



# *The Judiciary*

June 2018

**A life well lived:  
Judge Bosielo remembered**

**Deputy Chief Justice Zondo  
appointed Chancellor of UniZulu**

**Judge President Mbenenge on  
Transformative Constitutionalism**

## CONTENTS

- 2 A life well lived
- 5 A tribute to Judge Lombard
- 6 Deputy Chief Justice Zondo appointed Chancellor of UniZulu
- 8 Deputy Judge President Madondo addresses students at UniZulu
- 14 Judge President Mbenenge speaks Transformative Constitutionalism
- 16 Justice Carole Lewis' judgment recognised by international body
- 17 Judge's Registrable Interests
- 18 Judgments

### NATIONAL OFFICE

188 14th ROAD  
NOORDWYK  
MIDRAND  
1685

010 493 2500

[ocjcommunications@judiciary.org.za](mailto:ocjcommunications@judiciary.org.za)

[www.judiciary.org.za](http://www.judiciary.org.za)

## Editorial Staff and Contributors.

**Editor** Judge President John Hlophe and Judge President Dunstan Mlambo.

**Writers** Lindo Nkomonde; Pfunzo Mafenya, Chuma Mgadle.

**Photographers** Cornelius Silaule, Pfunzo Mafenya and Vutivi Maluleke

**Thanks To** Judicial Contributors

Dear Colleagues,

Please allow me to welcome you to the winter edition of the Judiciary Newsletter! This Issue is published as we mark the end of the first half of what has been an eventful year so far.

Members of the South Africa Judiciary continue to be recognised locally and abroad for the value they contribute to society and for the ground breaking work they do. As you go through the publication you will read about the recognition of Chief Justice Mogoeng Mogoeng by the University of Johannesburg.

You will also read about the appointment of Deputy Chief Justice Ray Zondo to lead the University of Zululand as its new Chancellor, as well as a significant international recognition of a judgment by Justice Carole Lewis of the Supreme Court of Appeal.

Unfortunately, the first half of the year has also been a period of loss for the Judiciary. On 5 May 2018 we learned of the passing of former Judge David Josephus Lombard who was serving at the Free State Division of the High Court at the time of discharge from active service in 2005.

A few days later, on May 15, we sadly learned of the passing of sitting Supreme Court of Appeal Justice, Judge Lebotsang 'Ronnie' Bosielo. The jurists were laid to rest on 9 and 19 May, respectively. May their souls rest in eternal peace.

We trust that you will enjoy this Issue as much as you enjoyed the previous ones! We take this opportunity to encourage you to invite the editorial team when you host events or deliver public talks so that it can be covered in this Newsletter.

We also encourage you to write articles on matters of interest for publication in the Newsletter. You can contact us through the office of the Spokesperson for the Judiciary, Mr Nathi Mncube.

Enjoy the Newsletter!

**Judge President John Hlophe**

Chairperson: Judicial Communications Committee

 The South African Judiciary

 @OCJ\_RSA

 @OCJ\_RSA

# A LIFE WELL LIVED



Judge Lebotsang 'Ronnie' Bosielo

On Tuesday, 15 May 2018, Supreme Court of Appeal (SCA) Judge, Lebotsang 'Ronnie' Bosielo, passed away at his home in Kyalami, Midrand. Reaction to his passing followed soon after.

Acting President of the SCA, Judge Jeremiah Shongwe, said in a media statement that the Judiciary had lost an experienced jurist.

"Judge Bosielo was a knowledgeable Judge who had spent nearly two decades of his life serving the South African Judiciary in different capacities.

"His vast experience, having served in the High Court, SCA and in the Constitutional Court as an acting Judge, will be sorely missed," said Judge Shongwe.

The media also reacted with the SABC posting that "Judge Ronnie Bosielo will ... be remembered for his sterling work while serving at various courts around the country before being appointed judge at the Supreme Court of Appeal in Bloemfontein."

The broadcaster also stated in a video feature that "Judge Ronnie Bosielo has been hailed for his role in the transformation of the judiciary."

This was a mark of a life well lived.

The Chief Justice of the Republic of South Africa, Mogoeng Mogoeng, speaking at a memorial service held in honour of Judge Bosielo on May 17, challenged everyone to reflect on the meaning of a life well lived.

"I knew [Judge Bosielo] as an attorney and it was not a favour that I appointed him as an Acting Judge on more than one occasion in the Constitutional Court. It was because he was suitable," said Chief Justice Mogoeng.

Chief Justice Mogoeng said Judge Bosielo made his mark. He described his hunger to ensure justice for all and the preservation of the originality of African law as exemplary.

Chief Justice Mogoeng also took the opportunity to correct the inaccurate reporting on Judge Bosielo which followed shortly after his passing, relating to a complaint lodged against him with the JSC.

"Judge Bosielo [was] cleared by the JSC. A very detailed judgement was released which cleared [him]," said Chief Justice Mogoeng.

The memorial service was attended by members of the Judiciary as well as colleagues from the public service. Many of those who spoke remembered Judge Bosielo as a devoted family man who, in spite of his demanding job, never forgot the importance of family.

His brother Peter Bosielo, confirmed this sentiment saying the late Judge was a family man, and that he created time for his family in his busy schedule.



The Deputy President of the Black Lawyers Association (BLA) Ms Bait seng Rangata, talked about the commitment that Judge Bosielo showed to the BLA. “He was an active and vocal member of the BLA. He was very clear about what the BLA stands for,” said Rangata.

Rangata also applauded Judge Bosielo’s jurisprudence, describing him as “a complete jurist”. She also added that one cannot ignore his renowned judgement in which he confirmed that customary law is not inferior to civil law.

*Moropane v Southon (755/12) [2014] ZASCA 76 (29 May 2014), Judge Bosielo confirmed that the events that took place between the two families since 2002 until 2009 while the couple lived together validate customary marriage according to the customary law of the Bapedi people.*

On behalf of the Minister of Justice and Constitutional Development, Deputy Minister John Jeffrey, said Judge Bosielo was a symbol of hope to justice. “We must continue with Judge Bosielo’s vision of ensuring access to justice,” said the Deputy Minister.

General Bantu Holomisa, speaking on behalf of the South African National Defence Force (SANDF), remembered Judge Bosielo as an exceptional leader who led the commission that outlined the salary concerns in the SANDF.

“Judge Bosielo was a democrat; he provided clear directions at all times,” said General Holomisa. Further adding that the current day SANDF was proud of the work of the commission done under the leadership of Judge Bosielo.

Judge Bosielo was laid to rest on 19 May 2018 in Fourways, north of Johannesburg. He is survived by his wife, two children and a granddaughter.

**May his soul rest in peace.**

### ***Judge Bosielo’s Educational Background and Career***

***Matric:*** Lerothodi High School, Bethanie

B Juris (1981) University of Limpopo, Polokwane, LLB (1983) University of Limpopo, Polokwane, LLM (1992) University of Johannesburg, Diploma in Advanced Corporate Law (1996) University of Johannesburg.

### ***Professional History:***

Candidate Attorney, Enver Surty Attorneys, Zinniaville: 1984 – 1986, Admitted as an Attorney: 1986, Partner at Bosielo, Motlanthe & Lekabe: 1987 – 1992, Senior Partner, Ronnie Bosielo Attorneys: 1992 – 1998, Admitted as an Advocate: 1998, Practising Advocate: 1999 – 2001 Judge of the High Court of South Africa, North Gauteng High Court: 2001 – 2009, Acting Judge of the High Court, Namibia: 2001, Acting Judge President, Northern Cape High Court: 2007 – 2008, Acting Judge, Supreme Court of Appeal: 2009, Judge of Appeal, Supreme Court of Appeal: 2009, Acting Judge, Constitutional Court, May 2012, Acting Judge, Constitutional Court, January to May 2016





Chief Justice of the Republic of South Africa,  
Chief Justice Mogoeng Mogoeng



Deputy Minister of Justice and Constitutional  
Development, John Jeffrey



Deputy President of the Black Lawyers Association,  
Bait seng Rangata



Peter Bosielo



General Bantu Holomisa



Judge Ntsikelelo Poswa





# TRIBUTE TO FORMER JUDGE LOMBARD

The former Judge President of the Free State Division of the High Court and current Supreme Court of Appeal Justice, Judge Molemela, on receiving the news of the passing of the late former Judge David Josephus Lombard, paid tribute to the late Judge on behalf of the South African Judiciary.

Judge Lombard passed away on 5 May 2018 at the age of 83.

In a media statement, Judge Molemela wrote that former Judge Lombard displayed his commitment to service early in his career on the bench by accepting deployment to where he was needed. Shortly after obtaining the status of senior counsel he served as Acting Judge in Venda as well as Windhoek in 1983.

In the following year he served as an Acting Judge of the Free State and Transkei Divisions of the High Court before being permanently appointed to the latter Court in 1985. At the end of 1988 he returned to Bloemfontein, where he served as a Judge until his discharge from active service in 2005. He also served as an Acting Judge of the Supreme Court of Appeal.

He was respected by his colleagues and legal practitioners alike, read the media statement.

Judge Lombard was born on 8 April 1935 on a farm in the district of Calvinia. He matriculated at the Outeniqua High School, George where he was also the head boy, whereafter he obtained his LLB degree in 1958, at the University of Stellenbosch, after he had obtained a BA degree from the same institution.



Judge David Josephus Lombard

He was admitted as an attorney during January 1961 in Windhoek. In January 1972 he was admitted as an advocate in Windhoek where he practiced until April 1972. He then relocated to Bloemfontein and joined the Free State Bar.

He was buried on 9 May 2018.

May his soul rest in peace.



## DEPUTY CHIEF JUSTICE ZONDO APPOINTED UNIZULU CHANCELLOR, CONFERS DOCTORATE TO ZULU KING IN FIRST ACT

The Deputy Chief Justice of the Republic of South Africa, Judge Raymond Zondo, was appointed as Chancellor of the University of Zululand (UniZulu) in February 2018 by the Council of the institution. He was sworn in on April 25 for his five-year tenure.

UniZulu Vice-Chancellor, Professor Xoliswa Mtose, speaking on behalf of the University's Senate, said they were pleased to welcome Judge Zondo to the institution.

"Your standing as an academic and a person of impeccable character precedes you. We look forward to a successful and productive working relationship with you on key issues that face the UniZulu community, allowing us to maximise our potential now and in future," said Professor Mtose.

In response, the Deputy Chief Justice acknowledged the University's contribution to the development of the country.

"From November 2009 until 2018, no less than three of the eleven Justices of the Constitutional Court obtained their undergraduate degrees at

UniZulu. This means just under thirty percent of the Justices in the highest Court have connections with this University.

"That is a substantial presence by one university. This University is also one of three in South Africa which has managed to produce two Chief Justices," said Judge Zondo.

He added that UniZulu has performed much better than other well-resourced universities, yet it is not held in the high regard it deserves.

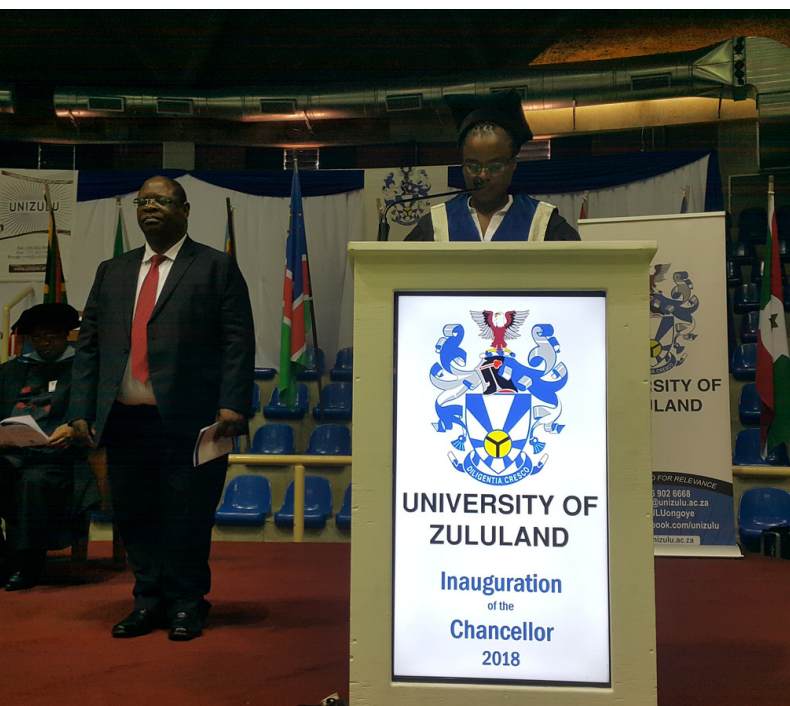
"The onus now is upon all stakeholders to lift the institution's name to its rightful position," said the new Chancellor, adding: "I urge us all to work together to make UniZulu better. If there are challenges, let us face them head-on."

In his first act as the new Chancellor of UniZulu, Judge Zondo conferred an honorary doctorate in social work to His Majesty King Goodwill Zwelithini on May 4. The University conferred the honorary doctorate to King Zwelithini in recognition of his extensive philanthropic work in alleviating poverty and suffering amongst his subjects.





Deputy Chief Justice Zondo was inaugurated on 25 April 2018 as the Chancellor of University of Zululand (UniZulu).



Deputy Chief Justice Zondo confers Doctorate on King Zwelithini at the University of Zululand (Unizulu).



# JUDGE MADONDO ADDRESSES GRADUATES AT UNIZULU



Deputy Judge President Isaac Madondo

The Deputy Judge President of the KwaZulu Natal Division of the High Court, Judge Mjabuliseni Isaac Madondo, was a guest speaker at the University of Zululand's graduation ceremony on May 10.

Titled "Rules of Ethics, opportunities and challenges that lie ahead of the graduates in their respective future careers", the full text of his speech appears below.

*Programme Director*

*Chancellor – Deputy Chief Justice Raymond Zondo  
(in absentia)*

*Chair of Council Ms Nomarashiya Caluza (in  
absentia)*

*Council Members*

*Vice-Chancellor Prof Xoliswa Mtose*

*UNIZULU Management (EXCO and MANCO)*

*Academic and Support Staff*

*President of Convocation and Alumni*

*Representatives from Mkhwanazi Traditional  
Authority*

*Chiefs of the Local Traditional*

*Authorities/Ondabezitha*

*Mayors of District/Local Municipalities*

*Special Guests*

*Business partners*

*Donors*

*Parents/Guardians/Relatives/Sponsors*

*Graduands*

I greet you all in the name of our lord, Jesus Christ

[1] While celebrating the graduation ceremony we are quite mindful of the gloomy side of life that most of the graduates, particularly Africans, who come from poor, marginalized or disempowered sectors of the population whose situations are in part reflect the legacy of apartheid policies. Some have been raised by widows, single parents or come from children headed families, and these are grim realities of the life of a black student.

[2] Education and Bill of Rights heal the divisions of the past (whites, coloureds, Indians/ Asiatics and Africans), bridge racial and cultural divides and lay a foundation of a country that is united in its diversity. The Bill of Rights is the cornerstone of constitutional democracy, affirming democratic values of human dignity, equality and freedoms.

[3] For historically disadvantaged youth to compete effectively in all spheres, in the open market, with the historically advantaged youth, need to be armed with education, which is a key to success.

[4] In the academic life of every student graduation is an epoch-marking and much desired event, translating into the sphere of work and practice. The country needs competent, efficient, honest and effective (able) accountants, administrators, advocates, attorneys, legal advisers, prosecutors, managers, magistrates and judges, all of whom must be drawn from graduates.

[5] Each and every graduate entering the profession of his or her own choice is required to abide and adhere to the tenets and rules of ethics of their respective professional bodies, be it the Independent Regulatory Body of Auditors (IRBA) for accountants, Law Society for attorneys and Society of Advocates for advocate profession,

whatever the case maybe. Through etiquette and the rules of ethics each professional institution projects the image of excellence and emphasizes the integrity of the profession in question, while nurturing and protecting its members.

[6] For graduates to become versatile and able to cope with and to respond effectively to the challenges of the constant changing social, political and economic environment, constant training, skills development, finance, infrastructure and mentoring are quite essential, over and above formal education.

[7] Constant training is essential and necessary to sharpen the competence and efficiency of persons engaged in a particular profession or trade and to keep them abreast with recent development, domestically and internationally. Also, it helps to empower the youth to apply knowledge, skills and values they have acquired confidently, efficiently and creatively. The skills development and mentoring widen the horizons of the initiates by (creating more opportunities than what they would ordinarily have), mould and enable them to seize any economic and professional opportunities that avail themselves.

[8] Most of the upcoming accountants and legal practitioners have an added burden of looking after members of their extended families. Since their practices are often not doing well, they experience financial problems to such an extent that they cannot even afford to pay rental for their offices and at the Bar. Most of them even find it difficult, if not impossible, to make a living. It is against this backdrop we often see an exodus of the upcoming accountants and legal practitioners from their respective professions to look for greener pastures elsewhere. We implore our government departments and parastatals to come to the assistance of the upcoming accountants and legal practitioners by allocating them work so to give them the necessary exposure, knowledge, experience and expertise in

their respective professions. However, the female practitioners suffer double jeopardy in that, first, they form part of the historically disadvantaged group and, second, because of their gender.

[9] Gender can be defined as the social roles women and men play in particular societies. Such roles and differences between them are conditioned by a variety of political, economic, ideological and cultural factors, and are characterised in most societies by unequal power relation. In South Africa, in rural areas for instance, the dynamics of gender relations are such that women are in a subordinate position. Since women are generally in a subordinate social position, the need therefore arises for strategies to promote gender equality, by devising ways and means to improve their access to power and economy so to be able to exercise public authority and to participate in important social discussions and formal economy.

[10] In the new constitutional dispensation and due to economic and social challenges the female black youth are presently facing, they find themselves bound to encroach onto the men's terrain and compete for jobs, careers, trade and profession which were previously reserved for men or male dominated professions or trades.

[11] In order for the female youth, in particular, to gain self-esteem and confidence in whatever they do in this changing world, and to seize any economic and professional opportunities that avail themselves, need support by their partners, families, community and government and such support could be in the form of training, skills development, finance, infrastructure and mentoring. The need has also arisen to provide an appropriate and well – trained women leadership to administer the affairs for their respective traditional communities.

[12] Legal profession is crucial to the protection, advancement and enforcement of human rights entrenched in the Bill of Rights and promotion of the Rule of Law. A person who desires to practise as an attorney has to register as an article clerk and eventually admitted as an attorney. At this stage he or she has to acquire a Fidelity Certificate which enables him or her to practise on his or her account and to handle public trust monies.

[13] A person who aspires to practise as an advocate has to join the Society of Advocates, first, by enrolling as a pupil for a certain period of time and, second, by practising as such. The society serves to protect the interests of their individual members in their professional capacity, to supervise the conduct of its members, and to improve the teaching and practice of law as well as the administration of justice.

[14] A counsel may render professional services only if brief to do so. A brief means a specific instruction addressed to the counsel concerned by the attorney. Briefs may only be accepted from practising attorneys except in certain situations. An advocate is under obligation to accept a brief in the courts in which he or she professes to practise. He or she has a duty to his or her client. The advocate should while acting with all due courtesy to the tribunal before which is appearing, fearlessly uphold the interests of his client without regard to any unpleasant consequences either to himself or to any other person. He or she has all the rights to assert and defend the clients' rights.

[15] Where the clients has made a confession to his counsel either before or during criminal proceedings, counsel may not in the proceedings assert that which he or she knows to be untrue nor may he connive at or attempt to substantiate a fraud. However, he may appropriately argue that the evidence offered by the prosecution is insufficient to support a conviction or may take advantage of any legal matter which might relieve the accused of criminality. He or she may not however, set up an affirmative case which he knows to be inconsistent with the confession.

[16] A person aspiring to become a judge must in terms of section 174(1) of the Constitution of the Republic of South Africa Act, 108 of 1996 (the Constitution) be a fit and proper person. Being a fit and proper person entails, integrity, honesty and conduct. Judges are drawn from advocates, attorneys, magistrates and academics. However, one must have a wealth of practical legal experience before one qualifies for appointment as a judge.

[17] Section 165(2) of the Constitution vests the judicial authority in the courts which are independent and subject only to the Constitution and the law which they must apply impartially without fear, favour or prejudice. A judge must uphold the independence and integrity of the judiciary and the authority of the courts, and maintain an independence of mind in the performance of judicial duties. A judge must always and not only in the discharge of official duties act honourably and in a manner befitting judicial officer.

[18] Judicial independence is the complete freedom of the individual judges to hear and decide cases that come before them on their merits, informed and bound by their good conscience, the assessment of the facts of each particular case and their understanding and interpretation of law. *Bernstein and others vs Bester no and others 1996 (2) SA 75 (CC)*. Every individual judge has the right not to have his or her independence of mind disturbed by any person or organ of state (s163(3)). Individual judge must be free from personal or political influence or private interests.

[19] Judicial independence is not a privilege which is exclusive preserve for the judges but it is essential and necessary for the protection, advancement and enforcement of fundamental values enshrined in the Constitution and for the interpretation of the Bill of Rights.



Impartiality is integral to equality and to justice. Impartiality can loosely be interpreted to mean that courts must treat all people fairly and equally (S v Ntuli 1996 (1) SA 1207 (SCA)). Bias jeopardizes the legitimacy of the judiciary, weakens its protection and ultimately undermines the Rule of Law.

[20] A judge resolves disputes by making findings of fact and applying the appropriate law to given facts.

This included the duty to –

- (a) observe the letter and spirit of the audi alteram partem rule;
- (b) remain manifestly impartial, and give
- (c) adequate reasons for any decision a judge makes.

The reasons for decisions must be clear, cogent, complete and sufficient.

[21] In conducting judicial proceedings, a judge maintains order, acts in accordance with commonly accepted decorum, remains patient and courteous to legal practitioners, parties and the public and requires them to act likewise. Since judges are fallible and can err in relation to fact or law, such errors are to be dealt with through the normal appeal and review procedures.

[22] An independent judiciary is fundamental to a democratic society founded on the rule of law. The rule of law means that the law must stand supreme as the source and fabric of all social organization. The essence of the doctrine of the rule of law amounts to that nobody may be deprived of rights and freedom through the arbitrary exercise of wide discretionary powers by the executive and that nobody is above the jurisdiction of the ordinary courts (Dicey, An Introduction to the Study of Law of the Constitution). The rule of law is the cornerstone of our constitutional democracy.

[23] There is a need for a judiciary that is aligned with and dedicated to the overall transformation goals, equality, democracy and human rights protection. Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair

public hearing before a court of law or where appropriate, another independent and impartial tribunal or forum. Indeed, the provisions of s 34 creates an access to justice, which is a fundamental human and democratic right and the pillar of a free and equal society crucial to the enforcement of the constitutional rights and delivery of remedies for their breach.

[24] The right obliges the government to establish courts and other tribunals or forum to enable individuals to have the legal disputes settled. It is therefore apparent that an access to justice is the most basic human right without which it is impossible to realize many of the human rights, be it civil, social, political or economic. All courts fall under single judiciary which is the single governance framework for the judicial officers of the superior courts and lower courts including traditional courts under the Chief Justice, as the head of the judiciary.

[25] In the present Constitution dispensation customary law is no longer subservient to common law but it enjoys equal status with common law and forms integral part of our law, and the courts are constitutionally enjoined to develop customary law so to be in line with the core values of the Constitution and fundamental human rights, if the circumstances so demand. (See S 39(2) of the Constitution). As a consequence, the judiciary need judges who are also conversant with traditional legal system. Traditional courts are essential and necessary to create access to justice to poor disadvantaged and marginalized rural communities. It is most preferred for its conciliatory and restorative approach. It provides speedy, affordable and meaningful remedies.

[26] In order to facilitate that process I have authored a book on the Role of Traditional Courts in the Justice System, first published in November 2017.

**[Ends]**

## HEADS OF COURT MEET

The Heads of Court, led by Chief Justice Mogoeng Mogoeng, met on 8 June 2018 in Midrand.



## CHIEF JUSTICE MOGOENG MOGOENG RECEIVES HONORARY DOCTORATE

Chief Justice Mogoeng Mogoeng was on 27 March 2018 conferred with an Honorary Doctorate in Law by the University of Johannesburg.

"Through his actions, Judge Mogoeng has been concretising each of the core University of Johannesburg values. An unquestionable ethical foundation is evident from his judgements in the Constitutional Court, delivered without fear or favour, as well as from his public addresses and publications. He has earned trust and credibility through judgments that were critical of executive decisions and conduct; of parliamentary rules and conventions; and of legislation that does not conform to the Constitution, resisting political pressure and maintaining judicial independence," said the Executive Dean of the Faculty of Law at the University of Johannesburg (UJ), Prof Letlhokwa George Mpedi.

For more click [here](#).





## CHIEF JUSTICE MOGOENG MOGOENG GIVES KEYNOTE ADDRESS IN CAPE TOWN

Chief Justice Mogoeng Mogoeng gave a keynote address at the World Bar Conference in Stellenbosch, 30 March 2018.



## DEPUTY CHIEF JUSTICE RAY ZONDO ADDRESSES NADEL

Deputy Chief Justice of the Republic of South Africa, Deputy Chief Justice Ray Zondo delivered a keynote address paying tribute to the late former Chief Justice of the Republic of South Africa, Justice Pius Langa, at the National Association of Democratic Lawyers (NADEL) AGM 2018 and Book Launch in East London, on 17 March 2018.



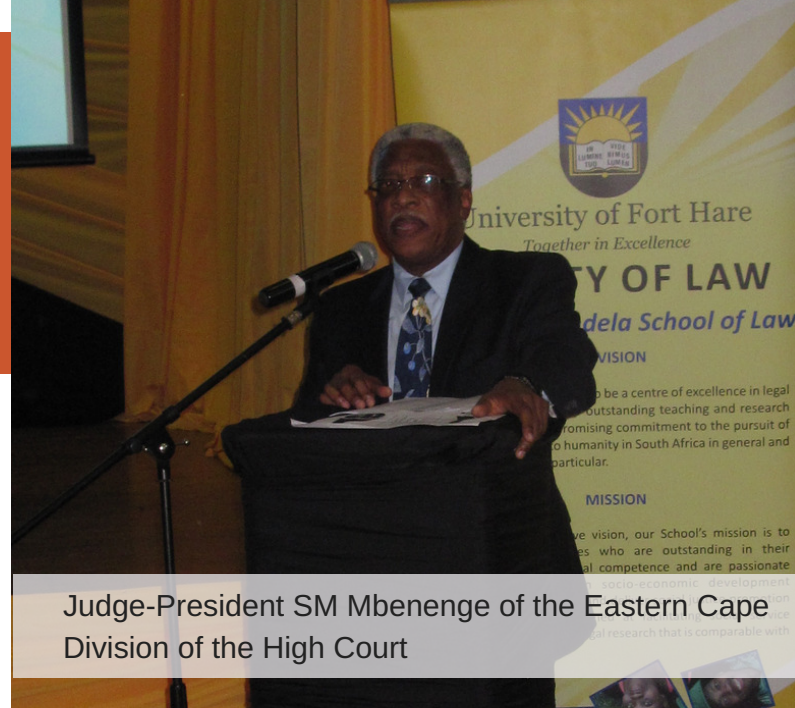
# JUDGE PRESIDENT MBENENGE SPEAKS TRANSFORMATIVE CONSTITUTIONALISM

The Judge President of the Eastern Cape Division of the High Court, Judge Mbenenge, delivered a public lecture on Transformative Constitutionalism at the University of Fort Hare (Nelson R Mandela Law School) on 17 April 2018.

He opened his address by acknowledging that the Nelson R Mandela Law School has in years past demonstrated its excellence in legal education. The Judge President further lauded the legal academics of the institution for their freedom to write and criticise even judgments of the courts, an exercise that has proven itself to be vital for the advancement of jurisprudence.

He further went on to say, “As a Judge, I lack that latitude and I should at the outset acknowledge the limitations within which I operate. Much as I am allowed to participate in public debate on matters pertaining to legal subjects, the judiciary, or the administration of justice, I am precluded from expressing views in a manner that may undermine the standing and integrity of the judiciary. You will derive comfort from knowing that this disclaimer applies only to me and not to most of us gathered here today. Moreover, if at some point I express a view, let it be known upfront that such a view does not necessarily represent the views of the entire Eastern Cape Bench.”

On the Topic of “Transformative Constitutionalism” his speech focused on what Transformative Constitutionalism is rather than what it is not. He said the concept of Transformative Constitutionalism encapsulates two notions – transformation and constitutionalism, which have been fused into a single notion: “transformative constitutionalism”.



Three questions immediately come to the fore, said the Judge President:

1. What is transformation?
2. What is constitutionalism? and
3. What does “transformative constitutionalism” denote?

In simple terms “transformation” is bringing about change in a structured way – change for the better. “Constitutionalism”, on the other hand, means adherence to a constitutional system of government. It is the idea often associated with the political theories of John Locke and the founders of the American republic, that government can and should be legally limited in its powers, and that its authority or legitimacy depends on it observing these limitations.

At the core, transformative constitutionalism teaches us not to be content with the status quo, it is informed by a desire to continuously seek better ways to transform the society in ways that continuously enhances the lives of the people. In this context the courts would seek to interpret laws in a way that promotes, protects and fulfil the rights and freedoms enshrined in the constitution.



Like judicial activism there is no single agreed meaning of transformative constitutionalism, but the courts use their judicial power and interpretive prowess to articulate a progressive approach of how best the laws can be applied to better serve the people. The late former CJ Langa stated the following in an attempt to provide a definition to “transformative constitutionalism” in the light of the duty of Judges: upholding the transformative ideal of the Constitution requires Judges to change the law to bring it in line with the rights and values for which the Constitution stands. The problem lies in finding the fine line between transformation and legislation. He stated further, that, overly activist Judges can be as dangerous for the fulfilment of the constitutional dream as unduly passive Judges. Both disturb the finely-balanced ordering of society and endanger the ideals of transformation.

More often than not the courts are called upon to make rulings on the application of policies like affirmative action or preferential treatment programmes designed to benefit historically disadvantaged groups. However, the dividing line between reasonable and justifiable affirmative action, on the one hand, and reverse discrimination, on the other, often leads to contestations and often invite courts to determine the correctness of government programmes that would have been allegedly developed to ‘cancel out’ the unequal access to services caused by institutionalised discrimination against certain classes or social groups in society.

Judge President Mbenenge appealed to students, lawyers in the making, to embrace “transformative constitutionalism.” He questioned whether students have reflected on the importance of “transformative constitutionalism” insofar as it safeguards socio-economic rights using student protest action as an example.

He said, from time to time protest action is embarked upon by students, more often than not for the most

legitimate of reasons. Protest is legitimate, whilst unlawful and criminal action that has the effect of negating “transformative constitutionalism” which is sometimes resorted to is not. The constitution should be seen as a living document that guides not only the government and public institutions but all those who come into contact with it.

Judge President Mbenenge said our institutions of learning and government departments should not only preach and lecture the values of the constitution but also take a pragmatic approach thereto. In the words of the late Nelson Rolihlahla Mandela, said the Judge President, lawyers should always remember that they are leaders of thought in their communities. That admonition applies with more force to a law student, especially in so far as they relate with other fellow students and activities engaged in during protest action.



## Justice Carole Lewis' judgment recognised by international body

The judgment of the Supreme Court of Appeal, *Primedia Broadcasting & others v Speaker of the National Assembly & others* [2016] 4 All SA 793 (SCA), 2017 (1) SA 572 (SCA) penned by Justice Carole Lewis (sitting with Justices Azhar Cachalia, Zukisa Tshiqi, Kevin Swain and Dumisani Zondi) was nominated as a finalist in the Significant Legal Ruling Category of the Columbia University Global Freedom of Expression Prize competition.

The awards, established by Columbia University President Lee C. Bollinger, recognise judicial decisions and legal representation from around the world that strengthen freedom of expression by promoting international legal norms.

Although Justice Carole Lewis' judgment did not clinch the award for "Significant Ruling", the nomination in itself was a significant recognition.

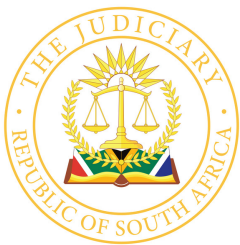
In the 2016 judgment Justice Carole Lewis found that the rules and policy adopted by Parliament governing the broadcast of disorder in the Parliamentary Chamber violate the public's right to an open Parliament and are unconstitutional and unlawful. Justice Carole Lewis found that the disruption of the cell phone signal in Parliament during the State of the Nation address was in contravention of the s 4(1) of the Powers, Privileges and Immunities of

Parliament and Provincial Legislatures Act 4 of 2004 and was unlawful.

The Significant Ruling prize went to the Constitutional Court of Colombia.

On April 5, 2017, the Constitutional Court of Colombia handed down a landmark ruling (Decision T-543/2017) holding that consumers have the right to be informed about the health risks of consuming sugary drinks. The case involved EducAR Consumidores, a non-profit that was ordered to stop broadcasting a public service announcement describing the hazards of excessive sugar consumption. The Colombian Constitutional Court held that prohibiting an NGO from broadcasting such a commercial violated the right of consumers to information and that banning the PSA was a form of censorship. This ruling could not be more topical and important in view of the global epidemic of obesity and diabetes. By guaranteeing the right of consumers to access information about the products they consume, the ruling gives meaning to the essential core of their right to information (Global Freedom of Expression, 2018).

The third biennial Columbia Global Freedom of Expression Prizes were presented in a ceremony on the Columbia University campus on April 25.



# ANNUAL DISCLOSURE OF JUDGES REGISTRABLE INTERESTS



Annually, Judges are required to disclose to the Registrar in the form prescribed by the Regulations Relating to the Judicial Service Commission Act, 1994: Disclosure of Registrable Interests (the regulations) their registrable interests and those of family members where appropriate (section 13 of the Judicial Service Commission Act, 1994).

Judges in active service disclosed their interests for the first time in 2014, the year the disclosure law came into effect, and these disclosures are captured in the Register of Judge's Registrable Interests which is kept by the Registrar at the Headquarters of the Office of the Chief Justice (OCJ).

In March of every year, Regulation 3 (4) of the Regulations, requires every Judge to inform the Registrar in writing whether the information in the Register as previously disclosed is an accurate reflection of the Judges' registrable interests, and if applicable make such further disclosures or amendments as may be required.

At the beginning of each year the Registrar sends reminders to all Judges in active service which also

include individual entries to the Registrar for each Judge. Judges are required to verify the information in the individual entries and inform the Registrar in writing (email or letter) whether the information previously disclosed is still accurate.

Where necessary; Judges should make such further disclosures or amendments as may be required.

Judges are not required to complete new forms but to confirm in writing (email/letter) the accuracy of the previous disclosures or make changes where necessary. At all times, the Registrar is available to assist Judges and to support them to comply with the disclosure law and the contact details of the Registrar are the following:

## **Phethuvuyo Gagai**

Registrar of Judges' Registrable Interests

The Office of the Chief Justice

Office No: (010) 493 2579

Cell No: (072) 735 1769

E-mail: PGagai@judiciary.org.za

WWW: [www.judiciary.org.za](http://www.judiciary.org.za)

For more information click **here**.

# JUDICIAL APPOINTMENTS



The Honourable Mr Justice **Tati Moffat Makgoka**, SCA



The Honourable Madam Justice **Mahube Betty Molemela**, SCA



The Honourable Mr Justice **Ashton Schippers**, SCA



Ms **Sharon Chesiwe**, Free State



Mr **Pitso Ephraim Molitsoane**, Free State



Ms **Mareena Opperman**, Free State



Ms **Khosi Qondani Hadebe**, KZN



Mr **Sidwell Bongani Mngadi**, KZN



The Honourable Mr Justice **Bhekisisa Jerome Mnguni**, Competition Appeal Court



The Honourable Mr Justice **Bashier Vally**, Competition Appeal Court

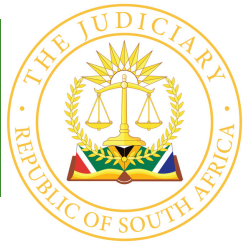


The Honourable Madam Justice **Margaret Victor**, Competition Appeal Court



Ms **Sungaree Pather**, Electoral Court





# JUDGMENTS

## RECENT JUDGMENTS FROM THE CONSTITUTIONAL COURT AND SUPREME COURT OF APPEAL

The Constitutional Court and the Supreme Court of Appeal (SCA) have since April delivered a number of judgments that have generated heightened media interest.

Notable among the judgments handed down by the Constitutional Court were:

- Helen Suzman Foundation v Judicial Service Commission (Trustees for the time being of the Basic Rights Foundation of South Africa as Amicus Curiae); and
- Minister of Safety and Security of the Republic of South Africa v South African Hunters and Game Conservation Association (Fidelity Security Services (Pty) Limited and Gun Free South Africa (NPO) as Amici Curiae).

These and other recent Constitutional Court judgments can be viewed [here](#)

Among the notable judgments to be handed down by the SCA since April were:

- PG Group (Pty) Ltd & Others v National Energy Regulator of SA & Another; and
- Mostert and Others v Nash and Another.

These and other recent SCA judgments can be viewed [here](#)

### Judiciary websites:

<https://www.concourt.org.za/>

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

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



# Superior Courts Contact Information



## Constitutional Court

Tel: +27 11 359 7400  
Fax: +27 11 339 5098  
Private Bag x 1 Constitutional Hill Braamfontein 2017  
1 Hospital Road, Braamfontein, Johannesburg, 2017  
GPS: E 28.04336; S -26.1882

Registrar: Mr K Makgaka  
E-mail: Makgaka@concourt.org.za  
Website: www.constitutionalcourt.org.za

## Free State Division, Bloemfontein

Tel: 051 406 8100  
Fax: 051 430 7041

Private Bag x 20612, Bloemfontein, 9300  
cnr Fountain & Pres Brand Street,  
Bloemfontein, 9300  
GPS: E 26.21739; S -29.11858

Chief Registrar: Mr S Mapossa  
E-mail: SMapossa@justice.gov.za

## Limpopo Division, Polokwane

Polokwane Circuit Court

Tel: 015 230 4000  
Fax: 015 230 4200

Private Bag x9696, Polokwane, 0700  
36 Biccand and Bodenstein Street,  
Polokwane, 0700

Chief Registrar: Ms M Phaswane  
E-mail: mophaswane@justice.gov.za

## Labour and Labour Appeal Court Johannesburg

Tel: 011 359 5700  
Fax: 011 403 9328  
Email: Labourcourts@judiciary.org.za

Private Bag x52, Braamfontein, 2017  
Arbour Square Building, 6th and 7th Floor  
c/o Juta & Melle Street  
Braamfontein, 2001

Registrar: Ms F.N Ntuli  
E-mail: FNtuli@judiciary.org.za  
Website: www.justice.gov.za/labourcourt

## Supreme Court of Appeal

Tel: +27 51 412 7400  
Fax: +27 51 412 7449  
PO Box 258, Bloemfontein, Free State, 9300  
Cnr President Brand & Elizabeth Streets,  
Bloemfontein, 9300  
GPS: E 26.21675; S -29.11563

Registrar: Ms CH Van der Merwe  
E-mail: ChVandermerwe@justice.gov.za  
Website: www.justice.gov.za/

## Western Cape Division, Cape Town

Tel: 021 480 2411/2636  
Fax: 021 423 0412

Private Bag x 9020, Cape Town, 8000  
35 Keerom Street, Cape Town, 8001  
GPS: E 18.41752; S -33.925

Chief Registrar: Ms Ruanne David  
E-mail: RDavid@judiciary.org.za

## KwaZulu-Natal Division, Durban

Tel: 031 362 5800  
Fax: 031 305 4550

Private Bag x 54314, Durban, 4000  
12 Dullah Omar (Masonic) Grove, Durban,  
4001  
GPS: E 31.01921; S -29.86172

Acting Chief Registrar:  
Ms Tanisa Mahomed-Hanif  
E-mail: tmahomed-hanif@judiciary.org.za

## Land Claims Court

Tel: 011 781 2291  
Fax: 011 781 2217 / 2218  
Private Bag X10060, Randburg 2125  
Trust Bank Centre, Randburg Mall, Corner of  
Hill Street and Kent Avenue, Randburg, 2194  
GPS: E 28.00083; S -26.09232

Registrar: Mr Stephen Cindi  
Email: SCindi@judiciary.org.za  
Website: www.justice.gov.za

## Gauteng Division, Pretoria

Tel: 012 315 7711  
Fax: 012 326 1995

Private Bag x 67, Pretoria, 0001  
Cnr Paul Kruger & Madiba Streets, Pretoria, 0002  
GPS: E 28.18784; S -25.7449

Pretoria High Court Palace of Justice  
Tel: 012 314 9000

Acting Chief Registrar: Mr Banathi Masoka  
E-mail: BMasoka@judiciary.org.za

## Northern Cape Division, Kimberly

Tel: 053 833 1441  
Fax: 053 831 1320

Private Bag x 5043, Kimberley, 8300  
Sol Plaatje Drive, Kimberley, 8301  
GPS: E 24.76783; S -28.74564

Registrar: Mr C Conradie  
E-mail: CConradie@justice.gov.za

## Mpumalanga Division, Nelspruit

Tel: 013 345 8211  
Fax: 033 345 3815

Private Bag x 9014, Pietermaritzburg, 3200  
301 Church Street, Pietermaritzburg, 3200  
GPS: E 30.3805; S -29.599

Chief Registrar: Mr M Seloana  
E-mail: MSeloana@judiciary.org.za

## National Office address:

188 14th ROAD  
Noordwyk  
Midrand  
1685

Switchboard number  
010 493 2500