

THE JUDICIARY

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Editor

The recent months have been sad for the Judiciary. We bade farewell to a fellow judge, Judge Bhekisisa Jerome Mnguni of the KwaZulu Natal Division of the High Court, who passed away on 7 September 2021. We have also lost a commissioner of the Judicial Service Commission (JSC), Mr Lutendo Bennedict Sigogo, who passed away on 31 July 2021.

Once again, we convey our deepest sympathies to the Mnguni and Sigogo families and everyone who was close to the late colleagues. We wish them strength during this difficult time. For us in the Judiciary, and the legal fraternity at large, their passing is a great loss. We have been robbed of humble servants.

The quarter that ended on 30 September 2021 offered us, once more, opportunities to celebrate our heritage as a nation, and honour women. This year's national Women's Month commemoration was held under the theme: "The year of Charlotte Manny Maxeke: Realising Women's Rights". We are pleased to bring you a Women's Day message from Justice Mandisa Maya, the President of the Supreme Court of Appeal, which she penned in her capacity as President of the South African Chapter of the International Association of Women Judges. Please read it and be inspired. We take this opportunity also to extend our congratulations to Justice Maya on her appointment as Chancellor of the University of Mpumalanga for a period of five years, effective 1 July 2021.

Still on Women's Month, a few women Judges took part in the SABC Channel Africa Radio programme, Womanity: Women in Unity – a gender-based programme that



campaigns for progress and development amongst women in Africa and celebrates prominent and ordinary African women. Please see pages 22 to 32 for a sneak peek at the interesting discussions the Judges had with programme host, Dr Amaleya Goneos-Malka.

The capacitation of the Magistracy is important for the effective functioning of the Judiciary. The appointment of 158 Magistrates by the Minister of Justice and Correctional Services to take up positions around the country is a welcome contribution towards ensuring accessibility and effectiveness of the courts.

Last, but not least, I take this opportunity to thank all my colleagues who have contributed valuable material to this edition. This newsletter would not exist without your participation.

We are pleased to present to you the spring edition of the Judiciary newsletter! Niyithakasele.

Enjoy the newsletter!

Judge President Dunstan Mlambo
Chairperson: Judicial Communications Committee



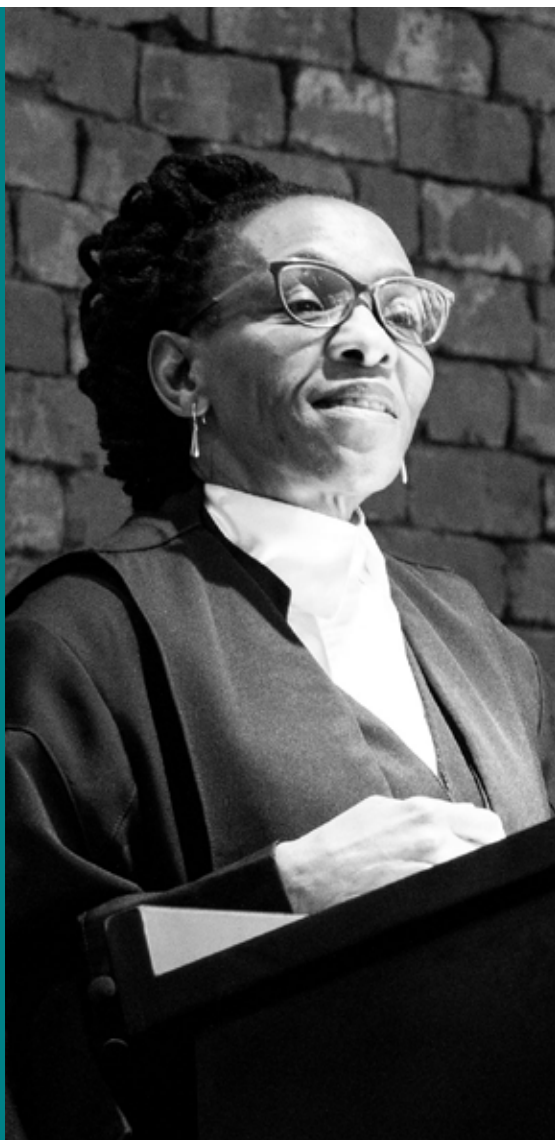
PRESIDENT MAYA APPOINTED AS CHANCELLOR OF THE UNIVERSITY OF MPUMALANGA

The South African Chapter of the International Association of Women Judges (SAC-IAWJ) is proud to announce the appointment of its President and the President of the Supreme Court of Appeal of South Africa, Justice Mandisa Muriel Lindelwa Maya, as Chancellor of the University of Mpumalanga (UMP).

The UMP, at a special meeting of its Council, approved the nomination of Justice Maya to serve as the next Chancellor. Justice Maya succeeds His Excellency President Matamela Cyril Ramaphosa, whose term as UMP Chancellor came to an end on 30 June 2021. The appointment of Justice Maya is for a period of five years from 1 July 2021 to 1 July 2025.

Justice Maya's association with the UMP was concretized in one of the most successful conferences of the SAC-IAWJ co-hosted by the University at its campus in August 2019.

Prof MD Mabunda, the Chairperson of the Council of UMP, stated that Justice Maya's 'expertise and experience will undoubtedly be of utmost importance and value to the University'. ■



WOMEN'S DAY 2021 MESSAGE

By Justice Mandisa Maya

President of the Supreme Court of Appeal

On August 9 we mark an important day on our calendar, Women's Day, and pay tribute to all the brave women who stood against injustice and marched to the Union Buildings on 9 August 1956 in protest against the extension of the repressive pass laws to women, thus charting the path to a just, equal and inclusive South Africa. We also celebrate the hard work and achievements of a countless present day South African heroines, in rural villages, townships and every nook of our society, who, six decades later, continue the struggle for dignity and equality for all in our country; a struggle of global proportions as not a single country in the world, in this age of unprecedented technological advances that include space tourism and fabulous wealth and privilege for some, has achieved gender equality.

We honour our icons during the most challenging and volatile time since the birth of our democracy as the debilitating inequality in our country, aggravated by corruption and maladministration, and now the Covid-19 plague, cuts deeper with each passing day – the shrinking economy, unabated job losses and unemployment (especially of a majority of our young people), escalating food and fuel prices and lawlessness among other grave challenges which threaten the well-being of our society. And the brunt of it all is felt the most by women, as even in the Covid-19 meltdown they have lost the most jobs and suffer the most from poverty and hunger and the rampant gender based violence and other social ills. It is a sombre day. But all is not lost and we draw courage from our brave mothers who, in the darkest days, did not give up and took the fight to the enemy. We pause, take stock and seek more ways to forge equality and a better society.

I also take this time to congratulate our Association, the South African Chapter of the International Association of Women Judges, for its hard work and for successfully hosting its first virtual Annual General Meeting and election of a new Executive Council comprising a formidable team of women. This indeed proves once more that no hurdle, and certainly not the Covid-19 virus, will impede the tide of woman power. A lot more of that strength, resilience and creativity will be needed this term into the future to turn things around. But we are the SAC-IAWJ and nothing will defeat us. ■

Very best wishes

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ONLINE HEARINGS HAVE PROVEN EFFECTIVE

By Judge President Monica Leeuw
North West Division of the High Court

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The transformation agenda for the Judiciary is very fundamental for our hard fought democracy

On 11 August 2021, Judge President Monica Leeuw addressed the OCJ's Executive Committee (Exco) during its strategic planning session for the 2022/23 Financial Year. She attended the session to provide guidance to the OCJ Exco, from the perspective of the Judiciary, on the strategic direction the OCJ should pursue in the coming Financial Year. The following is the full text of her remarks at the session.

The establishment of the Office of the Chief Justice marked a turning point in the history of a long struggle towards Judicial independence in South Africa.

The establishment of the Office of the Chief Justice goes a long way to give true meaning to the spirit of the Constitution that the Judicial authority vests in the courts and is the first phase as outlined in our preferred Judiciary led independent court administration model. The Judiciary like any other Branch of State requires to be effectively supported administratively in order for members of the Judiciary to focus their attention on administering the

Law. It is for this reason that the OCJ should not cease to be reminded of the critical role it plays in supporting the effectiveness of the Judicial System at large.

When the OCJ started operating as an independent department with a budget vote in 2015/16, judicial functions and the Administration (OCJ) were combined in the strategic plans and APPs. This was corrected, when the judicial functions were delineated from the plans of the OCJ. This has led to the establishment of the Judicial Accountability committee, which looks at the modalities of planning and accountability of the Judiciary. Three annual

reports of the Judiciary (2017/18, 2018/19, 2019/20) have been produced and published. The 2020/21 Annual Report is being developed. We remain indebted to the OCJ for their continued support and assistance in the development of this Report as we continue to navigate through the evermaturing space of Judicial Accountability.

The transformation agenda for the Judiciary is fundamental for our hard fought democracy. It is because of this reason that the SAJEI, under the direction and governance of the Council, has been fully functional since 2012 and has trained and continues to train Judicial Officers, Aspiring Judicial Officers and Traditional Leaders for the proper execution of their judicial functions. The training offered to Judges and Aspirant Judges is intended to widen and deepen the pool of potential Judges for appointment to the high office. Judicial Education is one of the most effective instruments at our disposal to empower Judicial Officers to deliver justice to all our people.

The year 2020 will go down in our history books as the year South Africa and the World will forever be reminded of. The COVID-19 pandemic has not just robbed us our dignity but has also negatively impacted every sector of our economy including the Courts as a wellfunctioning Judicial system also underpins economic development. The hard lockdown imposed in the first quarter of last year had a severe impact on the operations of the Courts. To give effect to lockdown regulations, on the 17th of April 2020, the Chief Justice issued directives outlining that only urgent applications and matters arising from the activities associated with disaster management may be heard in open court during the lock down period in order to ensure Justice was served even under such trying times.

On 02 May 2020 the Chief Justice issued Directives for the management of Courts following the introduction of a new Alert Level system as part of the Declaration of a National State of Disaster. The Chief Justice delegated, to all Heads of Court at the Superior and Magistrates' Courts, the authority to take such action and issue such Directions as may be necessary to give effect and manage particular circumstances not addressed in the Directives.

The Heads of Court issued Directions for the management of judicial functions in their respective courts. These Directives also, for the first time in the South African Judicial history, provided for court proceedings to be conducted through virtual platforms. The ability transition, through necessity, from in-person to virtual court proceedings is a true testament of the dynamic nature of the South African Judiciary. The use of technology to conduct online hearings has proved to be an effective alternative to the traditional court sittings and it is important that the OCJ continue to

improve on its court modernisation strategy as a tool to enhance speedy access to Justice.

As the OCJ reflect on its future plans, it is therefore critical that modernisation and the use technology to enhance court efficiency is prioritised. COVID-19 has reminded everyone including the Judiciary of the importance of embracing technology in improving the efficiency of our court environment.

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The advancement of technology at the courts as part of the court modernisation programme has the potential to increase the case finalisation rate and improve the overall public satisfaction towards the court services. In 2016, the Judiciary through the leadership of the Chief Justice outlined a set of priorities for the Judiciary. These priorities are aimed at improving the efficiency of the entire Judiciary system.

Although some of these priorities have since been implemented by both the Judiciary and the OCJ respectively, a lot still needs to be done to support the Judiciary in strengthening Judicial Governance and improving its operations. The development of the Court Online solution, should also be fast tracked to modernised courts and court processes, improve the management of court records and minimise loss of critical documents in our courts. These priorities further guide the OCJ in their planning processes and have found expression in the strategic priorities the Department itself seeks to achieve.

The Judiciary remains grateful for the continued support offered by the OCJ to allow this Arm of the State to fully execute its constitutional mandate. We again have the great pleasure to congratulate the Secretary General and all employees of the OCJ for the continued commitment to serving the Judiciary and in doing so always maintaining their diligence and insistence on compliance with the prescripts. This has led to three clean audits in a row, at the time when this has become a rarity in Government. The Judiciary wishes the OCJ well as it finalizing its planning for the upcoming financial year and that it continues its upward trajectory for the attainment of all its set targets. ■

URGENT APPLICATIONS, THE DOs AND DON'Ts

By Judge Ingrid Opperman

Gauteng Division of the High Court

On 1 July 2021, Judge Ingrid Opperman was invited to address the South African Bar Association during its Afternoon Programme. Her address was on the topic “Urgent Applications (DOs and DON'Ts)”



In this address I will focus on practical tips to help you navigate your way around the urgent court. You need to appreciate that Johannesburg and Pretoria are the busiest Divisions in the country. In Johannesburg, we have between 50 to 60 matters weekly on the urgent roll and this workload is shared between two Judges.

Before you start drafting an urgent application or before you appear in the urgent court it would be a good idea to refresh your memory on the basics – do a quick urgency 101 refresher. Read rule 6(12) again, chapter 9.23 of the Practice Manual (if in Johannesburg) and the latest practice directive which, again in Johannesburg currently, would be paragraphs 172 to 183 of the revised 18 September 2020 Consolidated Directive effective from 11 June 2021. It will also be helpful to read Judge Wepener's judgment *In re: Several Matters on the urgent roll*, 2013 (1) SA 549 (GSJ) which contains a useful summary of the most common stumbling blocks faced by litigants in this court.

Remember that you are required to set out explicitly the circumstances which render the matter urgent. Most importantly, rule 6(12)(b) requires that the applicant must, in her founding affidavit, set out explicitly not only the circumstances on which she relies to render the matter urgent, but also the reason why she claims that she cannot be afforded substantial relief at a hearing in due course. Now you will be reminded of what Acting Judge Notshe said in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 at para [7], he said:

“It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard.”



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As the test is relief in the ordinary course, you have to establish what is meant by the ordinary course. Is it a year away, is it 6 months away when you can be heard in the ordinary course? I was in urgent court last week and read several founding affidavits which stated that matters in the ordinary course were only being heard in November of this year. This statement was factually inaccurate. What I did at the beginning of last week's urgent week was to request my secretary to establish when the registrar is enrolling matters for hearing in the ordinary opposed motion court. Last week it was every week in August and the first week of September 2021. Now this information makes a big difference to your argument relating to substantial redress, as the question is why do you need your order on 22 June 2021 and why can it not wait until August 2021?

In *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others* [2014] 4 ALL SA 67 (GP) Judge Tuchten succinctly summarised the correct approach to dealing with urgent matters at para 64 as follows:

"It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): whether the respondents can adequately present their cases in the time

available between notice of the application to them and the actual hearing, other prejudice to the respondents and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency."

What you should also look out for are directives published by the Judge dealing with your matter. I publish such directives together with my roll. In it I provide my secretary's email particulars and request that practice notes and/or heads of argument be mailed to her by no later than 4pm, the Monday of the particular urgent week. But compliance with this request is actually already too late. Let me explain why:

The urgent roll closes at 12h00 on the Thursday preceding the urgent Tuesday. I get my files during the afternoon of the Thursday sometimes only on the Friday. I instruct my secretary to freeze the files which means that legal practitioners are not permitted to upload any further papers without my permission.

Please note that every Judge has their own way of managing their court and this address deals with MY way of managing my urgent court.

The only files I have are those electronic ones which appear on CaseLines. Judges don't get hard copy files at all for urgent applications in Johannesburg. So the first thing

you should do as counsel is to go onto Caselines and to ensure that a complete set of papers has been uploaded. By ensuring I mean page through each page and ensure it is complete and legible. I often have batches of papers missing from an affidavit or some pages are upside down. Check very carefully. If the file is not in order, fix it by mailing the Judge's secretary and by requesting her to unfreeze the file to enable you to correct that file.

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Think very, very carefully before you move an application ex parte. Remember that court orders should only be granted behind a litigant's back in exceptional circumstances.

Now remember I said getting the practice note and heads of argument to the Judge on the Monday preceding the Tuesday is actually already too late – the reason is that one only has the weekend to read ones files. So if you are able to and you are briefed timeously, send a practice note - the earlier the Judge gets a practice note, the more useful it is. So if you can do it on the Friday – do so – even if you say in it that your heads of argument will be filed on the Monday.

In it, you should identify what should be read. Why? When one opens a Caselines file it is often overwhelming – there are so many sections with numerous interlocutories and other related proceedings as part of that file. It is enormously time consuming to work through all of that to find what is on the urgent roll for that week. It would be a simple matter to send a practice note in which you identify the section to be read. By way of example - the urgent application appears at section 002, the answering affidavit at 010 – 150, the replying affidavit at 002 – 160, and that the draft order has been uploaded at 010.

Another option is to use the widely shared note facility available on Caselines. Just provide a very brief roadmap for the Judge to assist her in navigating through what is often a morass of paper and sub-sections. The first thing she sees when she opens the file will be this note with a clear instruction of what is on the roll and where to find it.

I should on this score share an experience I had last week: I opened a file with 23 sections – one of them with an application for a Leave to Appeal. The matter clearly had a history. After having spent a considerable amount of time trying to find what was on the Tuesday roll, I posted a Widely Shared Note at 3:56 on the Friday afternoon. It read: '[k]indly direct me to the practice note for the hearing on 22 June 2021. What relief is being sought and what papers should be read?'

To distinguish it from the orange notes posted by the Registrar, I used the colour red. My note thus appeared under a 1 cm thick red band. It could not have been more visible. Needless to say, I received no response or guidance until late Monday afternoon when a practice note was filed which still did not identify the papers to be read. Counsel for the respondent established that the totality of the papers uploaded spanned 2400 pages. It included 13 applications. It bears mentioning that the relief which was being sought was contained in a supplementary affidavit which had not been uploaded and which did not form part of the 2400 pages. This, admittedly, is an extreme example but explains why you should keep your eye on the caselines file, be on the lookout for notes posted by the Judge and be ready to guide the Judge to that which should be read at the earliest opportunity or to deal with other queries.

Also, try getting your heads of argument to the Judge as soon as possible. Make them as comprehensive as possible. Remember, the purpose of heads of argument is to persuade a court and to assist the Court in giving you your order with reasons, where appropriate, as soon as possible.

What I call for are draft orders in word format. Why do I do that? The reason is this: before we started holding court on a digital platform, counsel used to hand up two hard copies of the order. One used to change the order as you engaged with counsel. That's what I still do, but now only with a soft copy. I call up the draft order, and change it as counsel and I engage. Sometimes an applicant seeks final relief. I look at the relief and decide what's happening the following day I would be prepared to stop (thus a final interdict), but what happens after tomorrow I would only stop by issuing a rule, the terms of which will have immediate interim effect, so that the order embodies both final and interim relief. By way of example: I received an application on Friday to interdict a wedding from going ahead on the weekend and any time after the weekend whilst the individual was still married to the applicant. I must confess this was a first. I have stopped funerals but not weddings.

I granted the final interdict preventing the wedding from going ahead over the weekend but then issued a rule nisi calling on the Respondent to show cause why an order should not be made final that he be interdicted from getting

married to anyone whilst he is still married to the applicant and whilst he has not made an application in terms of section 7(6) of the Recognition of Customary Marriages Act 120 of 1998 and a court has not approved a written contract regulating the future matrimonial property system of his marriages. I think it is fair to say that Judges are cautious when granting final relief in urgent court and where, like this matter, there was service but no opposition at the hearing.

I find it time consuming to have practitioners preparing drafts and various drafts being mailed back and forth. I often do a combination: I ask for one re-draft of the order to be mailed to me and I then refine it in the presence of the counsel. I want to ensure that the order I ultimately grant, is the one I afforded counsel an opportunity to comment on. So although it can seem a bit tedious, the process contributes to accuracy and fairness.

Also, although the substance of the draft order you send the Judge should be a carbon copy of the relief you are seeking in your notice of motion, you must couch the wording of the order as that of an order. By way of example: Change the “be’s” to “is’s”. One doesn’t say in an order: ‘[t]he Respondent be interdicted’. One says: ‘[t]he Respondent is interdicted’.

Read and read your order again. It is the most important document in the entire litigation. If it is unclear, it will give rise to problems down the road and all your efforts will come to naught. Remember the order you get must be clear to the litigants and contempt is difficult to show if there is an ambiguity in the order. Also, the Sheriff must know what to do. So wear those spectacles when crafting the relief you will be seeking. Take extra care in the formulation of your order.

Think very, very carefully before you move an application ex parte. Remember that court orders should only be granted behind a litigant’s back in exceptional circumstances. In *South African Airways SOC v BDFM Publishers (Pty) Ltd* 2016 (2) SA 561 (GJ) at para [22] Judge Sutherland summarised the principle as follows:

“The principle of audi alteram partem is sacrosanct in the South Africa legal system. Although, like all other constitutional values, it is not absolute, and must be flexible enough to prevent inadvertent harm, the only times that a court shall consider a matter behind a litigant’s back are in exceptional circumstances. The phrase ‘exceptional circumstances’ has regrettably through overuse, and the habits of hyperbole, lost much of its impact. To do that phrase justice, it must mean very rarely, only if a countervailing interest is so compelling that a compromise is sensible, and then a compromise that is parsimonious in the deviation allowed. The law on the procedure is well established.” (emphasis provided)

Of course section 34 of the Constitution guarantees a right to a fair hearing, which right has been formulated as follows by Yacoob J in the unanimous judgement of *De Beer NO v North-Central Local Council and South-Central Local Council and Others* 2002 (1) SA 429 (CC) at para [11]:

“This section 34 fair hearing right affirms the rule of law, which is a founding value of our Constitution. The right to a fair hearing before a court lies at the heart of the rule of law. A fair hearing before a court as a prerequisite to an order being made against anyone is fundamental to a just and credible legal order. Courts in our country are obliged to ensure that



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keep your eye on the caselines file, be on the lookout for notes posted by the Judge and be ready to guide the Judge to that which should be read at the earliest opportunity

the proceedings before them are always fair. Since procedures that would render the hearing unfair are inconsistent with the Constitution courts must interpret legislation and Rules of Court, where it is reasonably possible to do so, in a way that would render the proceedings fair. It is a crucial aspect of the rule of law that court orders should not be made without affording the other side a reasonable opportunity to state their case. That reasonable opportunity van usually only be given by ensuring that reasonable steps are taken to bring the hearing to the attention of the person affected..."

“ try getting your heads of argument to the Judge as soon as possible. Make them as comprehensive as possible

If you have to move your application ex parte, you have substantiated it in your founding affidavit and have persuaded a court to grant it, make sure you include in the order the respondent's entitlement to a reconsideration. I normally include something along the following lines:

"Attention is drawn to the content of rule 6(8) of the Uniform Rules of Court which provides that any person against whom an order is granted ex parte may anticipate the return day upon delivery of not less than twenty-four hours' notice."

In that vein, where there was service but no appearance at the time of the granting of the order, I include reference to rule 6(12)(c) as follows:

"The Respondent's attention is drawn to the content of Rule 6(12)(c) of the Uniform Rules of Court which provides that a person against whom an order was granted in his absence in an urgent application may by notice set down the matter for reconsideration of the order."

The comments of Judge Sutherland in respect of the steps to be taken to ensure effective service summarised at para [26] of the South African Airways matter should be heeded.

Something happened in urgent court last week which is worth mentioning under this topic. The applicants sought a stay of execution of a winding-up order granted, pending the determination of a rescission application. The notice of

motion distinguished between the Part A relief, being the stay, and Part B being the rescission. The creditor had wound up the close corporation having served the application at the Close Corporation's registered address. Of course this was sufficient service for the order to have been granted but the Close Corporation had attorneys who had been corresponding with the creditor's attorneys about the very debt in issue. The winding-up application had not been served on such attorneys being the very same attorneys who had placed themselves on record as the attorneys for three sureties which the creditor sought to hold liable in terms of a summons. The existence of a bona fide disputed debt is of course tacitly conveyed by the use of action proceedings. I concluded the judgment with the following:

"The object of rule 45A is to obviate real injustice. In my view and given the circumstances of this case, Voltex ought to have notified Errol Goss Attorneys of the winding-up application. There were two parallel court processes running where the sureties were defending the claim, had filed a plea and the principal debtor (IEC) was being liquidated without notice to the attorneys representing the sureties, the very same attorneys who had responded to the Letter of Demand and who had stated expressly that any winding-up application will be opposed. Even if not a legal requirement, in my view, the failure to have sent the winding-up application by email to Errol Goss Attorneys and to have sought the relief without notice to them, is legal practice which in my view, is sailing very close to the wind on an ethical front."

The point is this – be sure to give notice to those you have corresponded with on the matter. Certain matters are automatically urgent such as refugee matters – but even there, the applicants should afford the state a proper opportunity to file answering affidavits, if they so wish. In this regard the comments of Judge Wepener In re: Several Matters on the urgent roll are pertinent:

"[16] There are also matters brought against departments of State. Experience has taught that such respondents need time to look into the allegations contained in the affidavits in order to be able to file answering affidavits, if they so wish. When these affidavits are filed, the matters can be seen in a proper perspective. Attempts to disallow them to file affidavits are usually based on the judgment in Arse v Minister of Home Affairs and Others 2012 (4) SA 544 (SCA) where it was said at para 10 that a detained person should not be deprived of his or her right to freedom for one second longer than necessary. Malan JA however, added the words that the detention should not be 'longer than necessary by an official who cannot justify his detention'. This statement must be seen in its proper context. It does not say that all persons who are incarcerated are entitled to be released post haste. It deals with unlawful incarceration and that determination can only

be made upon a proper consideration of all the facts as the governing legislation specifically provides for incarceration. By allowing the respondents to place facts before the court to attempt to justify the actions of its employees, the matter can be properly considered. The success or otherwise of the respondents opposition to the matter can only then be determined."

Now what if you think the matter is semi-urgent? In our division you should approach the Deputy Judge President and ask for a special allocation.

In terms of paragraph 26 of chapter 9.23 of Johannesburg's practice manual, the Judge to whom an urgent matter is allocated - if she is of the view that the matter is not sufficiently urgent that it should be heard that week, but that it is sufficiently urgent that it should not be heard in the ordinary opposed motion court - can immediately inform the parties of this view and the parties shall then be entitled to immediately approach the Deputy Judge President for an expedited date to be allocated for the matter to be heard in the special motion court or such other motion court as the Deputy Judge President may deem meet.

Also remember that in Johannesburg, urgent applications for leave to execute a judgment despite a pending appeal, in terms of section 18 of the Superior Courts Act 10 of 2013, should be referred to the Judge who heard the main application. Such Judge should endeavour to hear such application as a matter of urgency. The same Judge should hear the section 18 application as regard should be had to the merits and the prospects of success when considering whether an order should be enforced despite a pending appeal. Approach the secretary of the Judge who granted the order. I normally hear the application for leave to appeal and the section 18 application at the same time.

When in urgent court last year October, I heard an application where a media defendant was afforded 2 court days within which to prepare its answering affidavit.

I was confronted with a tricky and novel legal argument which dealt with the interplay between the urgent court's competence to order a media defendant to publish an apology and the speedy remedies afforded by the Press Council, which in that case had been commenced by the applicant but then abandoned. The argument was not dealt with in the heads of argument filed by either party but for the first time in the oral argument before me. I do not blame counsel for the respondent as everything happened with such hugely truncated time periods and he presented a very able and compelling argument despite these challenges, but I use it to make the point made by Judge Cachalia (as he then was) in *Digital Printers v Riso Africa (Pty) Ltd* (unreported judgment, case no. 17318/02 WLD):

"The urgent court is not geared to dealing with a matter which is not only voluminous but clearly includes complexity and even some novel points of law."

So obviously I am not saying that an applicant who wishes to develop the law should stay away from urgent court, but what I am saying is that these types of considerations should be factored in when deciding how much time a respondent should be afforded to file an answering affidavit or perhaps whether the Deputy Judge President should be approached with a request for a special allocation when it is clear that the case is not an ordinary run of the mill matter.

I want to conclude with this: the doors of our courts will not be closed to meritorious matters, but your first priority as counsel moving an urgent matter must be to assist the Judge to produce the order that your client seeks in a manner that takes account of the Judges workload and fairness to the opponent. ■



CASE MANAGEMENT AND THE APPLICATION OF THE PRACTICE MANUAL

IN THE GAUTENG DIVISION OF THE
HIGH COURT IN THE TIME OF COVID

By Judge Raylene Keightley

Gauteng Division of the High Court, Johannesburg

Case management has long been part of the practice of the Gauteng Division of the High Court. While the Covid pandemic has necessitated practice directives dealing specifically with the conduct of proceedings in the Division during these times, this in itself has not changed the fact that case management processes have continued.

The most important change necessitated by Covid has been that almost all of the Division's operations (save for criminal trials) have shifted to the virtual and online platforms. The adoption of CaseLines in the Division preceded the pandemic. Through CaseLines, all new civil proceedings are instituted electronically on the digital platform. All pre-Caselines matters are also required to be uploaded onto the platform so that all proceedings are now managed electronically, without the necessity for paper files. As you can imagine, when lockdown was announced under the Disaster Management Regulations, the fact that the Division was already operating largely on a digital system of file management meant that we could continue our operations relatively seamlessly and, most importantly, in safety.

The operations of the courts in the Division during the extended state of disaster is governed by the Judge President's Revised

Consolidated Practice Directive dated 18 September 2020, which, in its most recent version, was issued on 11 June 2021. The Directive provides for a combination of Caselines, video platform, and open court hearings of all civil matters. Criminal matters still proceed in open court, with safety protocols in place to protect Judges, other court officials, the accused witnesses and lawyers.

Under the Directive:

- All pleadings must be uploaded onto the Caselines digital platform (save for certain, limited exceptions).
- Appeals and applications may be dispensed with “on paper”, i.e. without an oral hearing if the parties and the presiding Judge agree. Where oral representations are heard, the default position is that the hearing should take place on a virtual platform (usually MS Teams, or Zoom are used).
- As to matters in which evidence is to be led, parties may indicate a preference for the matter to be heard in open court. However, the Judge retains a discretion to decide whether an open-court hearing is necessary and can be conducted safely. A “hybrid system” may also be employed, with some witnesses appearing in court or other venue, while the Judge and other parties log on and hear the evidence virtually.
- At the end of the day a balance must be struck in trial matters between the need to observe safety precautions in the interests of public health, on the one hand, and the need for a fair trial and the interests of justice on the other. If the interests of justice and fair civil process require an open court hearing (in whole or in part), the Directive requires that strict Covid protocols are observed.

This system has been in operation in our Division now since April 2020. Most Judges would agree that our work rate has not been impeded at all. In fact, many of us have noted that we tend to work longer hours, because one can now conduct a range of different judicial activities, virtually, after official office hours. Practitioners, too, have become used to Caselines and virtual hearings.

In-person litigants are accommodated at all times. A number of courts are available each day for unopposed motions, urgent court applications, and other matters in which in-person litigants are common. A court official is on hand in each court to assist the in-person litigant to appear on video link via a laptop situated in the court room. If practitioners prefer, they may also use the video-link available in court. Personally I have found this to be particularly useful in urgent court. Shortly before Christmas last year a burial matter landed on my urgent desk. The matter had to proceed at about 9pm at night. Although the attorney for the applicant was in one venue, and I was in another, the

in-person respondent was able to come to court and to be heard by video link, and the matter was speedily resolved. The electronic and virtual platforms model that has seen our Division through the difficult days of the state of disaster has also permitted Judges to continue with our case management operations without any difficulty.

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In the Gauteng Division, there are three categories of case management processes in civil matters.

The first is what I will refer to as “ad hoc case management”. This is not as informal as it sounds. It is dealt with in chapter 6.15 of the 2018 general Practice Manual for the Division. Under this system, the parties in any civil matter may approach the Deputy Judge President to request that a case managing Judge be allocated to manage the matter so that the case may ultimately become ripe for hearing. There is no limit on the type of matter that may be referred for this type of case management. Usually it is matters that are highly contested, with many interlocutory applications hampering progress. Contested divorce matters and complicated eviction proceedings involving large communities are ones that often find their way into this type of case management.

Typically, the case management Judge in ad hoc case managements will hear the various interlocutory applications that arise, and will issue appropriate directives to assist the further progress of the matter. Only when the case management Judge certifies that the matter is now ready for hearing, will the DJP be advised and the matter enrolled for hearing. The case management Judge will usually step out of the picture at that stage and a different Judge will be appointed for the trial or oral hearing.

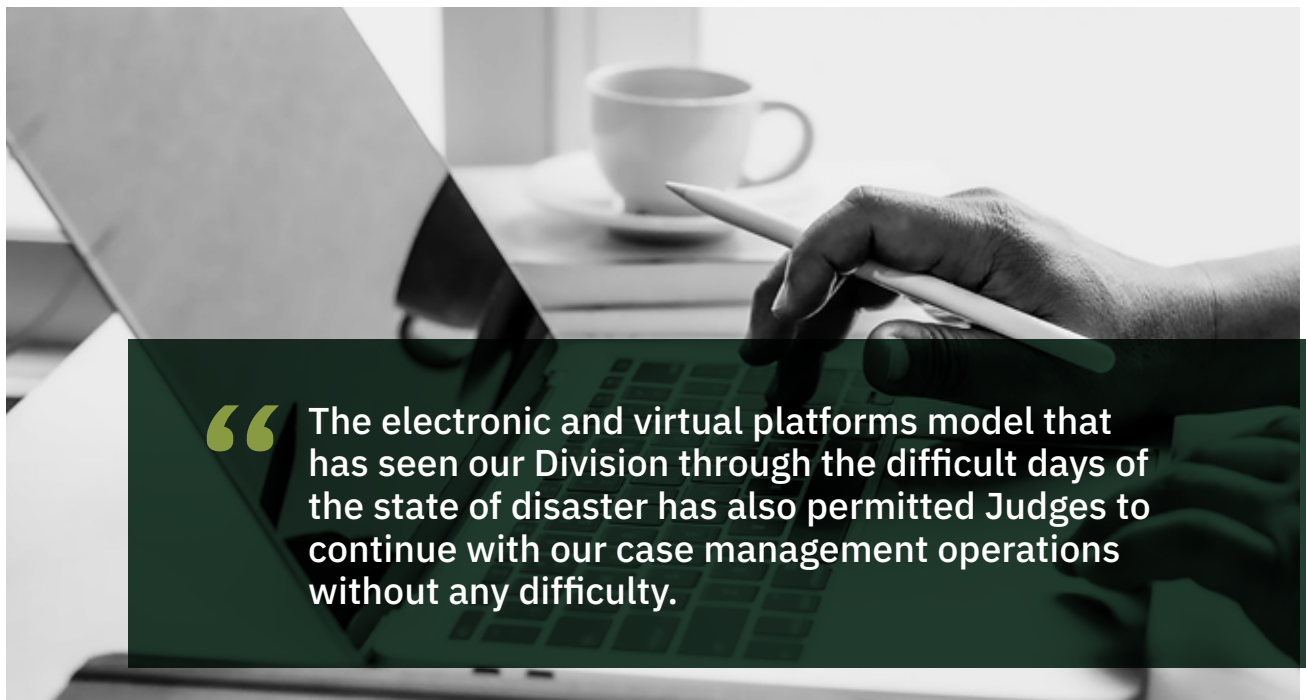
The second type of case management takes place under the Commercial Court Practice Directive, which was issued on 6 October 2020. In the Gauteng Division, matters of a commercial nature that tend to involve more complicated issues may be diverted into the Commercial Court stream. Here, case management forms an integral part of the Commercial Court process from the word go. The case managing Judge is responsible for meeting with the parties as soon as possible after the matter is allocated as a Commercial Court matter. The purpose of the case management is that it permits the issues to be distilled, and a timetable set for all steps that must be taken with a view to an early enrolment for hearing. It is aimed at achieving a speedy resolution of sometimes complex matters that otherwise might clog up the civil court system for years.

Commercial Court case management requires active and ongoing participation by the Judge, and co-operation from the parties. As with ad hoc case management, the Commercial Court Judge will issue such directives as are necessary and hear any interlocutory applications necessary to ensure that progress is maintained and the time table is

gets into court. However, with Commercial Court case management, the Judge must adopt a far stricter “hands off” approach to the merits. Her job is to get the matter ready to the point where she can preside over it, not to try to nudge the parties towards settlement.

The final type of case management is worthy of a topic in its own right: mandatory case management in civil trials. I am going to focus on case management in trials involving the Road Accident Fund (RAF matters); the Passenger Rail Agency of South Africa (PRASA matters) and the MEC for Health (MEC matters). In our Division, these are identified as “Y matters” in the relevant Practice Directives.

These three categories of civil trials are ubiquitous in the Gauteng Division. RAF trials take up by far the most volume of cases on our civil trial rolls. PRASA matters typically involve train commuters who sue PRASA for damages for personal injuries suffered in train accidents (being pushed out of coaches; doors slamming on them etc). The MEC matters are usually matters brought on behalf of minors whom it is alleged suffered cerebral palsy as a result of



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adhered to. Unlike ordinary case management, however, the Commercial Court Judge will usually also hear the matter. This highlights one important distinction between the role of the case management Judge under these two types of case management.

With ad hoc case management, the Judge may well try to bring the parties closer together and even keep an open mind about trying to get the parties to settle. She can do this because she will not hear the matter when it eventually

negligence on the part of medical staff in public hospitals during their birth. They can run into millions of Rands, and will usually involve a number of experts, typically running for three to four weeks.

In both RAF and MEC cases, expert evidence forms an important part of the trial process. Historically, mandatory case management of these matters was adopted to ensure that matters only became enrolled for trial after the pleadings were closed and all expert witness joint minutes etc

were filed. Without case management, these types of cases would overwhelm the civil trial roll and, more importantly, would do so despite the fact that at roll call it would become apparent that the matter is not in fact ready for trial. Earlier practice directives in the Division were aimed at using a case management/certification court system to ensure that trial dates were only given after a Judge had certified that the matter was ready for trial.

This still remains the position with PRASA and MEC matters. However, a new Practice Directive was issued in June 2021 (Revised Practice Directive 1 of 2021). Part of the new Practice Directive is to regulate case management, trial allocation and enrolment of trial matters in the Division. The aim of the new Directive is broadly two-fold: first, to refine the trial case management and allocation system to further reduce civil trial roll congestions; and second, to deal with the knock-on effect on the civil trial roll of the RAF's change of policy in terms of which it no longer instructs attorneys to act on its behalf in RAF trials.

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In the Johannesburg High Court statistics show that despite the previous trial certification and case management process, the civil trial roll remained overburdened with 120 matters on average per day. Despite all attempts to ensure that the certification process would result in only trial-ready matters being enrolled, in practice this was not happening. Most RAF matters which had been certified trial ready were in fact not ready to proceed (for various reasons, which time does not permit me to discuss). The knock-on effect of this was increased waiting time for trial dates.

Under the June 2021 Directive, a model is introduced that channels Y matters into different streams depending on whether, in particular, the defendant (mostly the RAF) remains actively engaged in the matter. In Y matters where the defendant remains actively engaged (mostly MEC and PRASA matters) the certification court process and case management through the certification court remains in place. However, in RAF matters, where attorneys have been taken off brief, case management and certification is no longer required.

Instead, in these matters, the plaintiff is required to use the trial interlocutory court to obtain compelling judgments against the RAF to comply with its pre-trial obligations (for example, to hold the requisite pre-trial meeting six weeks before trial). Should the RAF fail to comply with a compelling order, the plaintiff is entitled to approach the court for an order striking the RAF's defence and granting leave for the matter to be heard on a default judgment basis. In that instance, the matter is enrolled as a default judgment matter and, theoretically, will not be enrolled on the ordinary civil trial roll. This should, theoretically, free up the civil trial roll for the allocation to Judges of matters which are in fact ready for trial on the trial date. The new model also removes from certification/case management court those RAF cases no longer suited to case management because the RAF is no longer actively participating.

It is too early to tell yet whether the new model is working. Inevitably, practical teething problems will occur. It still does not solve the problem of the sheer number of RAF cases in our Division and the burden this places on the trial system. It is also not ideal for a Judge to have to hear RAF matters on an undefended basis for obvious reasons. Very often these cases are for large sums of money and are based on expert evidence that cries out to be properly tested. The Judge is placed in a very difficult position in the absence of a defence, particularly bearing in mind that the damages awarded must be satisfied from the public purse. However, this is not a problem of the courts' creation and it is not one that we can solve on our own, regardless of how well we manage to refine out case management process. ■



NEW CHAIRPERSON OF THE SOL PLAATJE UNIVERSITY COUNCIL

By Sol Plaatje University, Institutional
Advancement Department

Judge Phatshoane served on the Sol Plaatje University (SPU) Council since June 2014 and has played an integral role in the development of the University. She is poised to lead the Council, until April 2025, as it governs SPU in the next phase of its growth in terms of its research profile, academic offerings, digital expansion, financial consolidation, and exciting community engagement endeavours.

Judge Phatshoane is the newly appointed Deputy Judge President of the Northern Cape Division of the High Court, with effect from 1 July 2021. She is also an Acting Judge of Appeal at the Supreme Court of Appeal, a position she will hold until September 2021. She previously acted as Deputy President of the Labour Court and Labour Court of Appeal. She has made rulings on labour law, private law, civil procedure, and criminal law.

She obtained a BProc from the University of the North and her LLM and LLB degrees from the University of the Free State. After being admitted as an attorney in 1999, she set-up her own, highly successful, law firm Phatshoane Henney

Group Inc in 2002. She also served part-time at the CCMA from 1999 to 2004 and lectured at the University of the Free State from 2006 to 2009. In 2012 she was the recipient of the Alumni "Extraordinary Achiever" Award from the University of the Free State.

Judge Phatshoane is a member of the National Judicial Case Flow Management Committee and a member of the South African Chapter of International Women Judges and served as its Vice-President from 2012 to 2014.

The outgoing Chairperson of the SPU Council, Judge Yvonne Mokgoro will be honoured for her immense contribution to the University through her leadership of the Council since August 2014. She has had a steady hand on tiller of the SPU vessel and will continue to be its champion as it enters new waters. ■

Source: Sol Plaatje University,
Institutional Advancement Department

APPOINTED JUDGES

The Judicial Service Commission (JSC) interviews were held from 12 - 23 April 2021 in Sandton, Johannesburg. A total of 74 shortlisted candidates were interviewed by the JSC. Thirty-five (35) candidates were recommended to President Ramaphosa and the President has appointed the following 29 Judges:

SUPREME COURT OF APPEAL



Justice Z Carelse



Justice N P Mabindla-Boqwana



Justice T R Gorven



Justice W Hughes



Justice S P Mothle

FREE STATE DIVISION OF THE HIGH COURT



Deputy Judge President N M Mbhele

GAUTENG DIVISION OF THE HIGH COURT



Deputy Judge President R T Sutherland



Judge N P Mali



Adv P G Malindi SC



Mr N M Manoim



Mr M P N Mbongwe



Ms M M Munzhelele



Adv P D Phahlane

KWAZULU-NATAL DIVISION OF THE HIGH COURT



Mr B S M Bedderson



Mr M E Nkosi



Adv C Sibiya

LABOUR COURT



Adv M T M Phehane

LIMPOPO DIVISION OF THE HIGH COURT



Deputy Judge President M V Semanya

MPUMALANGA DIVISION OF THE HIGH COURT



Deputy Judge President S S
Mphahlele



Adv T M Mankge



Mr T V Ratshibvumo



Ms L D Vukeya

NORTHERN CAPE DIVISION OF THE HIGH COURT



Deputy Judge President M V
Phatshoane



Adv L G Lever SC



Adv A P S Nxumalo

NORTH WEST DIVISION OF THE HIGH COURT



Mr A H Petersen



Adv F M M Snyman SC

WESTERN CAPE DIVISION OF THE HIGH COURT



Mr M Francis



Adv N Mangcu-Lockwood



MAGISTRATES APPOINTED

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The Minister of Justice and Correctional Services has made 158 new Magistrates' appointments in vacancies around the country

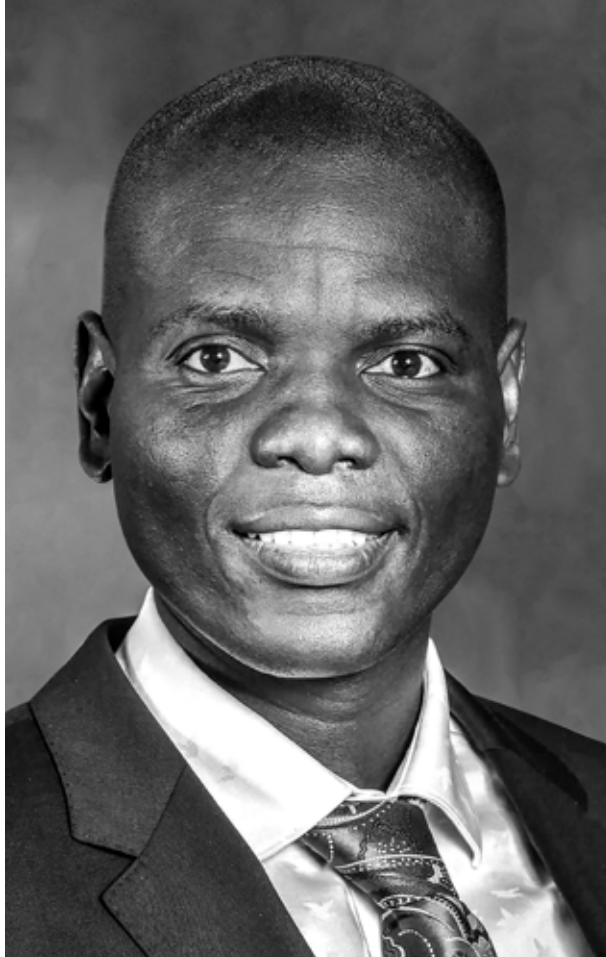
Magistrates Courts are at the very coalface of our justice system. It is vital that these courts, which are often the first port of call for the dispensing of justice, are well-capacitated and functioning optimally.

This means having a sufficient number of magistrates in our courts, especially at a time when our courts are having to deal with the impact of the Covid-19 pandemic on a daily basis.

The Minister of Justice and Correctional Services has made 158 new Magistrates' appointments in vacancies around the country. The date of assumption of duty will be 1 October 2021 so as to enable the new appointees to give the necessary resignation notices at their current positions, make arrangements to relocate, and so forth.

A fully transformed judiciary is a constitutional imperative. Of the 158 new appointments 104 are African, 23 are Coloured, 8 are Indian and 23 are White. In terms of gender, 88 are female and 70 male.

We have made significant progress in terms of transformation over the last two decades. At the dawn of democracy in 1994 magistrates were part of the public service and were employed by the then Departments of Justice in the various homelands, the TBVC States and the rest of South Africa. An amalgamation process to bring them all under one department was led by the then



Minister of Justice, the late Minister Dullah Omar, and in 1998 there were a total of 284 female magistrates (18%) and 567 Black magistrates (37%) countrywide out of a total of 1515 magistrates (including the regional, chief, senior magistrates and Regional Court Presidents).

The new appointments show how far we have come in terms of gender and racial transformation, as there are now 695 African, 143 Indian, 176 Coloured and 388 White persons on the level of Magistrate.

If one includes the regional, senior and chief magistrates, as well as the Regional Court Presidents, to get a view of the magistracy as a whole, 957 are African (50%), 204 are Indian (10,6%), 224 are Coloured (11,7%) and 528 are White (27,6%) out of a total of 1913. A total of 947 are women.

This means that 72,3% of our magistracy are Black and 49,5% are female.

In terms of the Regulations for Judicial Officers in the Lower Courts, 1993, all newly appointment magistrates must, before commencing with the functions of a judicial officer, attend a course by the South African Judicial Education Institute (SAJEI). It is envisaged that this course will take place between during October 2021.

The Magistrates Commission plays an important role in the filling of vacancies of magistrates' posts. The Magistrates Commission is a statutory body established in terms of the Magistrates Act, 1993 and the appointment procedures and processes are set out in the legislation and in accompanying Regulations. In short, the appointment process follows the following steps -

- Vacancies are identified and confirmed against the judicial establishment and funded posts
- Advertisements follow thereafter
- Applications are processed
- Shortlisting is done
- Interviews are held
- Recommendations are made by the Magistrates Commission after the conclusion of the interviews
- The recommendations are submitted to the Minister of Justice for his consideration and appointment.

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The filling of these vacancies is an important step in capacitating our judicial officers and our courts, so as to enable them to deliver justice to all

“I want to commend the Magistrates Commission for their efforts in the enormous tasks of filling these posts. The shortlisting and interviewing of 418 candidates is unprecedented – all the more so given that the Commission had to do so under trying conditions brought about by Covid-19.

The filling of these vacancies is an important step in capacitating our judicial officers and our courts, so as to enable them to deliver justice to all,” said Minister Lamola. ■

By the Department of Justice and Correctional Services



JUDGE ZOLASHE LALLIE

Labour and Labour Appeals Court

The SABC Channel Africa Radio programme, Womanity: Women in Unity, hosted women Judges during Women's Month to discuss various topics of interest around the progress and development of women in Africa. The following are excerpts from these discussions with programme host, Dr Amaleya Goneos-Malka. The full podcasts are available on the Judiciary RSA YouTube page.

DR. MALKA: Judge Lallie, your career in the legal sphere seems to have been focused on labour as well as workplace issues. Some of your prior roles include being a member of the Industrial Court, serving as the Convening Senior Commissioner of the Commission for Conciliation, Mediation and Arbitration, otherwise known as the CCMA, as Head of the Eastern Cape Provincial office, you have also run your consultancy which addressed labour law and in 2012 you were elevated to the Labour Court Bench. Please tell us more about some of the functions of the labour court as well as its jurisdictions.

JUDGE LALLIE: The labour court deals exclusively with labour issues. In terms of Section 157 of the Labour Relations Act 66 of 1995, the labour court has exclusive jurisdiction in respect of all matters in which labour legislation and any other statute requires the labour

court to adjudicate, so it is a legislation that determines our jurisdiction. So if a piece of legislation requires that certain cases be adjudicated by the labour court, those cases are adjudicated by the labour court exclusively. We have also concurrent jurisdiction with the high court over cases which involve alleged and threatened violation of any fundamental rights entrenched in Chapter Two of the Constitution, which arise from employment and labour relations. We have jurisdiction over the constitutionality of acts and conduct of the state as an employer, some of our functions include reviewing decisions of the CCMA and bargaining councils, we adjudicate cases involving discrimination and unfair dismissal of employees

DR. MALKA: Judge Lallie you mentioned the Employment Equity Act and one of the points which has been raised in several conversations that we've had

with leading women from different fields is that of gender pay gaps and I know that there was an amendment to the Employment Equity Act, which was to incorporate equal pay for work of equal value. Interestingly, in 2018 in Iceland, Iceland became the first country in the world to make it illegal to pay men more than women for doing the same job. Please can you share some of your views on how we can close gender pay gaps.

JUDGE LALLIE: I wish to suggest that affording women equal opportunities early in their lives places them in a position to compete with men. It is my view that we need to remove the distinction between men and women when it is unnecessary. So when women are afforded the same opportunities, they acquire the same qualifications and skills to perform the same jobs as men and the justification of paying a man more falls away. So we need to empower women, we need to remove the discrimination between women and men very early in people's lives and where the pay disparities exist, we need to remove all the reasons that justify them.

If we have to give women more skills, more education and more opportunities to perform those duties that men perform in order to earn particular salaries, then let's ensure that women are placed at the same level as men.

DR. MALKA: And within the judiciary and justice value chains, do you think that if we have more women entering that space it will help to formulate decisions as well as public policies that are perhaps more considerate of issues that affect women, whether that is equality or employment discrimination?

JUDGE LALLIE: I believe so, because if a decision about women has to be taken, who best can take it, because it involves their experiences, it involves issues about them. So it is proper that if it is about you, you have to be part of that decision-making and in saying so, I wish to add that as women, we live with men too, when I say that we need more women in this value chain, I do not necessarily exclude men, because decisions about women do affect men too.

DR. MALKA: Turning towards more of a personal perspective now, as we go towards the latter part of the show; Judge Lallie you hold a B Juris degree, you hold your LLB as well as BA Honours in Industrial Relations; please can you tell us what role education played in your life and career development?

JUDGE LALLIE: I wouldn't be holding this interview with you sitting in these chambers if I didn't acquire the formal education that I have. The formal education that I have

acquired assisted me to develop, to access opportunities, to work hard and to qualify for senior positions, for all the positions that I have held, so that's the role that formal education has played in my professional life, opening doors, it has helped me access opportunities.

DR. MALKA: Lastly, in recognition of women's month, as we close off today's conversation; can you share a few words of inspiration that you'd like to pass onto girls and women who are listening to the show?

JUDGE LALLIE: To all the girls who are listening to this show, I would like to tell you that I attended local schools; I am from the township, so it doesn't matter where you are from. If you take the necessary steps to achieve your goals, you can; it can be done, you can achieve your goals, keep working. One of the things I would like to share with women is that as women let's continue earning our stripes. So integrity is very important, we need as women to work fairly and honestly, even when we think that no-one is watching. I'd like to say to women you only have one name, protect your name and if I may add one last thing from my father; my father taught us that women and men are created differently, however, that difference has nothing to do with capacity. So the fact that we are women does not necessarily mean it is not a reflection on our capacity, so as women we have what it takes, let's acquire the necessary education, the necessary knowledge, the necessary skills and hold these positions of power and perform to the best of our ability. ■

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JUDGE THANDO MANKGE

Mpumalanga Division of
the High Court



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Everybody should be intentional and radical about this cause of empowering women

DR. MALKA: To being with Judge Mankge, today you sit on the bench as High Court Judge of the Mpumalanga Division of the High Court, please will you walk us through some of the key landmarks in your career that got you to this point that you're at today?

JUDGE MANKGE: I got into law actually by default. As I was at university I registered for Bachelor of Administration because my high school subjects were accounting and economics, but when I got into university, one or two months into the university in my Bachelor of Administration degree I got to meet a different group of people and most of them were from the law faculty, so I used to visit their classes when I don't have classes and then I developed interest into law, I liked the way they interacted with the lecturers, I liked the boldness.

So when I started to work, one thing that to is a landmark in my career is the fact that I developed as early as my first year of working, that I'm called for bigger things, it meant bringing justice to the people and those people who are very much remote to the elite world, so that is what drove me from the early years of my career.

DR. MALKA: Thinking about other moments in your career and as you were elevated to the bench, what have been some of the standout cases for you that you've presided over?

JUDGE MANKGE: I have presided over various types of cases, but mostly for me what impacted in my career is those cases which are to do with the matters of the heart wherein you preside on cases over the dispute over children, the adoption of children, the children that get neglected and mostly the children that are in conflict with the law, so for me, those are the cases that impacted my career and that are very close to my heart, because those are the cases that when you are sitting, either as a magistrate or as a prosecutor or as an advocate or as a Judge, those are the cases that makes you to be in direct contact with the hearts of the people that you are serving at that particular time.

DR. MALKA: Looking from your position today, do you feel that the South African legal system has developed according to your expectations?

JUDGE MANKGE: I would say yes. Our constitution and the courts in particular in our country, they strive to promote and protect social justice with the decisions that they make and the decisions that they make it supports the constitution. So to me yes, our legal system has developed to my expectation and to a certain degree, beyond my expectation. I say so because of the following; it has stood the test of time on so many levels. It is accessible to people to start with and if I can just highlight, even people who are not South African citizens for an example, they have access to justice in this country and even people who are South Africans they have, and are being served with the justice.

DR. MALKA: Sometimes however, I wonder if the general public know what rights they're entitled to and Judge Mankge you certainly have an ethos with regards to social justice and part of your social responsibility. I understand you took it upon yourself to initiate a project with the Department of Education, to educate learners in local schools about law as well as basic human rights standard. Please can you tell us more about this project and some of its achievements?

JUDGE MANKGE: These projects actually started as a result of me enrolling with the University of Pretoria doing human rights and constitutional practice, and as I was there I realised that even myself as an ordinary law student, I did not understand that much about basic human rights. I asked myself what more about the children in the township, because remember I was working in the township at that time, and it happened that it coincided with the era of the Child Justice Act, which aimed at keeping children away from the formal criminal justice system. For the children to understand that they need to be away from the formal criminal justice system, firstly they must be aware of their rights and their basic rights and to me it was a way of saying if I can plant a seed as a lawyer, a seed that will germinate with time, I would know that I have impacted people and I have impacted children.

DR. MALKA: Statistics from 2017 indicates that only 37% of South African Judges are women. In our programme we've learned about the South African Chapter of the International Association of Women Judges as an instrument for capability and capacity building to help develop female Judges, but looking at the fact that women only represent 37% of Judges, so in other words men account for 63%, it doesn't seem to be enough. Given your experience and interaction with people, what else do you think needs to be done to help increase the representation of female Judges in South Africa?

JUDGE MANKGE: There is proof that if a country or an organisation empowers women there is better growth in terms of productivity. In my view, which makes the progress slow is actually the fact that women are still in my view regarded as less able than men, which is very unfortunate. Everybody should be intentional and radical about this cause of empowering women. Secondly, they should follow it up and monitor whether the cause is still being pursued, because in my view there is no point in being intentional and radical about it and once you start it and at the end of the day we are not following up, you don't even know whether it is still pursuing the cause that you wanted to pursue. No point is having this thing on paper, it must be followed-up, be monitored, so that you can see the improvement in the legal field in particular, that women are empowered.

Women should be educated enough, like the project that was I doing in schools, I was educating them about law, as young as they are, to say you can come and be a lawyer, but if we don't educate them they won't even know and if they don't know they won't even know that there are opportunities out there for them in law, if they now have those opportunities, they need to be supported.

Women, if they have been given an opportunity, like for example like I was given an opportunity to act as a Judge, I should make sure that I open a space for other women as well so that even those who were doubting our ability can see that we are able, because remember you are not going to be in a position to show that you are able if you've got no opportunity.

DR. MALKA: Judge Mankge we're coming towards the end of the show now and one question that I'd like to ask you is about your personal journey and factors of success; please can you tell us, in your opinion, what have been some of the key drivers to your success?

JUDGE MANKGE: I decided very early in my life that I will follow my name; my name by the way is Thandoluhle so the direct translation for that is 'beautiful love', so I chose very early in my life to follow my name. So to me, it's more about loving people. If you really love people you have got no malice and whatever intention that you are having is going to serve those people. I serve people and the very same principle that I use in my personal life, I have taken it into my workplace. I serve people of Mpumalanga where I am, I serve people of South Africa, where I am, I just serve. ■



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JUDGE LINDIWE VUKEYA

Mpumalanga Division of the
High Court

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I want to be remembered as that person who never allowed her upbringing to decide what she can be in life. I want to be known as that person who never limited herself to what she could do.

DR. MALKA: Judge Vukeya, to start with, you earned your BProc degree from the University of the North, you went on to be a candidate attorney, a public prosecutor, a magistrate, served as an acting Judge of the high court in the North Gauteng region, thereafter acting Judge of the high court in Mpumalanga province and then elevated to the bench as a permanent Judge. Did you always envisage a legal career and eventually becoming part of the judiciary?

JUDGE VUKEYA: To be honest, I never thought I would one day become a Judge, I just want to start from there. Growing up I thought I was going to be an actress, you know, anything in the entertainment industry - radio, I even intended to study speech and drama because I believed that I was going to be good at that, but my teachers at Emjindini High school in Barberton, believed I would make a good lawyer because I was very argumentative, I participated in debate competitions. So in a way there is still that belief in me that I was going to make a good lawyer and then it grew in my mind and I started believing it myself, such that when I got to the university my first choice became a BProc degree.

I obtained my degree and I started working in 1996, every now and then I would still take part in arts and entertainment, such that I joined my cousin and his friends in forming what is today the Barberton Community Radio Station.

DR. MALKA: Reflecting for a moment on your career as a Judge, what would you say have been some of the most memorable cases that you've presided over?

JUDGE VUKEYA: As a Judge I've done a lot of civil work, which is very much interesting because it involves this and that, people fighting over money, but you know in the criminal law there are about three cases that I dealt with. I always say that or I think that I am a very strong person because I do not take cases to my heart and let my emotions influence my reasoning or my Judgement, I always want to be the objective person in my reasoning, but there were about three cases in my career that I found very touching and interesting.

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I want to believe that all Judges, male or female, have a duty to protect the rights of all the citizens of our country and to not bring their personal beliefs into the arena.

DR. MALKA: Judge Vukeya you mentioned earlier in the conversation how you and I think it was your cousins had created the Barberton Community Radio Station and you've played an instrumental role in your community and one of the other areas, for instance is, establishing indigenous language courts in the Barberton sub-cluster; please can you tell us more about this project and some of its achievements?

JUDGE VUKEYA: This project was quite interesting and challenging at the same time. It was a pilot project where the Department of Justice wanted to test if the use of our African indigenous languages was viable in our South African Courts. It was funny to, as an African person,

to finally discover how difficult it is to switch from the English legal terms to vernacular. We had to identify a predominantly spoken language in the area, cases would be dealt with without the use of interpreters, so one would have to find a prosecutor and a Magistrate who speak the language of the accused.

This project went well in the beginning, we finalised a good number of cases. We had fun speaking our own language, the accused seemed to be enjoying it, but because we live in a diverse society people are free to move around sometimes for greener pastures sometimes because they just don't want to be there anymore, we started experiencing problems.

DR. MALKA: In the course of your personal development you've extended your training to cover sexual offenses, dealing with vulnerable groups and family law, to mention just a few, and you also give presentations proactively on issues like domestic violence and the abuse of women and children and we see that echoed in the types of cases that you'd highlighted earlier for us as cases that had a significant effect on you and were very memorable. Please can you tell us what motivates your interest in these topics and being able to disseminate important information on these matters which really negatively impact a significant number of women in our country?

JUDGE VUKEYA: These topics are our saddest reality as South Africans. I can also add the issue of maintenance of children as one of the things we struggle with. Family law is what I find very interesting and I love it. I believe that many of us have experienced one family or the other involved in issues of domestic violence. I grew up in a township and I thought it was just us African people who are affected by these problems, but that was just me being ignorant, because when I started working in a court environment I realised that we may be different in colour, but we are similar in many other ways. I started realising that this problem is actually much bigger than I thought and that as a community we needed to sit down and have a conversation with each other to fight this pandemic and I never missed the opportunity to involve myself and to try and be a part of the solution rather than the problem.

DR. MALKA: In South Africa it's estimated that 90% of sexual offenses are committed against women and almost 30% of those crimes go unreported. In relation to gender based crimes, in your opinion, do you think the presence of women Judges make the ordeal perhaps less distressing for women when they appear in court as witnesses and survivors?

JUDGE VUKEYA: I would really like to say yes, but I'll tell you why I'm going to say no and I hope you can understand. I hope also the listeners will understand this, because generally it would sound more comfortable to put it that way, to say women should sit and preside in cases that involve women and children because we have a soft spot naturally. I want to believe that all Judges, male or female, have a duty to protect the rights of all the citizens of our country and to not bring their personal beliefs into the arena.

Members of the society must not be afraid to appear before a male Judge in a rape case for instance. I believe that our society should be such that women are comfortable to talk about these things because they know that men are not going to judge them or that men are not going to favour men because of being men, if you understand what I mean. I

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Now, we have to recognise the fact that we are raising young leaders, even if we are raising girl children, we must empower our children

DR. MALKA: In consideration of rights and celebrating appropriate Judgements, the theme of this year's women's month is; Realising Women's Rights For an Equal Future. In the short-term, what types of mechanisms do you think we could use to reduce the inequalities that women still experience today?

JUDGE VUKEYA: They say that charity begins at home, we should as families start empowering our children, young girls for an example, we are out of those days where people believe that only boys should be raised to take care of their

families and be the heads of the families. We are out of those times and eras in our lives. Now, we have to recognise the fact that we are raising young leaders, even if we are raising girl children, we must empower our children.

DR. MALKA: I wanted to ask you now is about your personal journey and some of the factors that you consider to have been important drivers of your success?

JUDGE VUKEYA: You know I've learned in life that from a broken thing you can build something and I accepted that and that pushed me to work hard on myself as I was growing up. I'm not afraid to say that I come from a broken family, my parents were married but then they were separated as I was in grade nine, which is standard seven I believe.

They both went their separate ways and we were left on our own to take care of each other as children. With my two brothers, we continued without parental guidance or protection. We could have dropped out of school, you know, we could have become criminals, we could have done a lot of things without guidance. I think the thing is that they [our parents] created a good foundation before they separated.

DR. MALKA: Judge Vukeya you've shared some incredible moments with us and at the end of the day being able to still realise your aspirations and ambitions; what would you like your legacy to be?

JUDGE VUKEYA: I want to be remembered as that person who never allowed her upbringing to decide what she can be in life. I want to be known as that person who never limited herself to what she could do. Someone who went through all odds to achieve what she has achieved today. Throughout my career I have worked very hard to come out of poverty and I have applied for better jobs and promotions, even where others believed it was impossible. I want to be known and remembered as that one who does not doubt the power of God. ■



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JUDGE FATIMA DAWOOD

Eastern Cape Division of
the High Court



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DR. MALKA: Judge Dawood to start with, can you tell us, did you always imagine a legal career and eventually becoming part of the judiciary?

JUDGE DAWOOD: I was always passionate about justice and to coming to the aid of others, even as a young child. I seem to have had a natural talent to convince others to

see things from my point of view, but it was only in my matric year that I considered pursuing law as a career and my passion to bring about justice for the poorest of the poor was ignited. I, however, did not have any aspirations of one day being a Judge at that stage. I studied in the pre-democratic era so the chances of me being appointed a Judge were fairly slim at that stage, although even as a child I would preside over disputes of my friends and find amicable solutions that benefitted all of them.

DR. MALKA: Judge Dawood you spoke about the fact of having to overcome your first stumbling block of getting your family to allow you to pursue your ambitions and your path; can you tell us about some of the other key landmarks in your career that led you to reach a point of coming onto the bench?

JUDGE DAWOOD: The chairperson of the Bar Council called me and asked me if I wanted to act on the bench, this was as a direct result of the honourable Minister of Justice Brigitte Mabandla's rejecting the initial list of candidates put forward to act on the bench. I hasten to add that each one of the candidates initially on that list

met every criteria to be selected to act, save for the fact that they were not female and she wanted to accelerate the transformation of the bench by the appointment of more females to the bench.

I then had to ask myself whether I was ready to take on this opportunity and I felt I had the necessary experience to do so and I accepted, despite knowing that this was not the norm, as acting stints had until then been reserved predominantly for senior counsel who at that time were, if I'm not mistaken, exclusively male. I'm not sure if I would have been a Judge today had it not been for the Honourable Minister creating the opportunity for me to act initially.

DR. MALKA: In terms of being in an evolving environment and keeping up with the latest and let's say not use the word trends, because it's not an appropriate expression within the legal space, but being up-to-date with current cases and looking at what new precedents are and the law is alive, it's organic and changes with the needs of society.

JUDGE DAWOOD: Yes it's quite interesting; it's evolving all the time and we're in the forefront of changes because our constitution is alive. It's a real live document; it's not just on paper.

DR. MALKA: There were some statistics from 2017 which indicated that only 37% of South African Judges are women and considering this figure, considering you are a Judge and you know what the realities are of working in this environment; what do you think needs to be done to increase the number of female Judges in South Africa?

JUDGE DAWOOD: Well we need to take a step back and essentially ensure that females remain in the profession, effectively it's at that stage that females need to be moulded, trained and prepared.

DR. MALKA: This year's theme for women's month is Realising Women's Rights for an Equal Future. We know that women unfortunately as still struggling to achieve equality, but yet gains continue to be made through progress and I always think that our history defines what our present is, but the actions that we execute in our present direct our future. So, thinking about the recent past, in your view, what do you think are some of the important equality gains that women have attained?

JUDGE DAWOOD: Well if you're looking at the fact that we are fortunate as women at this point in our history, we have a government that is actively pursuing the equality of women and this is being driven by men. This means that unlike the past where women had to fight for the right to vote, etcetera, today the importance of the equality of women is recognised and although the fight is not over by

any stretch of the imagination, at least we are fighting with the system, not against the system.

DR. MALKA: I'd like to ask you now is about some of the factors of success that you consider have contributed to your journey. Some people have spoken about values, perseverance, faith, discipline; in your view what would you say have been some of your key drivers?

JUDGE DAWOOD: Clearly discipline, being disciplined and dedicated. My key drivers seem to have been to prove that I could do whatever I set my mind to. It definitely took hard work, discipline, focus, staying true to myself and my values and beliefs and having complete faith that whatever the outcome was, that was what was intended, but ensuring that I play my part and did the best I could. I knew earlier on life that I wanted to be my own person, not dependent only other person. I wanted to be a trailblazer, I loved adventure and taking risks.

DR. MALKA: What would you like your legacy to be?

JUDGE DAWOOD: I would like it to be of someone who with courage, conviction, compassion and caring upheld our constitution on the principles and values of fairness and justice for all and the upholding of the rule of law. I would like it to be of someone who had the courage to fight for her own rights, for equal treatment, for equal opportunities to demonstrate to young women out there that you too can achieve anything you set your mind and your heart to, with hard work, discipline, dedication, passion and enthusiasm to do what you do and love to do what you're doing. Having faith in myself. ■

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JUDGE BULELWA PAKATI

Eastern Cape Division of the
High Court

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and we will fall,
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DR. MALKA: We've had conversations with several of your colleagues who serve in the High Court as well as the Labour Court, there seems to have been a defining moment that set them on their trajectory to study law; please can you tell us what made you choose law as your career path?

JUDGE PAKATI: Well the treatment of young girls that I witnessed at the time influenced my decision to choose law. We had a custom called Ukhuthwalwa, that was the order of the day when I grew up; a young girl will be waylaid, assaulted and abducted by a group of men for purposes of having sexual intercourse with her and get her to marry either one of them or a family member.

She would be kept against her will at the paternal home of the prospective husband; if he is at home he would have sexual intercourse with her without her consent, in the meantime a message would be sent to her family advising them that she is with them. If both families agree to the arrangement, then Labola negotiations will take place and the young girl will be married to the man. Most of the times this man would be a stranger to her; that to me was unfair and tantamount to treating women as objects by

forcing them to marry to strangers without considering how they felt or wanted for their future. It would also stop them from pursuing their dreams of becoming what they wanted to be, I therefore wanted justice for them.

DR. MALKA: How do you think we can get more women to occupy positions of leadership or decision-making roles?

JUDGE PAKATI: I can say first of all that women are ready to assume decision-making roles, but some of them get distracted by challenges that come their way. There will be challenges and we will fall, but, we should not allow ourselves to be discouraged. We should be able to stumble and fall and rise up again, with resilience and fixing our eyes to our goal, we overcome anything that is thrown at us, that is what kept me going in the midst of incredible hardship and barriers put in my way of getting what my end goal is. Eventually, staying focused on my

DR. MALKA: Judge Pakati when you were pregnant with your son that you were effectively asked to leave the work environment, at being seven months pregnant and you managed to help change the narrative and to change that practice. We know that the juggle between career and motherhood has always been a controversial issue for women; how do you see this with your first hand experience?

JUDGE PAKATI: It is a controversial issue because of the attitude of the society and cultural norms. I think these attitudes need to be changed because times have changed. The perception that women should do certain jobs which cannot be done by men does not have a place in our society now. It is unfair that women have to perform societal roles, especially those of motherhood, and yet be seen as incapable of being career women. Notably, being a mother is an extra but very important role most women play in our society, yet life must be balanced.

DR. MALKA: We've given some examples of the role of legislation really indicating that it is such a powerful tool, if upheld, to help advance women's rights and sometimes I find it hard to fathom that it's only been since 1996, effectively twenty-five years ago, when the Bill of Rights was introduced and all women in South Africa were formally recognised as equal citizens. In your view, what would you say are some of the important equality gains that women have attained?

JUDGE PAKATI: Although the constitution promotes women equality, we are still a long way to go, for example, women have to work ten times more to prove themselves, nonetheless, we have definably made gains and strides. Today there are women who serve in cabinet, madam justices in the constitutional court, the supreme court of appeal is headed by a woman, there are specific projects by government designed for women in business which will bear more women entrepreneurs. So I think we have made some considerable strides in making equality gains for women.

DR. MALKA: Reflecting on this year's Women's Day, in the short term, what types of mechanisms do you think could be used to accelerate this issue of equal rights, dignity, economic liberation and freedom from violence for women in South Africa?

JUDGE PAKATI: In my view, the constitution is the supreme law of the republic, law or conduct inconsistent with it is invalid and the obligations imposed by it must be fulfilled. This is the most powerful mechanism that should be used to accelerate equal rights, dignity, economic liberation and freedom from violence for women in South Africa.

DR. MALKA: Can you please tell us who have been some of the female role models in your life?

JUDGE PAKATI: My number one influencer in my life was my mother. From childhood she had been there as my motivator, giving me guidance, giving me support and she stood by my side throughout my journey as a young adult. I also wish to mention that in my community where I grew up there were no educated women to look up to, except my aunt who was a professor at the University of Zululand, her hard work and dedication also motivated me.

DR. MALKA: Could you please tell us what you would like your legacy to be, what you'd like to leave behind?

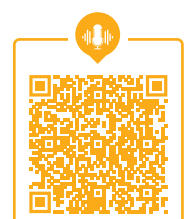
JUDGE PAKATI: I wish to state that first of all I appreciate that I have struggled in every milestone that I reached in my career. I have had challenges in my path that I would not wish any woman to go through, ranging from language barrier, to tribalism, to sexism, but, through perseverance, patience, humility, determination and courage, I am still standing.

DR. MALKA: Please share with us a few words of inspiration that you'd like to pass onto women in Africa?

JUDGE PAKATI: First of all I would like to say that women are tired of having to always argue their value and competency and it's time for those in power to wake up to that reality. Women are educated, they are strong, experienced and willing to lead. For the upcoming girl, I encourage you to be prepared to stand up to challenges, but also remember to be kind and patient to yourselves, never allow anyone to tell you what you can and cannot do. You are more than enough and more than capable. I want to refer to the words of Maya Angelou who said, I quote; "You may encounter many defeats, but you must not be defeated, in fact, it may be necessary to encounter the defeats so that you can know who you are, what you can rise from, how you can still come out of it." Remember that your success should be the inspiration of another; be confident in everything you do. ■

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There will be challenges and we will fall, but, we should not allow ourselves to be discouraged. We should be able to stumble and fall and rise up again



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OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

WHAT IS THE

POPI ACT?



**THE PROTECTION OF PERSONAL
INFORMATION ACT NO 4 (POPIA)
CAME INTO EFFECT ON 1 JULY 2021**



ENACTMENT

The POPIA was enacted in 2013 and the Regulations relating to it were gazetted on 14 December 2018.



WHAT POPIA REGULATES

The POPIA seeks to regulate the collection and processing of personal information by private or public bodies to protect the constitutional right to privacy.



CONSTITUTIONAL RIGHT

The POPIA gives effect to the constitutional right to privacy enumerated in section 14 of the Constitution as well as the right of access to information captured in section 32 of the Constitution.



PERSONAL INFORMATION

According to section 1 of the POPIA, personal information means amongst others, information relating to an identified living natural person. This may include information about race, gender, medical status, sexual orientation, education background, medical matters and employment history.



COMPLIANCE FRAMEWORK

Regulation 4(1)(a) of the Regulations Relating to the Protection of Personal Information Act (the Regulations) requires an Information Officer of an institution to develop, implement, monitor and maintain a Compliance Framework for the POPIA.



RESPONSIBLE PARTY

The person or body collecting personal information is referred to in the POPIA as the Responsible Party and the one from whom information is collected as the Data Party.



CONDITIONS FOR THE LAWFUL PROCESSING OF PERSONAL INFORMATION



The responsible party must ensure that the conditions stipulated in the POPIA will be complied with when planning to collect and process personal information by amongst other things, developing a Framework contemplated by the Regulations relating to the POPIA.



Personal information must be processed lawfully and in a reasonable manner that does not infringe the privacy of the data subject.



Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the party collecting it.



Further processing of personal information must be done in accordance with the purpose for which information was originally collected.



The responsible party must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary.



The responsible party must maintain the documentation of all processing operations under its control or responsibility.



The integrity and confidentiality of personal information collected must be secured by the responsible party by taking appropriate measures to prevent loss, damage, disclosure and unauthorized access.



The data party has the right to request the responsible party to confirm that it is in possession of such personal information.



JUDICIAL RETIREMENTS



**Chief Justice Mogoeng
Mogoeng**

Constitutional Court

Discharged: 11 October 2021



Justice Sisi Khampepe

Constitutional Court

Discharged: 11 October 2021



Justice Christopher Jafta

Constitutional Court

Discharged: 11 October 2021



Judge L J Bozalek

Western Cape Division of the High Court

Discharged: 24 August 2021



Judge A Cachalia

Supreme Court of Appeal

Discharged: 15 August 2021



Judge S H Cele

Labour Court and Labour Appeal Court

Discharged: 31 July 2021

Judge A J Bam

Gauteng Division of the High Court, Johannesburg

Discharged: 16 July 2021

Judge A van Zyl

KwaZulu Natal Division of the High Court, Pietermaritzburg

Discharged: 24 August 2021

IN MEMORIAM

MAY THEIR SOULS REST IN PEACE



Judge Bhekisisa Jerome Mnguni

KwaZulu Natal Division of the High Court

Passed away on 7 September 2021



Mr Lutendo Benedict Sigogo

Acting Judge of the High Court in Mpumalanga and a member of the Judicial Service Commission

Passed away on 31 July 2021



Judge Booysen

Retired Judge - Pietermaritzburg High Court

Passed away on 11 August 2021



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