

THE JUDICIARY

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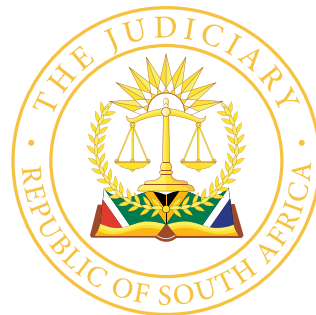
CHIEF JUSTICE MOGOENG
MOGOENG HONoured BY IIA SA

JUSTICE EDWIN CAMERON
HANGS UP HIS ROBE

E-FILING PROJECT







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THANKS TO OCJ COLLEAGUES FOR THEIR SUBMISSIONS

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Editor

This quarter the Judiciary bade farewell to a colossus of the legal fraternity, Justice Edwin Cameron, who retired from active service in August. A lot has been said, both at the official Constitutional Court Session held in his honour on August 20, and in the media, about the enormous contribution he has made to the Judiciary and to South African life in general in a judicial career spanning twenty five years.

Those of us who have had the privilege of working with Justice Cameron will remember him as a committed and principled Jurist who embodied the values of ubuntu. I wish to extend once more our gratitude to Justice Cameron for his efforts in moving our jurisprudence forward, whilst also working as an ordinary member of the citizenry to ensure that our country moves forward in many fundamental ways and that no one is left behind. We wish you a happy retirement, Sir!

The Honorable Chief Justice Mogoeng Mogoeng has had a number of speaking engagements in the recent past. He has been on a number of platforms engaging society on various important issues. He has also been honoured by the Institute of Internal Auditors South Africa for ethical leadership. The Judiciary joins in congratulating the Chief Justice for this important recognition. We continue to be grateful for his exemplary leadership as the Head of the Judiciary.

The Judiciary has been busy with a number of initiatives aimed at improving the efficiency of our Courts. These include case flow management and the building of capacity to automate Court processes. Key milestones have been achieved in this regard and you can read about these on this Issue. We thank our colleagues who serve in the structures that have spearheaded this work for their commitment, particularly the Judicial Case Flow Management Committee ably led by Justice Mthiyane.



We have also received with appreciation a commitment by the Minister of Public Works and Infrastructure, Ms Patricia de Lille, to implement initiatives to improve the physical environment in our Court buildings. This will not only contribute towards making the Courts more effective, but will also enhance the Court experience for users. We look forward to further developments in this area.

We trust that you will enjoy this Spring Issue of the Judiciary Newsletter. I extend my thanks to our contributors, particularly Judge President Selby Mbenenge, for their continued commitment to this publication. I also thank the Communications team of the Office of the Chief Justice for their hard work putting this publication together. Ukwanda kwaliwa ngumthakathi! ■

Enjoy!

Judge President Dunstan Mlambo
Chairperson: Judicial Communications Committee

Chief Justice Mogoeng honoured for ethical leadership

Chief Justice Mogoeng Mogoeng was honoured by the Institute of Internal Auditors South Africa on 13 August 2019, with the Chairman's Guardian of Governance Award during a ceremony at the Sandton Convention Centre.

Previous recipients of the Award include former Public Protector Thuli Madonsela and the SABC8 – the eight SABC journalists who were fired in July 2016 for speaking out against the broadcaster's decision to censor coverage of protests.

The award is given to those who uphold the prescripts of good governance and display remarkable ethical behaviour.

Chief Justice Mogoeng Mogoeng expressed his gratitude for the Award. Below are his remarks on the occasion. ■

The award is given to those who uphold the prescripts of good governance and display remarkable ethical behaviour



Chief Justice Mogoeng Mogoeng at the Institute of Internal Auditors event



“ What if each and every one of us in the house or at least the critical mass of those of us present; were to leave this place determined to be for the rest of their lives the embodiment of courageous ethical leadership



Chief Justice arriving at the Institute of Internal Auditors event



Chief Justice giving his thank you speech after receiving his award



“ When HIV attracted stigma, he bravely stood up and disclosed his status. He could’ve chosen to mind his own business and not care about others but he is not that type of person.

Thank you, Justice Cameron!

A long, illustrious judicial career has come to an end. Justice Edwin Cameron of the Constitutional Court retired from active service with effect from 20 August 2019. He first graced the Bench as an acting Judge of the High Court on 20 August 1994. The acting stint lasted until the end of December of the same year. The late President Mandela appointed him permanently to the same Court with effect from 1 January 1995. Whilst on the High Court Bench, he also served as a Judge of the Labour Appeal Court for a few years. He was next appointed to the Supreme Court of Appeal by President Mbeki with effect from 1 January 2001. On 1 January 2009 he joined the Constitutional Court after being appointed by President Motlanthe. He served there for ten years eight months.

He read his final judgment at the Constitutional Court on August 20. It related to claims from land tenant farmers, some of which date back to over 20 years. The court ruled in favour of labour tenant farmers fighting for their claims to be processed by a “special master”. Justice Cameron, handing down his final judgment, said courts must intervene to make sure land reform programs function as they should.

The Constitutional Court honoured Justice Edwin Cameron at a formal sitting on 20 August 2019. Many have paid tribute to Justice Cameron...

“When HIV attracted stigma, he bravely stood up and disclosed his status. He could’ve chosen to mind his own business and not care about others but he is not that type of person. The lives of many people across the globe have been saved and things have changed.” – Chief Justice Mogoeng Mogoeng praising Justice Cameron for his courage in speaking out about his HIV status and fighting for access to antiretroviral medication for all South Africans.

“Justice Edwin Cameron deserves to be honoured at a national level, to be recognised by this country for the critical role, the catalytic role, that he played in making antiretroviral available to the multitudes, in liberating many.”

- Chief Justice Mogoeng Mogoeng

“And so I come to Justice Cameron’s last quality. What is it, we ask ourselves. This court room is packed with people, who, if asked what their connection to Justice Cameron is, will say that he is their closest friend. That, Edwin Cameron is your special gift. By fixing your eyes on each one of us, you make us feel that there is no other person in your life who matters. This is the quality of star dust. We come to this court room or anywhere else you invite us, in the faint, expectant hope that in your celestial presence, some of your star dust will rub off and settle on one of us mere mortals.”

- Sappho Dias Dutton



Ms Sappho Dias Dutton delivered a speech on behalf of Timothy Dutton CBE QC

“It is an honour for me, on behalf of Parliament to say a few words to celebrate the life and service of Justice Edwin Cameron. The preamble of our Constitution is inspirational. It says ‘We the people... respect those who have worked



Ms Thandi Modise, National Assembly Speaker

hard to build and develop our country... believe that South Africa belongs to all who live in it... (we are) united in our diversity'. Today marks the 25th anniversary of Justice Cameron's appointment as a judge – making this event a really deliberate act of coincidence. I am not sure whether it is another deliberate act or a mere coincidence that the Constitutional Court made this event to coincide with a remarkable and historical day of Tuesday the 20th of August, 1940. For it was this day (in 1940) that the then British Prime Minister, Winston Churchill, made the fourth of his famous war-time speeches, containing the line, 'Never was so much owed by so many to so few'. I make reference to this phrase because I believe, honestly so, that Justice Cameron is one of those 'few' who have contributed so much to this, our so young constitutional democracy."

- Ms Thandi Modise, National Assembly Speaker

'Never was so much owed by so many to so few'. I make reference to this phrase because I believe, honestly so, that Justice Cameron is one of those 'few'

"You shouldn't be determined by what you drive and what you wear. It's your service to humanity that must define you. He could have chosen to mind his own business and care less about others, but not Edwin. His love for the multitudes wouldn't allow him to do so."

- Chief Justice Mogoeng Mogoeng

"You identified with challenges facing our masses, particularly the poor, HIV-positive people and the LGBT (Lesbian, Gay, Bisexual, and Transgender) community. There's no group in South Africa you didn't fight for."

- Justice and Correctional Services Minister, Ronald Lamola

"The end of an era! We wish Justice Edwin Cameron all the best as he steps down from the apex court after 25 years. The dignity and rights of South Africa's most vulnerable were protected under his watch. #EdwinCameron"

- The South African Government

"Edwin Cameron looms large over the legal history of South African access to land, the medical health environment and sexual-orientation justice issues. The shadows he cast in his forceful defence of the rule of law go beyond the borders of South Africa."

- Omphemetse S Sibanda

"On 10 December 2018, TAC and its partners came to the Constitutional Court to thank it for its progressive ruling and support. Today we are here to bid farewell to one of TAC's biggest supporters and friend, Justice Edwin Cameron, as he retires from the bench. RESPECT!"

- Treatment Action Campaign (TAC)



Justice & Correctional Services Minister, Mr Ronald Lamola

"I have only ever met a handful of people in my life who combine calm, rationality, pragmatism and also deep empathy as effortlessly as Justice Edwin Cameron does. Edwin doesn't wait to speak; he listens. And he listens deeply, patiently and completely. It is that capacity that he activates when he finally does speak, write or offer advice — if advice is sought from him."

- Eusebius McKaiser

"Law students theorise about 'value-laden approaches to legal interpretation'. In Edwin's life, the connection between deprivation and using the Bench to help change the structures of an unjust society, become real."

- Eusebius McKaiser

"This, though, is a little story about how a big man helped make me think about myself differently when he brought me into his community as a lowly library assistant who ranked among the invisible people who keep the wheels running. When I think about that time and Edwin's opus, it is a work designed to make the invisible visible and important – the people who are HIV-positive and the people who do not have the bare necessities of a decent life. As our activist judiciary is chronicled, he has earned a place as one of the pillars of the post-apartheid institution, our Constitutional Court, so admired around the world."

- Ferial Haffajee

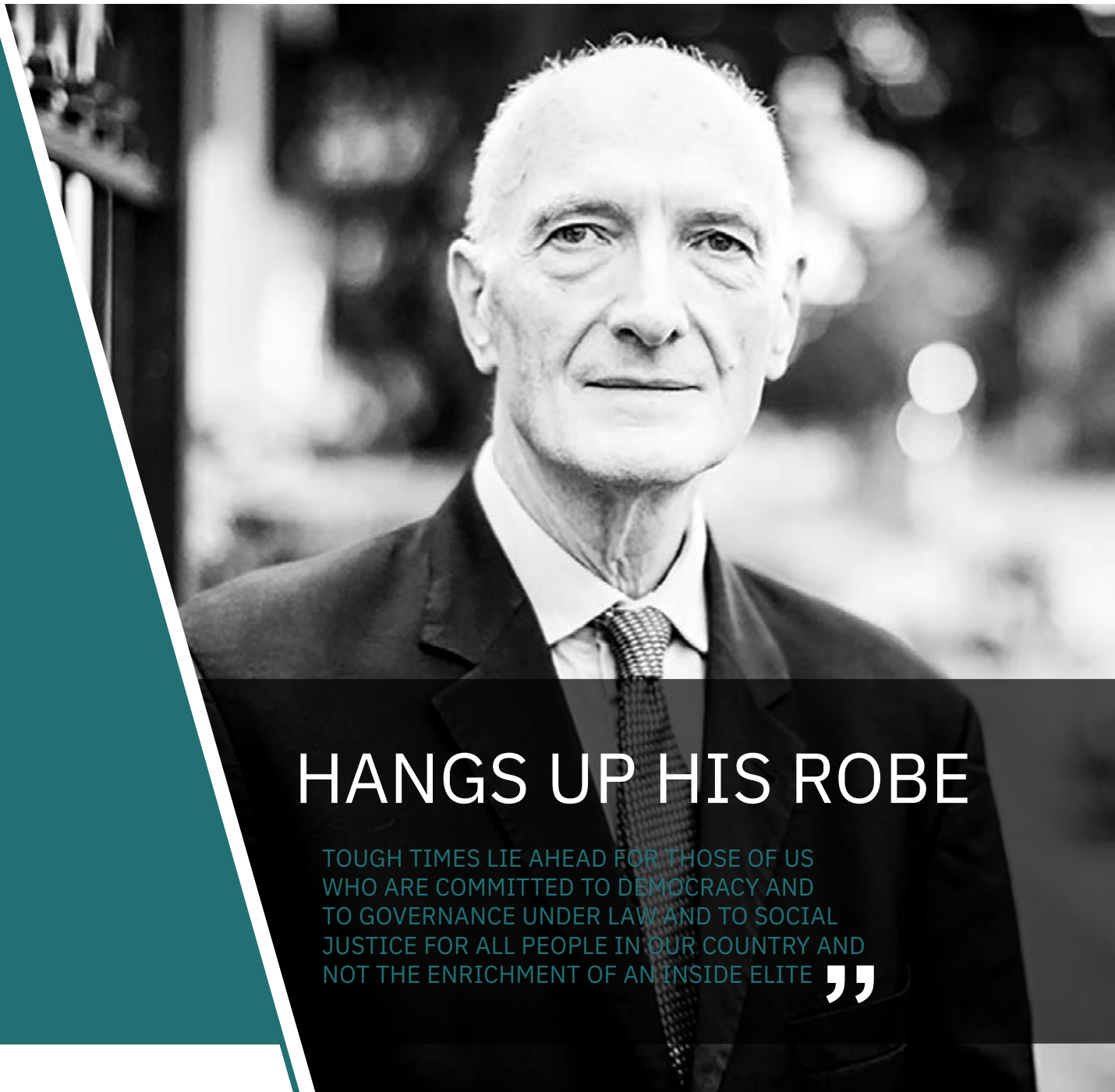
"The contributions of Justice Cameron to our understanding of both justice and compassion are of enormous importance, and we hope that he will continue to contribute towards a renewed constitutional dialogue."

- Narnia Bohler-Muller, Gary Pienaar and Michael Cosser

"A legal giant and eagle bows out today and retires as one of the Judges of the Constitutional Court. We will forever be indebted to you Justice Cameron for shaping the jurisprudence of our country and for being a champion of human rights!" ■

- Attorney Ziyanda Sibeko on Twitter

JUSTICE CAMERON



HANGS UP HIS ROBE

TOUGH TIMES LIE AHEAD FOR THOSE OF US
WHO ARE COMMITTED TO DEMOCRACY AND
TO GOVERNANCE UNDER LAW AND TO SOCIAL
JUSTICE FOR ALL PEOPLE IN OUR COUNTRY AND
NOT THE ENRICHMENT OF AN INSIDE ELITE ”



Chief Justice, colleagues, guests – I thank you from my heart for your generosity in being here this morning and for your most generous words.

My overwhelming feeling here this morning is one of gratitude – gratitude to my family and loved ones, to my friends, my colleagues, my law clerks and everyone here at Court.

I know many have adjusted their schedules to be here. In particular I thank the Speaker of the National Assembly (former Chair of the National Council of Provinces), Ms Thandi Modise, and Minister of Justice and Correctional Services, Mr Ronald Lamola, for going out of their way to be here and for participating.

In addition, my heart-friend Sappho Dias Dutton, traveled overnight from London yesterday to ensure that she would be here to read the tribute prepared by her husband, Timothy Dutton QC, who is too severely ill to travel. Your presence, Sappho, and Tim’s tribute, after more than 40 years of friendship, strike an irremovably deep place within my heart.

But, most important, I feel gratitude for the encompassing and unconditional love that my family has given me – my sister Jeanie Richter, my niece Marlise Richter and her spouse Marc Lewis and their baby Linda. As you heard in Sappho’s tribute, Jeanie helped make me the person that I am. Her family and their granite-solid love have been pillars of security and stability in my life.

I also thank and honour Sophie Kekana and her family for their warm love and support since 1983.

I am particularly glad that the Chief Justice has countenanced the presence of two babies in court – Leo Nkosi Cowen and Linda Richter-Lewis.

This, to my knowledge, is a first. But it is also right. I sometimes tell audiences of young people that our generation has had its chance – and that what we are fighting for now is not our own futures, but theirs. It pleases me to know that we are now fighting for the future of Linda and Leo and their children.

I also owe a special thank you to my partner, Nhlanhla Mnisi.

For Nhlanhla I have a very private question and then a very public confession. The private question is: where were you for the first 62 years? You have changed and enriched my life for the better so unimaginably that it is hard to conceive of how it was before you.

The public confession is this. I know you think that our relationship since April 2015 was spontaneous and autonomous. It was not. It was at the instance and under the instruction of perhaps the second most powerful person in this Court after the Chief Justice, namely my beloved sister Justice Sisi Khampepe.

Justice Khampepe regularly admonished me about the absence from my life of a loving partner of isiNguni-speaking. When I say “Nguni-speaking”, I am distorting Justice Khampepe’s proud heritage as a member of the Zulu



Top & bottom: Justice Cameron with his family at his farewell lunch



Justice Edwin Cameron with Justice Leona Theron, surrounded by law clerks



Constitutional Court Justice Sisi Khampepe with a former law clerk



Justice Edwin Cameron with Chief Justice Mogoeng Mogoeng

royal family – she wanted a Zulu-speaking partner for me. I think she has fully reconciled herself to the fact that you are Swati-speaking and not 100% Zulu, since the amaSwati are neighbours, cousins and in many instances brothers and sisters of the Zulu nation.

Then, to my colleagues, in the High Court, the Supreme Court of Appeal and, finally, in this Court, I thank you from my heart.

It has not been easy, not for any of us. Since this Court sits en banc, with every judge involved in deciding every matter that comes to it, we are forced to deal with each other daily, often in mountains of emails and attachments.

Over these 10 years that I have been here, the workload of the Court has increased by between four- and six-fold. The pressures at times has become enormous. In addition, the issues have been pressing, at times divisive and often emotional.

When I started in this Court in 2009, I remarked to my colleagues who had seen it through its first 15 years that those had been the easy years – that the difficult years lay ahead. That I think has proved true.

Not only in workload, but in political pressure and in the difficulty of the problems this Court has had to grapple with,

in all these aspects we have been challenged in fresh and unprecedented ways.

Over this past decade, the still-unresolved Hlophe saga has hung over the Court. In addition, we confronted racially divisive issues, including affirmative action, language rights and culture.

It pleases me to know that we are now fighting for the future of Linda and Leo and their children.

Landmark judgments in these years have ensured that public power remains subject to our constitutional values and the rule of law and that public accountability is sustained.

Yet through it all, we worked hard as colleagues at finding ways to fulfill our commitment to the Constitution while being truthful to our judicial oaths but also respectful of each other.

We did so I believe in a way that recognised the depth of the issues and the anger they, sometimes rightly, trigger, but, each time, returning, after division, to renew our pledge to uphold the Constitution and its values.

In this, I do not think that any one of us feels the slightest self-satisfaction or self-congratulation. Not at all. There is still too much to be done. And the perils confronting us remain too large.

If I predicted on joining the Court that the preceding years were the easy ones, I fear I can make the same prediction now – that tough times lie ahead for those committed to democracy and governance under law in our country.

Since 2011, we have had the remarkable leadership of Chief Justice Mogoeng Mogoeng. His headship has been strong-willed, insistent, clear-sighted and uncompromising: redoubtable in energy, determination, principled commitment and insistent in the clarity and purity of voice – for truthful leadership, against corruption and dissemblance and lies, and for constitutional accountability.

In other words, Chief Justice you are a tough guy. (One hell of a tough guy). Our still-fragile democracy owes a considerable debt to you.

We note that your own tenure will be ending in just 26 months' time. Rumour has it that President Cyril Ramaphosa had better be on the look-out then, for you will surely be seeking a fit role for your post-judicial life. (But if those rumours are true, what will former Deputy Chief Justice Dikgang Moseneke do?)

My greatest gratitude is, of course, in being here at all. I have survived an epidemic in which many millions of us in South Africa and on this continent have perished

But before saying something about law clerks, may I express my profound appreciation to all the staff of this Court – the judges' secretaries, Registry and library staff, the cleaners and the security personnel. You made working here a rich and companionable experience.

And, most centrally in all of this, is my dearly-treasured personal assistant (PA), Ms Elizabeth Metse Moloto. Elizabeth started working with me on 11 October 2009 when the last of the Mandela appointees (Justices Langa, Mokgoro, O'Regan and Sachs) left the Court. She changed my life. Elizabeth is an unexampled phenomenon of efficiency, lucidity, memory and sustained positive energy.

Chief Justice if you were not here, I would nominate Elizabeth to run the Court. I am most deeply in her debt not just for the work she does for me, but for what she has meant as a human being in my life and that of my family.

Having mentioned my colleagues and the court personnel, I now have the very happy task of mentioning my law clerks –



From left: Justice Richard Goldstone, Judge President Basheer Waglay and Judge President Dennis Davis.



Members of the Judiciary were present to bid Justice Cameron Farewell.

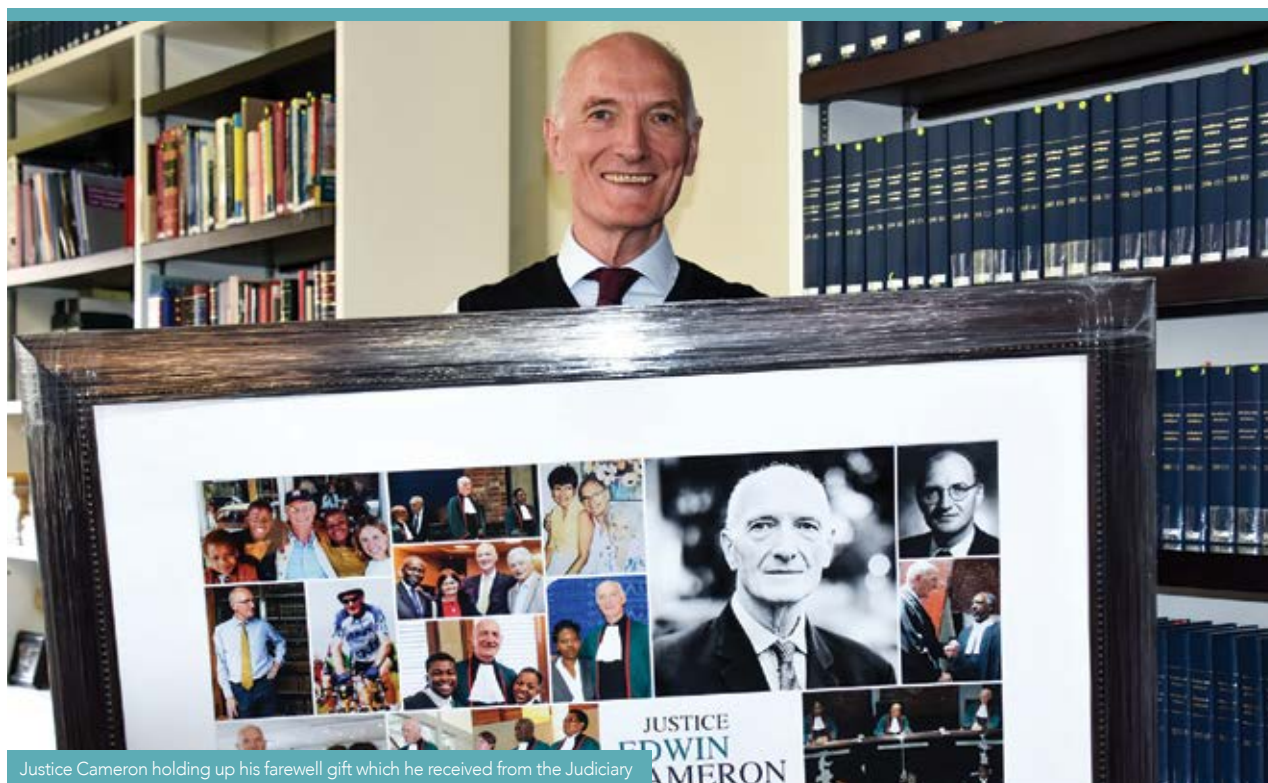
at present Michelle Sithole, Sagwadi Mabunda and Rebecca Gore. And now, my law clerks.suma

When I came to this Court more than 10 years ago, I had never experienced close interaction with law clerks. The experience was entirely novel. It changed not just the way I work, but the way I think and the way I relate to people.

I can truly say that the 30 or 40 law clerks I have worked with, including foreign law clerk volunteers, have brought me almost unmitigated joy.

They bring to the Court not just their acuteness of intelligence and research capacity, but their ideas – ambitious, future-seeking and always optimistic.

However worrying the signals from our democracy and our economy, how can we be down-spirited when the young people who energise this Court remain so insistently upbeat? It has been an inspiration.



Justice Cameron holding up his farewell gift which he received from the Judiciary

I started off by saying that my overwhelming feeling this morning was one of gratitude.

My greatest gratitude is, of course, in being here at all. I have survived an epidemic in which many millions of us in South Africa and on this continent have perished. I have survived because of my privilege of place and protection and position.

all our people would enjoy the basic necessities of a dignified life in an increasingly equal society, in which injustice, racism, gender-discrimination, homophobia and xenophobia would be receding

And I recall with pride that it was brave, principled civil society activists, together with a vigilant honest, truth-telling media, plus the judges of this Court, under Chief Justice Chaskalson and Deputy Chief Justice Pius Langa, who ensured that antiretroviral therapy would be available to all.

After nearly eleven years here, what strikes me as most enduring about this Court is its commitment to the future – to our country's future, to our people's future.

The AIDS Treatment judgment was a decision about government policy, but in its ultimate effect it looked not

backward, but to the decades ahead. Like all this Court's decisions, it was forward-looking, and affirmative of this country's most vital energies and possibilities.

As public values have sometimes dimmed, in the grim tissue of lies, deception and double-dealing through which our country has had to struggle to survive in the past decade, this Court has continued to look forward and ahead.

I remember the words of my colleague Mbuyiseli Madlanga, during our confidential discussions of one of the controversial cases brought during the governance of former President Zuma:

I want our decision to be right, not just for this President, nor for the President of my children, but also for the President of my children's children.

That, I believe has been the fundamental commitment of each of my colleagues, and it has been a privilege and a joy to share in service to it – in pursuit of the vision of the Constitution – one in which all our people would enjoy the basic necessities of a dignified life in an increasingly equal society, in which injustice, racism, gender-discrimination, homophobia and xenophobia would be receding.

The fight for our constitutional values is now urgent more than ever, and that future-directed, future-regarding commitment more vital than ever.

That we sometimes shake our heads at how far we are from achieving that reality does not mean that we should not continue to pursue it. ■

THE CHIEF JUSTICE SPEAKS

THE CAPE TOWN BUSINESS CHAMBER, THE WESTIN - CAPE TOWN

Chief Justice Mogoeng Mogoeng named "Business Ambassador 2019" by The Cape Town Business Chamber.

22 August 2019



STELLENBOSCH UNIVERSITY - STELLENBOSCH

Chief Justice Mogoeng Mogoeng delivered a keynote address at the University of Stellenbosch.

23 August 2019



THE COMPETITION COMMISSION - PRETORIA

At the 20th Anniversary Celebration and 13th Annual Conference of the Competition Commission, Chief Justice Mogoeng Mogoeng delivered a keynote address.

30 August 2019



INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION JUDGES - CAPE TOWN

Chief Justice Mogoeng Mogoeng delivered a keynote address at the International Association of Refugee and Migration Judges (IARMJ) Africa Chapter 2019 Conference.

04 September 2019



2019 DELOITTE AFRICAN LEADERSHIP SUMMIT - DURBAN

Chief Justice Mogoeng Mogoeng spoke at the 2019 Deloitte African Leadership Summit.

12 September 2019





OCJ E-Filing Court Modernisation

Caselines application system

1. OCJ E-FILING COURT MODERNIZATION PROJECT

On 23 November 2018 Chief Justice Mogoeng Mogoeng announced plans to pilot an e-Filing system at the Superior Courts within six months. In his speech the Chief Justice indicated that the main challenges of Courts is that they handle a lot of hard copies throughout the Court processes, including dockets, case files and judgments.

Making use of technological advances to improve efficiency in the courts and improving access to justice

The OCJ aims to implement an Electronic Filing System (e-Filing) in order to provide a platform for Law Firms (LFs) / Litigants to file documents to the Courts electronically over the Internet.

The e-Filing is meant to fully exploit the ICT advancement to minimise not just the physical movement of people and

paper Court documents from parties to the Courts, but also to leverage the benefits of electronic storage within the Courts, namely, faster document filing and retrieval, eradication of the misplacement of case files, concurrent access to view the same case filed by different parties, etc.

The following benefits can be realised from e-Filing:

Within the Courts: The e-Filing must allow electronic documents to be automatically routed to the appropriate registrar clerk for processing. The system must allow further routing within the courts, for example, for approvals by the Registrar and a reply is then sent out by the registrar clerk which is routed back to the originating LF/ Litigant.

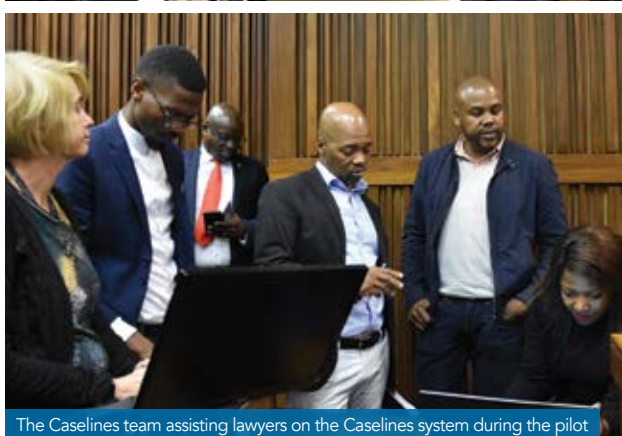
This shall enable realisations of improvements in efficiency by minimising paper flow to shorten case processing time. The process will be fast, convenient and efficient.

2. IMPLEMENTATION OF AN EVIDENCE MANAGEMENT SYSTEM: CASELINES

As part of the implementation of an end-to-end e-Filing



Judge Lamont presiding over a pilot test case at the Johannesburg High Court



The Caselines team assisting lawyers on the Caselines system during the pilot



Registrars from the Johannesburg High Court being trained on Caselines

solution, the process of evidence management was assessed as to its efficiency in handling large volumes of paper and court evidence before, during and after (in storage and archiving) Court matters. Within the management of records (i.e. docket, case files and judgements), a system was required to address:

- Document uploads, bundle management and case preparations
- Courtroom presentations and management of evidence within the case
- Safe document storage, archiving and records management

The OCJ has identified a momentous opportunity to utilise digital interface to reduce the large amount of paper records handled throughout the Court administration process and handling Court matters more proficiently. This improves the efficiency of our Courts and client services by leveraging new age digitalisation.

WHAT IS CASELINES?

CaseLines is an advanced cloud-based collaboration solution that offers digitalisation of evidence in the Court. Courts across South Africa deal with cases handled in a variety

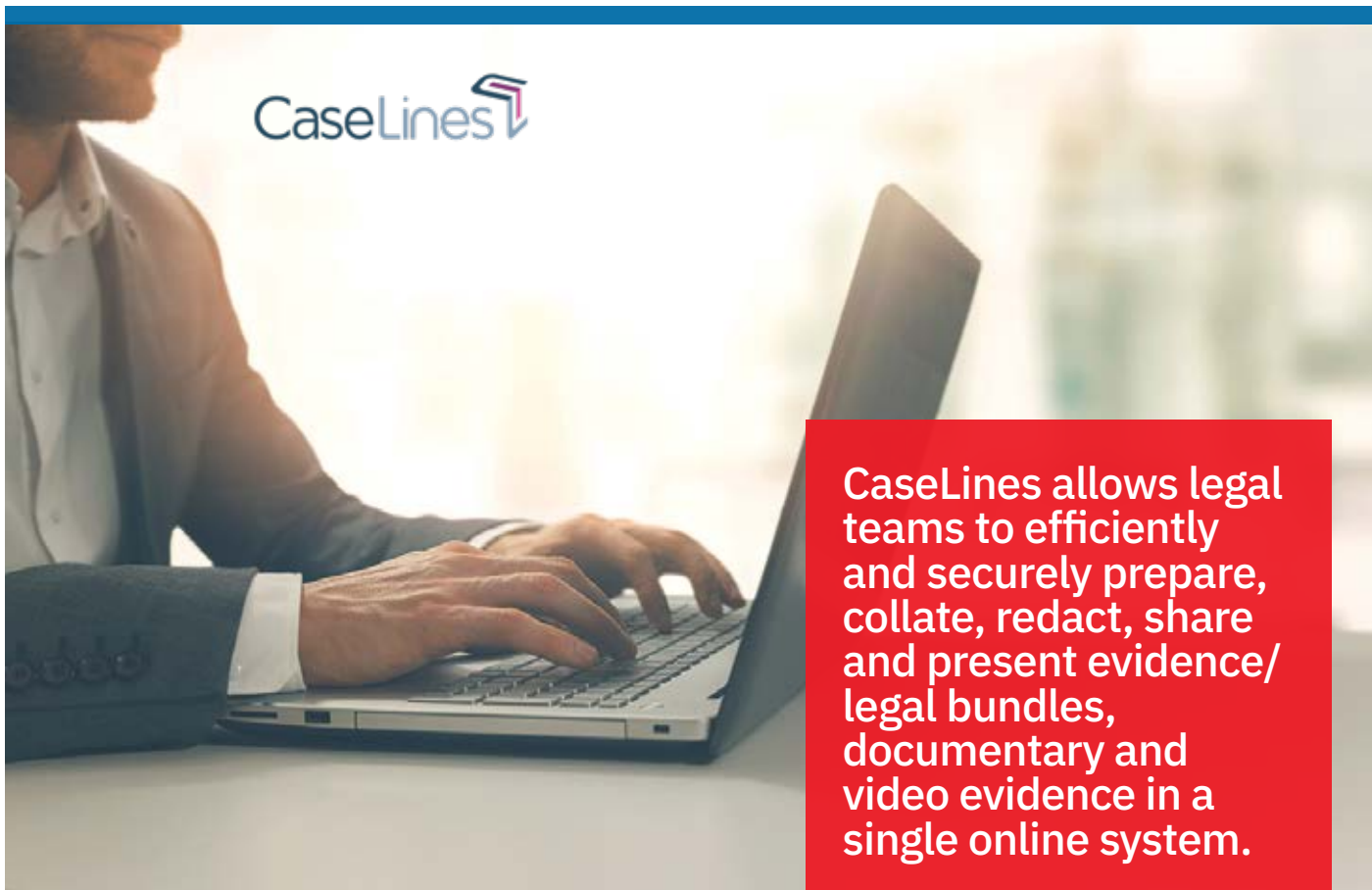
of magnitudes, from small to large. These cases deal with an immense volume of paper handled within each Court hearing. CaseLines aims to manage Court evidence for optimised proceedings.

WHAT DOES CASELINES DO?

CaseLines allows legal teams to efficiently and securely prepare, collate, redact, share and present evidence / legal bundles, documentary and video evidence in a single online system. Throughout the legal process – bundle building and case preparation, collaboration and review, and court presentation – CaseLines makes progression more efficient, simpler, faster and highly secure.

1. BUNDLE BUILDING: CaseLines makes it simple to gather evidence from a range of sources. It also allows presentation of evidence in formats that follow individual Court practice directions. This flexibility is vital as Courts have different requirements for bundles with diverse rules on areas such as pagination and indexing.

2. COLLABORATION AND REVIEW: Bundles must be shared with all relevant parties during preparation and in Court review. As everything is held within one system users can be sure that all parties always have access to the very latest



evidence. CaseLines also helps attorneys better prepare their arguments, and it enables Judges to more easily review and annotate evidence before, as well as during a hearing.

3. COURT PRESENTATION:

CaseLines comes complete with a full suite of state-of-the-art tools, with functionality designed to help attorneys present evidence more fluently to the Court and to witnesses.

2.3 PROJECT PROGRESS UPDATE

2.3.1 GAUTENG CASELINES PILOT

The CaseLines System was piloted in the Pretoria and Johannesburg Gauteng Divisions for civil matters, with a select number of pilot Judges. The pilot focused on opposed motions and special motions and was implemented in the 3rd Term.

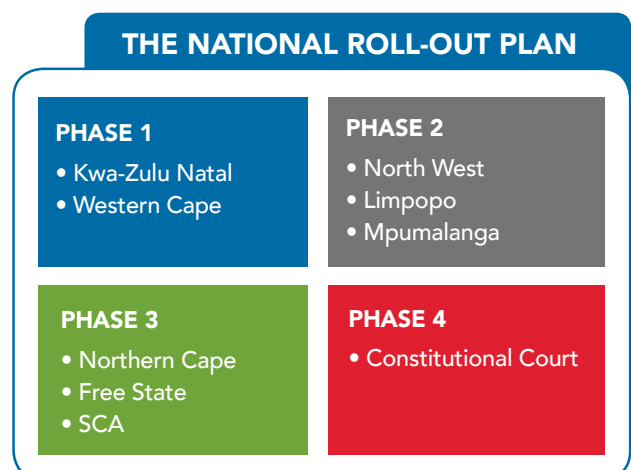
CaseLines also helps attorneys better prepare their arguments, and it enables Judges to more easily review and annotate evidence before, as well as during, a hearing.

The pilot results were very positive and a decision was taken to cover 70% of the work on Caselines in the 4th Term. Support is provided to Judges in particular, and preparations are at an advanced stage to start pilots in other Divisions.

NATIONAL ROLL OUT PLAN

In testing the implementation of the CaseLines System within the pilot Courts, the national roll-out will take place within the following phases.

Dependant on the rollout of necessary ICT infrastructure such as WiFi and fibre, the national roll-out is planned in the following phases:



4 HARDWARE REQUIREMENTS FOR CASELINES

CaseLines is an advanced cloud-based platform that can be accessed on any laptop or tablet with a browser that is HTML5 compliant with Internet access. All pleadings and evidence is securely stored on an online cloud, allowing access to the files with ease and safety.

The digital Court rooms will be assessed to ensure the correct requirements are available for running of cases digitally. WiFi will be made available in the Court room (with the correct access speed), with restricted access to the CaseLines website. Plug points will be made available for laptops.

NAVIGATION OF THE SYSTEM

CaseLines Systems training will be provided when the CaseLines System is rolled-out throughout the provinces.

Systems training will provide information about how to navigate the CaseLines System, the key functionality of the system and how users can begin practically applying the system within each Court. All support required will be provided.

Quick reference guides will be made available when the CaseLines System is available in each High Court to assist users with navigation within the system. ■

CaseLines is an advanced cloud-based collaboration solution that offers digitalisation of evidence in the Court.

DIGITAL PRESENTATION IS EASY AS 1-2-3

1

BUILD YOUR CASE ON CASELINES

Simply log on, build and upload your pleadings, Court documents and evidence on the system”.

2

PREPARE YOUR CASE AND ARGUMENT

Access the latest pleadings and Court documents live, prepare your arguments with private notes and arrange evidence with automatic page pagination and indexing

3

PRESENT YOUR CASE AND DIRECT THE COURT TO SPECIFIC AREAS

Functionally assisting you to present your case efficiently by directing the Court to specific areas of the case seamlessly



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Court buildings up for refurbishment

Chief Justice Mogoeng Mogoeng has welcomed the commitment by the Minister of Public Works and Infrastructure, Ms Patricia de Lille to allocate R260 million for the repair and maintenance of court buildings across the country.

I hope that all of us will appreciate how interlinked the state of our court buildings is with the justice that is delivered by the courts

Minister de Lille made the announcement during a discussion held with the Chief Justice on the state of court buildings in the country. She said since becoming the Minister of Public Works and Infrastructure she has received a number of complaints about the state of court buildings around the country and this was concerning to her.

"We need to give the public the best possible experience when they enter court buildings so that they feel comfortable that justice is being done," said Minister de Lille.

Chief Justice Mogoeng Mogoeng echoed the Minister's sentiment, adding that South Africans would continue to feel that the state of justice is poor because of the state of court buildings.

"I hope that all of us will appreciate how interlinked the state of our court buildings is with the justice that is delivered by the courts," the Chief Justice said.

He also urged Minister de Lille to explore available avenues to reduce the amount of money spent on maintaining court buildings. "Let us move towards owning court buildings," Chief Justice Mogoeng Mogoeng urged.

"The time for a radical paradigm shift has arrived. These exorbitant leases [that government pays building owners] must be discontinued or renegotiated so we can save money for the State," the Chief Justice said. ■



Minister of Public Works and Infrastructure, Ms Patricia de Lille



The Judiciary moves to improve case flow management

The South African Judiciary, under the leadership of Chief Justice Mogoeng Mogoeng, on 25 July 2019 held a workshop to on-board Heads of Court, Judges and Chief Registrars on the recently gazetted new and amended case management rules which came into operation on 1 July 2019.

The case management rules have been put in place to improve judicial case flow management through the coordination of court processes and resources so that court cases progress in a timely fashion from filing to disposition. Case flow management entails the assignment and allocation of cases to a Judicial Officer at the earliest opportunity. Judicial Officers then become responsible to manage the flow of that case in an efficient and effective manner to ensure its speedy finalisation.

Broadly stated, the principles for the successful implementation of case flow management are that early in the litigation process court intervention and continuous control over the progress of the case by a Judicial Officer can be established.

Pre-trial conferences will be held to ensure cases are trial ready and can be certified as such by a Judicial Officer. This results in firm and credible trial dates being set and adhered to by all parties. To assist with this, provision is made for a court to impose appropriate sanctions if a party does not comply with these rules, time-lines or an order of the court. Further, through engaging the litigants at pretrial phase, the case management Judge can encourage settlement where appropriate in an effort to finalise the dispute between the parties in a speedy, efficient and cost-effective manner.

The South African Judiciary introduced judicial case management in the High Court in 2013, through a pilot project. The objective of the pilot project was to expedite the flow of civil cases in the High Court to attain the speedy finalisation of such cases and to clear backlogs in the courts. The project was initially implemented in October 2013 in three (3) Divisions of the High Court, namely, Gauteng Division, Western Cape Division and Kwa-Zulu Natal Division, and was subsequently extended to all Divisions of the High Court.

In the absence of Rules of Court regulating judicial case management, the Judicial Case Flow Management Committee (JCFMC), which operates under the auspices of the Heads of Court, and chaired by former Deputy President of the Supreme Court of Appeal, Justice Mthiyane, developed Interim Practice Directives to serve as a guideline for the implementation of case management.

The case management rules have been put in place to improve judicial case flow management through the coordination of court processes and resources

Court rules to facilitate this process were drafted, through consultation with the Judiciary, by the JCFMC and endorsed by the Heads of Court in 2017. The Rules were submitted to the Rules Board in 2017 and came into effect on 1 July 2019. ■



Justice Mthiyane, speaks Judicial Case Flow Management

1 July 2019 is a momentous day in the history of the South African Judiciary. For the first time, the Judiciary, as a collective, has the power to fully coordinate court processes and resources so that court cases progress in a timely fashion from filing to disposition. Judges and the administrative support staff can enhance justice when a court supervises case progress from the time of filing, sets meaningful events and deadlines throughout the life of a case, and provides credible trial dates. Case flow management entails the assignment and allocation of cases to a judicial officer at the earliest opportunity. It then becomes the responsibility of that judicial officer to manage the flow of that case in an efficient and effective manner to ensure its speedy finalisation.

Broadly stated, the principles for the successful implementation of case flow management are that early in the litigation process court intervention and continuous control over the progress of the case by a judicial officer can be established. Pre-trial conferences will be held to ensure cases are trial ready and can be certified as such by a Judicial Officer. This results in firm and credible trial dates being set and adhered to by all parties. To assist with this, provision must be made to all a court to impose appropriate sanctions if a party does not comply with these rules, time-lines or an order of the court. Through engaging the litigants at pre-trial phase, the case management Judge can encourage settlement where appropriate in an effort to finalise the dispute between the parties in a speed, efficient and cost-effective manner.

The Access to Justice Conference held in 2010 resolved that the Judiciary, under the leadership of the Chief Justice take the necessary steps to implement management of the flow of civil cases in our courts by Judges; thus taking the control of the pace of litigation out of the hands of the parties and their legal representatives. The essential rationale was to use this as one of the tools towards enhancing access to justice,

particularly for poor litigants. Section 34 of the Constitution of the Republic of South Africa guarantees all citizens the right to access to justice. Judicial case flow management is a means to increasing access to justice for the people of South Africa by increasing the finalisation of matters and reducing backlogs.

This resolution led to the establishment of the Judicial Case Flow Management Committee (JCFMC) under the chairpersonship of Mogoeng J (as he then was), after a study tour during December 2010 to the United States of America (USA) to experience judicial case flow management first-hand. This study tour was fully sponsored by the United States Agency for International Development (USAID). Subsequent to the elevation of Mogoeng J as Chief Justice, I took over as Chairperson.

The JCFMC was mandated to oversee the implementation of the Judicial case flow initiatives as observed in the USA through a pilot project which would be run in certain identified High Courts.

A Task Team with Majiedt JA as its convenor was established to oversee the implementation of the pilot project to be conducted in the Gauteng Division of the High Court, the Western Cape High Court and Kwa-Zulu Natal High Court (Durban and Pietermaritzburg (Kwa-Zulu Natal)). These High Courts were selected as pilot sites as they have the highest caseloads in the country and the view was held that if the bigger divisions could successfully implement case management; it would be easy to implement the initiatives and best practices learnt at the smaller divisions where the case loads were far lighter.

The objective of the pilot project was to expedite the flow of civil cases in the High Court to attain the speedy finalization of such cases and to clear backlogs in the courts. The



Justice Mthiyane, Chairperson of the JCFMC

project was initially implemented in October 2013, in three (3) Divisions of the High Court namely Gauteng Division, Western Cape Division and Kwa-Zulu Natal Division, but, following the JCFMC workshop in 2015 was subsequently extended to all Divisions of the High Court.

In the absence of Rules of Court regulating judicial case management, the Judicial Case Flow Management Committee (JCFMC), which operates under the auspices of the Heads of Court, developed Interim Practice Directives to serve as a guideline for the implementation of case management.

These initiatives were not always warmly embraced. There was at times severe push back from the organised legal profession, and dare I say it, from within the Judiciary as well. But through determination, consistent and persistent implementation and consultation, the increased rate of case finalisation and the concomitant saving of costs, has led even the most ardent of detractors to see the benefits and even, begrudgingly so, become proponents of Judiciary-led case management.

Following the March 2015 workshop held in this exact venue, new and amended court rules to facilitate this process were drafted, through consultation with the Judiciary, by the Judicial Case Flow Management Committee and endorsed by the Heads of Court in 2017. The process was led by Deputy Judge President Janet Traverso and her team following which the JCFMC task team led by Judge Majiedt finalised the drafting process. The Rules were submitted to the Rules Board in 2017. The JCFMC workshop to be held in July 2019 is as a direct result of the gazetting of the new and amended case management rules which came into operation on 1 July 2019.

Judge Nathan Erasmus, one of the task team members responsible for the drafting of these Rules, will present the Rules in more detail, so I will say no more on the content of the Rules.


The purpose of today is to allow the Heads of Court, JCFMC members and members of the Judiciary, supported by the Registrars and officials of the OCJ, to deliberate and discuss the implementation of the rules. The rules empower the Judge President of a Division to determine such categories of defended actions and opposed applications or any other proceedings in which judicial case management should apply.

The JCFMC resolved to host this workshop to allow the Judiciary the opportunity to identify the best practices in ensuring that the purpose of these Rules is fully realised. In so doing the Judiciary takes ownership of the process and leads the efficient and effective management of cases to ensure that Justice to all does not remain a loft constitutional ideal.

I would like to take this opportunity to thank the members of the JCFMC who have remained committed to this process.

THE JCFMC MEMBERS ARE THE FOLLOWING:

Chairperson: Deputy President KK Mthiyane (ret); Members: Justice C Jafta (Constitutional Court); Judge S Majiedt (SCA); Judge President M Leeuw (North West); Judge President A Jappie (Kwa-Zulu Natal); Judge President S Mbenenge (Eastern Cape); Judge President C Musi (Free State); Deputy Judge President P Mojaepelo (Gauteng); Deputy Judge President A Ledwaba (Gauteng); Acting Deputy Judge President Phatudi (Limpopo); Acting Deputy Judge President V Phatshoane (Northern Cape); Judge N Erasmus (Western Cape); Judge A van Niekerk (Labour Court); Judge President Legodi (Mpumalanga). ■



SADC Judicial Seminar on Transnational Wildlife Organized Crime

**ADDRESS BY THE JUDGE PRESIDENT
SELBY MBENENGE (SOUTH AFRICA)
AT THE SADC JUDICIAL SEMINAR ON
TRANSNATIONAL WILDLIFE ORGANIZED
CRIME. Gaborone, Botswana 01 - 02 August 2019**

Introduction

[1] If one looks around the world today, one is tempted to ask - "Has man been able to give effect to the mandate to 'have dominion over the fish of the sea over the birds of the air... and over every creeping thing that creeps on the earth?'" What account would she/he be able to give to the Creator for such dominion? Another related question is whether the world around us is still resourceful and a safe haven for fauna and flora.

It has been observed that in recent years, threat to wildlife in South Africa is on the increase. The Eastern Cape is one of nine provinces comprising the Republic of South Africa located as it is along the south-east coast of Africa. It boasts wildlife in various forms. This presentation will focus more on the position in the Eastern Cape, but is to a significant degree representative of the picture in the wider South Africa.

Overview of crimes linked to Wildlife Trafficking

[2] Research has revealed that South Africa is home to about 10% of the world's plants, 7% of reptiles, birds and mammals, and 15% of known coastal marine species. The web of natural life is vital for human well-being as it provides water, food, eco-tourism, fisheries, medicine, energy and oxygen; that is why we, as human beings need to take care of our natural wealth. In that way we will be exercising proper dominion over other creatures. Wildlife crime involves poachers; armed non-state actors from source nations; international crime groups; institutional corruption across global network chains and a range of players involved in demand countries,

which range from organized criminal syndicates, non-state actors and legitimate authorities.

[3] Wildlife trafficking crime starts with the illicit exploitation of natural resources, such as in the case of poaching of a rhino. It includes the concealment and laundering of financial benefits obtained through committing these crimes. Corruption is the most critical factor when it comes to the enabling of wildlife crime and trafficking. It is also regarded as a facilitator to poaching and also contributes towards the success of transactions between supply, transit and demand countries. In essence wildlife crime refers to any environmental crime that specifically involves the illegal trade, poaching, capture, smuggling, or collection of endangered species or protected wildlife.

[4] A perusal of judgments handed down especially in the Eastern Cape points to the relevant regulatory framework as being sufficiently wide enough for the protection of wildlife on land and in the sea. Besides common law offences, the National Environmental Management: Biodiversity Act 10 of 2004 makes it an offence for one to cut off and have in their possession a rhino horn without the requisite permit. There is also the Cape Provincial Ordinance on Nature and Environmental Conservation Act 19 of 1974, which makes it an offence for one to hunt wild animals by means of a device, and injecting an intoxicating or narcotic agent into the wild animal without the requisite permit.

[5] Marine wildlife is similarly protected as it often falls prey to poaching and other illegal activities. To that end, the Marine Living Resources Act 18 of 1998 applies to the conduct of a fish processing establishment without the requisite permit, and regulation 36(1)(a) of the Regulations promulgated under the Marine Living Resources Act to the fishing, collecting, keeping, storing and transportation of abalone.

[6] There are other statutory provisions regulating the conservation of wildlife in other provinces. For instance, in Limpopo, section 31(1)(a) (read with sections 1 and 117(a)(i)) of the Limpopo Environmental Management Act 7 of 2003 also makes it an offence for one to hunt a specially protected wild animal by darting or immobilising the animal by means or method for trophy purposes without a valid permit. Evidential aspects

[7] The facts of cases serving before courts vary from situation to situation.

- Evidence takes the form of police testimony given on the strength of information gleaned from various sources including police informers.
- At times, leads given to the police result in searches being conducted. In some instances, the admissibility of the evidence gets challenged, as was the position in *S v Ndlovu*, the issue having been that the search that culminated in the recovery of rhino poaching implements did not comply with the relevant legal prescripts (the issue was decided in favour of the police with the Court being of the view that the admission of the evidence surrounding the search and the recovery would not, on the facts of that case, be detrimental to the administration of justice).
- In the case of rhino poaching, possession by the accused person(s) of various items of rhino poaching implements and rhino horns in the case of the rhino and failure to account for that possession. In *Ndlovu* it emerged that the tranquilizer fluid had been sourced from Zambia. It had been common cause that the rhino horn in question had been removed with a saw and that DNA material of the rhino had been found on the saw which was found in the possession of the accused.
- A chip of paint found on the scene of a rhino killing, fitted exactly into the gap of a missing part on the saw which was proven as having been used for purposes of cutting off the rhino horn;
- The rhino in question had met their demise in a brutal fashion, in order to satisfy the demand for their horns by those who hold the utterly irrational belief that they are of medicinal value.
- Expert testimony relating to how the rhino in question met their demise is tendered.
- The modus operandi points to Rhino poaching as normally occurring during the period of the full moon, with tracks of persons being found at the various scenes; dart guns are used and the rhino horns removed very clinically in a specific manner with a saw.
- Some of the suspects and/or accused person(s) have turned out to have been employees or former employees of the nature reserves, having been employed as game catchers, game management consultants, managers, who are invariably the complainants or star witnesses in most cases.
- In the case of abalone fishing, officials from the Department of Agriculture, Forestry and Fisheries will normally shed light on the total weight of each racketeering activity and the street value of abalone found on each activity.

Sentencing considerations and challenges

[8] Environmental crimes should be taken seriously and failure to enforce the relevant legislation constitutes an infringement of the constitutional right to environment. The duty resting on us to protect and conserve our biodiversity is owed to present and future generations. In so doing, we will also be redressing past neglect. Constitutional values dictate a more caring attitude towards fellow human, animals and the environment in general.

[9] The Prevention of Organised Crime Act 121 of 1998 (POCA) confers jurisdiction on South African courts over "unlawful activity", "whether such conduct occurred in the Republic or elsewhere". The minimum sentence in South Africa is 15 years' imprisonment. In *S v Brown and Others* the accused were sentenced to undergo 15 years imprisonment and their sentences were ordered to run concurrently on the contravention of the provisions of section 2(1)(f) of the Prevention of Organised Crime Act. Section 3 of the Prevention of Organised Crime Act deals with the penal provisions and provides that a person convicted of contravening section 2(1)(f) is liable to pay a fine of R 1000 million rand or to imprisonment for a period up to life imprisonment.

[10] The International Co-operation in Criminal Matters Act which refers to the sovereignty of the country in whose territory the investigation takes place must be revered.

[11] The Constitution of the Republic of South Africa recognises that citizens have the right to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that inter alia promote conservation.

[12] Points to ponder:

- The establishment of specialist wildlife criminal courts;
- The prevalence of the commission of wildlife crimes, trafficking and trade in our society is reflective of deep-seated, systemic dysfunctionality and that legal mechanisms to address this phenomenon are limited and are reactive in nature but are nonetheless necessary;
- Ensuring that perpetrators are brought to justice while maintaining the natural habitat of animalae and plantae must be the focus of the court system;
- An idea of Wildlife Trade and trafficking Courts in South Africa, perhaps a development of illegal trade of wildlife must be established, with specially trained prosecutors, court supporters i.e. South African Police Service and judicial officers.

[13] If we do not take measures such as imposing appropriate sentences, magnificent creatures would be decimated from earth. Our flora and fauna would be poorer for it. South Africa would no longer be the safe home for the Big Five [Lion, Leopard, Elephant, Rhinoceros, Cape Buffalo], as it is known all over the world. ■

#67Minutes Leadership Talk

On 17 July 2019, Chief Justice Mogoeng Mogoeng delivered a keynote address at the #67Minutes Leadership Talk hosted by the People Matter Foundation in Kempton Park.

The Chief Justice spoke on eradicating poverty and attaining credible and ethical leadership. Below we have highlighted some of the quotes from the Chief Justice's address.



ON LEADERSHIP

"We should pause and reflect on what he [Mandela] would expect of every South African, of every African and any other person around the world who is a leader. Each and every one of us is a leader, as leadership is never really positional. It is functional leadership that matters."



ON NELSON MANDELA

"Nelson Mandela clearly requires and expects for each and every one of us to have a lifetime commitment to something. So the question is: since he dedicated his life to a cause, what is it that you have dedicated your life to? What are you committed to?"



ON CORRUPTION

"Part of what we have to grapple with in SA and the world is corruption. But it looks like we have channelled ourselves into believing that corruption can only be in the public sector. Believe me, it takes two to tango. We will never be able to defeat corruption if we allow ourselves to be choreographed into believing that corruption can only be in the public sector."





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