THE JUDICIARY

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NATIONAL OFFICE ADDRESS:
188 14th Road, Noordwyk
Midrand, 1685

STAY IN TOUCH
+27 (0)10 493 2500
ocjcommunications@judiciary.org.za
www.judiciary.org.za

TheSouthAfricanJudiciary @OCJ_RSA @OCJ_RSA Judiciary RSA

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EDITORIAL STAFF & CONTRIBUTORS

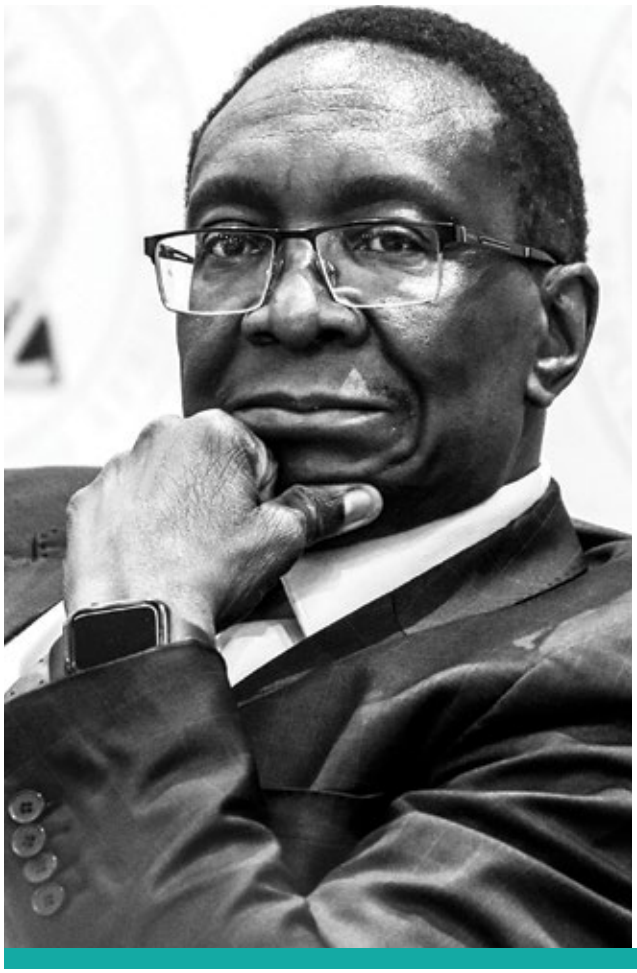
Editor:
Judge President Dunstan Mlambo

Writers:
Justice Jody Kollapen
Judge Francis Legodi
Judge Ingrid Opperman
Mr Ishmail Abramjee
Ms Lusanda Ntuli

Photographers:
Ms Lusanda Ntuli
Ms Pfunzo Mafenya
Ms Zininzi Makgoale
Ms Nontembiso Kgatle
GCIS

Designer:
Ms Nontembiso Kgatle

Editor



Dear colleagues,

This is our final issue of the Judiciary Newsletter for the 2021/2022 financial year. We sincerely hope that the publication continues to meet your expectations as our readers. In our very first Issue we said this newsletter seeks to inform members of the Judiciary of the latest judicial developments; inform stakeholders about the initiatives or activities of the Judiciary; heighten contact between members of the Judiciary; act as a platform for the Judiciary to share views on general matters that affect them; and profile Judicial Officers in the execution of their constitutional mandate. We hope we are still delivering on this mandate, nearly five years since our launch publication.

As the first order of business for this Issue, we extend our warmest congratulations to Justice Raymond Zondo on his appointment as the fifth Chief Justice of a democratic South Africa! We publish this Issue with his appointment having taken effect on 1 April 2022, and we have no doubt that Chief Justice Zondo has hit the proverbial ground running to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts. I am sure I speak for all my colleagues in saying Chief Justice Zondo can rely on all our support in implementing his vision for the Judiciary. Best wishes Mthiyane!

Justice Narandran "Jody" Kollapen was honoured on March 4 by the Pretoria Legacy Foundation (PLF) following his recent appointment by the President of the Republic as a Constitutional Court Justice, effective 1 January 2022. Justice Kollapen is also the Vice Chairperson of the PLF.

During the celebratory evening, the PLF bestowed Justice Kollapen with its highest award in recognition of his achievements. Please read more about this on page 30.

Justice Kollapen also recently delivered a talk on constitutionalism at a conference hosted by Section 27 and the Council for the Advancement of the South African Constitution (CASAC). Please read his remarks on page 10. We also bring you remarks by Judge President Francis Legodi, made to the Black Lawyers Association recently. Please see page 16 for this. Judge Ingrid Opperman also writes on the important subject of adjudicating sexual offences matters. Please turn to page 22 to read this.

We thank our colleagues for these contributions. This newsletter exists because of your contributions, so please never tire of supporting it.

Siyobonana ngokuzayo!

Enjoy the newsletter!

Judge President Dunstan Mlambo
Chairperson: Judicial Communications Committee

PRESIDENT RAMAPHOSA APPOINTS JUSTICE ZONDO AS CHIEF JUSTICE

On Thursday, 10 March 2022, President Cyril Ramaphosa, in accordance with Section 174(3) of the Constitution, appointed Deputy Chief Justice Raymond Zondo as the next Chief Justice of the Republic of South Africa with effect from 1 April 2022.

The President's decision follows consultation with the Judicial Service Commission and leaders of parties in the National Assembly on four nominees for appointment as Chief Justice.

In terms of the Constitution, the Chief Justice is "the head of the judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts".

With Justice Zondo assuming the position of Chief Justice, the position of Deputy Chief Justice will become vacant. President Ramaphosa has accordingly indicated his intention, once the new Chief Justice assumes office, to nominate Justice Mandisa Maya for

> "the Chief Justice is a guardian of our Constitution and the laws adopted by the freely elected representatives of the people

the position of Deputy Chief Justice. This nomination will be subject to the process outlined in Section 174(3) of the Constitution.

In September 2021, President Ramaphosa invited public nominations for the position of Chief Justice. The President appointed a panel, chaired by Judge Navanethem Pillay, to evaluate nominations made by the public and to shortlist nominees who fulfilled the advertised requirements for nomination.

After considering the Report of the Nomination Panel, President Ramaphosa identified the following candidates for consideration for appointment:

- Justice Mbuyiseli Madlanga
- Justice Mandisa Maya
- Justice Dunston Mlambo
- Justice Raymond Zondo

The President then invited the Judicial Service Commission and leaders of parties in the National Assembly to express their views regarding the suitability of any of the four nominees for appointment as Chief Justice.

> “The inclusive process of selecting the next Chief Justice demonstrated not only the value that South Africans place on the judiciary, but also the depth of experience and capability within the senior ranks of the judiciary

President Ramaphosa expressed his gratitude to each of the nominees for making themselves available for the position of the Head of the Judiciary. He also expressed his gratitude to the Judicial Service Commission, the leaders of political parties, the members of the nomination panel and the many South Africans who submitted nominations.

“The inclusive process of selecting the next Chief Justice demonstrated not only the value that South Africans place on the judiciary, but also the depth of experience and capability within the senior ranks of the judiciary,” President Ramaphosa said.

“The position of Chief Justice carries a great responsibility in our democracy. As the head of the judiciary, the Chief Justice is a guardian of our Constitution and the laws adopted by the freely elected representatives of the people. The Chief Justice stand as the champion of the rights of all South Africans and bears responsibility for ensuring equal access to justice. I have every confidence that Justice Zondo will acquit himself with distinction in this position.”

Justice Zondo was first appointed as a Judge of the Labour Court in 1997 and was Judge President of the Labour and Labour Appeal Court between 2000 and 2010. He has been a Justice of the Constitutional Court since 2012 and was appointed as Deputy Chief Justice in 2017. He holds a BJuris degree from the University of Zululand and obtained his LLB from the University of KwaZulu-Natal. He also holds an LLM (cum laude) from the University of South Africa and another with a specialisation in commercial law.

Source: The Presidency of the Republic of South Africa - www.thepresidency.gov.za

PRESIDENT MAYA CONGRATULATES DEPUTY CHIEF JUSTICE ZONDO ON HIS APPOINTMENT

The President of the Supreme Court of Appeal of South Africa Justice Mandisa Maya, extends warm congratulations to Deputy Chief Justice Raymond Zondo on his appointment by the President of the Republic of South Africa as the next Chief Justice.

President Maya offers her full support to the incoming Chief Justice and is committed to continue working with him in the exercise of judicial authority. Furthermore, President Maya has full confidence in Justice Zondo as a leader in the Judiciary and has no doubt that the contribution he will continue to make in our jurisprudence and administration of justice will strengthen and move the South African Judiciary forward.

President Maya expresses her gratitude to everyone who supported her candidature formally and informally, for the position of Chief Justice of the Republic of South Africa.

THE JUDICIAL SERVICE COMMISSION WELCOMES THE APPOINTMENT OF THE CHIEF JUSTICE

The Judicial Service Commission notes and welcomes the announcement by President Ramaphosa of his decision to appoint Deputy Chief Justice Raymond Zondo as the Chief Justice of South Africa with effect from 01 April 2022.

The JSC extends its congratulations and best wishes to Deputy Chief Justice Zondo.

The JSC further notes and welcomes the President's intention to nominate President Mandisa Maya for the position of Deputy Chief Justice once that position becomes vacant.

The JSC also wishes to extend its congratulation s and best wishes to President Maya regarding this process


01

STATE OF THE NATION ADDRESS
SONA 2022

On Thursday, 10 February 2022, President Cyril Ramaphosa delivered the first State of the Nation Address (SONA) outside of the Chamber of the National Assembly. For the first time since the dawn of our democracy, SONA took place at the Cape Town City Hall which was declared a Parliamentary precinct from 1 to 16 February 2022, and all rules that apply to the Parliamentary precinct came into effect at the Cape Town City Hall.

This unprecedented SONA was brought on by the devastating fire that engulfed Parliament on Sunday, 02 January 2022. The Judiciary, as one of the three Arms of State, was in attendance in what has been coined a historical SONA.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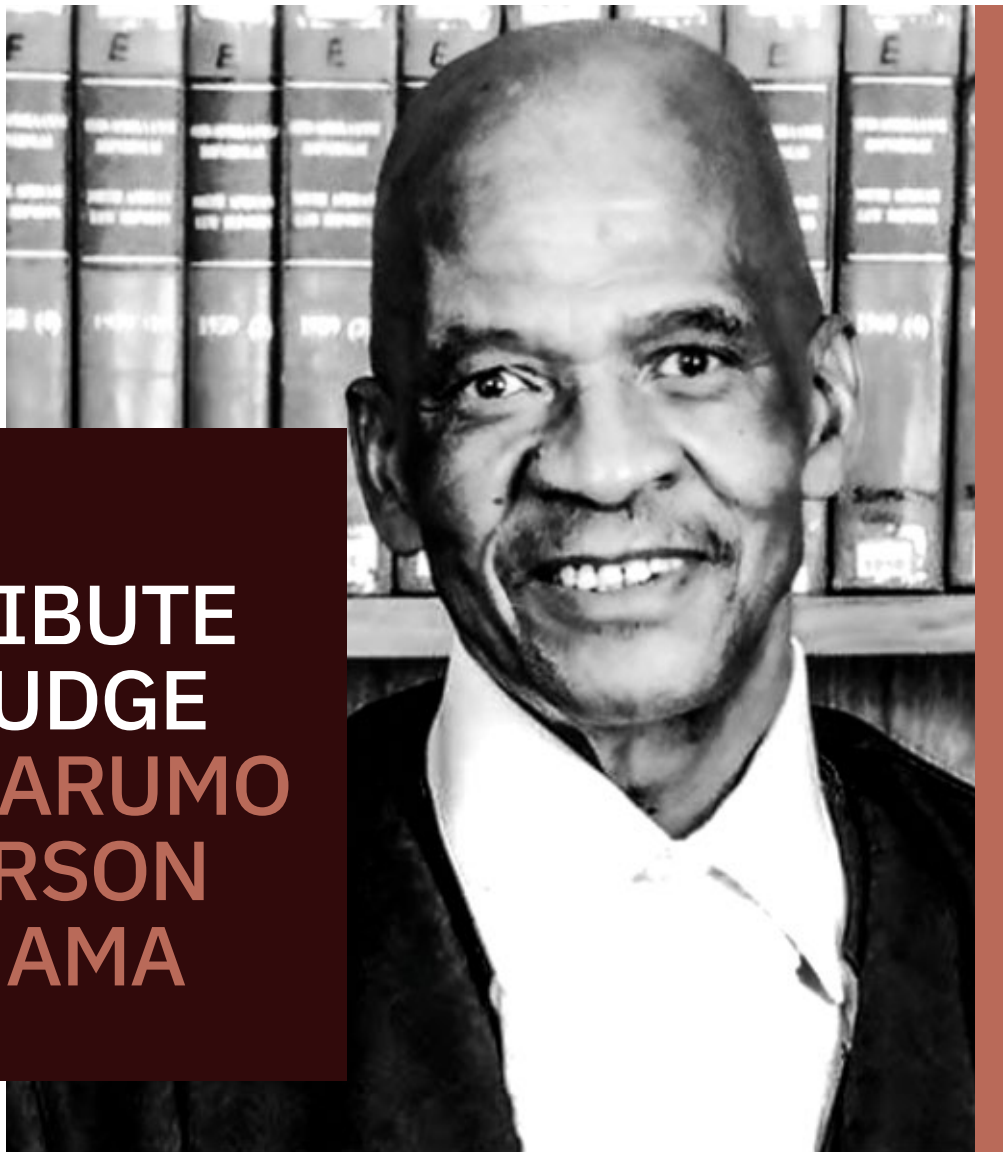
1. Judicial procession, ushered by Adv. Modibedi Phindela, the Secretary to the National Council of Provinces (NCOP) (GCIS)

2 - 3. Acting Chief Justice Zondo with Mrs Zondo, arriving at SONA and received by the Speaker of the National Assembly, Hon N N Mapisa-Nqakula and the Chairperson of the NCOP, Hon A N Masondo

4. Front row: Acting Chief Justice Raymond Zondo sitting alongside Deputy President of the Supreme Court of Appeal, Justice X M Petse. Back row - Left to right: Judge President S Mbenenge; Deputy Judge President S S Mphahlele; Deputy Judge President M V Semenya; Deputy Judge President S S Mphahlele and Judge President B Waglay.

5 - 6 Judicial procession (GCIS)

7. Acting Chief Justice Zondo greeting Hon A N Masondo upon his arrival at the Cape Town City Hall.



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A TRIBUTE TO JUDGE RAMARUMO EMERSON MONAMA

Judge Ramarumo Emerson Monama of the Gauteng Division of the High Court passed away on 17 February 2022. The following is the full text of the statement issued by Acting Judge President Ledwaba (Gauteng Division of the High Court) upon hearing of Judge Monama's passing.

On behalf of the Gauteng Division of the High Court, Acting Judge President Ledwaba, conveys his condolences to the family, relatives and friends of the late Judge, Judge Ramarumo Emerson Monama, who passed away on 17 February 2022 following a short illness.

The Judges and staff of the Gauteng Division of the High Court were saddened to learn of the passing of the Judge Ramarumo Emerson Monama, who had been an active Judge in the Division since 2010.

After completing matric, the Judge studied towards and obtained a Bachelor of Jurisprudence (B.iuris) degree at the University of the North in Limpopo. He later obtained a Bachelor of Law (LLB) from the University of the Witwatersrand.

He served his articles at Webber Wentzel attorneys, where he became a qualified attorney. He was a founding member of the Centre for Applied Legal Studies (CALS) – South Africa's oldest human rights/public interest legal center – in 1978, together with lawyers such as Professor John Dugard and Halton Cheadle.

His loss will be profoundly felt by his colleagues and the staff in the Gauteng Division of the High Court.

May his soul rest in peace.

01. A Church service to honour Judge Ranarumo Monama was held at the St Catherine's Anglican Church in Bramley, on 23 February 2022

02. Justice Nkabinde, former Justice of the Constitutional Court with Dr Kgosi Lesedi Motsatsi

03. Judge President Mlambo reading a tribute penned by the former Chief Justice Mogoeng Mogoeng

04. The Ceremonial Court sitting in honour of the late Judge Monama was held at the Gauteng Local Division of the High Court, Johannesburg, on 2 March 2022, proceedings were also live streamed on the Judiciary's YouTube channel

05. Judge President Mlambo (middle), Deputy Judge President Ledwaba (left) and Deputy Judge President Sutherland at the special Court sitting of Judge Monama

06. Members of the Judiciary and the Legal fraternity as well as members of the Monama family gathered to pay tribute to the late Judge

07. Adv. R S Du Toit, Deputy Director of Public Prosecutions, Johannesburg

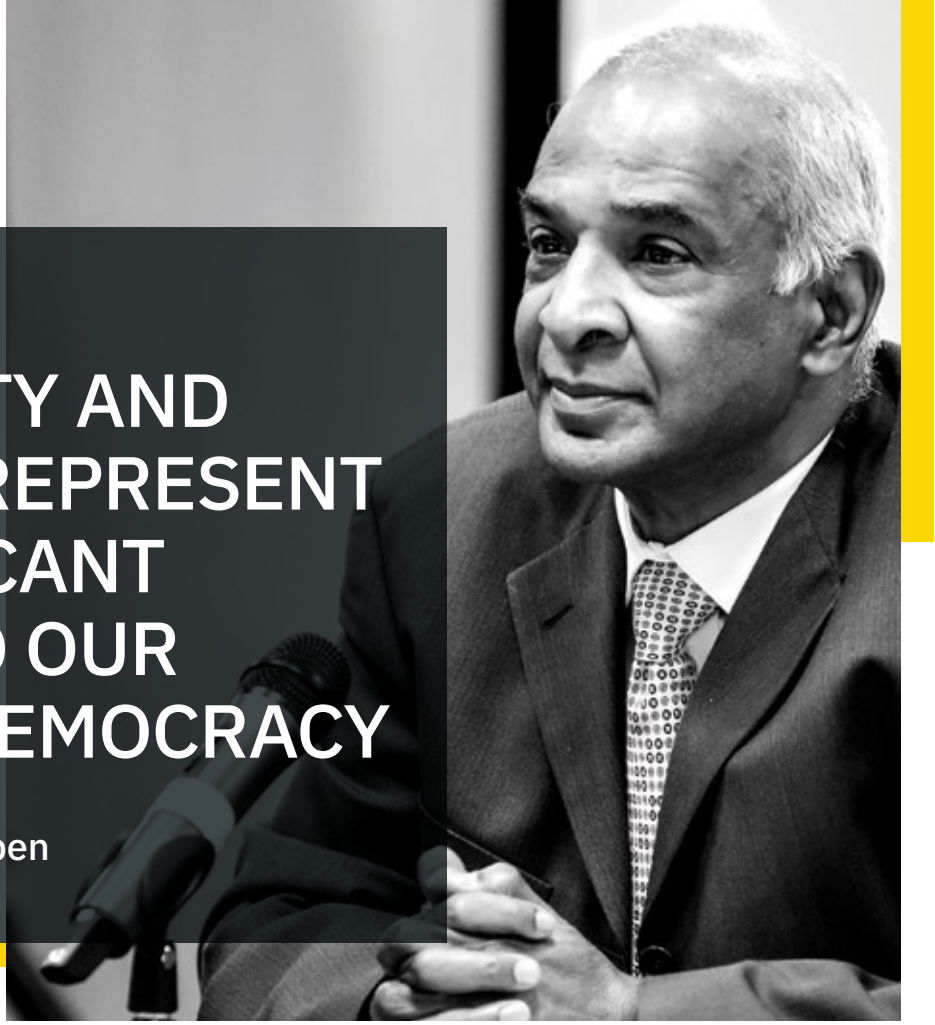
08. Adv. N Rajab-Budlender SC from the Pan African Bar Association of South Africa (PABASA)

09. Mr S T Mapheto from the Black Lawyers Association

10. Adv. C F Van der Merwe from the Johannesburg Society of Advocates

11. Adv. E Gaurneri represented Legal Aid South Africa

12. Mr W Bloem the Chairperson of the Johannesburg Attorneys Association.



INEQUALITY AND POVERTY REPRESENT A SIGNIFICANT THREAT TO OUR FRAGILE DEMOCRACY

By Justice Jody Kollapen
Constitutional Court

Justice Kollapen recently addressed a conference on constitutionalism, hosted by public interest law centre Section 27 and the Council for the Advancement of the South African Constitution (CASAC). The following is the full text of his address.

The topic of constitutionalism is an important one and of great significance at this time in our country when the very idea of a Constitution and the principle of constitutionalism is talking centre stage in a lot of the public discourse that is unfolding.

Former President Nelson Mandela described the coming into existence of the Constitution in the following terms:

> *"The brief seconds when the majority of the Honourable Members quietly assented to the new basic law of the land have captured in a fleeting moment the centuries of history that the South African people have endured in search of a better future. And so it has come to pass today that S.A undergoes her rebirth, cleansed of a horrible past, matured from a tentative beginning and reaching out to a future with confidence."*

While the ushering in of a new Constitutional order that evidenced an unconditional rejection of our shameful past and a commitment to a fundamentally and qualitatively different future was always going to be historic, few of us imagined how dominant a place the Constitution would come to occupy in virtually all facets of our lives. From the overtly political to the intensely personal; in commerce, trade and industry; in sport and leisure; indeed in the collective and individual consciousness; in the selfdetermination of individuals and collectives; and in the daily struggles of our people, the Constitution has been a constant.

Of course, its very nature and content and the scope of its impact continue to be the subject of ongoing contestation and will invariably be substantially shaped by the vantage point of the reviewer. For many, the Constitution has truly been the source and the foundation of a better society, a better life, a better future – one characterised by respect for their worth and dignity and one that has enabled them to reach their potential, as the preamble to the Constitution so boldly proclaims.

For many others, however, the Constitution remains an illusion far on the horizon. They impatiently wait to feel its presence and effect and to deliver on its promise of a better life for all. And the longer they wait, the more likely they are to believe it is more illusive than real. And yet, the very future of our country depends on how this constitutional pact is honoured for all South Africans. More on that later.

And so, important as the coming of the Constitution was, there was life and activism before the Constitution – it was vibrant, robust, boisterous, brave and courageous.

In the pre-1994 era, the institutions of state were not ours – they were created for a privileged minority, worked to

“People at all levels of our society and in all sectors recognised that unity in purpose was key if we were to speak in one voice, advance one united struggle and work towards the idea of one South Africa

advance minority interests and worked uncompromisingly against the interests of the majority. That was after all the perversion of apartheid. And so, the struggle for freedom took place outside of a formal and organised state institutional framework, but it was by no means a disorganised struggle – it was just organised differently and in a real sense organically.

People at all levels of our society and in all sectors recognised that unity in purpose was key if we were to speak in one voice, advance one united struggle and work towards the idea of one South Africa that belonged to all of its people. And what a precarious and exciting time that was. I can recall UDF mass meetings in Laudium where I lived then and still continue to live. The Civic Centre would be packed to the rafters, you never knew if the Security Police would break up the meeting and arrest the organisers and anyone else they felt like arresting; the speeches were rousing and passionate everyone was moved – even the cynical and those who believed that the crude might of the apartheid state was invincible.

And indeed long after the meeting had ended, you had a sense of hope even if objectively the power of the apartheid state was formidable. You instinctively knew and had faith that you were part of a greater movement that was unstoppable – a movement that was ethically beyond reproach you knew your leaders and you trusted them implicitly and they, in turn, served selflessly. The vibrancy of the organisations of civil society took centre stage in those struggles, they guided, they strategised, they led with integrity and were worthy of being followed. Workers, teachers, lawyers, parents, religious communities, trade unions and many other interest groups formed a resilient common front and gloriously took millions along with them.

And yet, life was difficult for us, for our parents, for our leaders and for our people. There were days when we were engulfed by despair and other times when hope soared within us. It was as Dickens famously wrote— “it was the best of times, it was the worst of times”.

And so the peoples’ struggle endured and in 1994 it reached its zenith when we voted for a new government and welcomed an impressive new and comprehensive institutional framework that was firmly located in the new supreme law we had adopted – the Constitution.
And so it raises the question” how does a peoples struggle, deeply rooted in the lived reality of the millions who drove it and owned it and gave it sustenance and legitimacy, relate to the new institutional framework of the Constitution, that was meant to deliver on the expectations of that struggle, which may well have fallen short in some ways, but in other ways substantially delivered on the blueprint for a new democratic order? I wish to make a few observations in this regard.

Firstly, we did not simply replace minority rule with majority rule, but instead with a system of constitutionalism – described in the following terms by William Galston writing in the Journal of Democracy:

> *“Constitutionalism, denotes a basic, enduring structure of formal institutional power, typically but not always codified in writing. This codified structure is ‘basic’ in that it provides the basis for the conduct of public life. And it is ‘enduring’ because it typically includes some mechanism that makes it harder to change the structure itself than to amend or reverse decisions made within it. In addition to organizing power, constitutions also establish boundaries for the institutions that wield it.”*

In its submission to the Constitutional Assembly in 1995 the ANC said:

> *“The supremacy of the Constitution should not be a system against the state but it should be a system for the democratic state, to guard against the state degenerating into anarchy, arbitrariness and illegality without a framework of rules. Such a state would undermine democracy and democratic practices.”*

Secondly, democratic decision-making or majority rule is recognised to the extent that it is not offensive to the precepts of the Constitution and, to that extent, constitutionalism recognises the necessary constraints that must apply to the exercise of state power. This is important particularly in South Africa where the claims of majorities may come into conflict with the Constitution. The fact that those claims are located in popular sovereignty do not render them any more legitimate if they conflict with the principles of the Constitution. This is not anti-democratic, rather it is the proper recognition that if you wish to build a truly inclusive society in the bewildering diversity that is South Africa , then the dictates of the majority or as some have said the tyranny of the majority must have some counter-weight.

Those principles operate to protect all – today they may appear as a barrier to the assertion of some claim but tomorrow the same group may invoke them to protect their interests.

Thirdly, the formal structures of the Constitution and those that encourage public participation in its processes were never meant to replace the natural ability of people to come together around an issue; organise and mobilise and advance

the public debate on that issue; and push for policy changes, law reform or whatever else was necessary to address the issue. While the structures of the Constitution are there to provide an enabling environment for this to happen, they are by no means dispositive of the manner in which people chose to organise themselves and engage with the formal institutions of state.

The need to and the right to organise and the spontaneity that often accompanies it must not be straitjacketed into formal processes, even though they must be harnessed in the most effective way possible. We must be careful that we do not allow the grandeur of the constitutional order to have a chilling effect on the lifeblood of democracy – people engaging with each other and with their government in the manner they may consider most effective.

Amartya Sen made reference to this on a visit to South Africa many years ago when speaking at Rhodes University, he referred to what he called the 2 perspectives of democracy – the public ballot and the public reasoning perspective of democracy is how he described them.

The public ballot perspective dealt with the adequacy of the public ballot and the freedom to vote and the integrity of the ballot and its assessment. The second interpretation, which he referred to as the "public reason perspective", sees democracy in terms of the opportunity of participatory reasoning and public decision-making. The democratic claim of a political order has to be judged by its commitment to protect as well as to respond to public reasoning.

Voting and balloting are, in this perspective, just one part of the democratic process. There was a need, he said, for supporting and encouraging open and informed discussion and to work for the responsiveness of public decisions to that interactive process.

This is what is also referred to as government by discussion and accords, in theory at least, with the provisions of our Constitution that speak to the participatory nature of the system of government that it introduces and the opportunities and rights of citizens to participate in policy making, law making and other processes.

Of course, one may then ask what is the state of our democracy from a public ballot perspective as well as from a public reasoning perspective? Over the past twenty seven years or so, the integrity of the ballot has endured considerably well and free and fair elections have become a significant and regular feature of our democratic order. What must be of concern however is the declining number of citizens who use the ballot – the recent turnout in the municipal elections put the figure at well below 50%. In a society with so many challenges, one would have hoped there is a greater appetite for elections but if the analysts are to be believed, it may represent a cynicism in the view that elections make a difference. It is something we should be concerned about.
Equally when one considers the public reasoning perspective of democracy can we say that participatory reasoning and the ability to respond to such reasoning has become a feature of our democracy? I'm not sure. Despite a sophisticated system of government at the national, provincial and local level including local ward committees, there is more we can do to ensure that the structures of participation results in meaningful and effective public reasoning.

When that system works effectively it deepens democracy, it enhances dialogue between government and citizens and it may avoid or limit the use of litigation as the ultimate resort in the assertion of a constitutional claim.

Simply to illustrate the point, I offer the following example. The provision of textbooks as part of necessary teaching materials has always been a part of government policy. One must then ask why it was necessary for parents and an NGO in a system of participatory democracy and with many tiers of government to have to go to court to secure an order to compel government to provide textbooks? You would have thought that when the problem arose a local elected councillor would become aware of the matter, raise it with the provincial education department and the matter would be resolved without the need to resort to litigation. That is after all what participatory democracy and being responsive to public reasoning would have achieved.

And so, it must then become evident that in the absence of what Sen describes as the public reasoning perspective of democracy, the Constitution will lack the enabling environment necessary for its proper fulfilment and its ability to deliver on its promises will always be constrained.

Twenty eight years into democracy and at the subjective level, people articulate differently about the state of our nation, and these views range from the cautiously optimistic to the deeply pessimistic, and in a large measure it again relates to the vantage point of the observer. On the other hand the objective facts can hardly be disputed and if one has regard to them, they paint a sobering picture of the challenges that face us.

The Diagnostic Report of the Planning Commission released some years ago list nine key challenges and they include that—

> *"[t]oo few South Africans work.*
> *The quality of school education for most black people is sub-standard.*
> *Poorly located and inadequate infrastructure limits social inclusion and growth.*
> *Spatial challenges continue to marginalise the poor.*
> *The ailing public health system confronts a massive disease burden.*
> *Public service performance is uneven.*
> *Corruption undermines state legitimacy and service delivery.*
> *South Africa remains a divided society."*

These are formidable, stubborn but not insurmountable challenges, and while most of them have as their resolution the adoption of proper policy and legislative frameworks on the part of government, there is much that can be done by individuals and the organisations of civil society. Of course, there are many who work tirelessly in this direction, and I commend you, but much, much more is required and awaits us.

If we are honest, as we must be, then we will readily admit that the South Africa of 2022 is far from the one we contemplated in 1994. Of course, we set the highest standards for ourselves but we were surely entitled and justified in doing so and while we have made considerable progress on some fronts, on many others we have hardly done as well as we should have and could have done.

The Constitution was however never intended to be self-executing. Textually it ranks as one of the best in the world but for its provisions to transcend the paper it is inscribed on and be converted into reality requires people and institutions, all who share a common fidelity to the Constitution, to act in unison. Fidelity to the Constitution does not require an uncritical acceptance of the Constitution – we must be able to critique it and revisit its provisions if need be, but this process must be informed and underpinned by asking the right question: if it is not working does the problem lie in its text or does it lie in our inability for whatever reason to give effect to its text?

Of course, a constitution on its own can never be a barometer of the state of democracy. At best it represents a signalling, and an important one at that, of the intent of those who have adopted it. Ours was no different – it was a statement of intent (brave, far reaching and ambitious) but still, no more than a statement of intent.

Let us be reminded of the caution of Prof Thomas Pogge when he says:

> *"Human rights instruments have become a substitute for real progress. Great battles are fought and glorious victories are won over rhetorical details that in the end make little difference in the lives of real people."*

I have noted from the conference programme that you will spend some time talking about grassroots movements, the climate change movement and the women's movement, and that is commendable because that is the essence of how we retain some measure of control of our lives and our destinies. It is through the agency of people who share common objectives that much more can be achieved, not just in terms of outcomes (important as they are), but in strengthening democracy and constitutionalism.

You will all recall the judgment of the Constitutional Court in the Nevarapine case and, while at the time it was properly celebrated as an important jurisprudential marker carving out a clear delineation of the separation of powers principle, the greater victory was the work of the TAC in mobilising millions of South African around the issue – public education, advocacy and lobbying all put the issue firmly on the public agenda and it could simply not be ignored. And I suppose even if ultimately the victory was not won in the courts (it was), it had already been won in the social and political spaces that mattered and, more importantly, in the public consciousness.

A word about the courts and litigation. The principle that the Constitution is supreme has as its consequence the provision in section 172 that a court must, when deciding a constitutional matter, declare any law or conduct that is inconsistent with the constitution invalid to the extent of its inconsistency.

This is a remarkable, far reaching but necessary provision and what it does is to vest with the courts the power to review and if need be set aside the conduct of the other arms of government when it is inconsistent with the Constitution. While it is a very debated provision it has over the years ensured a fidelity to the Constitution and has also ensured that by and large we have been able to function within the key operating principle of constitutionalism – that power must be exercised within the constraints the Constitution imposes.

And so the courts have played an important role in this era of constitutionalism, not just through Section 172, but in the interpretive role they invariably play in bringing the constitution to life, in ensuring that it retains the characteristic of being a living document and in interpreting legislation in keeping with the purpose of the constitution.

But we should be careful that we do not rely too much on litigation as the means to advance rights and there are a number of reasons for this caution. Courts are by their very nature limited in what they are able to do; they are confined to the pleaded issues before them; their findings must be evidence based; there is an evidentiary burden that any claimant must meet; litigation is costly and time consuming and generally operates on the winner takes all principle; courts must and do act in deference to other arms of government in appropriate circumstances; and finally, it has been said that courts are inherently conservative with some even arguing that traditional legal culture has constrained the transformative project.

And so let me raise from the many challenges that face us just three.

SOUTH AFRICA REMAINS A DIVIDED SOCIETY

The spectre of the rainbow nation made us feel warm and good about our country and its people but was it also a beautiful spectre on the horizon. Today we may have become more inclusive in how we have dealt with the demands of diversity and it may have contributed to uniting us at some levels but we still remain a divided society in many other respects. Race, poverty and inequality represent massive fault lines that militate against the idea of a society united

in its diversity and we have not done much to address that. While the answers, I must accept, are complex and sometimes deeply rooted in our pscyche, I am not sure that we even speak about race except when some overt public expression of racism temporarily prompts us to do so, and even then the focus is on the incident rather than on the layered and structured form of racism that still runs deep. Did we never think that we needed an anti-racist movement just as we formed movements and campaigns to deal with so many other challenges we encountered ? Were we seduced by the idea that we were in fact the rainbow nation? I may be wrong but I'm not aware of an NGO that focuses substantially on anti- racism. Diversity work is important but it is not anti-racism work.

That we have to debate Black Lives Matter says much about us. Of course, all lives matter but if South Africans do not understand or even attempt to understand the history and context within which the Black lives matter movement was born then we will forever remain insensitive to what happened in our own country for so long.

On the other hand, we have made considerable strides in becoming a more inclusive society. Through legislation and litigation, we have advanced the idea that difference is valued and recognised and that the idea of equality is not about ensuring that those who are like us should be entitled to the benefits and rights we have, but importantly that those who are different are entitled to the same protection of the law and the opportunity to be who they want to be. Landmark judgments dealing with the right of gays and lesbians, women, children, non-nationals, cultural and religious groups etc. have all advanced the idea of an inclusive society.

A Rastafarian child going to school wearing dreadlocks or a Jewish boy proudly donning his kippa, an Indian girl wearing a nose ring, a Malay woman wearing her headscarf together with her work uniform or a Zulu worker proudly displaying his Isiphandla on his wrist, have become part of how we encourage and celebrate the diversity of who we are. These may not seem significant in the bigger scheme of things but human identity, self- determination and self-expression is such an integral part of human dignity. South Africa has done remarkably as we observe how other societies fight to impose uniformity as part of a dominant culture to their great detriment.

The recognition of diversity, however, also does not come without its challenges. The 2004 UNDP Report described cultural liberty in the following terms:

> *"Cultural liberty is a vital part of human development because being able to choose one's identity who one is without losing the respect of others or being excluded from other choices are important in leading a full life. People want the freedom to practice their religion openly, to speak their language, to celebrate their ethnic or religious heritage without fear of ridicule or punishment or diminished opportunity. People want the freedom to participate in society without having to slip off their chosen cultural moorings. It is a simple idea, but profoundly unsettling."*

It is unsettling in that if not properly managed the excesses of cultural liberty could result in a polarised society as we focus more on the things that make us different from each other rather than those that we share in common.

GOVERNMENT – OPEN, ACCOUNTABLE AND RESPONSIVE

The kind of government the Constitution contemplated and the relationship between it and its people was likely to take centre stage as it has done for the past twenty five years. The Constitution speaks of open, accountable, transparent and responsive government.

From a legal perspective, much has happened to give effect to that vision. The Promotion of Access to Information Act, Promotion of Administrative Justice Act, the Public Finance Management Act and the Local Government: Municipal Finance Management Act are some of the laws passed; institutionally are the independent Chapter 9 institutions; and finally, the South African Human Rights Commission, the Public Protector, the Auditor General, and Parliament and its oversight role, have all contributed to a system of greater accountability and one where government is expected to justify the use of the power at its disposal.

Here one is reminded of the eloquent articulation of that concept by the late Prof Etiene Mureinik in his characterisation of the interim constitution when he said:

> *"If the Constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification – a culture in which every exercise of power is expected to be justified, in which the leadership given by government rests on the cogency of the case offered in defence of its decision and not the fear inspired by the force at its command. The new order must be a community built on persuasion, not coercion."*

In the past 25 years there have been periods when that ideal has been held high and shaped governance but there have also been dark periods when there have been attempts to relegate it to an insignificant principle. But even in these periods, the vigilance of civil society and the public at large has seen significant judgments to ensure that the principle of justification or accountability does not lose centre place, and credit must go to government in observing court orders even when they were on the wrong side of such orders or opposed them being granted.

How the rule of law has become a significant feature in regulating power and its exercise perhaps owes much to the jurisprudence of the courts – the principle of legality, the notions of both procedural and substantive fairness and the concept of rationality have all contributed not to the idea that government must be restrained, but rather to the uncontested principle that power must be lawfully exercised.

POVERTY AND INEQUALITY

Universally claimed, the Bill of Rights with its extensive provisions covering not just classic civil and political rights but also a strong commitment to social and economic rights within the framework of advancing social justice, was held up as the terms and scope of the promissory note to a better life and the means through which to free and fulfil the potential of all. Mindful that the transition to democracy was not accompanied by any change other than political, and that the economic and social landscape remained unchanged after 28 April 1994, the Bill of Rights assumed even greater significance.

While there has no doubt been much that is worthy of celebration on this front, including most of civil and political rights – the right to vote, to association, to a free and independent media, to equality before the law, in other areas and, in particular, in the improvement of the material conditions under which people live, progress has been much slower as the Diagnostic Report reminds us.

While the rights framework remains important, we have also seen the commodification of rights – those who can afford rights buy them and so a private system where people buy education, health care, housing, social security, safety and security and even equality before the law in accordance with their means, while others rely on the public system and on the state to provide these. Two parallel systems that deliver common public goods delivering qualitatively vastly different outcomes. The idea that we are all equal before the law is tested daily in our legal system. People who face the risk of the loss of their homes or their livelihoods are not able to invoke the protection of the law because they do not have the resources to do so, while others can litigate in defence of matters that may be regarded as trivial in the bigger scheme of things.

The promise of equality before the law rings hollow in such circumstances and it is cold comfort to someone who has lost their home to be reminded that indeed they are equal before the law. Hardly the idea of an egalitarian society and likely to entrench the idea of a divided society.

How do you address massive inequalities in the country with limited resources? I guess you have a conversation between those who have the resources and those who do not. And in this regard it is us those of us who are at this conference, those of us who have been able to flourish in this democracy and those of us who benefited from the political and economic order that preceded 1994. Ours is a fragile democracy and its fragility is compounded by the massive inequalities that exist, and it must be the responsibility of all of us to become a part of this conversation. I hope you think about this in your deliberations over the next few days.

CONCLUSION

And so, where to from here? Firstly, the Constitution I believe remains an enduring framework for the ongoing transformation of our society. Its ability to speak to the reality of South Africans irrespective of their situation has enabled the development of, at the very least, a consciousness about the Constitution. Many have deployed it using its provisions, both as a sword to advance their position and dismantle the obstacles that stand in their way, and as a shield to defend them from the excesses of power. On the other hand, many others still wait for its promise to be realised.

We know the challenges that face us are formidable, yet we have the Constitution and still the collective will to transform our society. But real transformation cannot be a matter of lip service. It requires a commitment from all of us and fundamental change to the structure that continues to render us such a disparate and unequal society. It is the inequality and the poverty that represents a significant threat the fragile democracy that is in place. Ultimately, democracy must deliver on the dividends of what it promises, in our case social justice and equality – if it does not, what is the enduring value of having a democratic system? What is the value in defending it when it is under attack?

Perhaps Gandhi's words ring true at our current time when he said that the rich need to learn to live more simply so that the poor can simply live. As we start the next quarter of a century of the life of our Constitution it is a future that awaits us and we must believe one that is reachable as former President Nelson Mandela reminded us some twenty five years ago in 1996.

Today we ask: how was it possible and how did South Africa and the world allow apartheid to survive for so long? That same question will be asked of us – namely how did a society that suffered and sacrificed so much allow poverty and inequality to endure for so long when we had the means and the ability to overcome it? What will our answer be?

Allow me to wish you well in the deliberations that will follow during this conference and may you emerge with new energy, creative strategies, and a firm resolve to continue to make a difference. ■

> “Race, poverty and inequality represent massive fault lines that militate against the idea of a society united in its diversity and we have not done much to address that

A POSITIVE MIND-SET, DOING THINGS RIGHT AND CARING FOR OTHERS IS ALL WE NEED

By Judge President Francis Legodi
Mpumalanga Division of the High Court

Judge President Francis Legodi recently gave a keynote address at the Black Lawyers' Association's Strategic Planning Meeting themed: Shaping Organisational Culture And Moulding Organisational System For An Effective, Visible And Revolutionary Black Lawyers Association. The following is the text of his address.

I was struck by the theme of this strategic planning session: "Shaping organisational culture and moulding organisational systems for an effective, visible and revolutionary Black Lawyers Association".

What is it? You ask me, I will tell you that I do not know. All what I know is that 37 years ago, in this Province and at a place then called Kangwane Valley Inn just next to a Township called Lekazi or KaNyamazane, the Black Lawyers Association held its annual general meeting. That was in 1985. The meeting was scheduled to start at 09h00. But it only started two hours later. You know why?

We got a tip-off that morning from our own intelligence in this Province within the apartheid security system. We were advised not to use the venue for the meeting. We were tipped

by our agent within the system that underneath our chairs, tables and on the roof, there were listening devices. There was then a debate whether the meeting should be cancelled or should continue. The latter was the decision. And, you can imagine what we did. The plan by the security branch that day did not work. The rest became a history.

Your theme reminded me of men and women of moral courage and character at the time. It reminded me of the late Godfrey Pitje. It reminded me of Dikgang Moseneke, now retired Deputy Chief Justice.

Your theme reminded of Bernard Ngoepe, now retired Judge President. It reminded me of Phineas Mojapelo, now retired Deputy Judge President, who was an attorney here at the time.

Your theme reminded me of Mathews Phosa (an attorney, who that year was tipped that the security branch was about to remove him permanently from the face of the earth. As a result, he skipped the country into Mozambique.

Your theme reminded me of Seun Moshidi, now a retired judge. It reminded me of Keith Kunene. It reminded me of the late retired George Maluleke. What a wonderful person and may his soul rest in peace. Your theme reminded me of the many brave men and women who were members of the Black Lawyers Association at the time.

The usage of the word "Revolutionary" in your theme forced me to consult the dictionary. I was worried whether the word is suited for an address by a judicial officer. I found two important meanings of the word "revolutionary". First, it means "involving or causing a complete dramatic change.

Second, it means: Engaged in or promoting political revolution.

The leaders and members of the Black Lawyers Association in good standing at the time were heroes of complete dramatic change. They were also engaged in the promotion of political revolutionary, if you were to refer to it that way. The latter, in my view, has been achieved through resistance and bravery considering where we are today as a nation. Whilst those who came before you in this Association never believed that dramatic complete change in the promotion of political freedom will come during their lifetimes, they vigorously and bravely pursued what they believed was right for the majority of the people of this country.

In preparation of my speech for today, I came across a statement which was made by Robert Kennedy many-many years ago. I found the statement to be fitting for the occasion today. He said:

> "Moral courage is a rare commodity than bravery in battle. It is one essential vital quality for those who seek to change the world and it yields most painfully to change".

Adam Schiff, an American politician, who is also an author and lawyer now recently took Robert Kennedy' statement a step further, as follows:

> "What happens when our heartfelt views of right and wrong are in conflict with the popular opinion of some of our constituents or colleagues?

What happens when our devotion to our oath, values and to the love of our country depart from the momentary passion of the larger people at home?"

As I stand before you here today, I ask myself what really made you to come with the theme:
"Shaping organisational culture and moulding organisational systems for an effective, visible and revolutionary Black Lawyers Association".

Very loaded theme indeed! I do not know what motivated you. But, I gain the impression that there is something that is worrying you. I gain the impression that there is something that you think you may not be doing right. I gain the impression that you want and you are anxious to correct the wrongs if there is anything like that. And, I hope there is none. But assuming that I am right, you can take comfort from those who came before you in the Black Lawyers Association. These were men and women who were first loyal to the course of the Black Lawyers Association. They were men and women who paid serious attention to the aims and objectives of the Black Lawyers Association.

These were men and women who believed that when something is wrong, is wrong and there is no sugar-quoting about it. They did not keep quiet and became the by-standers about wrong things. These were men and women who were driven by the desire to correct wrong things on the spot with honour, dignity, character, bravery, respect and tact.

They were men and women who believed that the culture of professionalism, competence and excellence and thus the main objective of the Black Lawyers Association at the time, should be a must for black lawyers. That was a deliberate cause of action by this Association at the time. The mission was to enhance the skills of the black lawyers who were victims of structural exclusions by the apartheid system at the time.

That mission became the mission accomplished when they defended human right activists of the time and very often

if not all the time doing those matters on contingency basis and relying entirely on human right organisations in Washington for funding and later the South African Council of Churches. The programme of trial advocacy training for the skill enhancement of black lawyers became a treasure of all times. And one hopes that one day you will make trial advocacy training affordable. You know what I am talking about regarding affordability.

By the way, being a member of the Black Lawyers Association at the time was almost an assurance to get funding from Washington DC to defend political activists. I am talking here about men and women who believed in the protection of the members of Black Lawyers Association at the time from harassment and threat of elimination by the apartheid system.

Some of us became the beneficiaries of that protection. Yesterday, I had to go to my archives and found the article in the Sowetan Newspaper written by Mathata Tsedu, one of the courageous journalists of all times. The article is more than three decades' old and was about what was happening in this Province, in particular Bushbuckridge. The article was titled: "Cop threatened lawyer"

And of relevance', the secretariat of the Black Lawyers Association at the time issued a statement as follows:

"We place responsibility for any harm upon our member – before your department, not only because of the strong allegations police tolerance, connivance and or collaboration, but also because it is the statutory obligation and duty of your department to protect him and other inhabitants of the area against the possible of harm".

These were strong words of men and women who were the members of this Association. They had no weapon. They had no constitution. They had no rights. But they still spoke like they were Goliath. They feared no one. Very brave indeed. That was the moral character that is said to be a rare commodity than bravery in battle. Those were men and women speaking through the Black Lawyers Association. It was a true rare quality of those who sought to change the course of the country for all and for the good of this country.

That was true revolutionary for the emancipation from the bondages and shackles of the apartheid system and one is thankful to be alive today through their braveness and courage. These were men and women with blood running through their veins willing to brave the disapproval of some members of their own communities whom the apartheid system made them to believe that, we were okay with what we had.

These were men and women who were prepared to brave the disapproval of their fellows, colleagues or some section of our society who used to fight each other. Their devotion to the values and to the love of this country, their devotion to integrity, professionalism and excellence, were unquestionable.

Their heartfelt views of what was right were never swayed by the popular views which were in conflict with what was the right thing to do. The next question is: What is the culture which you now want to change or shape? What culture do you want to mould for the effectiveness and visibility of the Black Lawyers Association as per your theme today. As they say, in life we are not judged by what we say only. We are also judged by what we do. History can be very harsh if we choose to go for the wrong path of life.

> "Lawyers of today, in particular black lawyers, have a very important role to play in our society and for our society

History can be very harsh to any person's life if we leave moral courage of what is wrong and right and if we leave our character, honesty and integrity at our doorsteps. We have lived to see the harshness of that history happening to many. And that is sad. We have lived to see dishonesty, corruption, fraud and lack of integrity creeping in and eating into our society almost like there are no longer consequences for wrong things.

I suspect, amongst others, this is the kind of culture you would want to shape and mould as you look and strive for the visibility and effectiveness of the Black Lawyers Association today.

How do you go about this? Do not ask me because I do not know. I note from your programme that immediately after I shall have taken my seat, you have an item titled: "Take home from JP's address". Let me say this upfront. I have nothing to give you to take home.

But look at it this way: Lawyers of today, in particular black lawyers, have a very important role to play in our society and for our society. These lawyers need to be community service orientated lawyers. Are you?

Those who know better put it this way:
"When we live our lives intentionally for others-, we begin

to see the world through eyes of others than our own.

And that inspires us to do more than care. We help.
We go beyond being fair. We are kind.
We go beyond dreaming. We work.
Why? Because we want to make a difference.

The moment you start adding value to others, it becomes an obsession in the best sense of the word. More you do that, the more you become intentional in other opportunities to do more. When you start living the significance story, you get a taste for making a difference and you would not go back".

So, ladies and gentlemen I implore, I beg you. Today you and I can decide to live a life that matters by helping others. That will impact how we will be remembered after we are gone. That is, when history will judge us. Positive mind-set and doing things right and caring for others, is all what we need.

Many of you who are hereby today are lawyers.

Law profession needs men and women of immense character and competence. It needs men and women who are driven by passion of what they do. When that happens you work very hard without being pushed because that is what you love. In the process, you equip yourself with knowledge, practical experience and excellence wherever you lay your mind, eyes and hands on.

When this happens, you feel the fulfilment inside. And, chasing money at all costs becomes a less priority. That is the beauty about passion and good heart. Success becomes a mission accomplished. But as a success becomes part of your life, do not take your eyes and mind off the rails of honesty, ethical conduct and grounded-ness.

I had an opportunity to practise law in this Province for about twenty years in particular Bushbuckridge, a very vast rural area before I was appointed to the bench in October 2004. I was taught by the ordinary members of our society in Bushbuckridge and in this Province at large, what it takes to be grounded, humble, title-less, status-less and most importantly to be honest in dealing with the ordinary members of our communities in our rural areas.

And one is for ever indebted for that teaching by those ordinary members of our society.

Do not forget this! Greed has the ability to deepen the very existence of our society to a serious disgraceful level. Chasing money at all costs has diminished the moral fabric of our society and this has made us the very enemies of the existence of our own well-beings and that of our society.

Our tolerance to wrong things whether within ourselves as a society or as BLA and thus making the innocent majority of our population to believe that there are no consequences for wrong things, is what is devilling the very culture of our existence.

If we are not careful very soon we will all be wiped-off by poverty, hunger and diseases and there will be nothing left for generations to come and there will be nothing left when we depart from this earth.

Perhaps one should not concentrate on the negatives for the purpose of the meeting starting from today.

Speaking for myself, I have trust in every one of you.

I know you have the ability to strive. You have the ability to be servants of the people.

And I have no doubt in my mind that as you get out of this beautiful part of our country where the sun rises, you will do so with the energy to plough back. I know the solution to shaping the culture, moulding the effectiveness and visibility of the Black Lawyers Association will be your mission accomplished by the time you get out here on Sunday.

When that happens, I will start attending every Annual General Meeting of BLA even if it has to be during my retirement. I thank you for listening and I wish you all of the best during your deliberations. And please do not forget to go for a night game drive and sight singing on your way back to your respective homes.

Lastly, I wish the branch-chair of BLA in this Province was here. If he was, I was going to advise you to talk to him nicely so that next time he can invite you to come back for a breakfast in Mozambique, lunch in Swaziland and dinner back in Mbombela in one day.

That is the extent of the beauty about where the sun rises, ladies and gentlemen! ■

> "We go beyond being fair. We are kind. We go beyond dreaming. We work. Why? Because we want to make a difference

ADJUDICATING SEXUAL OFFENCES MATTERS:

PRACTICAL CHALLENGES AND LESSONS LEARNED

By Judge Ingrid Opperman
Gauteng Division of the High Court

I recall how, as a prosecutor, I was in awe of the magistrates who would, at the conclusion of a trial, take their bench book notes and their authorities and start dictating an ex tempore judgment into the record.

My admiration and appreciation of the skill that magistrates routinely display, acquired from years and years of application and dedication, has just grown since being on the Bench of the High Court, where I read appeal records which evidence magistrates' efficiency and commitment to dispensing justice. I read these records also with a new and increasingly heartfelt appreciation of the work pressure you are under, with an acknowledgement of all the other challenges you face in producing your judgments expeditiously, keeping up to date with the latest authorities and getting through your heavy daily rolls. I was thus humbled by the request to address this audience from whom I have learned so much and for whom I have the utmost respect. In an endeavour to speak only from that which I know I decided to focus this talk primarily on the difficulties I have encountered in appeals I have been involved in. I hope that in doing so my office is able to give back some of the value that I have derived from yours.

I start with the case of S v Sebofi 2015 (2) SACR 179 (GJ). This was a judgment in which I sat with Judge Sutherland (now the Deputy Judge President of the Johannesburg Gauteng Division). The judgment deals firstly with the merits of the appeal per se and, secondly, examines the way it was dealt with by the police, the prosecution, the defence and the Regional Court itself.

The appellant was charged with having raped the complainant twice, kidnapping her and assaulting her with intent to do grievous bodily harm. These crimes all occurred as part of one incident. The magistrate acquitted the appellant of the ancillary charges, convicted him of double rape and sentenced him to one life imprisonment sentence. The sole witness to the rape was the complainant herself. There was one other state witness and the appellant testified. It is important to quote paragraph 5 of the judgment verbatim:

"[5]At the outset it is appropriate to say that scrutiny of the transcript of the trial in this matter has left us with a grave sense of disappointment about the way the allegation of rape was investigated, the way the case for the state was presented to the court and the way in which the defence was conducted. These concerns are addressed in the judgment. The concerns, in turn, imposed an immense and unfair burden on the presiding magistrate to fulfill her proper role as impartial arbiter. On appeal we found ourselves unable to be satisfied that a fair trial took place and that justice was accomplished."

The evidence is quite extensively summarised and analysed in the judgment. The shortcomings are highlighted. It is clear that the magistrate, given the paucity of the presentation and the cross examination tried to get clarity on certain issues.

In our view and as we record in the judgment, it was proper to find on the body of evidence that the complainant was sincere in her claim of rape. The critical issue however was the reliability of her identification as it happened at night and in the dark and, regrettably, because of the unprofessionalism of the police and the prosecution, the assessment of that issue had to be conducted on the barest of evidential material.

Also, the appellant's version warranted investigation on several obvious points which, if corroborated, might have contributed to exonerating him. For example, the appellant claimed he never had sex with the complainant. A medical examination was done and a specimen was taken, so much was common cause but what happened to the specimen? Should the absence of its admission found an inference that it did not connect the appellant? If it were inconclusive, why was that result not disclosed to the court?

The appellant said that he and the complainant had a romantic relationship of sorts which involved them telephoning and texting one another. The allegation about phone calls was not investigated or, if it was investigated and the results did support the state's case, being that there was no relationship whatsoever between the complainant and the appellant, why was there no evidence about that? The telephone record could have thrown a whole new light on the circumstances and advanced or retarded either version. It was because of this that, on appeal, the conviction was set aside and the matter remitted to the trial magistrate to call for evidence about (1) the specimens taken at the medical examination and the laboratory test results and (2) the alleged cell phone communications and such records thereof that may exist.

In our view, the process contemplated was limited to admitting evidence on two points only and did not involve a complete retrial. In the case of the specimen, it did not require any evidence of the appellant and in the case of the cell phone record, it should have required no more than the identification of a cell phone number.

The duty on the shoulders of magistrates and Judges to achieve a fair trial and a just outcome is an onerous one. It was expressed as follows in the judgment:

> "I was thus humbled by the request to address this audience from whom I have learned so much and for whom I have the utmost respect

'[82] In this case we are of the view that the steps taken by the magistrate to achieve a fair trial and a just outcome, despite her best efforts, were insufficient. The duty of a judicial officer in a criminal case has been articulated many times. In R v Hepworth 1928 AD 265, dealing with what was termed a ‹technical issue› (ie the oath had not been administered to a witness and this was uncovered after the testimony was given), Curlewis JA held at 277:

'A criminal trial is not a game where one side is entitled to claim the benefit of any omission or mistake made by the other side, and a judge's position in a criminal trial is not merely that of an umpire to see that the rules of the game are observed by both sides. A judge is an administrator of justice, he is not merely a figure head, he has not only to direct and control the proceedings according to recognised rules of procedure but to see that justice is done.'

[83] In S v Van den Berg 1996 (1) SACR 19 (Nm) (1995 NR 23; 1995 (4) BCLR 479) the issue was that inadequate evidence had been adduced by the prosecution about whether diamonds were rough or uncut. The trial court had discharged the accused at the end of the state case. On appeal the court held that the magistrate ought to have followed up on this aspect pursuant to the powers in terms of ss 167 and 186. The court ordered the trial to be reopened. In addressing the application of the sections the court approved the dictum in R v Hepworth, and at 65g held further:

'[T]he South African criminal trial is a compromise between the accusatorial and the inquisitorial systems. The presentation of evidence is normally left to the parties, but if the Judge considers that the material before him is not sufficient to enable him to arrive at the truth, he may pursue the investigation himself.

It should be abundantly clear that even though our system is a compromise or can be described as mixed, the accusatorial element remains the dominant element.'

[84] The sections of the Criminal Procedure Act 51 of 1977, referred to in [Van den Berg], provide as follows:

'167 Court may examine witness or person in attendance
The court may at any stage of criminal proceedings examine any person, other than an accused, who has been subpoenaed to attend such proceedings or who is in attendance at such proceedings, and may recall and re-examine any person, including an accused, already examined at the proceedings, and the court shall examine, or recall and re-examine, the person concerned if his evidence appears to the court essential to the just decision of the case.

[and]

186 Court may subpoena witness
The court may at any stage of criminal proceedings subpoena or cause to be subpoenaed any person as a witness at such proceedings, and the court shall so subpoena a witness or so cause a witness to be subpoenaed if the evidence of such witness appears to the court essential to the just decision of the case.'

[85] In S v Mseleku and Others 2006 (2) SACR 237 (N) the court extensively addressed the duty of a judicial officer to take the initiative to probe and question witnesses, especially where inexperienced legal representatives appear.

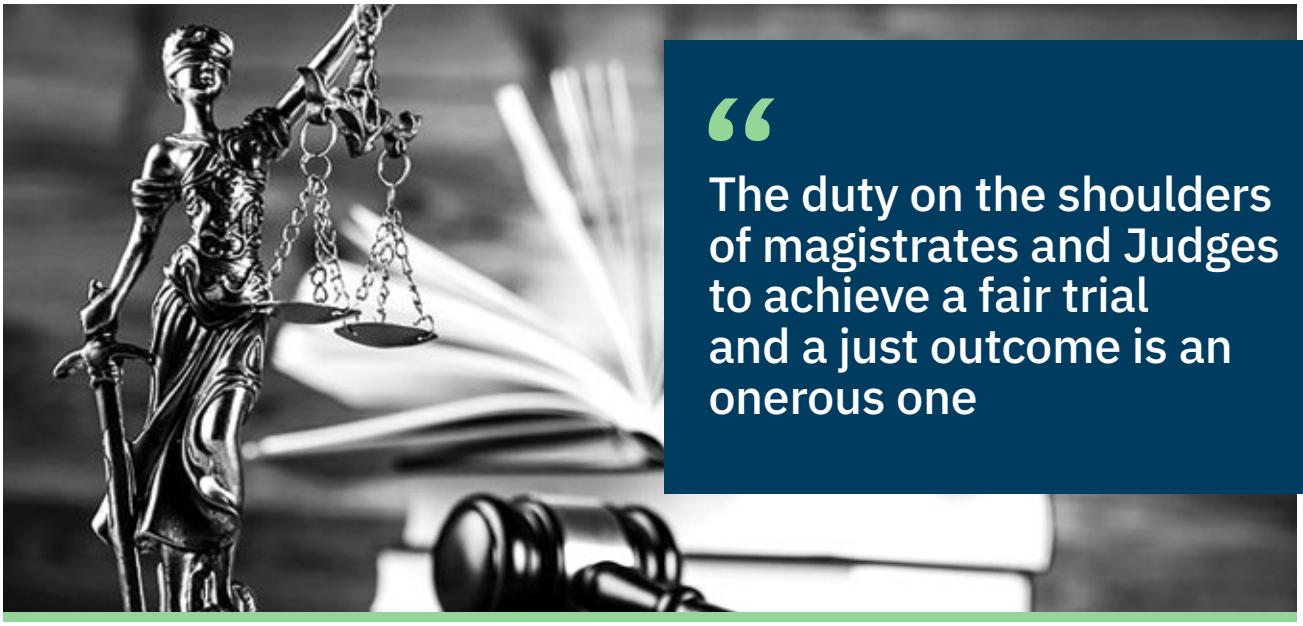
[86] It has to be unequivocally acknowledged that magistrates are placed in an invidious position when contemplating such steps. They are constantly at risk of being snookered — if they intervene, they might be condemned for interference; if they do not intervene, they might be condemned for not ensuring a fair trial. We are mindful of this dilemma. We do not hold the view that the magistrate in this matter is deserving of condemnation. However, it remains manifest that the process was seriously flawed, and more ought to have been done by the trial magistrate to ameliorate that condition. '

This matter then went back to the learned magistrate and regrettably she did not limit her enquiry to the two issues the High Court had directed her to, but went well beyond the High Court Order. This irregularity led to the setting aside of the conviction for a second time which result can be read in Sebofi v The State 2016 ZAGPJHC 290 (25 October 2016) a judgment penned by Keightley J with whom Kuny AJ concurred.

The irony of what happened here does not escape one. In the first instance she did not do enough and in the second, too much. That the magistrate acted in good faith in doing so was beyond doubt. It demonstrates the tight rope Magistrates work on in these high stake matters and hopefully we can all learn from her difficulties and the way in which she valiantly tried to remedy the inadequacies of the case presented to her.

The next principle I wish to focus on is the one distilled in the matter of Molaza v S [2020] 4 All SA 167 (GJ) (31 July 2020). The matter has a somewhat interesting history in that the matter came before the now deceased Judge Van der Linde and Altus Joubert AJ. Counsel were asked to prepare and present further argument on certain issues but before the rehearing could take place, Judge Van der Linde sadly died. The matter was then reallocated to be heard before me and Joubert AJ. Argument was presented afresh in this re-hearing and we asked an amicus for assistance.

The appellant had been found guilty on three counts of rape in the Magistrate's Court. Both Acting Judge Joubert and I were satisfied that the appellant had raped the complainant.



> "The duty on the shoulders of magistrates and Judges to achieve a fair trial and a just outcome is an onerous one

The question was whether the appellant, on the evidence, had correctly been convicted on three counts of rape. During argument, counsel for the state abandoned the third conviction of rape but maintained that two counts of rape were proved.

The issues which fell for consideration and on which I differed from Joubert AJ's judgment included how many acts of rape the evidence established and how many counts of rape the evidence should support. This was so because the Criminal Law Amendment Act 105 of 1997, as amended, (I will refer to this as 'the minimum sentencing legislation') refers to the statutory definition of rape as contained in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, as amended (which I will refer to as 'SORMA').

> all the role-players, i.e. the police, prosecution, healthcare providers and social services need to operate in an integrated manner combining their efforts in order to guarantee justice for victims of these crimes

The prescribed minimum sentence for an offence referred to in Part 1 of Schedule 2 is, as you know, imprisonment for life. The offence described there is rape as contemplated in section 3 of SORMA when committed in circumstances where the victim was raped more than once. The question that Borchers J sought to clarify in S v Blaauw 1999 (2) SACR 295 (W) at 299C (sitting as a court of first instance in respect of sentencing) was when does an act of rape start and when does it end? On the facts of that case there were three individual acts of penetration at more or less the same place and soon after each other. She concluded as follows:

> *"Ejaculation is not an element of rape, though it would seem to me that if the rapist had indeed ejaculated, withdrawn from the victim and then shortly thereafter again penetrated her, he would on the second occasion be guilty of raping her for the second time. Not only is there a second act of penetration, it would be reasonable to infer that the rapist had formed a new intent to have intercourse for the second time."1*
>
> *"Mere and repeated acts of penetration cannot without more, in my mind, be equated with repeated and separate acts of rape. A rapist who in the course of raping his victim withdraws his penis, positions the victim's body differently and then again penetrates her, will not, in my view, have committed rape twice.*
>
> *"Each case must be determined on its own facts. As a general rule the more closely connected the separate acts of penetration are in terms of time (ie the intervals between them) and place, the less likely a court will be to find that a series of separate rapes has occurred. But where the accused has ejaculated and withdrawn his penis from the victim, if he again penetrates her thereafter, it should, in my view, be inferred that he has formed the intent to rape her again, even if the second rape takes place soon after the first and at the same place."2 (emphasis provided)*

Although the test laid down in Blaauw to determine whether a victim was raped more than once related to the common law crime of rape, the Blaauw test has been approved by the Supreme Court of Appeal in respect of statutory rape as defined in section 3 of SORMA. The test has been applied consistently to matters involving the statutory definition of rape.

The evidence dictating the outcome of the issue ie how many counts or acts of rape, was quoted in full in the judgment. It reads:

"Q: You arrived at the garage, you asked Vusi to help you, what happens after that?
A: I then got into Vusi's car. Vusi went out of his car and … to go see his friend and he then left me inside the motor vehicle then the accused then came, Thabang, he then said I must go out of this vehicle and he then started pulling me out of the motor vehicle. And he then took me to his home, and when we arrived at his home he then said I must go into his bedroom and I then refused going to his bedroom and he then took me into his bedroom and then inside the bedroom he then said I must undress and he then said to me if I am not going to undress, he is going to call all his friends to come and rape me.

Q: Where were his friends at that stage Madam?
A: The friends were sitting in the dining room. He then slapped me with his open hand and then ended up undressing my clothes.

1 at 299C-D
2 at 300A-D

Q: Where did he slap you?
A: On my face.

Q: How many times did he slap you?
A: Twice.

Q: Please proceed.
A: He then started raping me. When he was now raping me for the first time he used a condom then the second time he did not use the condom and when he was now raping me for the third time he was no longer using the condom.

Q: Madam if you say that he raped you, what exactly did he do?
A: He inserted his penis into my vagina, and after he had raped me he then fell asleep and I then managed to escape. I went to the garage and neighbours arrived and I [indistinct]... The girl then helped with phoning the police."

A little later the prosecutor revisited the critical circumstances of the rape:

Q: Madam you also indicated that the accused raped you three times, how long did this take?
A: I do not remember how long it took but I was at the garage at around about 23:00 [indistinct]. 23 hours Your Worship was when I was at the garage.

Q: You do not recall how long you were with the accused in his bedroom while he was raping you?
A: No I cannot recall.

Q: Madam, when you left the accused's house to go to the garage, where was the friends at that stage?
A: They were sleeping in the dining room.

As you can hear, the difficulty in the evidence of the complainant was not the quality of the complainant's evidence but rather the sufficiency thereof. The complainant testified that she had been raped three times. The facts underpinning these conclusions were however not placed on record with sufficient particularity. She was not adequately led on those events. The complainant was never questioned about the interlude or time period between each act of rape. The detail of the issue of how long this all took was not canvassed by the prosecution nor the magistrate. The point we make in the majority judgment which I penned in Molaza is that the crime of rape consists of various elements. The victim cannot simply testify that she was raped. The facts underpinning that conclusion should be placed on record for each instance of alleged rape.

The insufficiency of the evidence caused us to look at the evidence of the appellant and it is here where the dispute between Acting Judge Joubert and myself arose, i.e. whether in the circumstances of this case, the state's case could be supplemented with facts from the appellant's testimony under circumstances where his defence of consensual sexual intercourse had been rejected. It was then on this issue where Judge Ismail and I found that in the circumstances of this case one could, even though Acting Judge Joubert differed. I am not going to spend much time on this feature because the point I want to make is a different one which is summarised in paragraph 84 of the judgment as follows:

> "I would urge us all to try and embrace a human rights based, victim-centred and survivor-focussed approach in our decision-making in gender based violence and femicide cases

'.....Victims of rape, as a class of vulnerable people in our society, ought to have a reasonable expectation that their cases are taken seriously enough to be presented properly and tried at a standard that the guilty do not wriggle free because of un-insightful and superficial attention to the elements of the crime by those who are responsible to protect them. This court has previously drawn attention to the unacceptable manner in which the evidence of complainants in rape matters is presented but it would seem as though the reprimands have fallen on deaf ears.[3]

In addition, this insufficiency (lack of detailed attention to the evidence in the presentation of the facts of the matter) has involved enormous judicial attention and the constitution of a three judge court which would not have been necessary if the detailed facts had been clearly and chronologically presented by the prosecutor leading the complainant to present the trial court with a detailed picture of what had happened. Perhaps the time has come to report the transgressors.

3 S v Sebofi, 2015 (2) SACR 179 (GJ)

Perhaps there is an element of consideration for the victim's dignity that causes the critical facts to be glossed over rather quickly in the evidence. But dignity can be protected by courtesy and gentleness from the bench. A witness who feels that her dignity is in safe hands can be asked the critical questions necessary to address the seriousness of the situation.

What the judgment further does is to consider the judgment of Mahlase v S [2013] ZASCA 191 (29 November 2013). You will recall that the Mahlase judgment set the proverbial cat amongst the pigeons in respect of the prerequisites for the minimum sentencing provisions to be triggered. It held that for the rape to fall within the provisions of paragraph (a)(i) of Part 1 of Schedule 2 of the minimum sentencing legislation, a co-perpetrator had to have been (1) before the trial court and (2) had to have been convicted. I will refer to this as the Mahlase dictum.

It was important in the Molaza judgment to deal with this as the implication of the Mahlase dictum was, that the number of counts of rape the appellant was convicted of would dictate the sentence he received and not the facts underpinning the convictions. We then explored whether we are bound by the Supreme Court of Appeal decision as we considered it incorrect as many other judgments had already also found.

Judge Ismail and I then found that we were not bound to follow the Mahlase judgment based on the reasoning of Carelse J (with whom Twala J concurred), in a full bench division judgment in the matter of Khanye,[4]. We thus concluded that the only way around Mahlase was the route identified by Carelse J in Khanye by following the Supreme Court of Appeal judgment of Legoa[5]. We thus held that two counts of rape are not required to trigger the operation of the minimum sentencing regime as held by the Mahlase dictum. What is required are two acts of rape.

In Blaauw, the accused was charged with one count of rape. When the victim was asked how a single act of rape took approximately two hours, she provided details which compelled the Judge to conclude that she was describing at least two separate acts of sexual intercourse, and hence two separate acts of rape. It was contended in Blaauw that because the accused was only charged with a single count of rape it would be unfair to invoke the provisions of the minimum sentencing legislation. Borchers J concluded otherwise on the basis that the minimum sentencing legislation did not create new statutory crimes of rape. All that the legislature had done was to define circumstances which it regarded as aggravating and which, if present, would attract higher sentences than in the past. In the result, Borchers J concluded that it was competent to find on the facts that the victim was raped more than once, even where the accused was charged with only one count and to sentence the accused as provided for in the minimum sentencing legislation.

This finding in Molaza does not serve as authority that an accused person must only be charged with one count in the circumstances that prevailed in Molaza. A summary of the principles distilled appears in the judgment and they include:

> *[123] Where a person is accused of raping the victim more than once in a single encounter, the preferred way to charge the accused is with a single count of rape with clear indications in the charge sheet that reliance will be placed on item (a)(i) of Part 1 of Schedule 2 of the 1997 Act being that separate acts of rape will be sought to be proved.*
>
> *[124] Where a person is accused of raping the victim more than once and the two acts are separated by a significant period of time, perhaps a week or few months, separate counts are preferable.*
>
> *[125] It is permissible to convict an accused person on more than one count of rape where the facts support separate acts of rape. The preferred way would be to convict of 1 count with a finding of the separate acts should the acts have occurred in a single encounter.*
>
> *[126] The number of counts of rape of which an accused is convicted, does not dictate whether the 1997 Act is triggered. The facts underpinning the conviction/s do.*
>
> *[127] Bound by both Legoa and Mahlase, it is permissible to follow either although the preferred route is Legoa as justified by Khanye.*

We set aside the convictions on counts 2, 3, 4 and 5, and replaced it with a finding that "the accused is convicted of one count of rape with a finding that two acts of rape, as contemplated in item (a)(i) of Part 1 of Schedule 2 were committed and the accused is sentenced to life imprisonment." We also made an order that the Director of Public Prosecutions draw the content of the judgment to the attention of the prosecutor who led the evidence of the complainant and that the DPP is to enable proper training to prosecutors generally to prevent a repeat of the situation which arose in this matter.

4 *Khanye v S*, [2017] ZAGPJHC 320 (13 March 2017)

5 *S v Legoa*, 2003 (1) SACR 13 (SCA)

GENERAL OBSERVATIONS

Because of the limited time, there are a couple of points that I just want to mention and not elaborate upon as much as I have on the earlier lessons.

They include that I would urge us all to try and embrace a human rights based, victim-centred and survivor-focussed approach in our decision-making in gender based violence and femicide cases. That being said, one must always remember that the trial needs to be fair to the accused as well and that his rights are not to be trampled on in the process and in the desire to deal with the scourge which has engulfed our society like an omicron variant.

I would encourage you to be proactive. By way of example, I heard the balaclava serial rapist matter where both perpetrators had worn balaclavas. Their identity was thus hidden and the evidence of the complainants distinguished the two men with reference to their height. There were multiple counts and after a couple of days of viva voce evidence of the complainants, the defence counsel started making admissions in relation to the act of rape which admissions were formally noted in terms of section 220 of the Criminal Procedure Act. The DNA evidence linked the perpetrators but it was quite an exercise to join the dots as it were. I prepared a spreadsheet in which I populated all the relevant connecting evidence to ensure that every element of the offence had been proved. I was pleased that I had embarked on this process because some admissions had been omitted. I could alert the state advocate and the defence counsel to these omissions by simply enquiring, prior to the close of the state's case, whether the omissions were by design.

In this very same matter I took the trouble of summarising the evidence of each complainant in much detail. Of course I protected their identity but I think it is important for the victims to know that the court heard every detail of their ordeal and attempted to comprehended the extent of their suffering. It does not make for good judgment writing, but in my view these cases serve many purposes, certainly not primarily to punish the perpetrator, but importantly also to start a healing process for the victim.

At the Gender Violence and Femicide Summit held in Pretoria on 1 November 2018, Justice Maya in her address entitled "Judicial and Legal Responses to Gender Based Violence and Femicide" noted that all the role-players, i.e. the police, prosecution, healthcare providers and social services need to operate in an integrated manner combining their efforts in order to guarantee justice for victims of these crimes.

We ought to confront the reality that we as magistrates, as judges, are creations of our societies and that we carry all sorts of prejudices and stereotypes with us that we may not even be aware of. They are built-in and they are strongly held sets of values, preconceptions, opinions and prejudices. We must guard against these infiltrating our judicial reasoning. As mentioned above, we should guard against secondary victimisation, by way of example. I will leave you with this thought and one expressed so powerfully in the Constitutional Court judgment of Tshabalala[6] where the following was held at paragraph 63:

> *'[63] This scourge has reached alarming proportions in our country. Joint efforts by the courts, society and law enforcement agencies are required to curb this pandemic. This Court would be failing in its duty if it does not send out a clear and unequivocal pronouncement that the South African Judiciary is committed to developing and implementing sound and robust legal principles that advance the fight against gender- based violence in order to safeguard the constitutional values of equality, human dignity and safety and security. ..' (emphasis provided)*

Thank you for giving me your time and attention and for the hard work that you put into keeping our daughters, mothers, sisters, wives and friends safe and the quality of justice in our Courts as high as you do. ■

LIST OF AUTHORITIES

Khanye v S, [2017] ZAGPJHC 320 (13 March 2017)

Mahlase v S, [2013] ZASCA 191 (29 November 2013)

Molaza v S, [2020] 4 All SA 167 (GJ) (31 July 2020)

Sebofi v The State, 2016 ZAGPJHC 290 (25 October 2016)

S v Blaauw, 1999 (2) SACR 295 (W)

S v Legoa, 2003 (1) SACR 13 (SCA)

S v Sebofi, 2015 (2) SACR 179 (GJ)

6 *Tshabalala v S; Ntuli v S* [2019] ZACC 48 (11 December 2019)

SHORTLISTED CANDIDATES FOR THE ELECTORAL COMMISSION VACANCY

During the period of 04 - 06 February 2022, the Office of the Chief Justice published notices in the media calling for nominations of interested persons to fill one (1) vacancy in the Electoral Commission. The closing date for submission of nominations was set for 18 February 2022 and later extended to 25 February 2022.

On 07 March 2022, a Panel chaired by the Acting Chief Justice of the Republic of South Africa, comprising of the Public Protector, the Chairperson of the Commission for Gender Equality and the Chairperson of the South African Human Rights Commission, established in terms of section 6 of the Electoral Commission Act, 1996, met and compiled a shortlist of candidates to be interviewed at its sitting to be held on 01 April 2022. The following candidates are on the shortlist:

1. Mr Justice Bekebeke
2. Adv Geraldene Carol Chaplog-Louw
3. Mr Edward Nkhangweleni Lambani
4. Ms Nalini Maharaj
5. Ms Keitumetsi Stella Mahlangu
6. Ms Princess Mangoma
7. Mr Vuma Glenton Mashinini
8. Dr Sithembile Nombali Mbete
9. Ms Bongiwe Mbomvu
10. Mr Sediko Daniel Rakolote
11. Mr Mfundo Wiseman Thango
12. Mr Gladwyn Martin White

THE INTERVIEWS WILL TAKE PLACE AS FOLLOWS:

Date: 1 April 2022

Venue: Premier Hotel, Midrand, 187 Third Rd, Halfway Gardens, Midrand, 1682

Time: 09h00.

Follow the OCJ's social media pages for coverage of the interviews.

- TheSouthAfricanJudiciary
- Judiciary RSA
- @OCJ_RSA
- @OCJ_RSA

JSC SHORTLISTED CANDIDATES FOR JUDICIAL POSITIONS

The closing date for comments on the suitability or otherwise of candidates nominated for judicial vacancies was set for Monday 28 February 2022.

On 05 November 2021 the Judicial Service Commission (JSC) published notices in themedia calling for nominations of interested persons to fill vacancies in the various Superior Courts. The closing date for submission of nominations was set for 06 December 2021.

On 27 January 2022, the Screening Committee of the JSC met and compiled a shortlist of candidates to be interviewed at its April sitting scheduled for 04 – 08 April 2022.

The closing date for comments on the suitability or otherwise of candidates nominated for judicial vacancies was set for Monday 28 February 2022.

On 05 November 2021 the Judicial Service Commission (JSC) published notices in themedia calling for nominations of interested persons to fill vacancies in the various Superior

Courts. The closing date for submission of nominations was set for 06 December 2021. On 27 January 2022, the Screening Committee of the JSC met and compiled a shortlist of candidates to be interviewed at its April sitting scheduled for 04 – 08 April 2022.

The names of the candidates to be interviewed by the JSC at its April 2022 sitting are as follows:

1. CONSTITUTIONAL COURT (TWO VACANCIES)

Adv Alan Christopher Dodson SC
Judge Fayeeza Kathree-Setiloane
Judge Keoagile Elias Matojane
Judge Mahube Betty Molemela
Judge Owen Lloyd Rogers
Judge David Nat Unterhalter

2. COMPETITION APPEAL COURT (THREE VACANCIES)

The JSC decided not to shortlist any candidate for this position.

3. EASTERN CAPE DIVISION OF THE HIGH COURT, GQEBERHA (TWO VACANCIES)

Prof Rosaan Krüger
Ms Sandiswa (Mickey) Mfenyana
Mr Vinesh Naidu
Ms Vuyokazi Pamella Noncembu
Mr Mbulelo Victor Nqumse
Adv Denzil Owen Potgieter SC

4. FREE STATE DIVISION OF THE HIGH COURT (ONE VACANCY)

Adv Josephus Johannes Francois Hefer SC
Ms Cathy Luise Page
Adv I Van Rhyn

5. GAUTENG DIVISION OF THE HIGH COURT FOR SECONDMENT TO THE LAND CLAIMS COURT (ONE VACANCY)

Ms Luleka Flatela

6. KWAZULU-NATAL DIVISION OF THE HIGH COURT (JUDGE PRESIDENT)

Judge Mjabuliseni Isaac Madondo

7. KWAZULU-NATAL DIVISION OF THE HIGH COURT, PIETERMARITZBURG (THREE VACANCIES)

Adv Elsje-Mari Bezuidenhout SC
Adv Hoosen Sattar Gani SC
Ms Narini Nirmala Hiralall
Mr Burt Silverton Laing
Prof Mbuzeni Johnson Mathenjwa
Adv Robin George Mossop SC
Mr Linus Bhekizitha Phoswa

8. LIMPOPO DIVISION OF THE HIGH COURT (TWO VACANCIES)

Adv John Holland-Müter SC
Adv Lesibana Gemine Philemon Ledwaba
Adv Marisa Naud -Odendaal
Mr Vusumuzi Reuben Sinky Ngobe Nkosi
Adv Thogomelani Coution Tshidada

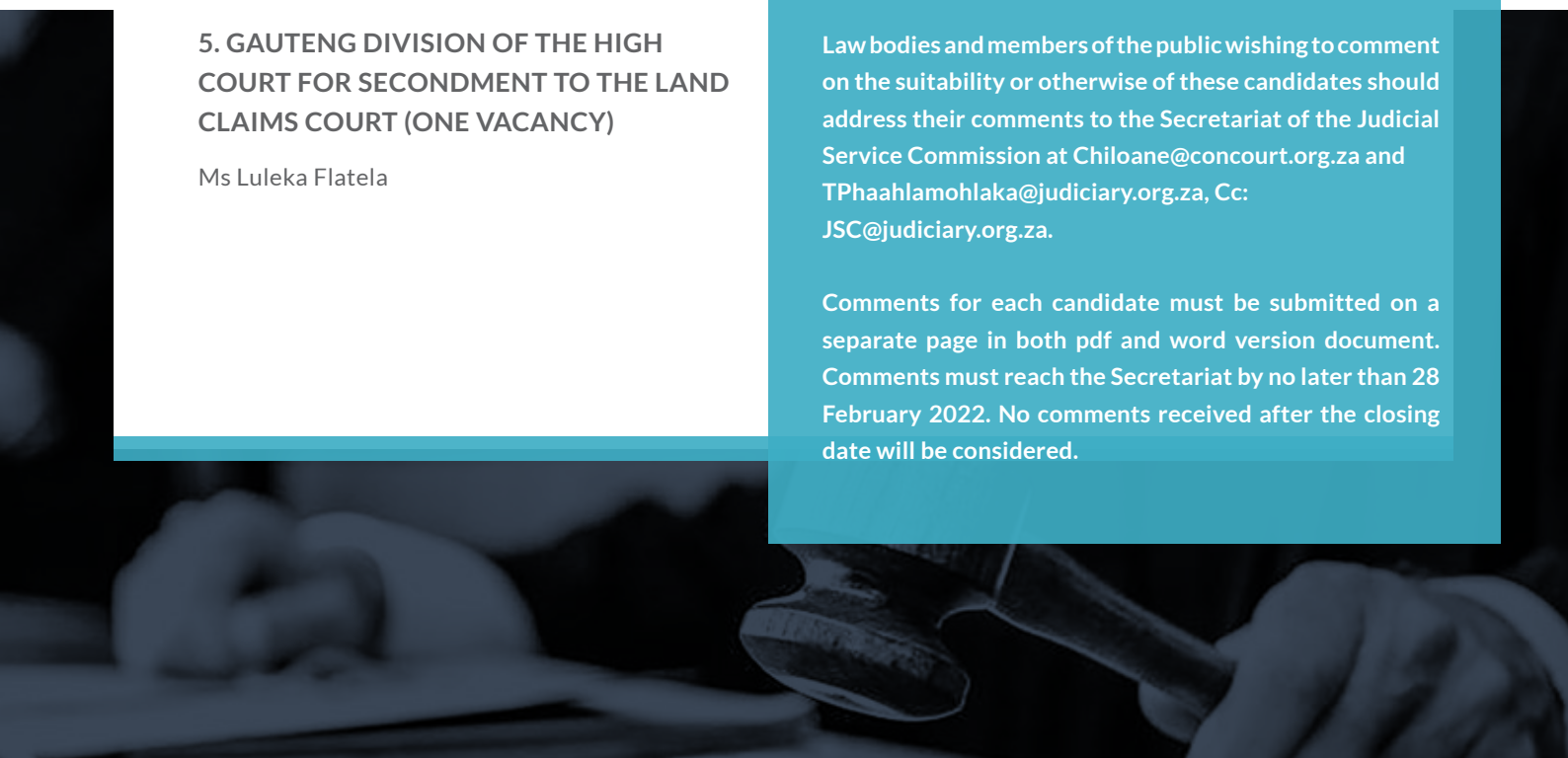
9. NORTH WEST DIVISION OF THE HIGH COURT (JUDGE PRESIDENT)

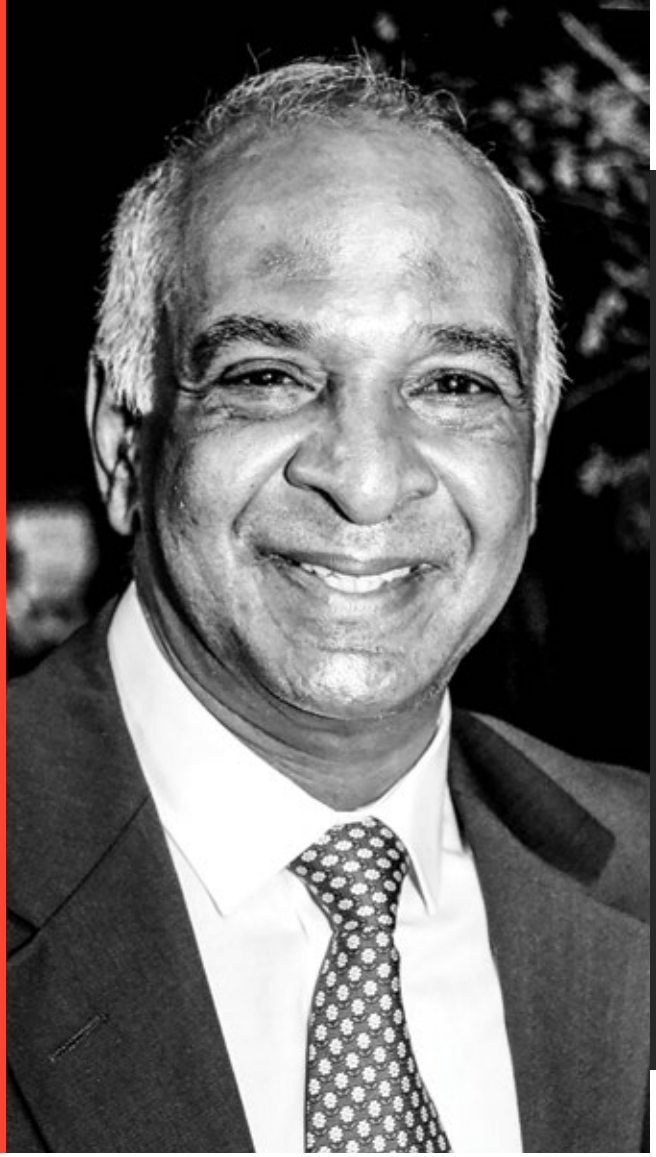
Judge Ronald Deon Hendricks

The shortlisted candidates will be notified of the date, time and venue of the interviews in due course.

Law bodies and members of the public wishing to comment on the suitability or otherwise of these candidates should address their comments to the Secretariat of the Judicial Service Commission at Chiloane@concourt.org.za and TPhaahlamohlaka@judiciary.org.za, Cc: JSC@judiciary.org.za.

Comments for each candidate must be submitted on a separate page in both pdf and word version document. Comments must reach the Secretariat by no later than 28 February 2022. No comments received after the closing date will be considered.





JUSTICE KOLLAPEN HONOURED IN A TRUE CELEBRATORY FASHION BY HIS COMMUNITY

By Ishmail Abramjee

The Pretoria Legacy Foundation (PLF) hosted a magnificent Celebratory Evening to honour its Vice Chairperson, Justice Jody Kollapen, in Laudium, Pretoria on Friday night 4 March 2022.

The Constitutional Court judge was feted and honoured in style by the foundation and local community, after his recent appointment to the apex court. Several high-ranking dignitaries and heads of court attended the colourful event.

The event kicked off with a ceremonial display by the Pretoria Muslim Brigade. The crowd rose spontaneously to their feet in rapturous applause as the popular and much loved judge was escorted into the auditorium by members of the brigade. Crowds of people from various communities attended the function and many more from the neighbouring precinct lined the streets to pay tribute to one of its finest sons.

Justice Kollapen is much loved and highly respected in his community and they spared no effort to honour him by celebrating his successes with much song and dance. The auditorium stage was elegantly decked out in its finest livery befitting the occasion. The audience was entertained by fine performances of classical Indian dancing at its best. A rising local musical star, Yuneil Padayachee rendered some of the guest of honours' favourite songs with his saxophone. The audience was completely enthralled as the attendant band continued playing late into the night. The popular justice and former human rights lawyer was introduced on stage by two of his daughters, one a medical doctor and the other an advocate.

Justice Kollapen delivered a speech from the heart and spoke warmly of his great affection for his community and the support they have always and continue to provide to him. He traced back his humble beginnings. His father was a waiter and his mother was a struggle activist who took part in the 1956 woman's march to the Union Buildings.

In his speech, Justice Kollapen honoured the very same community that came to honour him. This was testimony to his incredible personality, as a humble and caring person that earned him the endearment of his community. He reminisced about his life, family and career and his often witty and humorous anecdotes had the crowd in stitches. He traced his life and career from Cowie Street in Marabastad, where he grew up, to his current post on Constitutional Hill, where the country's highest court is located.

“The Pretoria Legacy Foundation bestowed its highest award to one of their own

From left to right: Judge President Mlambo of the Gauteng Division of the High Court, Judge Harshila Kooverjie and Justice Jody Kollapen.

The Pretoria Legacy Foundation bestowed its highest award to one of their own and also recognised the achievements of another judge from the same community. Judge Harshila Kooverjie, who was recently appointed to the bench of the High Court in Pretoria, was also honoured at the function.

In a remarkable coincidence, both Judges live just a street away from each other in the nearby suburb of Claudius, near Laudium and Justice Kollapen jokingly suggested that between him and Judge Kooverjee, they had the capacity to deal with a case as well as its appeal in the same day and within a street of each other. A tribute to the late Chief Justice Ismail Mahomed, who also hails from the same community, was delivered by his niece, Aneesa Mahomed who heads up a big legal firm in the capital.

The prestigious event was even more significant in that both Mlambo JP and Ledwaba DJP of the Gauteng Division of the High Court were both in attendance. So too was the recently retired Japie JP of the KZN division. Several acting Judges also graced the occasion, as did several members of the legal fraternity, the NPA, politicians, civil society leaders, industrialists and businessmen.

Two of the country’s most experienced legal writers, Karyn Maughan of News24 and Franny Rabkin of the Sunday Times were also in attendance as guests. Ismail Abramjee, spokesperson of the foundation said that the event was the first significant community event since the outbreak of the Covid-19 pandemic and probably one of the most important post-democracy functions in the area.

He thanked all those that attended and especially the community for ensuring that the event was the huge success that it was. ■

From left to right: Mr Ismail Abramjee of the Pretoria Legacy Foundation, DJP Aubrey Ledwaba and Mrs Ledwaba and Justice Kollapen.

JUDICIAL RETIREMENTS & APPOINTMENTS

JUDICIAL RETIREMENTS

Judge President A N Jappie

KwaZulu Natal Division of the High Court

Discharged: 28.02.2022

Judge C G Lamont

Gauteng Division of the High Court, Johannesburg

Discharged: 30.01.2022

Judge K Makhafola

Limpopo Division of the High Court

Discharged: 07.02.2022

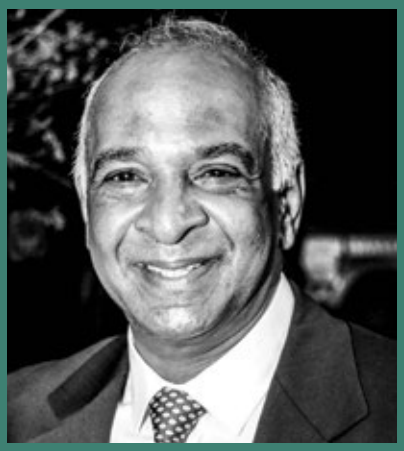
Judge J M Roberson

Eastern Cape Division of the High Court
Discharged: 01.01.2022

Justice M J D Wallis

Supreme Court of Appeal
Discharged: 31.01.2022

JUDICIAL APPOINTMENTS



Justice N Kollapen

Constitutional Court
Appointed: 01.01.2022

Justice R S Mathopo

Constitutional Court
Appointed: 01.01.2022

IN MEMORIAM

MAY THEIR SOULS REST IN PEACE

Judge R D Claassen

Gauteng Division of the High Court, Pretoria

Passed: 01.12.2021

Judge L S Melunsky

Gauteng Division of the High Court, Pretoria

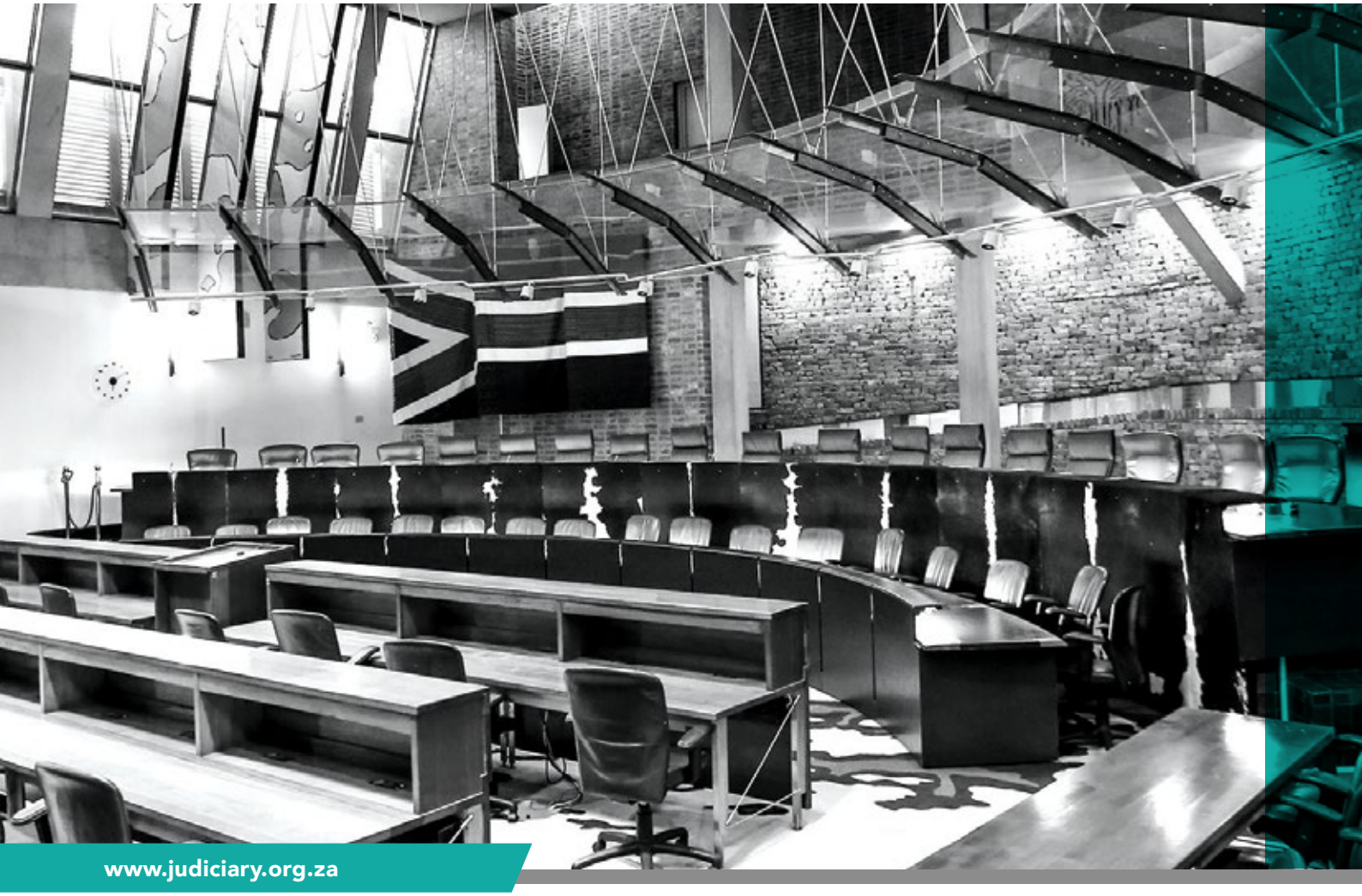
Passed: 01.12.2021

Judge R E Monama

Gauteng Local Division of the High Court, Johannesburg

Passed: 17/02/2022

Photo source: https://bit.ly/3LkNhmG



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