



The Judiciary

March 2018

**CCJA Bureau Meets
in Durban**

**Enhancing
Judicial
Accountability**

**The State Capture
Commission**

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Thanks To Judicial Contributors

Dear colleagues,

Welcome to 2018 and to our first Issue for the year!

We trust that you have had a good start to the year and that, so far, you are on track with all the goals you have set yourselves for the current twelve month period.

A lot has happened within the Judiciary space since the last time we published this newsletter. Notable among these was the retirement of our esteemed colleague, Justice Bess Nkabinde, whose twelve year term at the Constitutional Court ended in December 2017. A moving farewell ceremony was held in her honour – read about it on page 4. We take this opportunity to wish her an enjoyable retirement.

As we all know, His Excellency the Chief Justice of the Republic of South Africa, the Honourable Mogoeng Mogoeng, has since April 2017 been serving the Judiciaries of the Continent of Africa as the President of the Conference of Constitutional Jurisdictions of Africa (CCJA).


The CCJA is an organisation which brings together the African constitutional jurisdictions (Constitutional Council, Court, Tribunal, Supreme Court, and Constitutional Chambers) and aims to support and deepen democracy in the African continent by upholding constitutionalism and the rule of law in the member states. The CCJA Executive Bureau, led by His Excellency Chief Justice Mogoeng Mogoeng, held its 9th Annual Session in January to discuss its programme of action for the year as well as constitutional developments in its various member countries. You can read more about the great work the CCJA is doing on pages 2 and 3.


Cooperation between African Jurisdictions for the advancement of constitutionalism and the rule of law was also the theme when the South African Judiciary met with Judges from neighbouring states to share experiences on the adjudication of organised crimes, specifically relating to human trafficking, wildlife trafficking and money laundering. We expand more on this event on pages 11 and 12.


Lastly, but certainly not least; we are all aware that the Honourable Deputy Chief Justice of the Republic of South Africa, Judge Ray Zondo, was appointed by the former President of the Republic of South Africa, President Jacob Zuma, to chair the Commission of Inquiry into Allegations of State of Capture, Corruption and Fraud in the Public Sector including Organs of State in January this year. This is a momentous task that has been given to the Deputy Chief Justice and the work of the Commission will be watched closely not only within our borders, but also beyond by the global community. In March, the Deputy Chief Justice announced a high-level team that will assist him in undertaking this work. The details are page 7. We assure the Deputy Chief Justice of our full support as he undertakes this important assignment.

We trust that you will enjoy this Issue as much as you enjoyed our first one!

Judge President John Hlophe
Chairperson: Judicial Communications
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 The South African Judiciary

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THE CCJA CONCERNED ABOUT THREATS TO JUDGES

Chief Justice Mogoeng Mogoeng says the Conference of Constitutional Jurisdictions of Africa (CCJA) is concerned about threats to Judges in the African continent by 'powerful forces' who want to erode the independence of the Judiciary.

He was speaking during a media briefing in his capacity as the President of the CCJA at the conclusion of its 9th Annual Session of the Executive Bureau in Durban on 24 January 2018.

Chief Justice Mogoeng Mogoeng said the Session of the Executive Bureau had spent some time deliberating on this matter so that the CCJA could intervene decisively in instances where the independence of the Judiciary was threatened.

The CCJA has intervened in a number of such cases in the African continent. One of these interventions was the statement

issued by the CCJA raising concern about negative remarks allegedly made by President Uhuru Kenyatta following a decision of the Supreme Court of Kenya that nullified his re-election as President last year.

In a media statement on behalf of the CCJA, Chief Justice Mogoeng Mogoeng said "The CCJA and the South African Judiciary, are deeply concerned about the remarks reportedly made by His Excellency President Uhuru Kenyatta about Chief Justice Maraga and other colleagues in the Kenyan Judiciary... His Excellency the President is reported to have said that Kenya has a 'problem' with its Judiciary that must be fixed, asked 'who even elected you', and said 'six people have decided that they will go against the will of the people'. He allegedly went so far as to label the Chief Justice and his colleagues as 'wakora' or 'crooks'."

Chief Justice Mogoeng Mogoeng said that this intervention was

lauded by other jurisdictions of the world as 'trend-setting'.

"During the course of elections [in Kenya], when [Judges] were reportedly subjected to unprecedented insults – and what could have been understood to be utterances of intimidation by very powerful forces in their country – caught not only the eyes of major players in the continent, but also major players in the global stage.

So much so that, when we held the Congress of the World Conference of Constitutional Jurisdictions in Lithuania, our intervention was so trend-setting that it became a subject matter of extended deliberations by the world body," said Chief Justice Mogoeng Mogoeng during the media briefing.

Chief Justice Mogoeng Mogoeng attended the 30th African Union (AU) summit in Addis Ababa and used the opportunity to raise these issues with the political leadership

of the continent. He was invited in his capacity as President of the CCJA as a special guest to the summit by AU Commission chairperson Moussa Faki Mahamat.

It was meant to help him

understand better the challenges facing the AU in enforcing the AU Charter on Human and People's Rights and the strengthening of judiciaries in constitutional democracies, but he was also there to advise the politicians about the worries of Judges on the continent.

The CCJA's 9th Annual Session of the Executive Bureau was held to discuss its programme of action for the year as well as constitutional developments in its various member countries.



Chief Justice Mogoeng with Mr. Medelci Mourad (President of the Constitutional Court of Algeria) and Madam Justice Guilhermina Contreiras Prata (Vice President of the Constitutional Tribunal of Angola).



Deputy Chief Justice Zondo addressing delegates at the Gala Dinner.



From L-R: Mr. Aboudou Salami Maman Sani (Secretary-General of the CCJA); Chief Justice Mogoeng Mogoeng (President of the CCJA); Mr. Laraba Moussa (Deputy Secretary General of the CCJA) and Mr. Tabbech Abdelmadjid (Treasurer General of the CCJA).



Chief Justice Mogoeng addressing delegates at the Gala Dinner following the Executive Bureau meeting.



Delegates visited cultural and tourist sites in Durban

CHIEF JUSTICE MOGOENG RECIEVES BIKO-FANON AWARD

Chief Justice Mogoeng Mogoeng received the Biko Fanon Award for Psychological Liberation. The award - jointly made by the Steve Biko Foundation, the Psychological Society of South Africa (PsySSA), the Pan-African Psychology Union (PAPU) and the Fondation Frantz Fanon - was made in recognition

of Chief Justice Mogoeng's contributions to public awareness, creating a singular source of hope for morality in the South African and continental citizenry. He was honoured during an evening event held at Zoo Lake Bowling Club in Johannesburg on March 12.

Chief Justice Mogoeng received the Biko-Fanon Award for Psychological Liberation, and was presented with a blanket depicting Steve Biko the father of Black Consciousness. Well known musician Siphosiphiso 'Hotstix' Mabuse performed at the event, held at Zoo Lake.





JUSTICE BESS NKABINDE RETIRES

December 2017 marked Constitutional Court Judge Bess Nkabinde's end of her twelve year term as a Justice of the Constitutional Court of the Republic of South Africa. She was bade farewell in a two-part ceremony during 6 and 7 December 2017.

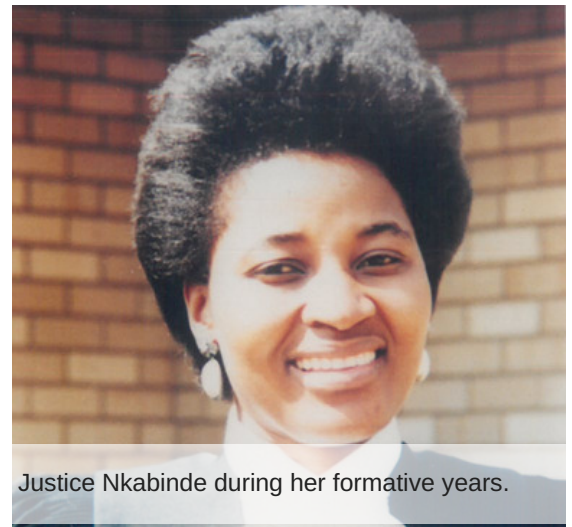
Constitutional Court Judges serve for a term of twelve years.

An elegant gala dinner was hosted in Judge Nkabinde's honour on December 6. This was attended by members of her family as well as other dignitaries from the legal fraternity. Speakers at the dinner included Justice Froneman, Former Deputy Chief Justice Moseneke, and the Acting Chief Justice Zondo, with Justices Cameron and Khampepe being programme directors.

On December 7, a ceremonial sitting of the Constitutional Court was held in which Judge Nkabinde handed down her last judgment. The judgment on her final day was on a labour matter where she found Section 38(2) (b)(i) of the Public Service Act unconstitutional.

Representatives from the National Association of Democratic Lawyers (NADEL), Black Lawyers Association (BLA), the General Council of the Bar of South Africa, as well as Parliament of South Africa, among others, all took turns during the ceremonial sitting lauding Judge Nkabinde for her stellar career.

We wish her well in her retirement!



Justice Nkabinde during her formative years.



Justice Nkabinde with some of her former law clerks.

STATE OF THE NATION ADDRESS

IN PICTURES



The leadership of the Judiciary annually takes part in the opening of Parliament. The Justices are joined here by the Secretary-General of the OCJ, Ms Memme Sejosengwe.



CJ Mogoeng leads the Judicial procession on the red carpet



The spouses of the Judiciary leadership were also there.





DEPUTY CHIEF JUSTICE ZONDO ASSEMBLES STATE CAPTURE COMMISSION TEAM

The Chairperson of the Commission of Inquiry into Allegations of State of Capture, Corruption and Fraud in the Public Sector including Organs of State, Deputy Chief Justice Raymond Zondo, has announced the high-level team that will assist him in the work of the Commission.

He made the announcement during a press briefing held at the Office of the Chief Justice building in Midrand, Gauteng, on 7 March 2018.

Speaking during the press briefing, Deputy Chief Justice Zondo said he had appointed Dr Khotso De Wee, Vincent Maleka SC, Terence Nombembe, Leah Gcabashe SC, Paul Pretorius SC and Thandi Norman to help him spearhead the work of the Commission.

Dr Khotso De Wee has been appointed as the Secretary of the Commission. He was the Executive Director of Fort Hare Solutions and previously served as the Chief Operations Officer at the Department of Justice and Constitutional Development. De Wee was also previously the Acting Secretary General of the Office of the Chief Justice.

Terence Nombembe, former Auditor General of SA will be head of investigations for the Commission. "He will lead a team of investigators

who are multi-disciplined in order to cope with the type of investigations that will be required," said the Commission Chairperson.

Senior Counsel, Paul Pretorius, will lead the Commission's legal team. He will be joined by three other senior counsel, namely, Vincent Maleka, Leah Gcabashe and Thandi Norman. Pretorius, as leader of the legal team, would at times lead evidence in the hearings.

Deputy Chief Justice Zondo said the Commission had effectively begun its work on March 1, and "some investigators would begin to go out into the field and conduct investigations". He said some investigations would need more time and there might be a need to wait before those hearings begin.

The announcement of the team generated a sentiment of approval from the media with headlines such as "Zondo puts together his own justice league" (Mail & Guardian online, March 7) "Zondo selects a crack team" (Business Day, March 8), "State capture inquiry team inspires confidence, hope" (The Mercury, March 8), and "High-powered team on board for Zondo inquiry" (The Herald, March 8).

Civil society organisations also welcomed the team announced by the Deputy Chief Justice:

Director of the Ahmed Kathrada Foundation, Neeshan Balton, said they were 'thrilled' to learn Nombembe would be leading the investigation. "He is a man of incredible integrity and has a full understanding of the public sector. If there is anyone who will be able to pick up the flaws, it's him," Balton said. – The Mercury, March 8.

Council for the Advancement of the South African Constitution (CASAC) director Lawson Naidoo told Daily Maverick: "This is an impressive team of able and experienced professionals whose integrity is beyond reproach. Justice Zondo is to be commended for assembling such a strong team." – Daily Maverick, March 9.

The team was ... described as "very impressive" by Accountability Now's Paul Hoffman, who added that its composition "engenders confidence that a serious effort will be made to get to the bottom of State Capture, its causes, effects and the means of preventing it from happening again". – Daily Maverick, March 9.

An announcement is expected soon on the premises from which the Commission will operate.

MEET THE TEAM



Dr Khotso De Wee



Isaac Vincent Maleka, SC



Terence Mncedisi Nombembe



Leah Gcabashe, SC



Paul Joseph Pretorius, SC



Thandi Victoria Norman

Polokwane Bar Council honours Judge President Makgoba



The Polokwane Bar Council hosted an annual dinner on November 25 to honour the Judge President of Limpopo Division of High Court, Judge Ephraim Makgoba for his leadership. The event was held at Fumani Lodge in the Waterberg District.



Judge President Makgoba with Adv Lindiwe Vilakazi of the Polokwane Society of Advocates



Colleagues, stakeholders and OCJ staff came together to honour JP Makgoba





JUDGES THRASH OUT JUDICIAL ACCOUNTABILITY MECHANISM

By Yvonne van Niekerk

The Judiciary owes its relevance, significance and support not just to the Constitution of the country, its laws and institutions. It also owes its credibility and admiration in the eyes of the public to the Judgments it delivers and the strategic priorities it is able to set for itself. The starting point is identifying key challenges that inhibit the Judiciary from meeting its constitutional mandate to ensure access to Justice for all, efficiently and effectively.

Throughout the world the Judiciary remains accountable to the people for the power and authority bestowed upon it. Chief Justice Mogoeng Mogoeng has emphasised that the Judiciary should be responsible for setting its own performance indicators and targets for the purpose of accountability, evaluation of its performance and identifying areas that require improvement.

The Heads of Court established a sub-committee, chaired by Judge President Hlophe, on Judicial Accountability to address the following issues:

- a) What should Judges do to improve court performance;
- b) What is the most effective way of gathering statistics;
- c) How should the Judiciary communicate effectively its work to the public (progress made; the challenges and the required resources); and
- d) How best the Judiciary can ensure that it reviews its targets on an on-going basis.

A workshop was held on 11 – 12 December 2018, where 45 Judges from all the Superior Courts met to discuss and finalise the Judicial Accountability report. The purpose was to identify challenges that undermine the efficiency and effectiveness of the Judiciary.

The identification and exchange of best practices and the setting of measurable targets for court performance bears the ultimate aim of ensuring that the Judiciary regain control of litigation and court processes. It seeks to deal with the developing situation in which, thanks to a heightened understanding of constitutionally mandated judicial independence, it is no longer appropriate for any other institution to report on the state of the Judiciary. Instead, Judges must now speak for themselves about their progress and problems.

This was a truly momentous moment for the Judiciary. Historically there were no accountability mechanisms to allow the Judiciary to report on court performance and other matters related to the exercise of its constitutional mandate. Traditionally Judges accounted through their judgments, with the Executive reporting on court performance and related budget matters.

Deputy Chief Justice Zondo delivered the keynote address at the workshop. He drew from his experience as a Judge President and addressed the Judges on matters relating to proper management of judicial performance.



He said that “as our democracy matures and develops and the principle of judicial independence becomes more crystallised, it becomes necessary for the Judiciary to develop its own way of being accountable to the people it serves.”

The Judges spent the two days deliberating and discussing what criteria should be used when reporting on Court Performance and how best to indicate and measure whether the Judiciary is improving or not? Critical indicators were discussed and the lively debates ensured the fine-tuning of targets the Judiciary have set for themselves.

The workshop also endorsed the idea of a Legal Week where the Judiciary would report on its performance to the public at large and in so doing be transparent and accountable on its Constitutional Mandate.

During his closing address, Judge President Hlophe said that “The time has now come for the Judiciary to take the lead on accounting to the public for its work, and for the power and authority the state has endowed on them.”



Deputy Chief Justice Zondo delivered a keynote address at the workshop.



Judge President Hlophe is the Chair of the Committee on Judicial Accountability.



Judge President Shongwe addressing the workshop.



Deputy Judge President Musi addressing the workshop during a presentation.



Forty-five Judges from all the Superior Courts attended the workshop.



Enhancing Judicial Excellence



The South African Judicial Education Institute (SAJEI) kicked off 2018 by hosting their first workshop for Judicial Educators and Guest Facilitators.

The three-day workshop focused on facilitation skills, developing effective curriculum programmes, as well as on how to employ systematic methods for planning and conducting judicial programmes.

The workshop was held from 8 to 10 January 2018 at SAJEI training centre at the OCJ National Office in Midrand.

The main objectives of the workshop were to equip judicial facilitators with judicial skills required to develop learner-centred educational programmes, and also to recognise the difference between adults and children's curriculum.

The workshop was conducted by Mr John Meeks of the National Centre for State Courts in the United States of America. Meeks is a frequent presenter at judicial branch education programmes on the topics of adult education, faculty development, curriculum development and leadership.

The South African Judicial Education Institute (SAJEI) was established in terms of the South African Judicial Institute Act 14 of 2008 in order to:

- (a) provide proper, appropriate and transformational judicial education and training, having due regard to both our inherited legacy and our new constitutional dispensation; and
- (b) offer judicial education and training to aspiring and newly appointed Judicial Officers as well as continuing training for Judicial Officers.

SAJEI is led by a Council consisting of 24 members who are largely from the Judiciary. Other stakeholders such as Advocates, Attorneys, Academics as well as Traditional Leaders form part of the Council.



SA Judiciary meets with Judges from neighbouring states to share experiences on the adjudication of organised crimes

Human trafficking, wildlife trafficking and money laundering cases have become constant in the court rolls of the Judiciary. Combating human trafficking, wildlife trafficking and money laundering has become a global concern, with different structures identifying gaps in legislation and the criminal justice system on the complexities of adjudicating cases of this nature.

During 17-19 January 2018, members of the South African Judiciary and Judges from Kenya, Mozambique and Tanzania attended a Seminar hosted by the South African Judicial Education Institute (SAJEI) in the Limpopo Province to exchange knowledge in dealing with these matters.

The Deputy Chief Justice of the Republic of South Africa, Justice Raymond Zondo, gave the keynote address. In his address, Deputy Chief Justice Zondo thanked the organisers of the seminar for focusing on the chosen topics, stating that it demonstrated commitment and

signalled that the Judiciary is acknowledging that it is faced with challenges.

“In a seminar like this one it is where we learn from one another and also share experiences with other Judges from our neighbouring countries”, said Deputy Chief Justice Zondo.

The Deputy Chief Justice also mentioned that, of the three topics, money laundering was the most challenging. “Money laundering is a global phenomenon, with the United States, Italy and Russia being the top three countries faced with this illegal activity... The International Monetary Fund estimated that between 2% to 5% of the global economy involves laundered money,” said the Deputy Chief Justice.

He also expressed serious concerns regarding wildlife trafficking, stating that the Judiciary and the law enforcement agencies are faced with a number of challenges when investigating and adjudicating wildlife cases.

The following topics were covered during the seminar:

- Nature and extent of wildlife trafficking in Africa: Issues and Challenge, by Dr Joseph Okori, Regional Director IFAW Southern Africa.
- Complexities in adjudicating Human Trafficking cases in South Africa, by Justice C Mocoselle (Supreme Court of Appeal), Judge R. Henney (Western Cape Division of High Court, Judge N. Ranchod (North Gauteng Division of High Court), Judge M. Mabesele (South Gauteng Division of High Court) and Deputy Judge President P. Goliath.
- Adjudicating transnational Human Trafficking cases, by Justice (Dr) P. Kihwelo (Mozambique) and Deputy Judge President C. Mu.
- International Adoptions and Child Trafficking, by Justice Z. Tshiqi (Supreme Court of Appeal).
- Unpacking complex instruments of proceeds from Money Laundering (e.g. Trusts, Corporations and Companies), by Mr Pedro Gomes Pereira.



Deputy Chief Justice Ray Zondo gave a keynote address at the opening of the workshop.



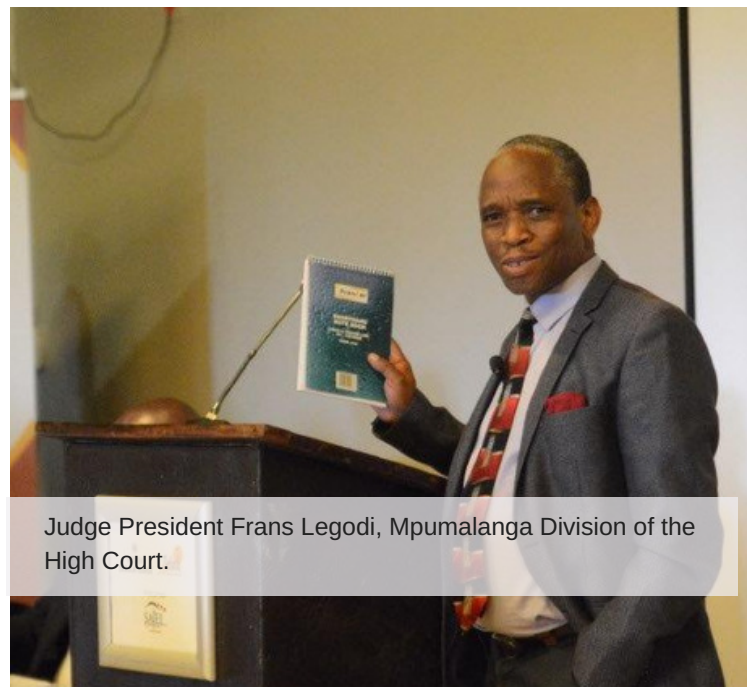
Deputy Judge President of the Limpopo Division of the High Court, Judge Fikile Mokgohloa



Judges from South African and neighbouring Judicial jurisdictions with Deputy Chief Justice Zondo.



Justice tshiqi, Deputy Judge President Mokgohloa and Judge President Legodi.



Judge President Frans Legodi, Mpumalanga Division of the High Court.

Upskilling for Aspirant District Magistrates

A total of 160 Magistrates from different provinces converged in Kempton Park, Gauteng, to attend the Aspirant District Magistrate Training programme, conducted by the South African Judicial Education Institute (SAJEI). The workshops took place between 4 February and 2 March 2018.

The programme was aimed at advancing the Aspirant Magistrates' skills in children's court, child justice, criminal court, family court, civil court, and judgment writing. During this period, the Magistrates engaged on

a range of critical issues faced by the Judiciary on a daily basis.

During the opening ceremony, Chief Magistrate J. Ikaneng from North West addressed the magistrates on "The Role of the Magistrate, Integrity of the Profession, the do's and don'ts of the profession". The keynote address was delivered by Judge T.P. Mudau of the Gauteng Division of the High Court. In his address, he talked about the role of the Magistrates in a constitutional dispensation.

The Aspirant District Magistrate Training programme began in earnest on 4 February 2018. Minister of Justice and Correctional Services, Adv TM Masutha, MP addressed the Aspirant Magistrates words of encouragement.





THE “GENTLEMAN JUDGE” REMEMBERED

By Pfunzo Mafenya

As has been a long standing practice of the SA Judiciary to honour late Judges for their contributions to the bench, the Judiciary came together to remember the late Transvaal Judge President, Frikkie Eloff, who passed away in December 2017 at the age of 92.

On February 27, members of the Judiciary, Eloff family members and the legal fraternity, gathered at the Pretoria High Court for a ceremonial sitting, held in remembrance of the “Gentleman Judge”, as he was popularly known.

Judge President Eloff was well-known for presiding over the Chris Hani case and his sentencing of the South African Communist Party (SACP) leader's killers to death. He was also the Judge who swore-in to office the late former President Nelson Mandela's cabinet after the 1994 democratic elections.

Speaking during the ceremonial sitting, Judge President of the Gauteng Division of High Court, Judge Dunstan Mlambo, spoke about Judge Eloff's family history and their role during the apartheid era.

Judge Mlambo described Judge President Eloff as someone who struggled to come to terms with the changes of 1994, especially with the transformation of the Judiciary. But he commended him for later embracing the transformative imperative ushered in by the Constitution. He also described him as a jurist who held on to legal principles. “We know of his Judgments in the Chris Hani murder trial and the Mandela vs Mandela divorce matter”, he said.

In his tribute, former Judge President of the Gauteng Division of the High Court, Bernard Ngoepe, said he learnt from Judge Eloff that when difficult matters arose at the Court, as the head he must avail himself. He also remembered the late Judge's work ethic by telling a story of how Judge Eloff once denied long leave to another Judge in the Johannesburg High Court, demanding that he deliver judgments for all his cases before leave could be granted.

“Who on earth could be Judge Eloff, except the man himself? I aspired to be him, but I could not be him,” said former Judge President Ngoepe.

Speaking on behalf of Law Society of the Northern Province, Mr Gule said Judge President Eloff was an eminent jurist who mentored many others. “Former Deputy Chief Justice Dikgang Mosekene ascended to the bench through the late Judge [Eloff],” he said.

On behalf of the NPA, Adv Andrew Chauke remembered the late Judge as a remarkable Judge who was fair on all his decisions. Advocate Green from the Johannesburg Society of Advocates described him as an officer of the law, who enjoyed his law career regardless of the challenges that comes with the job. “He received many honorary awards for his work”, he added.

The former Judge was buried on December 12, 2017, in a private ceremony. A formal funeral was held on January 15, 2018, in Pretoria where his former colleagues and peers paid their last respects.



The Judges of the Gauteng Division of the High Court paid homage to former Judge President Eloff, together with members of his family and those from the legal fraternity



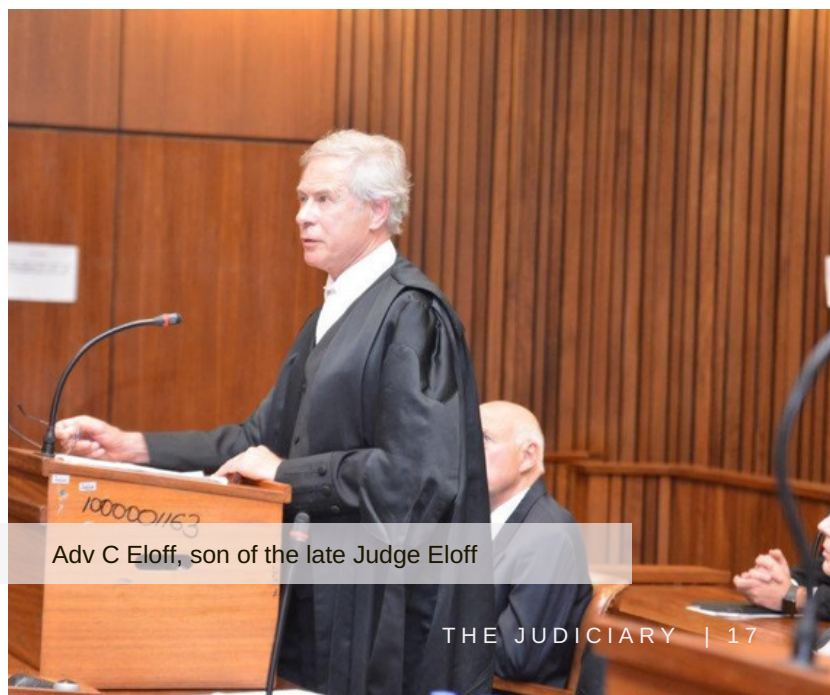
The Eloff Family



Mr T Joubert from the Gauteng Attorneys Association



William Moadi from the Black Lawyers Association



Adv C Eloff, son of the late Judge Eloff



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