evidence. Up to now nobody has come with any evidence. The accusation is made by those who wish to ensure that the Judiciary of South Africa is not trusted by the public, that it is looked at with suspicion because it suits their purposes that the Judiciary should be viewed with suspicion.

Under our constitutional democracy the independence of the Judiciary is provided for in our Constitution. The independence of the Judiciary relates to both the individual independence and the institutional independence. The individual independence of the Judiciary may be easily abused by some unless there are clear systems and mechanisms in place to ensure judicial accountability. For many years there were no clear systems and mechanisms to hold Judges accountable for unacceptable conduct and for conduct such as undue delays in handing down judgments. It took more than 15 years after the advent of our constitutional democracy that amendments were made to the Judicial Service Commission Act to establish the Judicial Conduct Committee which processes and adjudicates complaints against Judges which are viewed as minor or as serious but not impeachable.

Where the JCC takes the view that your complaint is likely to lead to impeachment, if established, it recommends that the JSC asks the Chief Justice to appoint a Judicial Conduct Tribunal to investigate and report on such complaints. This is one of the institutions that has been created over the past thirty years in order to make sure that members of the public who have complaints against Judges have got a place where to go and lay those complaints. Under apartheid there was no such body. Indeed, I want to take this opportunity to thank all Judges who give up their time to serve on the Judicial Conduct

Committee in order to make sure that this body operates and I want to take this opportunity to also thank Heads of Courts because they, too, play a very important role in the processing of a certain category of complaints that are referred to this body.

The Office of the Chief Justice is one very important institution that was created during the 30 years of our democracy. It was created by Proclamation 44 of 2010 on 23 August 2010, which amended schedule 1 to the Public Service Act of 2010 to make provision for a new department. It was established by President Zuma. This was a very important step on our journey to a complete institutional independence as the Judiciary and we must take this opportunity to express our appreciation that during his term President Zuma established this institution. It now remains for those who came after him to take this project for the institutional independence of the Judiciary further.

Those who came after President Zuma have the responsibility to take it further. This is because for about 10 years after the Office of the Chief Justice had been established and after the Judiciary had handed over to the Executive a report produced by two former Chief Justices of this country, Chief Justice Langa and Chief Justice Chaskalson, which made recommendations on what steps needed to be taken in order to ensure that we in South Africa have a judiciary-based court administration, the Executive did not respond to the Judiciary. In that way our fight for a full institutional independence was impeded. It is a pity that, on the one hand, President Zuma took such an important step of establishing this very important institution but for many years thereafter the Executive did not take the matter further. However, I'm glad to say that towards the end of last year the Executive came back and they said they had been conducting research so that they could give us a response. They gave us a response. As the committee of the two Chief Justices had indicated in their report that there were some matters that still needed to be investigated in regard to the Court Administration model that they had recommended, I appointed a Committee chaired by Judge Ngoepe to look into those issues so that we could have finality and that Committee is soon going to give me a report. I'm happy to say that the Executive has already indicated that they would like us to meet to have a preliminary discussion about the kind of court administration model that South Africa should have. We have our own, they have their own.

There is a need for discussion. That meeting was supposed to have taken place on the 29th of November but it was postponed. I have no doubt that it will soon be rescheduled so that those discussions can take place. It is my wish that next year should end with a final decision so that soon South Africa will have a judiciary-based model of court administration.

When we talk about some of the features of our journey in the past 30 years we must be free to talk also about the fact

that among our courts there have been challenges, but we have learnt certain lessons from those challenges. Here I talk about the fact that the creation of certain courts after 1994 came with some uncertainty about the jurisdictions of some of the courts that had been there before. In this regard we know that under the Constitution, the interim constitution and the final constitution before the 17th Constitution Amendment, the Supreme Court of Appeal and the Constitutional Court were at the same level. The Constitutional Court was the highest court on constitutional matters and the Supreme Court of Appeal was the highest court in non-constitutional matters and this created some tension and those who have been around for some time will recall that there emerged at a certain stage certain judgments from both courts which indicated that there were certain tensions because the one court was the highest court in a certain area and the other one was the highest court in other areas. One known case is the Logistics<sup>1</sup> case where the Supreme Court of Appeal sought to say a common law review is not a constitutional matter and the Constitutional Court in Pharmaceutical Manufacturers<sup>2</sup> subsequently said a common law review is a constitutional matter and, there are no two systems of law.

We also know that there were certain tensions between the Labour Appeal Court and the Supreme Court of Appeal as well as the Competition Appeal and the Supreme Court of Appeal. However, out of all those challenges, as the Judiciary, we emerged a better Judiciary and the courts emerged better courts. Of course, ultimately the appellate jurisdiction of the Supreme Court of Appeal in labour matters as well as competition matters was taken away. There's no doubt that now there is no tension whatsoever because through those lessons we became a better Judiciary and were able to handle and are able to handle whatever challenges there may be.

One of the areas where the Judiciary of South Africa has performed exceedingly well is in performing its function of protecting the Constitution, of protecting the rule of law, of protecting the independence of the Judiciary. One need not substantiate this because we all know it. Indeed, the Judiciary of South Africa is respected internationally in part because of its record in upholding the Constitution and the rule of law. The Judiciary of South Africa has done that despite the fact that, to a very large extent, many Judges work under extremely difficult conditions. The conditions under which the lower Judiciary operates are worse than those of Judges and yet we know that, for most people, when they talk about justice, they talk about what they see in the lower courts.

This means that it is very important that the lower Judiciary's conditions of service should be acceptable and the courts where they operate should be in acceptable conditions. In some of the lower courts Judicial Officers have to park their cars in the streets and, when they go home in the afternoon, they find a witness or accused parked behind them. In some

1 Commissioner of Customs and Excise v Container Logistics (Pty) Ltd; Commissioner of Customs and Excise v Rennie Group Ltd t/a Renfreight 1999 (3) SA 771 (SCA).

2 Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others 2000 (2) SA 674 (CC).

of the lower courts when Judicial Officers come out of court they are forced to go through the public to get to their offices. Many courts do not have enough courtrooms. Almost every 4th Magistrates Court complains that they need more courtrooms. A number of them operate from old buildings that are dilapidated.

Loadshedding disrupts the operations not only of the lower courts but also the Superior Courts except where there are generators. Not every court has a generator. When there is a backlog of cases such as we sometimes see in the Annual Judiciary Report, the public needs to know that part of the problem is loadshedding but part of the problem is also that there are vacancies of Judicial Officers that are not filled. Also in some courts such as the Labour Court new posts need to be created so that those Judges can be appointed and yet the government takes ages to address these problems. This has been a problem in the Labour Court for a long time. Cases are taking longer to be set down because there are no court rooms.

There are many other courts which have similar complaints. Indeed, we must fight for a full institutional independence of the Judiciary where we can control the budget that we need in order to make sure that court operations are able to run smoothly. I will not talk much about institutional independence and a court administration model because there are speakers who are going to talk about that but there's no doubt in my mind that we need institutional independence in order for us to be able to turn things around in many of the courts. Some of the stories that one hears are stories where a Judicial Officer sits next to a witness to hear their case because the space is simply not enough. If we handle some of these things ourselves, we certainly would not have this situation.

Before I conclude I want to go back to a point or to an issue that I believe is very important to which I referred earlier. That is the personal independence of Judges. It is an issue I like talking about because for me it is very critical for our Judiciary because you may have full institutional independence but, if you don't have personal independence, an environment that enables Judges and Judicial Officers to make decisions that they are called upon to make without fear or favour or prejudice, you will not have a credible Judiciary. Our Judiciary has been tested and each time it has come out strong. Of course, the greatest test that it was put to was in 2021 when threats were made in the media by people who did not want the Constitutional Court to make the decision that it believed was correct when a former President defied an order of the Constitutional Court. That for me will remain one of the most important moments in the history of our Judiciary, when our highest Court was defied and threats were made against the Justices of our highest Court in order to try and pressurise the Justices to make a decision that they might not have wanted to make. They stood their ground. The High Courts have done the same in various matters. That is very important. The integrity of all Judicial Officers, their commitment to their oath of office and their commitment that no matter what, they will

make their decisions without fear, favour or prejudice is central to a credible Judiciary and to our democracy. I wish that we should do more as we recruit new Judges to make sure that all those that enter the Judiciary have got what it takes to make sure that no matter what the circumstances are that they will come across they will always be truthful to their oath of office. That is one of the things that we must take with us into the 4th decade of our democracy. With these words I declare this conference duly opened. Thank you very much. ■



# STRENGTHENING JUDICIAL INDEPENDENCE

Deputy Chief Justice M M L Maya

Deputy Chief Justice M M L Maya delivered a keynote address at a gala dinner preceding the opening of the Judges' Conference. The following is the text of the Deputy Chief Justice's address during the reception gala.

Good evening

It is a singular honour and privilege to deliver this address at this momentous gathering. I am particularly pleased to be in the company of our distinguished guests, our elder and guide, retired Judge President Ngoepe, who we do not see as often as we would like, and retired Chief Justice Magara who has travelled all the way from Kenya to lend us his support and share his knowledge, experience and wisdom which will no doubt ensure the success of these proceedings. I extend warm greetings to all of you.

I must mention that I stand here under very strict instructions from my principals, to keep it short, so that people can use the rest of the evening to let their hair down, catch up with colleagues and, as Africans are wont, to eat, sing and dance. I even heard rumours that there might be Karaoke music and challenges to the stage later so it promises to be quite an interesting evening. And I will faithfully keep my undertaking not to be long.

## Towards a single, effective and fully independent judiciary ”

Colleagues, it is 12 years since we, as members of the South African judiciary, last met under one roof to discuss issues affecting us and our institution. Those years have been crammed with all kinds of challenges, changes and developments, some positive and some negative. They were also marked by the judiciary's inability to follow through and effectively implement the important resolutions on its future, which were taken at the last Judges' Colloquium in July 2011— to enable it to become an effective and truly independent institution that delivers accessible and quality justice for all as envisaged in our Constitution. And for over a decade we have been in limbo, working under the strain of a delayed transition and many, heavy challenges the resolution of which the conference starting tomorrow morning will hopefully



find ways of kick starting and chart a decisive way forward. So it is truly special and exciting to be finally here to put our heads together about our fate and we thank our Chief Justice and his organizing team for moving heaven and earth, during particularly difficult times, to convene this gathering that gives us an opportunity to look within, as a collective. And the large turnout is most gratifying as it vindicates the need for this conference which cannot succeed without every judicial officer's participation and support.

The theme of the conference, which is "Towards a single, effective and fully independent judiciary", aptly picks up from where we left things in 2011. That conference, in much the same way as this one, aimed at reviewing and reflecting upon the challenges which faced the judiciary and how the accessibility and effectiveness of the courts could be enhanced. It started by properly acknowledging the significant strides made since the dawn of democracy, in 1994, in transforming the judiciary of the apartheid regime, which was characterized by an unjust judicial system that aided and abetted the implementation of discriminatory laws and policies manufactured by that abominable system; a judiciary which was enjoined to interpret and enforce unjust laws without questioning their violation of the principles of justice and basic human rights and which had no autonomy as the functions of the courts were mainly governed by the administrative state agency and judicial decisions were influenced by political pressures.

Indeed, the advent of the constitutional dispensation introduced a new kind of a judicial system — a judiciary that is independent from other arms of government and is accountable only to the Constitution and the law, which it must apply impartially and without fear, favour or prejudice. As the custodians of the Constitution and the law, our courts are vested with enormous powers by the Constitution to ensure that there is no abuse of state power by other organs of state and that there is proper observance of the rule of law by all persons, state institutions and public and private entities. Judicial independence — which has two components: individual independence and institutional independence respectively referring to the ability of judicial officers to act independently and impartially and the existence of structures and guarantees to protect courts and judicial officers from interference by other branches of government<sup>1</sup> — is thus of utmost importance for the courts to effectively play their crucial role and conserve an impartial judicial process. It also reinforces the confidence and the respect of the public which the judiciary serves in the functioning of our courts. It is therefore imperative that the judiciary runs its affairs independently, and with credibility and integrity, in order to preserve its legitimacy in society.

To this end, to ensure the proper functioning of our democracy and respect for the rule of law, our Constitution unequivocally guarantees the independence of our judiciary by not only vesting judicial authority in our courts<sup>2</sup> but by also obliging organs of state through legislative and other measures to assist and protect the courts so as to safeguard their independence, dignity, impartiality, accessibility and effectiveness. This is necessary because as former Chief Justice Ngcobo pointed out, the independence and impartiality of the judiciary are not the private rights of individual judges, but are the human rights of citizens protected by section 34 of the Constitution, which gives everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum<sup>3</sup>. And so, the chief concern of this conference, in sum, which it will examine closely, is whether there is sufficient protection and support for judicial independence in South Africa.

The conference of 2011 was convened following an observation which holds true today, that despite the tremendous transformation which our justice system had undergone, it was still not as efficient, effective and accessible as it should have been, hence the need for its review, to assess the logjams to an ideal justice system and find solutions to achieve it. Chief Justice Ngcobo described this ideal justice system as one 'that is just in the results ... it delivers; that is fair to all litigants...; that is inexpensive; that delivers results in the shortest possible time; that people who use it understand; that responds to their needs; and that is effective [because it is] adequately resourced'. He then identified three key challenges — the need to equip our courts with adequate facilities and properly trained administrative personnel who would be able to deal with the rapidly increasing volume of complex litigation in our courts; the need to address the problems of cost and delays in our justice system and develop a just, fair, inexpensive justice system that is understandable and responsive to the needs of its users.

These key challenges were extracted from an exploration of a wide range of issues — judicial independence and sustaining the confidence of the public in the judiciary, enhancing court efficiency, including judicial case management and performance measurement, the use of information technology to enhance the efficiency of the courts, alternative dispute resolution mechanisms, including court based mediation and restorative justice, court administration, judicial education and others.

<sup>1</sup> The judicial authority of the Republic is vested in the courts.

<sup>2</sup> The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

<sup>3</sup> No person or organ of state may interfere with the functioning of the courts.

As I said earlier, these are essentially the very issues which concern us today. Although there has been marked progress in respect of a few of them, (such as judicial case management and performance measurement, alternative dispute resolution and judicial education) in the sense of laying the foundations, several fundamental and pressing challenges, which adversely impact the functioning of our courts and the delivery of justice, remain unresolved.

For the achievement of our institutional independence, former Chief Justice Ngcobo strongly advocated for the development of a judiciary-based court administration model because he, and indeed all of us believe, as he put it, that ‘the capacity of the courts to deliver justice can best be secured by placing the administration of the courts under the ultimate control of the judiciary, which is responsible for the delivery of justice’<sup>4</sup>.

Under the historical governance system of the judiciary, the court administration of both the Superior Courts and the Magistracy was controlled by the executive. The establishment of the Office of the Chief Justice (the OCJ), as a national department to provide support to the Chief Justice as the leader of the judiciary, was a crucial and welcome intervention undertaken by key role players, led by Chief Justice Ngcobo and former Minister of Justice Radebe. It signaled a paradigm shift, which was aimed at affirming and advancing the independence and effectiveness of the judiciary and was a critical step to eliminate perceptions that courts were still under the influence of the Ministry.

However, there still remains a long way to go towards achieving what was ultimately intended in this exercise. One of the key objects for the establishment of the OCJ was the creation of a platform for the implementation of the judicial reforms that will improve service delivery and address the administrative challenges that have existed in the judiciary over the years<sup>5</sup>. The establishment of the OCJ, which was tellingly effected by way of a Presidential Proclamation<sup>6</sup> and not by legislation, was just the first rung of a transitional process which would take place in three phases, first by the establishment of the OCJ as a national department located within the public service to support the Chief Justice as the head of the Judiciary and the head of the Constitutional Court; secondly (b) by the setting up of the OCJ as a fully independent entity; and lastly, by the establishment of a structure to provide for judicially-led court administration<sup>7</sup>.

The current, unfortunate reality, however, is that the OCJ is yet to move beyond the first phase. Although it has taken over broad areas of the administrative functions of the Superior

Courts, the executive still maintains control over the budget and financial management of the judiciary, which is the heart of the power and ability to meaningfully run anything at all. This state of affairs keeps the judiciary firmly in the grip of the executive.

The second layer to this challenge is that the Department of Justice and Constitutional Development is still fully responsible for the court administration of the magistracy, including the establishment of magistrates courts and the appointment of magistrates and support staff.

Chapter 8 of the Constitution envisions a single judiciary that is led by the Chief Justice who bears the responsibility to establish norms and standards for the operations of all the courts in our country<sup>8</sup>. Encouragingly, all indications are that the creation of a single judiciary with a fully integrated system, structures and leadership, which has been debated at various forums for many years now, has the support of the key role players, in particular, the magistracy and the executive.

Speaking at various platforms on behalf of the Chief Magistrates Forum of South Africa and Judicial Officers Association of South Africa (JOASA), of which he was respectively Chairperson and President, and as the Africa Regional Group Representative of the International Association of Judges, Judge Thulare, has asserted on a number of occasions that a single judiciary would advance judicial independence of magistrates and would help them, as part of the judiciary, to uphold the rule of law and enhance access to justice.<sup>9</sup>

Addressing the magistrates on the same subject at a JOASA Annual General Meeting in January 2014, Deputy Minister Jeffery of the Department of Justice and Constitutional Development<sup>10</sup> spoke about the role of his department in bringing about a single judiciary. He said that freeing the magistracy from executive control has been a gradual process which was initiated by the enactment of the Magistrates Court Act and the removal of magistrates from the Public Service and his department’s governing structures. The Deputy Minister contended that a complete overhaul of the Magistrates’ Court Act is long overdue and that a new Act is necessary to establish fully integrated lower courts as part of the judicial system.

But that was almost 10 years ago and nothing has happened in the intervening period to realize this critical vision of a unitary judiciary which most, if not all, of us agree would promote the efficiency of the judicial system, better enhance transparency and accountability in its functions and, most

<sup>4</sup> Chief Justice S Ngcobo ‘Enhancing access to justice: The search for better justice’ Access to Justice”, Speech delivered at Conference 6 July 2011 16

<sup>5</sup> [www.judiciary.org.za/images/establishment/Establishment-of-the-OCJ-2010-2013.pdf](http://www.judiciary.org.za/images/establishment/Establishment-of-the-OCJ-2010-2013.pdf)

<sup>6</sup> Proclamation 44 GG 335500 of 23 August 2010.

<sup>7</sup> [www.judiciary.org.za/images/establishment/Establishment-of-the-OCJ-2010-2013.pdf](http://www.judiciary.org.za/images/establishment/Establishment-of-the-OCJ-2010-2013.pdf)

<sup>8</sup> [www.saflii.org/za/journals/DEREBUS/2014/29.pdf](http://www.saflii.org/za/journals/DEREBUS/2014/29.pdf)

<sup>9</sup> See for example, D Thulare, “Magistrates deserve a seat at the table reserved for the Judiciaries of Africa within the Commonwealth”, Asserting Judicial Authority, Advancing Judicial Independence and Insulation of Magistrates from State Interference: Notes from South Africa

<sup>10</sup> <https://www.gov.za/news/speeches/deputy-minister-john-jeffery-judicial-officers-association-south-africaannual>

importantly, access to justice. Although we have recently seen the Magistrates Court Amendment Bill and the Lower Courts Bill, a cursory reading of their contents shows that they are not directed at an integration of the magistracy with the rest of courts and will therefore not assist even if they are ultimately promulgated.

The magistrates have long lamented the unfortunate fact that their sector has not entirely shaken off its unfortunate legacy acquired from the apartheid system, of being a mere extension of the public service and the terrible neglect it has suffered over the years. We are all aware of that neglect — the dire lack of resource provisioning, from critical key court personnel such as interpreters, clerks of the court and law researchers and secretaries, to safe and secure court buildings, important court equipment such as recording equipment without which cases cannot be adjudicated, functional libraries, basic tools of trade and many other vital resources which are necessary for a judicial officer to properly adjudicate a case and produce a just, quality decision. And while it may be argued that the superior courts have their own serious struggles to access critical resources, their situation under the administration of the OCJ is infinitely better than the plight of our magistracy.

There is a firm basis for the view that there is an urgent need for a speedy creation and implementation of the necessary policy and legislative measures that will finally bring the magistracy — which is the port of entry for and, according to the statistics, adjudicates 95% of this country's civil and criminal cases, and generally deals with the most disadvantaged members of our society — within the fold. It is only then, when we have a unitary court system in which the magistracy is fully subsumed as part of the judiciary in which it has a real voice, that we will have fulfilled the demand of our Constitution for a single judiciary.

The challenges I have outlined above are issues of major reform that one acknowledges will likely require incremental implementation and may not be achieved in the short term. There are, however, many other challenges with which our court system continues to grapple, which require immediate attention. The sharp rise of crime and litigation, in the face of a shortage of judges, has had an adverse effect on the performance of the courts, which are consequently inundated with backlogs and struggle with delays in the finalization of matters and delivery of reserved judgments.

The judicial system has been hamstrung by a woefully inadequate infrastructure and poorly maintained court facilities for many years and its severe technological deficiencies, which were thrown into sharp relief during the COVID-19 pandemic when court operations had to be conducted remotely in the face of poor digital resources and an unreliable network, persist to this day. These challenges have a most negative impact on access to courts and expeditious administration of justice.

There are other challenges posing a serious threat to judicial independence with which the judiciary has had to contend over the years, including unsubstantiated accusations from certain quarters of judicial capture, bias against the state, judicial overreach and others. Another one is the erosion of judges' remuneration over the past decade, in flagrant breach of the express provisions of the Constitution in terms of which a judge's remuneration may not be reduced. This is a matter of extreme concern as it imperils the judiciary's ability to attract the best candidates to the bench and threatens a crucial component of judicial independence. Individual and institutional independence is protected by security of tenure, financial security and administrative independence which insulate judges from the temptation of making extra money elsewhere and the improper influence which may arise<sup>11</sup>.

These challenges, and there are more, all need urgent attention. Therefore, as envisaged by this conference, the development and adoption of a model that will provide for a judiciary-led court administration for all courts, a model that will facilitate the resolution of all the challenges faced by the courts by the judiciary itself, to ensure prompt and effective administration of justice, remains an urgent and imperative task.

But all that said, it is important to also look on the bright side — there is one — and recognise the remarkable progress which our judiciary has made over the years. Despite all the challenges, our courts have made tremendous strides in reshaping and developing our jurisprudence to align with the foundational values of the Constitution in the past three decades. They have played a critical role, through ground-breaking judgments, in respect of wide ranging, important issues in transforming our society to one based on democratic values, social justice and fundamental human rights and promoting access to justice.

The effort to transform the institution, which previously excluded black and women lawyers arising from the systemic inequalities perpetuated by the apartheid regime on racial and gender bases, has garnered significant achievements. The Judicial Service Commission, which was established to fulfil the constitutional imperative, among others, of a transparent, representative system for appointing judges to the superior courts for the creation of a judiciary that reflects broadly the racial and gender composition of South Africa, has played a critical role in the process of ensuring that the judiciary competently fulfils its constitutional obligations while upholding the foundational values of non-racialism and non-sexism upon which our democracy is based. And while the body has had its own challenges over the years, some which will be examined during the conference, it has worked hard to improve its processes, by developing the necessary guidelines and fine-tuning its selection criteria in order to deliver on its constitutional mandate.

Today, the South African judiciary boasts a magistracy that has achieved race and gender diversity and has a healthy number

<sup>11</sup> CH Powell, "Judicial Independence and the Office of the Chief Justice", *Constitutional Court Review* 2019 Vol 9, 497-519 at 497

of women in leadership positions. The superior courts, whilst not as successful, are getting there. At the last count there were 248 judges in total — 120, 48% are black; 30, 12% are coloured; 75, 30% are white and 23, 9% are Indian. Of these 248 judges, 113, 46% are women. And in a number of the Divisions of the High Court — the Eastern Cape in Bhisho and Mthatha, Free State in Bloemfontein, Gauteng in Pretoria, KwaZulu-Natal in Durban, Mpumalanga in Middelburg, Northern Cape in Kimberley, North West in Mafikeng — and in the Labour Court, women judges are already in the majority. Recent times have also seen a steady rise in the number of women in the leadership of the judiciary. Two busy Divisions of the High Court, the Kwa-Zulu Natal and Mpumalanga Divisions, are for the first time in our history, led by women Judges-President appointed this year<sup>12</sup>. There are currently five Deputy Judges President<sup>13</sup> across the nine high courts in the country. The Supreme Court of Appeal got its second woman President<sup>14</sup> in June this year and we also have a woman Deputy Chief Justice since 2022. These are major achievements for our institution.

Also worthy of mention is the South African Judicial Education Institute (the SAJEI), which is a statutory body established to promote, amongst other things, the independence, impartiality dignity, accessibility and effectiveness of the courts by providing continuing judicial education and training of judicial officers.

It is fair to say that it is run well and has consistently delivered on its mandate despite some challenges, including the perennial budget cuts. These achievements are made possible by the participation of colleagues, who generously give their time despite tight work schedules and impossible workloads, to design course curriculae, give lectures and generally assist with the running of the SAJEI to maintain its independence.

Most laudably, earlier this year the SAJEI resuscitated the critical aspirant women judges' programme, which was established by former Minister of Justice, Brigitte Mabandla,

in collaboration with the South African Chapter of the International Association of Women Judges some years ago and proved so successful that its graduates from that time are now among the most senior women judges in the country.

The revamped programme provides education and training for women lawyers who aspire to become judges. Importantly, it does not only help with sharpening the candidates' skills in preparation for the judicial bench. It also helps in the quest to level the judicial playing field by deepening the pool of competent women lawyers from which women judges can be sourced. It is most heartening that almost all of its first graduates have already been invited to act as judges and we commend the Heads of Courts for supporting this important project. Unfortunately, this initiative is also threatened by the prevailing budgetary constraints and cannot afford to pay a stipend to self-employed candidates who have to forgo earning an income to attend the training. This example too illustrates the need for the judiciary to manage its own finances.

So, that is more or less the state of our institution Colleagues. I will stop here and leave the rest for the Chief Justice's keynote address and the conference programme. In the meantime, I think we should give ourselves a good pat on the back for our unwavering commitment and loyalty to our country, which is amply evidenced by our fiercely uncompromising protection of the Constitution and the law over the very difficult last while and our unflinching willingness to work extremely long hours, daily, to meet impossible work targets, in most difficult working conditions, for inadequate salaries.

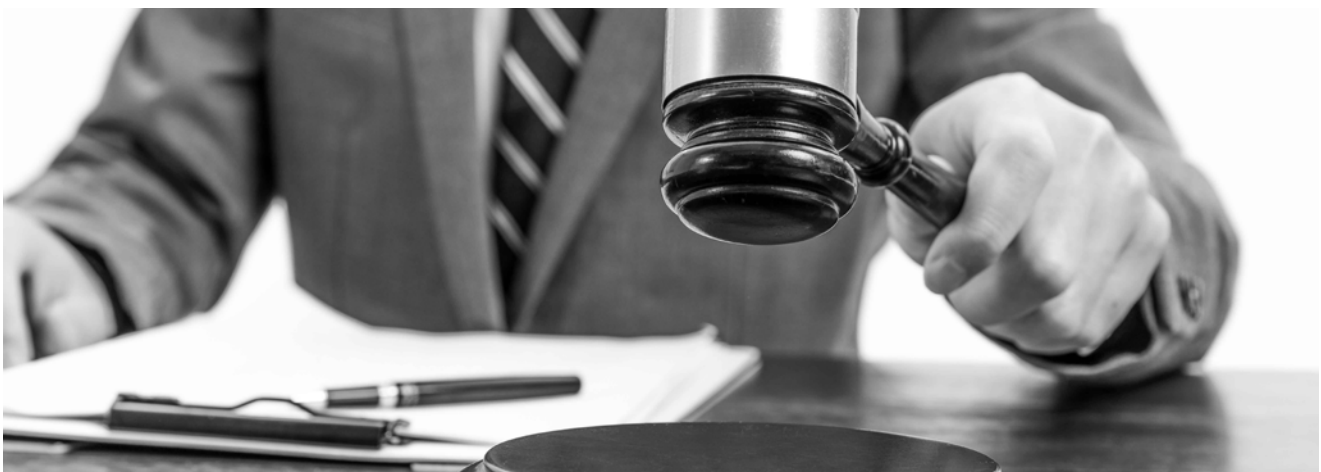
I wish us an enjoyable evening and fruitful deliberations in the next few days.

Thank you. ■

<sup>12</sup> Judges President Poyo Dlwati and Mphahlele, respectively.

<sup>13</sup> DJP Phatshoane of the Northern Cape Division of the High Court; DJP Semenya of the Limpopo Division of the High Court; DJP Mbhele of the Free State Division of the High Court; DJP Goliath of the Western Cape Division of the High Court; and DJP Djaje of the North West Division of the High Court. <sup>14</sup> President MB Molemela.

<sup>14</sup> President MB Molemela.







# THE HAGUE REPORT

Madame Justice B C Mocomie  
Supreme Court of Appeal, South Africa

Preliminary Report on the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention, 10 to 17 October 2023, Peace Palace, Hague, Netherlands.

The HCCH, is an intergovernmental organisation the mandate of which is “the progressive unification of the rules of private international law” (Art. 1 of the Statute).

The HCCH’s mission is to resolve these questions by providing internationally agreed solutions, developed through the negotiation, adoption, and operation of international treaties, the HCCH Conventions, to which States may become Contracting Parties, and soft law instruments, which may guide States in developing their own legislative solutions. These Conventions and instruments provide clarity and direction in cross-border relations across three main areas:

- International Family and Child Protection Law
- Transnational Litigation and Apostille
- International Commercial, Digital, and Financial Law

The ultimate goal of the organisation is to work for a world in which, despite the differences between legal systems, persons — individuals as well as companies — can enjoy a high degree of legal security.

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It was founded in 1893 in Netherlands. Its headquarters is in The Hague, Netherlands. Its founder is Professor Tobias Asser. The current Secretary General is Dr Christophe Bernasconi. Dr Bernasconi, of Swiss nationality, first joined the HCCH in 1997 as Secretary, became First Secretary in 2000 and then Deputy Secretary General in 2011. In 2018, he was reappointed for a further term of five years as Secretary General. To date, Dr Bernasconi has presided over the Organisation’s expansion from 74 to 90 Members, as well as the adoption of the 2019 Judgments Convention and the HCCH Principles. He was the architect of the electronic Apostille Programme (e-APP), which has become an integral part of the modern operation of the Apostille Convention. He has visited Africa on many occasions

to make the HCCH more visible in Africa and bring more African countries on board to join the HCCH under a special project”, the Africa project.<sup>1</sup>

### Membership

The HCCH has 90 member States across the world of which eight are African countries: South Africa being amongst the eight.

### Meetings

A respected forum for effective multilateralism, the HCCH brings nations together to cooperate, through a series of regular meetings, in the joint development of mutually beneficial legal frameworks. The main purpose of **Plenary Sessions (or Diplomatic Sessions)** is the negotiation and adoption of Conventions and other instruments.

**Special Commissions**, composed by governmental experts, meet in between Plenary Sessions to prepare draft Conventions to be considered for adoption, as well as to review the practical operation of existing Conventions and recommend improvements in their implementation.

**Experts' Groups** are exploratory bodies tasked with conducting research on specific new areas of work, while **Working Groups** are bodies established to develop concrete solutions in relation to existing or potential future Conventions, such as draft provisions, principles or guides. Together, the meetings of the Plenary Sessions, Special Commissions, Experts' Groups, and Working Groups drive forward the work of the HCCH<sup>2</sup>

### Eight Meeting, October 2023

From 10 to 17 October 2023, the Eighth Meeting of the Special Commission (SC) on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention was held at the Peace Palace in The Hague. The meeting was attended by 471 delegates, in person and via videoconference, representing HCCH Members, non-Member Contracting Parties, and Observers, as well as by members of the Permanent Bureau (PB).

South Africa was represented by Justice Baratang Constance Mocomie, Supreme Court of Appeal of South Africa as the Primary Liaison Network Judge of the International Network of Judges and the Central Authority of South Africa Advocate Nthabiseng Thokoane.

The SC reviewed and clarified a number of issues in relation to the practical operation of the 1980 and 1996 Conventions,

based on information submitted by Members and Contracting Parties in response to questionnaires. The SC confirmed that, in general, both Conventions are operating effectively.

In relation to the 1980 Convention, delegates discussed, among other topics, questions in relation to the processing of return applications and the enforcement of return orders, as well in relation to the request of rights of custody and access / contact. The SC recommended that Contracting Parties experiencing delays, which remain a significant obstacle to the operation of the Convention, review their existing processes. The SC assessed the application of the Article 13(1)(b) exception to the return of the child in the context of domestic violence, supporting the proposal of the Secretary General to hold a forum on this topic that would allow for discussions amongst organisations representing parents and children, and those applying the Convention. Noting progress made in relation to the revised Request for Return Recommended Model Form and Request for Access Recommended Model Form, the SC invited the PB to convene a Group of interested delegates to assist in their finalisation.

In relation to the 1996 Convention, the SC discussed issues relating to **jurisdiction**, including change of *habitual residence*, the definition of “*urgency*” under Article 11, and the *transfer of jurisdiction*, as well as *coordination of jurisdiction* issues and *direct judicial communications*. It also provided guidance on the determination of *parental responsibility and rights of custody*; the *recognition and enforcement of measures of protection* and the *placement or provision of care of the child in another Contracting Party* under Articles 3(e) and 33. Mediation and international family relocation were also discussed in the context of both the 1996 and the 1980 Convention. The SC also encouraged States that have not done so yet to join the 1980 and the 1996 Conventions.

The SC adopted 103 Conclusions & Recommendations, which are available on the HCCH website in [English](#), [French](#), and [Spanish](#)<sup>3</sup>.

A considerable moment was dedicated to Domestic Violence within the context of the 1980 Convention under the article 13(1)(b). Concerns were raised by almost all the countries that in the application of the 1980 Convention, the core principle of “prompt return” inevitably undermines the violence that the “abducting parent” would have endured before they took the unlawful step of abducting their child with no recourse of the law agencies available in all countries including where they would absconded to, the receiving country. This permeated through when the receiving country considered to return the abducting parent to face the music; what measures to put in

<sup>1</sup> HCCH website (downloaded 7 November 2023).

<sup>2</sup> HCCH website (downloaded 7 November 2023)

<sup>3</sup> Extracted from the website of the Permanent Bureau of the HCCH with permission of the HCCH.

place to ameliorate the harsh consequences they may face including prosecution for contempt of court which in some countries can be imprisonment<sup>4</sup>.

In his opening address at the Commission on 10 October the Secretary General acknowledged the presence of Hague Mothers; a FiLiA legacy project<sup>5</sup>. In a booklet presented to the delegates as they walked into the secure and peaceful precinct of the Peace Palace which hosted the Commission, they demanded that the Commission should address the plight of women/mothers who fled their homes due to domestic violence and then criminalised when they fled their homes, through the Hague Convention. They believed that men used the Hague Convention to take their children even where they had no parental responsibilities over them. If left unattended, the Hague Convention could easily be used for purposes other than it is intended for and may in the process breach several international treaties and protocols.

Subsequent to this successful meeting, the Secretary General Christopher Bernasconi posted on the HCCH website<sup>6</sup> and LinkedIn<sup>7</sup>.

"It has been a great pleasure to see over 470 delegates, representing almost 80 jurisdictions, come together for a single purpose – reviewing the practical operation of the 1980 Child Abduction and 1996 Child Protection Conventions. We addressed a wide range of important and often delicate issues relating to the operation of these two important child's rights instruments, managing to bridge differences in national approaches and interpretation to provide us with a clear way forward. I was particularly pleased to propose a Forum on domestic violence in the context of Article 13(1)(b) – a format which should allow for an open discussion amongst all interested parties. I'm very much looking forward to this important event. My sincere thanks go to the co-Chairs, Dr Daniel Trecca from Uruguay and the Hon. Justice Victoria Bennett from Australia, to the delegates, to the entire family law team of the Permanent Bureau, and to all who contributed to the success of this important meeting!"

The Secretary General invited member States to continue the discussion in their respective countries in preparation of the meeting of the Forum in 2024, not to wait for the next sitting of the Commission in five years. ■

<sup>4</sup> Copied with permission of the HCCH from the HCCH website.

<sup>5</sup> One the aims of Hague Mothers is noted as "to end the injustices created by the Hague Abduction Convention; especially for mothers and children who are victims of domestic violence."

<sup>6</sup> HCCH website (downloaded 7 November 2023).

<sup>7</sup> HCCH – Hague Conference on Private International Law.



Judges attending the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention, held from 10 to 17 October 2023, at the Peace Palace in the Hague, Netherlands.

# FAREWELL TO JUDGES OF THE KZN DIVISION



The KwaZulu-Natal Division of the High Court bade farewell to three Judges who were discharged from active service recently. A farewell function was held for them on 30 November 2023 and we feature an address made by two of the retiring Judges, Deputy Judge President M I Madondo.



## JUDGE PRESIDENT M I MADONDO

Deputy Judge President of the KwaZulu-Natal Division of the  
High Court



## JUDGE M S MOODLEY

KwaZulu-Natal Division of the High Court



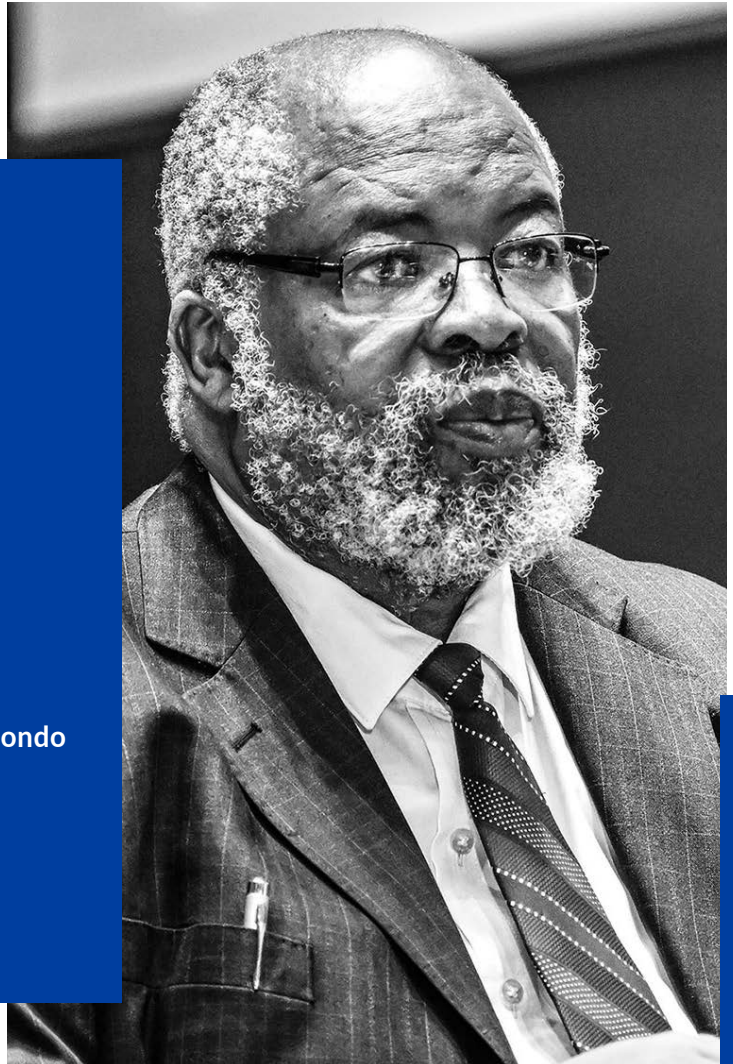
## JUDGE G LOPES

KwaZulu-Natal Division of the High Court



# I HAVE RUN THE RACE AND WON THE PRIZE

**Deputy Judge President Mjabuliseni I Madondo**  
KwaZulu-Natal Division of the High Court



I would like to start by thanking God, the Creator of the universe, mainly, for allowing me to be conversant with Him; (2) directing me towards a career that I was ordained to pursue and most of all for guiding and protecting me throughout my career.

## My journey in the legal career

Before I go any further, I would like to warn you that my speech today will deliver some hard truths but it is not intended to ruffle any feathers, although that's inevitable but I want to make it clear that that is not my intention. My objective is just to give a graphic description of my journey and highlight key milestones that depict what it took to get to where I am today.

My journey in the legal career has been long and arduous. It has not been smooth sailing but rather very turbulent. On my part it required a great deal of resilience, endurance, perseverance, patience tolerance as well as acting with understanding, restraint and rationality. As a result, I have both pleasant and unpleasant memories.

Being doubted by some members of the Bar did not deter me or shake my confidence, instead I listened to my own voice which told me to not allow anybody to determine my future ”

With that said, my journey to getting here was marred by racism, discrimination and prejudice that made it nearly impossible to be where I am today but it's also worth noting that it made me the person I am today.

### Public prosecutor

In 1987 I was appointed public prosecutor by the Department of Justice and stationed at Stanger Magistrate's Court. According to Justice policy I was entitled to be allocated accommodation in the Justice apartment. But, a white magistrate, Mr Fraser, denied me such entitlement, stating that he did not know that Justice would send him a black public prosecutor. As a result, I was then forced to seek shelter in a shanty town, eNtshawini, outside Stanger and that's where I remained until I was transferred to Pietermaritzburg Magistrates' Court (on the pretext that, that was where the head of court had found me accommodation). However, I would later find out that was false. Nevertheless, Fraser's discrimination in such a blatant manner prepared me for the journey that laid ahead of me.

### Becoming an Advocate

On 21 November 1988, I was admitted as an advocate of the Supreme Court of South Africa (now High Court). In January 1991 I enrolled as a pupil at Pietermaritzburg Bar. I was the only African pupil there. Some white members of the Bar told me to my face that I would not pass my Bar examination. Should I happen to pass, I would for sure not get any briefs. To their disappointment, I not only passed the Bar examination at one sitting and joined the Bar in July 1991 but I also managed to get briefs, mainly, from African legal practitioners and pro deo work. This helped to sustain my practice. For sixteen years of my practice at the Bar I never defaulted paying the Bar fees or expenses. Being doubted by some members of the Bar did not deter me or shake my confidence, instead I listened to my own voice, which told me to not allow anybody to determine my future.

### Elevation to silk status

When I applied for silk status at the Bar in 2004, there was resistance to my application and, consequently, my application was turned down twice, primarily, I believe, because I was an African black. However, on the second occasion I appealed against the decision refusing my application for silk status. I was then subjected to unprecedented interview by three senior members of the Bar in order to determine whether as an African advocate, I was a suitable person to be granted letters patent. To the best of my knowledge, no white applicant for silk had ever endured such an indignity. Further to that, the practices of certain members of white stock were rooted only in criminal or matrimonial matters, but despite all that they had unquestionably been elevated to silk status. To the Bar Council's surprise, the interview resulted in the three senior members endorsing my application for silk as a fit and proper person to be elevated to such status. Hence, on 16 August 2004 the President of the Republic of South Africa elevated my status to senior counsel. This highlighted the fact that I was not being judged based on my performance and competence but rather on perceived shortcomings as well as on the colour of my skin. However, I was not going to accept this, so through determination and perseverance I was able to change the minds of the three senior members and they saw that I was a fit and proper candidate to be elevated to silk status, and that resulted in their decision to endorse my application.

### Appointment to the bench

My application to KZN Bench was once again fiercely opposed by the Bar on the pretext that my appointment would cause division on the bench. The truth was that the objection to my appointment to the bench stemmed from the comment I had made on the

advent of the constitutional dispensation that there was still racial discrimination on the bench and an unequal power relation between black and white legal practitioners. The gravamen for the opposition to my elevation to the bench was rather resentment and racial bias on the part of the Bar, than anything else. While they thought that my appointment to the bench would cause division, what ended up happening was it caused unity. I was welcomed with open arms by everyone.

### Appointment as deputy judge president

In 2016 I was appointed as Deputy Judge President of KwaZulu-Natal Division of the High Court of South Africa but quite strangely my appointment was not formally announced let alone me being congratulated for appointment. Even colleagues who wanted to congratulate me could not do so in the open for fear of reprisal with the exception of Johan Ploos Van Amstel. Prior to the interviews for the position, there were cries by certain members in the high echelon, saying that "let us go and stop Isaac" unbeknown to them that Isaac was unstoppable. The reason for all this, was that I was not the management's preferred candidate for appointment in the position as I was not deemed pliable. This meant that I was on my own, without a mentor, thus I took it upon myself to learn the ropes and this helped me rise to the top of the crop unaided.

### Acting JP

When I was appointed as Acting JP, in this post, my mission was to uplift the disempowered and downtrodden members of the bench by affording them equal status, rights and opportunities with all other members of the bench. However, to my surprise after putting my neck on the chopping block in order for the disempowered and previously disadvantaged members of the bench to get such opportunities, the very same people turned around and chopped my head off accusing me of favouritism and denying them opportunities to progress.

Later when I applied for the position of the judge president, it was yet another rocky journey. So much so that I had to go twice. Much to the glee of my detractors who after my second interview sarcastically asked me whether or not I had recovered from the bruises. I explained to them that to me everything happens according to the will of God, for the man proposes and God decides, therefore, I did not suffer any bruises at all.

Despite all these trials as well as humiliation, I remained calm and collected, I acted with restraint and rationality and became even more determined than ever before to achieve my objectives. What provided a backdrop to this was that I was not only fully aware, but also appreciative of the fact that if you hold a position of authority, you become a target.

Therefore, I don't hate anyone of them and nor do I hold any grudges against any of them. Instead, I turned all the bad things there were saying about me into a strong and useful weapon in my hands and prospered. For retaliation and judgment are not for me but for God, our Lord.

### Persons who contributed to my success on the bench.

Through my ups and downs, there were some people who unwittingly pushed me to the top, thereby contributed to my resounding success. Even those who made it their duty to hate and belittle me they too in some way contributed to my success in a meaningful way. For one, they kept me on my toes and two they

pushed me to devise ways and means how to outwit and outlast them, fair and square, in their endeavours.

#### The people I would like to thank are as follows:

##### **Anton Van Zyl**

Fought tooth and nail alongside with me to get me elevated to silk status and later to the bench. It is now history that in both instances, we emerged victorious.

##### **The Former DJP Levisohn**

Levisohn DJP had a hand in the improvement of my judgments by editing and reviewing them and making constructive comments on them.

##### **Judge President Tshabalala**

The former Judge President Tshabalala offered me an opportunity to act on the bench. During my interview at the JSC he lauded my skills in judgment writing and commented referring to the judgment in which Levisohn DJP had remarked that I did everything good in it except to state that the judgment was reportable.

##### **Judge President Msimang**

The former JP Msimang was very instrumental and actually played a major role in upskilling me and sharpening my skills in judgment writing. Former JP Patel helped me by providing me with judgment writing literature including those of foreign jurisdictions. He allocated me a large number of cases and some of which were very complicated but I did not complain nor mourn about the amount of work allocated to me as I regarded that as a learning curve. Instead, I happily, honestly and diligently did the work assigned to me because I believed I was equal to the task.

##### **Judge President Jappie**

The former JP Jappie had confidence in me in that he assigned me to complex matters. This extensively enhanced my legal skills and talent in judgment writing.

##### **Ester Steyn / Rob Mossop**

Other people who helped me by editing and making invaluable comments on my law books were Ester Steyn and Rob Mossop. These people and others have helped me to become a prolific book writer. Such an exercise has resulted in the publication of the two law books, namely; *The Role of Traditional Courts in The Justice System (Acting within the provisions of the Constitution)*, 2017, As we speak, together with Lexis Nexus I am rolling out my second law book, *Customary Law in Constitutional Democratic South Africa*, which was released yesterday.

This new partnership is going to take me and my brand to a new stratosphere and I am excited about that. I would also like to personally thank the Deputy Chief Justice, Mandisa Maya, for her contribution to the preface of this second book, I am indeed grateful to her.

#### **Notable Achievements**

I feel privileged and honoured to have served on the bench in spite of concerted efforts by some evil forces to thwart my elevation to the bench. Unfortunately, none of the people who vigorously opposed my application made it to the bench to witness all this. Nothing is more fulfilling to me than my service on the bench as a judge, deputy judge president and an acting judge president

My mission was to uplift the disempowered and downtrodden members of the bench by affording them equal status, rights and opportunities with all other members of the bench ”

(defacto and de jure).

#### **Here are some of my notable achievements I want to also mention:**

##### **ConCourt**

My acting stint in the ConCourt was without blemish, and it was not only an eye opening exercise, but it put me in the highest calibre when it comes to the application of law and it taught me how to properly analyse and apply legal principles. In fact, it raised the bar in my judgement writing. I am forever indebted to Chief Justice Zondo for affording me such an opportunity.

##### **African Bar Association**

The African Bar Association has also been my proudest moments and I am grateful for their recognition of my contribution as an advocate, judge and the leader of the division both in my capacities as the deputy judge president and acting judge president.

##### **UNISA**

Furthermore, I am much elated with the recognition of my contribution in the legal career by the university of South Africa (Unisa), a world renowned academic institution, which conferred upon me the honorary doctoral degree (LLD) most to the chagrin of all those who have consistently been hell-bent to denigrate me, undermine my efforts and nullify my achievements. The conferment of an LLD, *honoris causa*, seals all. I am much thrilled with all these outcomes no matter how minute it might have been in the eyes of my detractors.

#### **Acknowledgements**

I am indebted to Justices of the Constitutional Court, Madam Justice Tshiqi and Mr Justice Madlanga, Mr Justice Mossop of KZN Division and the Chief Magistrate Ngubane of Durban (administrative region 6) as well as the members of the legal profession (of both the bar and side bar) for accompanying me and my family to Unisa in order to witness such a historic event and celebrate that milestone with me, they really made my day. Accordingly, it does not take a genius to know or realise that all these accolades go to KZN Division and the judiciary at large, not to me as an individual as some may think so.

Outside of Judiciary, I have also been actively involved in various community outreach programmes and empowerment initiatives which were carried out under the banner of the BLA-Nadel Empowerment Committee. I fought gallantly and achieved all what I had set out to-do. Even though some have not been achieved according to my original plan, but what remains and most important to me is that they have been achieved, anyway, as part

of my objectives.

All in all, I can rightly claim that I have run my race and won the prize. I thank God for granting my prayers that I exit the bench at this high note, much to the disappointment of certain people who harboured wishful thinking that I would exit as a nonentity.

#### In closing

In closing, as you know, on 24 November 2023 I was automatically discharged from active service as a judge, but not retired, as I was turning 70 years of age. According to Judges' Remuneration and Conditions of Employment Act, 2001 the total years of service is 17 years and 24 days. I have now entered the last phase of my years of active contribution in life. Judge President, I am available for service, if the need arises, for a period not exceeding three months in a year only on prior arrangement. God willing, I can assure you that for the next decade, I will still be relevant and active writing more books, which you are more than welcome to go and buy.

On the whole, I will miss you colleagues for various reasons and your anecdotal stories. ■







# MY YEARS ON THE BENCH HAVE GIVEN ME FULFILMENT AND SATISFACTION

JUDGE M MOODLEY

Judge of the KwaZulu-Natal Division of the High Court

Had I anticipated that there would be such an eloquent eulogy extolling my virtues on my retirement, I would have retired earlier. On the other hand, this array of acknowledgments has boosted my self-esteem and self-worth to such an extent that I am wondering how the KZN judiciary is going to survive without me. However having heard the pre-emptive assurances of the JP, it is clear that not only will this bench survive but the KZN judiciary will thrive.

Thank you for permitting me to preside for a few minutes over this august gathering. As we are approaching the festive season, it seemed appropriate to be guided by a favourite read, Dickens' A Christmas carol' except that I will not be evoking the three spirits of Christmas. But I intend to touch briefly on a few relevant facts in my past and present and then look to the future.

My professional career has been a meander. I had 2 ambitions – as a child, I planned to travel through Europe while teaching English in various European countries. Later, as I grew up in a politically turbulent era, I decided to be a lawyer because I believed in the intrinsic power and impact of words and language. In fact the scholarship I won from the English Academy of SA which enabled me to attend university was awarded on the strength of an essay entitled "The pen is mightier than the sword".

My appointment was both gratifying and nerve wracking, particularly because I was acutely aware of the acid test I had to pass both among colleagues and members of the Bar ”

So I was fortunate to be able to tailor my undergraduate studies to be consistent with my dual ambitions. But as I reached post grad, I realized that a career in law was dictated by my financial constraints. However, exposure to the law faculty and attendance at one day's LLB lectures so effectively dissipated my resolution to pursue a law degree, that the very next day I accepted the invitation to enroll for an honours degree in English, which was paid for by my scholarship. That changed the course of my professional career and I remained in academia for 6 years. As one of the youngest junior lecturers at the time, it was both challenging and rewarding, and I was exposed to a vista of experiences in art, history and literature I had only dreamed of. But my career was unsustainable in the climate that prevailed at the University of Durban Westville and I resigned at the end of 1981.



Thereafter I assumed the most significant and rewarding role in my life: I became a mother. But I also enrolled at Unisa for further studies in education and law. So while juggling the responsibilities of motherhood, I completed my studies and entered practice. Fortunately while practicing as an attorney and conveyancer, my passion for education found an outlet at the School for Legal practice and LEAD, until I was appointed to the Bench.

My appointment was both gratifying and nerve wracking, particularly because I was acutely aware of the acid test I had to pass both among colleagues and members of the Bar as I was little Ms Nobody from a small suburban attorney's practice. However I was fortunate, in that apart from the odd 2 or 3 supercilious, patronizing and conservative individuals, I received support and guidance rather than detraction and disparagement. I also found that my previous professional and life experiences stood me in good stead, giving me the confidence and insight I needed to deal with the rigours of the bench, and to develop an invaluable collegiality with my fellow judges.

My 15 years on the bench have given me much fulfilment and satisfaction which has generally overridden the stress and anxiety that infuses the Bench. Despite my complaints and irritation with the workload which has steadily increased over the years, I am and will eternally be grateful to God for giving me this opportunity to serve my people in a most gratifying way, and allowing me to fulfil my ambition in a manner I never dreamt of or was even possible when I decided on a career in law. I initially gave myself 2 years to decide whether I was a worthy fit for the judiciary, and I stayed 15 years because of the encouragement I received and the satisfaction I derived.

So much for the past. As for the present, since my retirement I have been incredibly busy with both personal and professional matters but I did manage to fit in a month in the Netherlands.

Despite my complaints and irritation with the workload which has steadily increased over the years, I am and will eternally be grateful to God for giving me this opportunity to serve my people ”

And now what of the future? Quite simple really:

First and foremost I want to be there for the people who have stood by me over the years and been my pillars: some are present — Thigam and Moga Pillay, Ann Ananth, unfortunately Ann's husband one of my dearest friends Dr Les Ananth could not be here; my cousins Senbie and Malini who represent my beloved family;

Others who were unable to be here but I must acknowledge are my siblings, Danesh and Nesu, my children, and my mom and dad for their unfaltering love and unstinting encouragement. For my moral compass and character I pay tribute to my maternal grandparents who were in loco parentis for a large part of my childhood.

Second — I intend to finally find the time to be with family and friends who I have fobbed off for years because of work constraints.

And third — I hope I can travel as much as possible while I can cope physically. I want experiences and adventures that feed my mind and soul.

To my brothers and sisters, thank you for enriching my life and years on the Bench. I wish all of you success and a meaningful and happy future. ■







Judge President T Poyo-Dlwati addressing the guests during the farewell dinner.



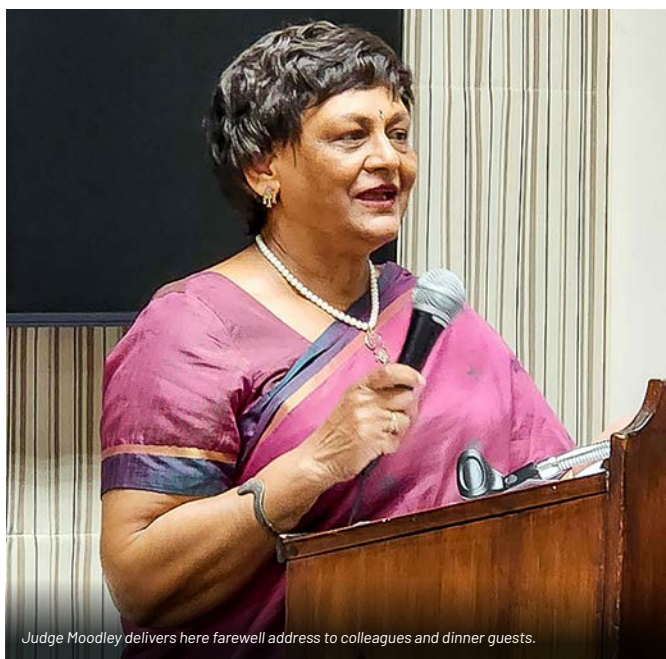
Judge G Lopes one of the celebrants, during his farewell speech.



Judges of the KwaZulu-Natal Division of the High Court gathered to celebrate their colleagues.



Deputy President I M Madondo delivered his farewell speech.



Judge Moodley delivers here farewell address to colleagues and dinner guests.



Acting Deputy Judge President Chili delivered the vote of thanks, and presented the retirees with a gift.





## REGISTRAR FOR JUDGES' REGISTRABLE INTERESTS, MR P GAGAI, BIDS FAREWELL TO JUDGES

Mr P Gagai

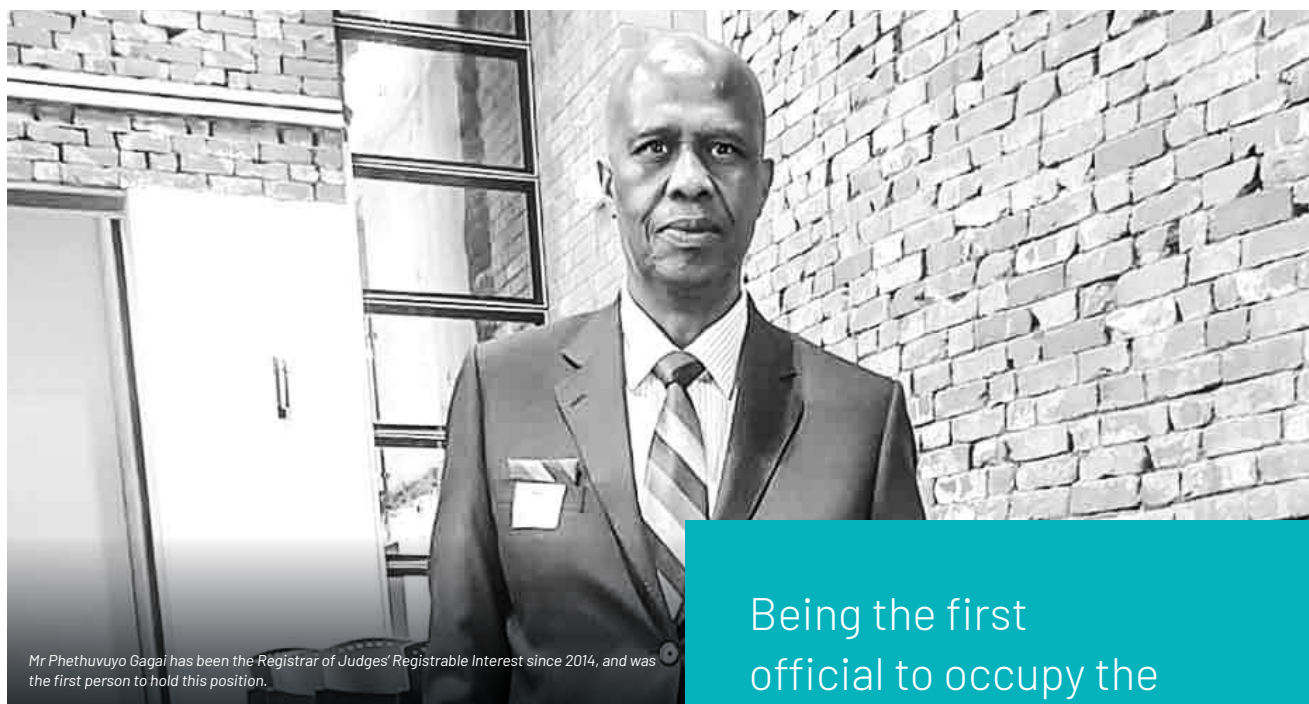
REGISTRAR FOR JUDGES' REGISTRABLE  
INTERESTS

*It was an honour and special privilege to be entrusted with the responsibilities of managing the Register of Judges' Registrable Interests (the Register). I was appointed in 2014 when the Regulations relating to the disclosures of Judges' Registrable Interests came into effect and I will retire at the end of the financial year 2023/2024. It has been an exciting but challenging journey especially at the beginning as the disclosure regime for Judges was new to everyone; it was the first time that Judges in South Africa were required to disclose their registrable interests.*

It has been an exciting but challenging journey especially at the beginning as the disclosure regime for Judges was new to everyone; it was the first time that Judges in South Africa were required to disclose their registrable interests ”

Section 13 of the Judicial Service Commission Act, 1994 (the Act) requires all Judges in active service to disclose their registrable interests and those of immediate family members annually, in the prescribed form. Section 13 (5) of the Act empowers the Minister of Justice and Correctional Services (the Minister), acting in consultation with the Chief Justice, to make regulations regarding the content and management of the Register of Judges' Registrable Interests (the Register).

In June 2013, Parliament approved the Regulations on Judges' Registrable Interests (the Regulations) and the President of the Republic of South Africa subsequently issued a Proclamation dated 20 January 2014, fixing 29 January 2014 as the date on which Judges were required to start disclosing their registrable interests for the first time. Pursuant to the promulgation of the Regulations, Judges in active service disclosed their registrable interests and these were entered into the Register that is kept by the Registrar at the National Office of the Office of the Chief Justice (OCJ).



Mr Phethuvuyo Gagai has been the Registrar of Judges' Registrable Interest since 2014, and was the first person to hold this position.

Being the first official to occupy the position of Registrar, the responsibility to operationalise the disclosure law fell on me ”

Section 13 (1) of the Act mandates that the Minister, acting in consultation with the Chief Justice, appoints a senior official in the Office of the Chief Justice as the Registrar of Judges' Registrable Interests (the Registrar). In February 2014, the Minister, acting in consultation with the Chief Justice, accordingly appointed me the Registrar of Judges' Registrable Interests. Being the first official to occupy the position of Registrar, the responsibility to operationalise the disclosure law fell on me. With the support of the Secretary General of the Office of the Chief Justice, I was able to set up systems and procedures relating to the disclosure process and the management of the Register. In this regard, I thank the Heads of Courts who supported me throughout the phase of establishing procedures to operationalise the disclosure regulations. I also thank all the Judges who cooperated with me during the formative years of the disclosure process. At some point and as part of the building process it became necessary for me to undertake a study tour to Parliament where I met the then Registrar of Members' Interests who introduced me to the process of managing the Member's Interest Register. The knowledge gained from the study tour became a key to the establishment of procedures and processes for the disclosure of Judges' Registrable Interests and the management of the Register.

As a Registrar, I am responsible for opening and keeping the Registrar, of Judges' Registrable Interests, and this responsibility entails the recording in the Register particulars of Judge's registrable interests; amending any entries in the Register when the circumstances of Judges with regard to the previously disclosed interest change. I am also responsible for preparing and submitting an Annual Report to the Secretariat of the Judicial Service Commission (JSC) so that it becomes part of the Annual Report to Parliament. The responsibilities of managing the Register required me to from time to time interact with Judges about their disclosures.

I joined the Office of the Chief Justice (OCJ) in 2012 as a Director responsible for the management of judicial policy and research. Before that, I worked in the Office of the Speaker of the National Assembly in the Parliament of the Republic of South Africa where I was responsible for managing legal research and coordinating oversight responsibilities of the National Assembly over the Institutions Supporting Democracy. Before joining Parliament, I worked at the South African Human Rights Commission (SAHRC) as the head of the Research and Documentation Unit. Before coming to the SAHRC, I worked for the State of Pennsylvania in the USA as a Worker's Compensation Judge where I was responsible for the adjudication of injury on duty and occupational diseases cases.

I am a holder of a Bachelor of Arts in Law Degree (B.A. Law) from the University of Swaziland, a Master of Human Services (MHS) from Lincoln University, State of Pennsylvania (USA), Juris Doctor (JD), and a Master of Laws (LLM) from Widener University, School of Law, in the State of Delaware. The areas of specialty are constitutional law and human rights.

It has been a privilege and a special honour to have been afforded an opportunity to contribute to the discharge of the mandates of the various institutions I worked for, especially the last responsibility of a Registrar of Judges' Registrable Interests. ■



# WESTERN CAPE JUDGE NEL AND JUDGE FRIEDMAN REMEMBERED

Acting Judge President P Goliath  
Western Cape Division of the High Court

*On Tuesday, 24 October 2023, the Judiciary and legal profession paid tribute to the late Judge Friedman (retired Judge President) and Judge Nel (retired Judge) of the Western Cape Division of the High Court, then known as the Supreme Court, Cape of Good Hope Division.*

In attendance at the memorial service were the Acting Judge President, Ms PL Goliath and the Acting Deputy Judge President, A Le Grange. Retired Justices Howie (former President of the SCA) and Brand (Justice of the SCA), retired, former and current Judges of the WC High Court, members of the Legal Profession, family of both Justices and officials of the OCJ.

#### Tributes were provided by:

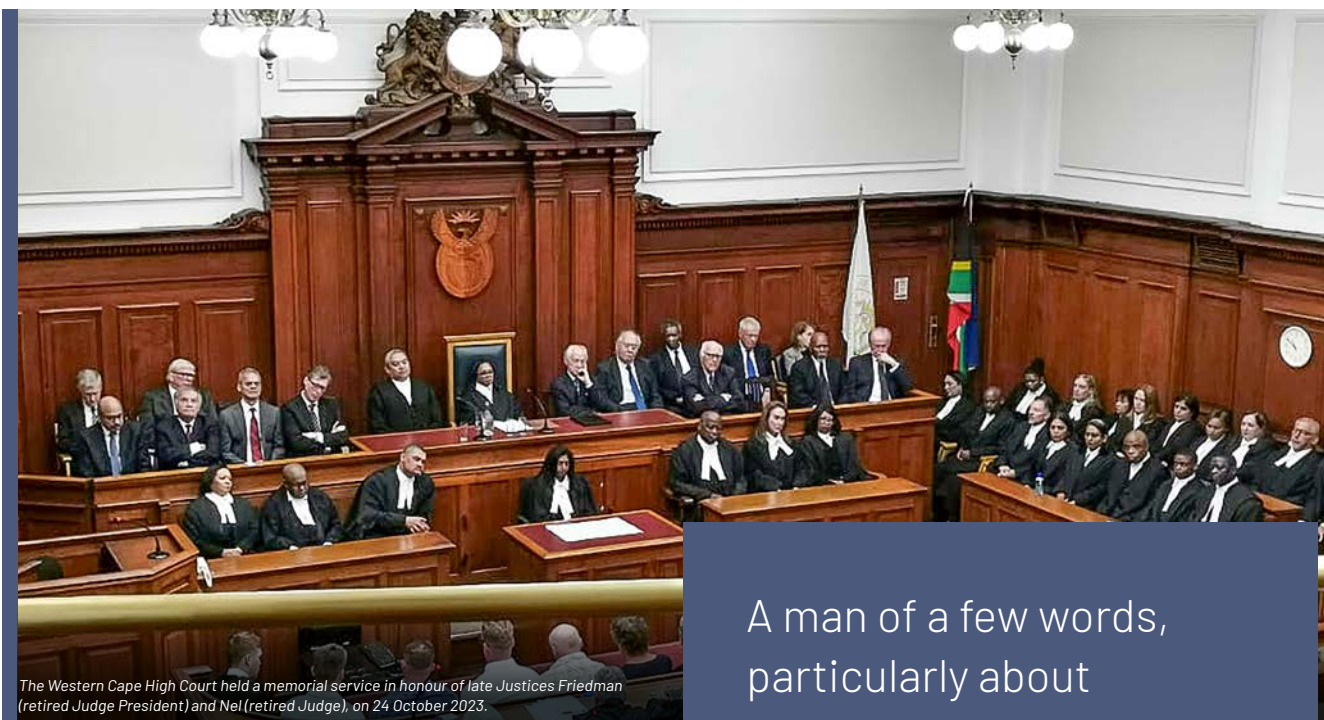
Hon. Acting Judge President Goliath; Justice Howie - eulogy for JP, Gerald Friedman; Justice Brand - eulogy for Judge Hennie Nel; Adv Peter Hodes SC on behalf of the Cape Bar; Adv Carine Teunissen on behalf of the Director of Public Prosecutions; Adv Jannie van der Merwe SC on behalf of the Legal Practice Council; Adv Zuko Mapoma on behalf of the Black Lawyers Association; Adv Michael Donen SC on behalf of NADEL; and Mohamed Salie SC on behalf of Advocates for Transformation in which they paid homage to the Justices and the contribution they made to the profession and society at large.

AJP Goliath referred to the two colleagues as “legal luminaries whose contributions have left an indelible mark on the tapestry of justice and the lives of countless individuals”.

In her introductory remarks AJP Goliath mentioned Justice Nel’s contribution to the 5th edition (2009) Superior Court Practice, which is a standard text on Civil Procedure in the High Courts. Goliath, AJP also mentioned his willingness to always share his knowledge and insights, nurturing the next generation of legal minds and imparting a sense of duty to uphold the highest standards of integrity. His philanthropic endeavours’ touched the lives of many and showcased the depth of his kindness and compassion.

In her remarks she spoke of Judge President Friedman as an advocate, Judge, Judge of Appeal and Judge President of the Western Cape Division. As an advocate, he was a paragon of legal acumen, harnessing the power of words and intellect with grace. He left an indelible imprint by being involved in landmark cases that formed legal precedents and influenced the history of our





The Western Cape High Court held a memorial service in honour of late Justices Friedman (retired Judge President) and Nel (retired Judge), on 24 October 2023.

A man of a few words,  
particularly about  
himself. He was fearlessly  
unintimidated by any  
person or living creature  
but frighteningly  
intimidating”

legal system. Judge Friedman recognised that the law was more than just a set of rules and regulations, but a vehicle for societal progress and the safeguarding of fundamental rights. The Court, under his reign became a symbol of fairness, efficiency, and accessibility. He worked relentlessly to streamline procedures and guarantee that justice was delivered on time. His leadership set a high standard for future leaders in the judiciary. He adopted a compassionate and emphatic approach when adjudicating matters, which reflected his deep sense of humanity.

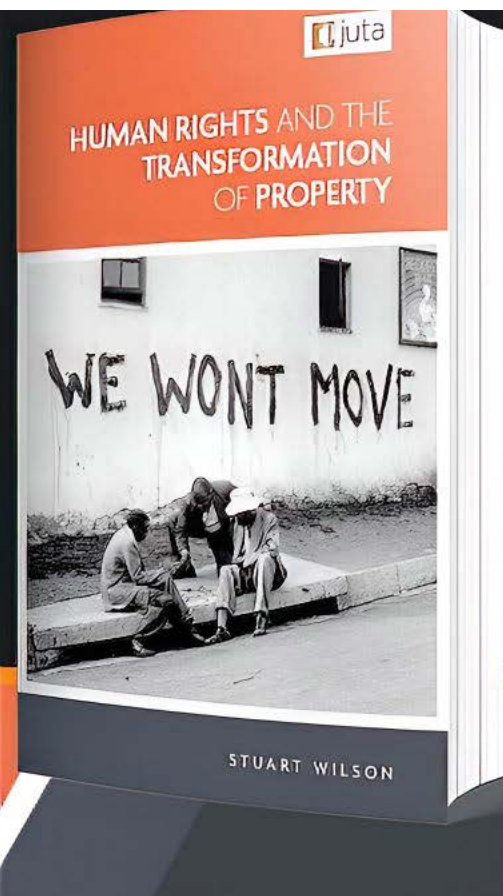
In his eulogy, retired Justice Howie, provided his view on the life of Justice Friedman – *“It was one of the particularly turbulent years in the stumbling progress of this country towards eventual democracy. It was a time when it was more important than ever that as fair, able and steadfast a judiciary as possible stood firm between the imposition of oppressive laws and the people they were sought to constrain. As far as benefit to the public was concerned, his appointment fitted that requirement exactly. It was in keeping with one who viewed it as a matter of principle to accept in order to better serve the country’s people”*.

He went further to note that Justice Friedman’s term as Judge President saw the appointments of the Western Cape’s first Black judges, its first woman judge, and judges from the ranks of academia and practising attorneys. Retired Justice Brand touched on the life of Justice (Hennie) Nel. In his eulogy, he described Justice Nel as *“a man of a few words, particularly about himself. He was fearlessly unintimidated by any person or living creature but frighteningly intimidating”*.

He went on to describe Justice Nel as a lateral thinker with a razor-sharp legal mind who usually approached matters from a different angle. That together with his intimidating presence made him one of the most devastating cross examiners he had ever come across in his career, which also made him one of the most formidable opponents to appear against. He described him

as having the qualities of a good trial judge with an exceptional legal mind and an extensive general knowledge of the law combined with an inherent sense of justice and a healthy degree of pragmatism.

He made mention of his role as the chairman of the Nel commission who looked into the failure of the Masterbond Investment scheme in 1991. Stemming from that commission Justice Nel became one of the top 50 financial figures whose decisions would affect the working lives of the accounting profession. In conclusion Justice Brand stated: *“it is primarily their character -their inflexible integrity, their unflinching courage, their honesty of purpose and of outlook, their breadth of vision – that we remember.”* ■



# HUMAN RIGHTS AND THE TRANSFORMATION OF PROPERTY



**JUDGE  
STUART  
WILSON**

Gauteng Division of the High Court,  
Johannesburg

In *Human Rights and The Transformation of Property*, leading human rights lawyer Judge Stuart Wilson develops a novel theory of how law leads to social change and what the prospects are for South Africa's Constitution to shape a more just distribution of property. Wilson questions long-held beliefs about the nature of land reform and the appropriateness of the concept of ownership as a way of organising access to land and property in South Africa. The book gives an overview of key aspects of constitutional and common law property rights - including the rights of ownership, possession and eviction; the rights associated with leases and mortgages; the National Credit Act; and the PIE Act - and discusses how they interact. It shows how recent developments in the law of eviction, rental housing, mortgage and consumer credit have opened up new spaces in which unlawful occupiers, tenants and debtors are challenging the power of landlords and financial institutions to dispossess them. By triggering a radical restructuring of property law, Wilson argues, the Constitution may yet keep the promise of a South Africa that belongs to all who live in it.

*Human Rights and The Transformation of Property* offers the most up-to-date critical account of recent developments in residential lease law, mortgage bond law and eviction law, and provides a policy rationale for these developments. It will be a valuable teaching text for law students and a reference guide for law and humanities academics, legal practitioners, NGOs and activists. ■

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### CHAPTER 7

What's Property Law got to do with it?

# JUDICIAL APPOINTMENTS

SUPREME COURT OF APPEAL



## Justice F K Setiloane

Appointed as a Justice of the  
Supreme Court of Appeal  
As of 01.12.2023



## Justice A M Kgoele

Appointed as a Justice of the  
Supreme Court of Appeal  
As of 01.12.2023

GAUTENG DIVISION OF THE HIGH COURT



## Judge S K Hassim SC

Appointed as a Judge of the  
Gauteng Division of the High Court  
As of 01.01.2024



## Judge O Mooki SC

Appointed as a Judge of the  
Gauteng Division of the High Court  
As of 01.01.2024



## Judge J J Strijdom SC

Appointed as a Judge of the  
Gauteng Division of the High Court  
As of 01.01.2024



## Judge B C Wanless SC

Appointed as a Judge of the  
Gauteng Division of the High Court  
As of 01.01.2024

KWAZULU-NATAL DIVISION  
OF THE HIGH COURT



## Judge M J Mathenjwa

Appointed as a Judge of the  
KwaZulu-Natal Division of the High  
Court  
As of 01.11.2023



## JUDICIAL APPOINTMENTS (CONTINUED)

LABOUR AND LABOUR  
APPEAL COURTS



### Deputy Judge President M E Molahlehi

Appointed as Deputy Judge President  
of the Labour and Labour Appeal Court  
As of 01.11.2023



### Judge M P N Nkontwana

Appointed as Judge of the Labour  
Appeal Court  
As of 01.01.2024



### Judge K M Savage

Appointed as Judge of the Labour  
Appeal Court  
As of 01.01.2024

LABOUR AND LABOUR APPEAL COURT



### Judge A J Van Niekerk

Appointed as Judge of the Labour  
Appeal Court  
As of 01.01.2024



### Judge M R Makhura

Appointed as a Judge of the  
Labour Court  
As of 01.01.2024



### Judge K Allen-Yaman

Appointed as a Judge of the  
Labour Court  
As of 01.01.2024



### Judge R N Daniels

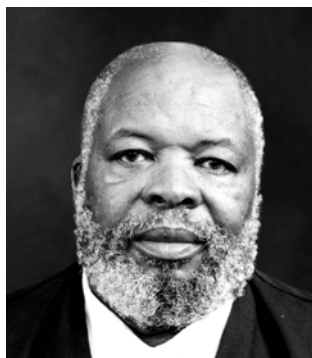
Appointed as a Judge of the  
Labour Court  
As of 01.01.2024

## JUDICIAL RETIREMENTS



### Justice H K Saldulker

Justice of the Supreme Court of Appeal  
Discharged: 1 November 2023



### Deputy Judge President M I Madondo

Deputy Judge President of the KwaZulu-  
Natal Division of the High Court  
Discharged: 26 November 2023



### Judge G N Kruger

Judge of the KwaZulu-Natal Division of  
the High Court  
Discharged: 1 January 2024



### Judge M S Moodley

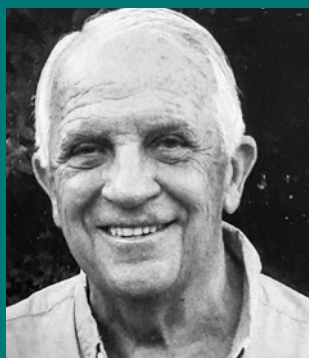
KwaZulu-Natal Division of the High  
Court  
Discharged: 31 July 2023



### Judge G Lopes

KwaZulu-Natal Division of the High  
Court  
Discharged: 01 August 2023

## IN MEMORIAM



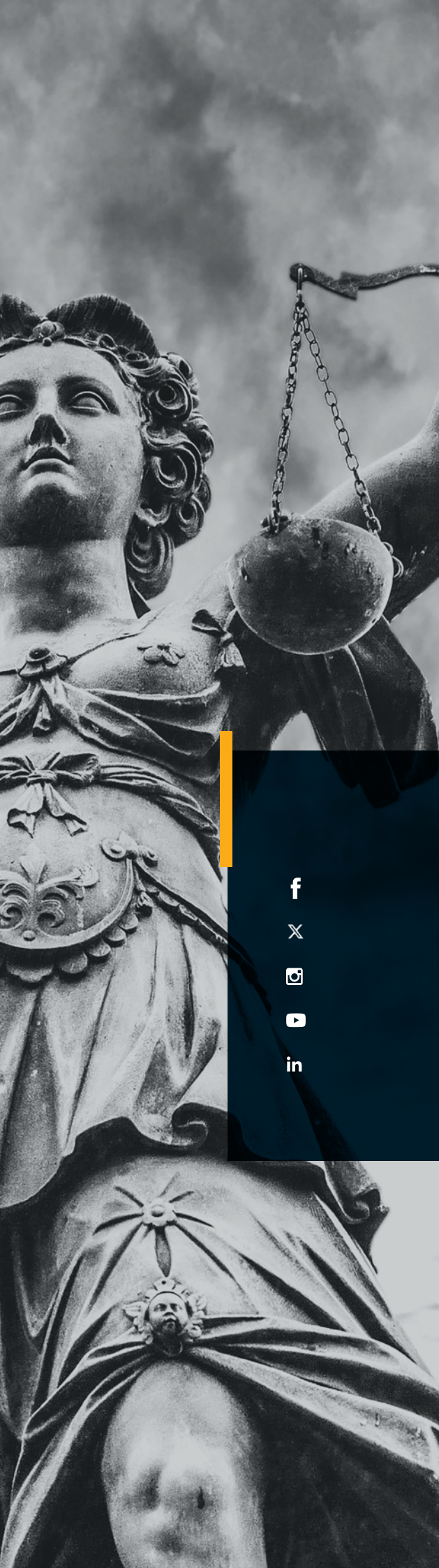
### Judge M P Jennett

Eastern Cape Division of the High Court,  
Gqeberha.  
Passed: 19 October 2023









**NATIONAL OFFICE ADDRESS:**

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