THE JUDICIARY

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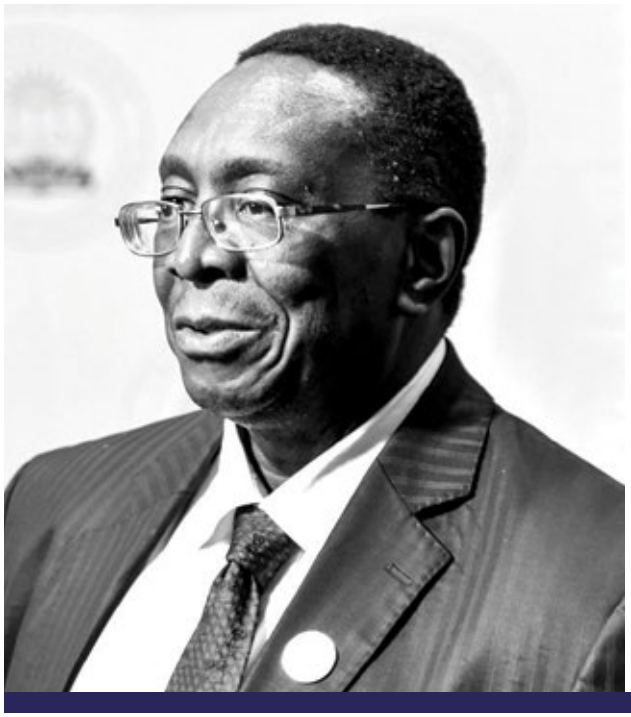

We commemorated two important occasions in the past quarter, Women's Month in August and Heritage Month in September. Whilst we marked these occasions together but apart this year because of the coronavirus pandemic, they were no less important.

With the context of Women's Month, we are delighted to publish thoughts by Justice Leona Theron on the challenges faced by women in the legal profession. We are also very excited that some of our female colleagues in the Judiciary had the opportunity to participate in a renowned broadcast programme that honours and tells the stories of women from all walks of life. We bring you excerpts of their interviews with links to the full audio interviews also provided. Maqhawekazi! Mbokodo! We celebrate you!

The past few months have proven to all of us that we are firmly in the digital age and technology now permeates every aspect of our professional and personal lives. It is therefore pleasing to see that members of the Judiciary are engaging with this reality and are contributing new knowledge and ideas on how the delivery of justice has to assimilate in this new world. In this regard we bring you contributions from our colleagues sharing their views on traversing the digital landscape, both in judicial training and judicial practice.

The Judiciary and the courts are important role players in the country's justice system and have an obligation to cooperate in certain structures with other role players within the justice system to see to it that justice is served. One of these structures is Special Tribunals. The President of the Republic of South Africa has, in terms of the Special Tribunals Act, 1996 (Act No.74 of 1996) read with Proclamation No. R. 118 of 2001, established the Special Tribunal on Corruption, Fraud and Illicit Money Flows. The President has further appointed retired Judge of the High Court in Gauteng Judge Gidfonia Mlindelwa Makhanya, assisted by seven High Court Judges, to lead the work of the Tribunal for a period of 3 years. We tell you more about the work of this Tribunal on page 22.

We thank the Special Investigating Unit for contributing an update on the work of the Special Tribunal on Corruption, Fraud and Illicit Money Flows for publication in this newsletter. We also thank our colleagues in the Judiciary who continue to be generous with sharing their work for publication in this quarterly. Without you, this publication would not be possible. ***Izandla zidlula ikhanda!***

Enjoy the newsletter!

Judge President Dunstan Mlambo
Chairperson: Judicial Communications Committee

On 3 September 2020, Justice Leona Theron addressed members of the Pan-African Bar Association (PABASA) in an informal webinar discussion on a range of topics, including her childhood growing up in Wentworth, Durban, the people that mentored her over the course of her career and how she balances career and family as a female Judge.

The broader context for the conversation was Women's Month, and accordingly the discussion focused on challenges faced by women in the legal profession. The transcription of the discussion below, which has been edited for brevity and clarity, focuses on Justice Theron's experiences during pupillage and as a young Judge, as well her advice for female advocates and Judges in particular.

CHALLENGES FACED BY WOMEN IN THE LEGAL PROFESSION

By Justice Leona Theron
Constitutional Court of South Africa

INFLUENCES AND MENTORS

I am guided by and believe in the philosophy of ubuntu, which in Zulu is expressed as "umuntu ngumuntu ngabantu". People are people because of people. I am who I am because of so many people. There are so many people on whose backs I have stood on along the way. I could spend days talking about the people who have assisted me along my journey.

I will share a few stories of mentorship in my life. Hopefully they demonstrate that no person, no matter how driven, ambitious or talented, can make their way through life alone. I hope that these stories also inspire those who are in a position to mentor to find the time to nurture junior or less experienced colleagues along the way.

Professor David McQuoid Mason and Professor Mandla Mchunu were my mentors at university. Professor McQuoid-Mason had introduced the Street Law Program in South Africa.

After I completed my LLB, I had about three months free before I started my articles with a very small law firm in Durban. It may surprise you to know that I could not get articles with a big law firm in either Durban or Johannesburg, although it was not for lack of trying. I applied at numerous firms in Durban and Johannesburg and did not receive a single offer. In the end, I took up articles with an attorney who had not been in practice long enough to register an articled clerk, which meant that I had to work for six months before my articles could be registered.

In the months before I started my articles, I worked full time for Street Law, under Professor McQuoid-Mason. Late in November of the year I completed my LLB, he instructed me to apply for the Fulbright Scholarship in order to do a masters in the United States, which I did, very reluctantly. At the time, I was not interested in a Masters: all I wanted to do was complete my articles and be admitted as an attorney.

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My application ended up being successful and, in July of 1989, I went to study at Georgetown University in Washington D.C. I was twenty-two years old and I had never travelled outside of South Africa. I was so excited, and so naïve, that I even bought a new outfit for myself to travel in.

In the intake of South Africans who were to complete a Masters in the United States that year, there were two women lawyers with whom I would become great friends. One of those women was Yvonne Mokgoro, who became one of the first women appointed to the Constitutional Court, and the other was Mandisa Maya, who would later become the first female President of the Supreme Court of Appeal. Our paths have crossed over in the years since then and, to this day, these two women remain part of my support system and are women I look to for guidance. We have supported each other as we have journeyed together in the legal profession for the past thirty years. I have no doubt that accepting the Fulbright, on the instructions of Professor McQuoid-Mason, and completing a Masters in the US, changed the course of my legal career.

When I did pupillage, I was the only woman in a group of six pupils. I was allocated Advocate Steven Mullins SC. I was his first pupil. He did not know quite what to make of me and, in a way, I did not know what to make him. He and I were in some ways an unlikely pair, but that did not stop me from learning all I could from him. He ended up becoming my first mentor in the legal profession.

On one occasion, when he gave me a plea to draft and I submitted my attempt, he told me something a senior advocate had said to him when he was a junior: “Leona, my plea will be a bit different”. I did not take any offence to this. He was very politely explaining the obvious: as a junior, you will try, and you will get it wrong. There was a time when his attempt had got it wrong and now he was reviewing my attempt. That is when I realised I had a lot to learn, and that is exactly what I did.

The lesson this taught me is that - while you cannot expect always to know everything and do everything perfectly at first - if you at least know what you do not know, that is a start. In a welcome speech I gave to the clerks starting at the Constitutional Court in July 2020, I told them this: know what you do not know. Dispassionately identify what your weakness are and set about improving yourself in those areas. While it is something I think juniors in particular need to do, the journey of self-improvement never ends.

I can give countless further examples of people I met along the way who have advanced my career. For example, when Judge Malcolm Wallis was chairperson of the KwaZulu-Natal Bar, he nominated me for a Commonwealth Fellowship, which is a fellowship that was granted to only twelve people annually from across the Commonwealth, with just one person per country

> Women should be open about the challenges we face and we should encourage a culture in which no one is embarrassed to admit that they need to reschedule a consultation because of a family commitment

being selected. The year I was selected was the year of South Africa's re-entry into the Commonwealth, and so, to mark that occasion, they chose two people from South Africa – a journalist and me, an advocate. As part of the fellowship, I visited and interacted with influential leaders across the political, legal and cultural spheres in London, Pakistan and Sri Lanka. A noteworthy occasion was a private meeting with the Queen at Buckingham Palace.

My first opportunity as an acting judge was at the invitation of former Judge President Somyalo, with whom I had served as a member of the Judge White Commission. Despite the fact that there were some judges, very few I would hasten to add, who did not welcome my appointment to the KwaZulu-Natal bench with open arms, I learnt a great deal from the all the judges with whom I worked. Many were prepared to mentor me and I grabbed this opportunity with both arms. Always be willing to learn – even from your adversaries.

BALANCING FAMILY, MOTHERHOOD AND A PROFESSIONAL LIFE:

Balancing life as an advocate, judge, mother, daughter, wife and active community member all at once has been a continuing learning curve. In the legal profession, as in many other professions, our lives seldom attain that "ideal" balance, in the sense that equal time and attention is devoted to all areas of our lives. What we can strive for is to find balance within ourselves – and to not place ourselves in a situation where we regret our choices in ten years. Of course sacrifices will be called for and work will take up an enormous amount of your time. However, the things that are really worth it, really worth having – especially professionally – do not come easy. They will require sacrifice, particularly early on when we usually have less control of our time.

I think ambitious women sometimes think: "I should be superwoman, I should be able to 'have it all'" with ease. And they feel tremendous guilt and frustration when they do not, when they miss a sports match, when they arrive to a consultation less prepared because a family commitment had to take precedence. We do not assist each other by pretending to do it all without sacrifices being made along the way. That is not to say that it is not possible to reach great heights as a woman and still be a wonderful mother, daughter, and member of your community. Women should be open about the challenges we face and we should encourage a culture in which no one is embarrassed to admit that they need to reschedule a consultation because of a family commitment.

A few years ago, Anne-Marie Slaughter, a top advisor to Hillary Clinton when she was Secretary of State, published an article entitled "Why Women Still Can't Have it All". In the article, she describes sipping champagne and greeting foreign dignitaries at a reception hosted by President Obama and all she could think about was her fourteen year old son, who had recently started skipping homework and failing maths. At the same function, she ran into a female colleague, who also had a senior position in the White House. She told this colleague – I'm going to write an article called "Why Women Still Can't Have it

All" and her colleague said – you cannot write that! It would be a terrible signal to the younger generation of women!

In the end, she wrote the article. In it, she admitted that, when she spoke to young women in the past and told them that they could have it all, she was unwittingly making them think that they were to blame if they could not manage to rise up the ladder as fast as men and also have a family and an active home life.

What I take away from the article is not that women should give up striving, but that we should all acknowledge the challenges we face, be open about those challenges and support each other.

Sheryl Sandberg says that women should "lean in", but younger female judges and advocates can feel ignored or side-lined. Women at the Bar and on the Bench need to be strategic in ensuring that their thoughts and ideas are communicated effectively: whether in legal argument, or in professional interactions with colleagues. There are two parts to any communication. The first is what you, as the speaker, actually say – the words, the point you are expressing. The second is the reception of that point and the way it is heard by your audience. There is a difference between having your voice heard and being listened to. We must ensure that we are not just at the table making noise, but that we are being listened to and that our points are landing. And the reality – the unfair reality – is that women have to work harder to ensure, first, that we occupy the space we need to express our point and, secondly, that our point lands.

As an advocate, I found that the best way to have my voice heard was to be more prepared than anyone else, to anticipate every possible question from the bench and to know the papers backwards. This kind of preparation made it easier for me to occupy the space I needed to make my points: if a Judge, or opposing counsel, tried to undermine me, I knew the material and the law and was unshaken. It is important to put yourself in a position to be able to stand firm and to hold your own space – this forces others to respect the space you hold.

Unfortunately, as a woman sitting on the Bench, one may be undermined by counsel, or even male colleagues on the Bench. I tend to ignore this type of behaviour. One must avoid reacting emotionally and ignore the tantrums of counsel, colleagues, or Judges, so that you can focus all your energy on the power of the point that you are trying to make.

That being said, I want to emphasise that if, as counsel, or judge, you experience incidents of blatant sexism, or racism, it may be prudent to address it directly. I understand that the "lean in" philosophy involves working your way up through the existing system and only worrying about making waves and changing the system when you are right at the top. Sometimes women worry about being branded "trouble makers", or being seen as not tough enough to take the heat. But it is very difficult to brand someone when they have calmly raised legitimate concerns about truly disturbing behaviour, with reference to specific instances. It can also be helpful to have male allies, who are prepared to call out more routine sexist comments and behaviour.

The legal profession has changed for women over time, but there is much change still to come. We need to be agents of change within our areas of influence. We need to be selfless, and to get involved in projects that will be good for the fraternity in general and women in particular.

It is important that words are accompanied by action: we do not write our lives with words, but with actions. Well done is better than well said. ■

The discussion concluded with remarks from PABASA members, who emphasised that women who have risen to senior levels of the legal profession and judiciary should tell their stories so that women who are still finding their way in the profession can benefit from the advice they have to share. This is a sentiment Justice Theron endorsed. She also emphasised throughout the talk that there is a role to be played by men within the legal fraternity, who can champion women and stand up against sexism in the profession.

While this article was being prepared, Justice Ruth Bader Ginsberg of the United States Supreme Court passed away. Justice Ginsberg – or 'RBG', as she is fondly known – was a great inspiration to Justice Theron. It is appropriate, then, that this article conclude with a quote from RBG, which distils the message Justice Theron sought to convey to PABASA's members, namely, that in pursuit of success, we must also commit to investing in our community and building up others:

"If you want to be a true professional, you will do something outside yourself. Something to repair tears in your community. Something to make life a little better for people less fortunate than you. That's what I think a meaningful life is – living not for oneself, but for one's community."

DIGITAL ELECTORAL JUSTICE AND COVID-19:

CHALLENGES, OPPORTUNITIES, AND IMPLICATIONS OF INCORPORATING NEW TECHNOLOGIES

By Judge Boissie Mbha
Supreme Court of Appeal

Photo source: Judges Matter

Judge Boissie Mbha took part in the 3rd Virtual Forum – "Digital electorate justice and COVID-19 Challenges, opportunities and implication of the incorporation of new technologies" on September 8. The following is the full text of his presentation on the Virtual Forum.

South Africa has not been spared from the devastating effect of the Coronavirus disease. As of today the number of confirmed cases, since its outbreak, is 639 thousand. There has been 15 004 fatalities. 567 thousand people have recovered. Thus the recovery rate currently is an encouraging 86%.

To stem the tide, the South African government put into effect the Disaster Management Act 57 of 2002 and in terms of section 27(2) of the Act, it declared a national state of disaster in relation to the COVID-19 pandemic. The state of disaster started from midnight 25 March 2020 and has been extended several times. At present the county is on level 2 of the national state of disaster which has enabled quite a number of business, social and educational activities to resume.

A number of regulations were promulgated under the Act whose aim was to slow the spread of COVID-19 and to flatten the curve. People were confined to their places of residence and prohibited from moving around unless it was for an essential purpose. Only essential service providers like healthworkers, providers of food services and so forth were allowed to go to work albeit under strict social distancing conditions, wearing of masks and so forth. Thus, there was a limitation placed on the exercise of certain constitutional rights. The government's position was that urgent measures were necessary to curb the infection rate and to manage the healthcare system to prevent it from being wholly overwhelmed and collapsing.

The entire judiciary in South Africa was suddenly placed in a position which it had never foreseen. Amidst all of this, the constitutional obligation of the courts, inclusive of the Electoral Court, to ensure access to the courts and justice as enshrined in section 34 of the Constitution, remained. Due to the need to adapt during the COVID-19 pandemic, the digitisation of the

Judiciary in South Africa had to be fast tracked. New technologies had to be implemented to ensure access to justice, including virtual hearings of court cases via ZOOM and Microsoft Teams. A technology which was initiated in South Africa was the Court Online: Evidence Management (CaseLines) System. It affords Judges and lawyers the opportunity to efficiently prepare, collate, redact, share and present evidence/ legal bundles, documentary and video evidence in a single online system. It allows parties to prepare for cases online and enables access to the latest evidence to all invited participants to the case.

Litigants can present and direct the Court to digital evidence: it assists in the presenting of evidence more fluently by automatically directing the Court to specific evidence seamlessly. CaseLines is currently being fully implemented within the high courts in Johannesburg and Pretoria. The Supreme Court of Appeal is presently implementing the system. The Electoral Court is part of the South African court system and enjoys the same and equal status as the high court. Judges who sit in the Electoral Court are drawn from the high courts except the chairperson who must be a judge of the Supreme Court of Appeal. Training has started earnestly for Electoral Court judges, and supporting staff, to bring them up to speed on the CaseLines system. Except for a number of municipal by-elections which have been postponed during 2020, the Electoral Court has not been called upon to sit. It is anticipated that it will be busy in 2020 when municipal elections are scheduled to take place. National elections will only be held in 2022.

CaseLines is proving to be an effective cloud-based platform which can be accessed on any laptop or tablet with Internet access and an Internet browser. All evidence is securely stored on an online cloud, allowing Counsel to access evidence with ease and safety. The advantages of CaseLines, especially during COVID-19, are that it minimises the physical movement of people within the court buildings and thus immensely reduces the general office section queues, allowing courts to comply with the social distancing regulations while continuing to make certain that people have access to the courts. It minimises the use of paper and it has the benefit of electronic storage that leads to faster document filing and retrieval, and in the process it eradicates the misplacement and loss generally of court files. To summarise:

Technology has improved access to justice and created efficiency by allowing computes to generate the manual and laborious work which was done by court personnel and has proven to be an important assistance to court administrators. However it has not changed the nature of the court process in the sense that the rules of courts have remained the same, but are being applied through technological means.

Technology has also improved efficiency by allowing for the litigation process to become more streamlined and savvy for the parties to the dispute. With the adoption of new technology systems there has been a few stumbling blocks such as monetary funding and costly maintenance of the software and updates of technology. However this can be improved with the government increasing the budget of the judiciary in to order ensure a more technologically savvy judiciary system.

One of the important challenges learnt are connectivity issues, especially during virtual court hearings, where the internet connection would result in litigants and judges disconnecting during the virtual hearings. A stronger internet connection would need to be invested in going forward. Another issue has been load shedding. The electricity supply needs to be beefed up to ensure that the courts are able to operate optimally at all times. Justice must never be delayed as justice delayed is justice denied.

Whilst the use of technology is a most welcome development and advancement in our courts, it cannot be denied that certain processes cannot, by their very nature, be replaced by technology. An example that comes to mind is the obvious instance of judges having to assess the demeanour of a witness during for example cross examination. An in- person hearing also has the advantage of allowing judges being steeped in the atmosphere of the hearing especially when it comes to engaging with counsel. All these cannot happen during virtual hearings.

Post COVID-19, it is anticipated that the use of many aspects of technology will continue. This is especially so in the case of the Electoral Court, whose rules permit for the disposition of certain disputes informally and without an actual sitting of the court. Thus teleconferencing amongst judges (and with litigants in certain circumstances) can be done easily through virtual meetings to dispose of matters.

We are constantly evolving and looking for means to improve. Ultimately, the focus must be the litigant who must always have access to justice unimpeded. ■

JUSTICE IN THE DIGITAL AGE

By Judge President Dunstan Mlambo

Gauteng Division of the High Court

The Judge President of the Gauteng Division of the High Court, Judge Dunstan Mlambo, delivered a talk in a recent Judges' Webinar on justice in the digital age, hosted by the South African Judicial Education Institute (SAJEI). The following is the full text of Judge Mlambo's presentation in the webinar.

INTRODUCTION

The global digitisation of society has completely transformed the way we conduct business today. With the internet, simple day-to-day activities are transformed into complex processes connected by embedded technology enabling a network of objects to connect and interact with each other.

At a touch of a button, large amounts of information can be accessed almost instantaneously, search engines are able to anticipate what your preferences are, and individuals are able to transact across a multitude of jurisdictions.

With the internet ever evolving and growing, those that govern our judiciary have noted that the courts in their own respect need to "keep up" with the times so to speak.

- This has become more evident with the coronavirus pandemic which presents its own unique challenges to the legal system.
- The COVID-19 pandemic has thus placed significant pressure on legal systems to embrace technological change.

Recent government announcements and directives from the Chief Justice and Minister have stressed the vital importance of the continued administration of justice in our country and the courts continue to operate, though with adjustments.

- The directive issued by the Chief Justice empowered each court with ability to draft its own directives in accordance with the Division's needs and modus operand.

I will briefly mention the various opportunities for innovation and development within our legal system and judiciary

- Court Online - is an advanced cloud-based collaboration solution encompassing a Digital Case Management and Evidence Management system.
  - It provides legal practitioners with the opportunity to file documentation electronically online anywhere and anytime without being physically present at court.
  - It also affords them the ease of managing their court appearance diaries and court evidence instantaneously online.
  - Benefits include:
    1. Minimised paper flow and storage
    2. Shortened case processing time,
    3. Fewer queues within the court.

- Alternative dispute resolution forums have continued to run at full functionality during the lockdown. Arbitrations are now being held virtually, with the Arbitration Foundation of SA introducing measures guiding their conduct.
- Remote consultations are now accepted as fair. Whilst it is preferable to have face-to-face consultations, the pandemic has seen remote consults become the "new normal", in the interest of preserving health and safety and maintaining social distancing. The Labour Court recently held that the Labour Relations Act does not prescribe the form in which the consultation process is to take place.
- Prior to 2016, courts did not have WI-FI. To date the courts are equipped with infrastructure and mobile access to legal content. Judges, Magistrates and legal practitioners have access to legal information and CaseLines during proceedings aiding in saving time and aiding in efficiency.

CASELINES

The Covid-19 pandemic has taught us that legal jurisdictions, even within our country, where available technological tools were used before the lockdown, even if only on a pilot basis, were quicker to address the challenges posed by the new reality of social distancing and isolation. CaseLines is such an example.

What is CaseLines?

It is an evidence management digital platform. Its ideal conceptual location is to assist in handling finalized litigation matters that are going through a hearing or trial. The system broadly functions by way of case creation, party/legal representative invitation, document filing and uploading and case presentation.

It allows litigants to file and upload pleadings and other documents electronically.

And to present their case and argument during Court proceedings, with Judges given the opportunity to efficiently and securely prepare and review evidence online and follow evidence presented digitally during the court hearing.

The use of CaseLines at the Gauteng High Courts

Integrating CaseLines into the court system-

- On 10 January 2020 I issued a practice directive for the full implementation of the system and this took effect in Gauteng from 27 January 2020.
- The use of CaseLines was met with resistance from both the public and Judges.

The advantages and disadvantages/limitations of CaseLines and where it can improve:

- Voluminous documentation can be stored in electronic and readily searchable form.
- The curtailment of paper-based litigation is environmentally friendly.
- CaseLines allows Judges and legal teams the opportunity to efficiently and securely prepare, collate, redact, share and present evidence/ legal bundles, documentary and video evidence in a single online system.
- Identified areas of improvement –
  - Attorneys not getting invites to CaseLines until two days before the matter. Ideally cases should be created when people ask for a date, but instead the system is set up to create the matter only when the matter was finally enrolled.
  - Parties are only notified that matters are finally enrolled a day before the matter is to be heard. Cases are then struck of the roll in court – the stated reason for this is that the matter is not enrolled, even though it is on CaseLines.
  - When loading a file on CaseLines and completing the task, files often go missing, i.e. they are not finally loaded on the system.

CaseLines and access to justice –

- Allows for convenient access from irrespective of where a person is, using a devise such as a laptop, tablet or even a smartphone. A key requirement is a stable internet connection.
- The electronic filing and exchange of court documents, pleadings and evidence can save time and cut costs for both litigants and the court – facilitating and improving access to justice.
- Indigent litigants do not or have limited access to technology, the Gauteng Courts have set up facilities that assist in this regard.

The use of CaseLines during the lockdown period.

> After-hours urgent court proceedings can be conducted without the necessity of court officials or judges leaving the safety of their homes after hours

VIRTUAL COURTS

Australia, Canada, America and the UK operate in a realm where the use of supportive or replacement technologies is more widespread, and the courts in those countries were more capable of making the transition to remote justice.

In Canada, videoconferencing technology has been used to receive witness testimony in civil trials for over a decade. The Ontario Rules of Civil Procedure allow for witnesses in civil trials to testify remotely using videoconference technology.

- Rule 1.08 of the Ontario Rules of Civil Procedure provides that a witness's oral evidence at trial may be received by videoconference if the parties consent; and that in the absence of consent, evidence may be received by videoconference upon motion or on the court's own initiative. The receipt of evidence through videoconference is subject to the discretion of the court.
- The the court, in exercising its discretion, takes the following factors into account, namely –
  - the general principle that evidence and argument should be presented orally in open court;
  - the importance of the evidence to the determination of the issues in the case;
  - the effect of the telephone or videoconference on the court's ability to make findings, including determinations about the credibility of witnesses;
  - whether a party, witness or legal representative for a party is unable to attend because of infirmity, illness, or any other reason;

In Australia, The High Court in Canberra, announced that following the adoption of policies restricting travel and meetings and remote workplace arrangements, the High Court of Australia would not be sitting in Canberra or on circuit in the months of April, May and June. This has since been reviewed and extended.

- The Court has indicated that it will continue to deliver judgments and deal with special leave applications including hearings as necessary at individual registries and will hear any urgent matters that may arise by video link.
- The Federal Court of Australia has published a Special Measures Information Note which sets out arrangements for the continued operation of the Federal Court during the COVID-19 outbreak in Australia.
  - These include to the extent possible, alternative arrangements such as:
    1. hearing matters on the papers,
    2. by telephone or
    3. by other remote access technology.

Before COVID-19 hit Singapore, the Singapore courts had an existing practice in place that enabled lawyers to make applications by video link. The Singapore court is also quite used to parties or witnesses appearing in court by way of video link. Insofar as the Supreme Court is concerned, hearings are continuing. Since the spread of COVID-19, the Singapore Court has implemented a justice continuity plan by dividing the judges of the High Court into two separate teams, wherein in an appeal matter, one Judge will sit will be in physical proximity while the other Judge will join using the video link.

The need for the Gauteng High Courts to go virtual as a result of the current pandemic.

- Most court buildings currently remain open, but civil hearings are now being conducted remotely wherever possible. Physical hearings are only to take place if a remote hearing is not possible and suitable arrangements can be made to ensure safety of all the parties present - This was a necessary step. Judges and their support staff now operate remotely and conduct court cases virtually because of the fear of contracting the disease.
- How the Gauteng High Courts have adapted since the lockdown restrictions were implemented -
  - Issuing of summons:
    We are currently operating on a manual system, where litigants email their summons to an email address solely created for this purpose. We are working towards creating a digital stamp that will assist in curtailing the time between attorneys issuing summons to the court and attorneys receiving their documents.
  - Enrolling matters on the court rolls, etc.
  - Holding of meetings

The pros and cons of virtual court sittings.

Virtual court hearings have reduced travel costs. Experts and witnesses no longer have to come to court - With real-time reporting, expert witnesses can respond instantaneously across the country.

Litigants and the Judge(s) are able to access all the pleadings on CaseLines during the proceedings allowing the sitting to flow seamlessly - While operating remotely judges and legal practitioners are able to communicate amongst themselves using their phones or apps such as WhatsApp.

In a recent admission wherein Judge Collis presided over at the Gauteng Division, the applicant was stationed in the UK due to the travel restrictions placed in that country. The Applicant's matter was enrolled and his papers were up to date. Through a virtual sitting the parties and the presiding Judge dealt with all the formalities and were able to admit the applicant who was stationed in another country. This is but one of the cases that highlight the advantages of using virtual courts.

After-hours urgent court proceedings can be conducted without the necessity of court officials or judges leaving the safety of their homes after hours.

Motions proceedings and appeals can be conducted on a virtual platform leaving sufficient courtrooms that can be utilised for viva voce evidence in deserving cases.

We are all familiar with the assertion "Justice must be seen to be done". This dictum summarises the principle of open courts-

- In light of the reality that transparency is a core part of the justice system, open justice is a hallmark of the exercise of judicial power.
- Virtual court sittings challenge this dictum. Virtual court sittings mean that only the litigants in the matter are privy to the proceedings.

Of course these virtual sittings have had their own issues-

- Sound Glitches
- Loadshedding – this inhibits the use of computers and routers or LAN connections during proceedings.

CONCLUSION

Discussing 'justice in a digital era' in this context is appropriate although the discussion is long overdue due to technological development that preceded the outbreak of the pandemic.

The systems put in place at the moment are only but foundational. Lawyers, courts, judges and others involved in the justice system need to reassess how to

operate and adjust in this changing environment that requires them to use technology to work remotely-

- We need to develop remote access jurisprudence and protocols. Rules of Court need to be amended to cater for online civil procedure.
- New rules need to be created for virtual sittings.

The feasibility of courts going completely digital?

It may be a costly operation against our already constrained budget-

- It will require new software and hardware that will require constant upgrading;
- The advent of the digital age and the rapid development of technology is, in some respects, a disreputable benefit. The ability to store and exchange information online has cultivated a fertile digital space for criminal activity, and has left individuals, businesses and the courts and Judge's private information vulnerable to hackers. As technology advances and hackers become advanced security and anti-virus programs will also require continued updates;
- While there are some laws governing cybersecurity in South Africa, many concerns have been raised over the shortcomings of the previous and current legislation and whether it has met the standards set by the international community in the fight against cybercrime. Just recently the rest of the Protection of Personal Information Act came into force. Though many have hailed the Act as a significant step to combating cybercrime and cyber terrorism, many have criticised it for being too vague, and enabling the government to police online activity;

Continuing on from the feasibility of courts going completely digital. It may deprive those who are not digitally savvy or have access to technology. This includes the elderly and indigent persons.

Socio-economic divide between practitioners / access to justice and equality.

Will reduce the staff capacity – increase in unemployment.

Of course, all of this will require a serious change in mindset for lawyers who are used to traditional stances. Some members of the legal profession may view these modern communication devices as a threat; others may dismiss them as mere gadgetry. It should, however, be viewed as an opportunity for the constructive use in furthering our goal of administering justice properly and promptly. Digitising of the legal world will not only improve access, but also change the way litigators practice law.

Having said all the above, it remains for me to state quite categorically that having implemented CaseLines in Gauteng we will be shooting ourselves in the foot if we delay the rollout of this system to other Courts, especially the appellate Courts such as them Supreme Court of Appeal and Constitutional Court.

Inevitably matters handled on CaseLines have started featuring in those Courts and it is self-defeating to handle those matters in those Courts outside the digital arena when they have been created and handled in that arena at first instance. ■

> The law and our behaviour will have to evolve with the demands and challenges of modern communication methods

SOCIAL MEDIA AND JUDICIAL TRAINING

First published in the Journal of the International Organization for Judicial Training, Issue 7, July 2020

By Judge President Cagney John Musi

Free State Division of the High Court

The exponential increase in social media platforms has drastically altered the manner in which we communicate.[1] Many institutions have reconfigured their communication strategies to keep abreast with these developments.[2] These platforms already had and will have a great impact on our substantive and procedural law. The manner in which judges3[3] utilise these platforms will also have an impact on judicial ethics.

The law and our behaviour will have to evolve with the demands and challenges of modern communication methods. Judicial training institutes will have to reconfigure their curricula in order to ensure that they train judges about social media platforms and their impact on the law.

Proper judicial training on these matters will assist in transforming the judiciary to harness social media platforms in the interests of justice and to better adjudicate matters involving social media.

This article briefly discusses the different training methodologies and points out what the author considers is the best methodology to follow in training judges.

Illustration, by dint of a few examples, show how South African courts have harnessed social media platforms in the interests of justice; how the law of defamation is changing when dealing with social media defamation; how social media defies territorial jurisdiction and what has been done in order to make sure that the net is cast very wide in order to give South African courts jurisdiction with regard to cybercrimes; and lastly, a few tips on how judges should not behave on social media platforms. ■

Please use the QR code or link to read the full article: https://bit.ly/3nK04UB

1. There were 2.41 billion monthly active users on Facebook during the 2nd quarter 2019, more than half a billion daily active users on WhatsApp during the first quarter 2019 and, on average, 330 million monthly active users on Twitter during the first quarter 2019. See J Clement, "Global social networks ranked by number of users 2019", Statista, 19 November 2019 at www.statista.com/statistics/272014/global-social-networks-ranked-by-number-ofusers/,accessed 17 January 2020.
2. Nastascha Harduth, "The legal impact of social media networks – international trends", Werksmans attorneys, 3 November 2015 at www.werksmans.com/legal-updates-and-opinions/the-legal-impact-of-socialmedia-networks-international-trends/, accessed 17 January 2020.
3. 3 All references to judges include magistrates, where applicable.

ARTIFICIAL INTELLIGENCE:

A PARADIGM SHIFT IN LEGAL NORMS AND THE IMPACT ON JUDICIAL TRAINING

FIRST PUBLISHED IN THE JOURNAL OF THE INTERNATIONAL ORGANIZATION FOR JUDICIAL TRAINING, ISSUE 7, JULY 2020

By Judge Brian Spilg
Gauteng Local Division of the High Court

We shall not cease from exploration
And at the end of all our exploring
Will be to arrive where we started
And know the place for the first time
TS Eliot, Four Quartets

The Declaration of Judicial Training Principles adopted by the IOJT in November 2017 recognises that judicial training is fundamental to judicial independence, the rule of law and the protection of the rights of all people.[1]

This article advocates a significant departure from conventional methods when dealing with artificial intelligence (AI) training. It also argues that the methodology to achieve this requires not only a departure from simply extending or adapting existing legal norms and principles within the area of law where an AI issue arises, but also the need to discern whether the case in fact involves an AI issue.

An AI issue may not be immediately apparent at face value. However if it does arise, then it may take the case beyond say, a simple contract or the exercise of an administrative power, to one involving a constitutional issue of unfair discrimination.

This will be illustrated later by an episode involving residency allocations for medical students.

The reason for advocating a different methodology is to avoid forcing the proverbial square peg into a round

1. IOJT, principle 1 at www.iojt.org/~/media/Microsites/Files/IOJT/Microsite/2017-Principles.ashx, accessed 4 March 2020.

hole. A failure to adopt a different training strategy is likely to inhibit, if not stifle, the technological leap which has already commenced.

In the most fundamental way, AI is a voyage into the unknown. For the first time we will be abdicating the process of finding solutions to attain a desired objective to machines.

Implicit in doing so is the premise that AI systems, whether operated within government agencies or commercially, will produce rational and socially beneficial outcomes.

At some stage it will also be necessary to legally classify data and decide whether it is to be confined within a particular branch of law or whether it straddles a number of branches, whether it requires its own unique classification or should itself be subdivided into separate categories.

> “
>
> **An AI system can devise algorithms by means of advanced machine learning independent of human involvement**

Moreover AI development is not gradual. “J” shaped graphs abound showing the exponential development of AI systems. Every 18 months there has been a doubling up on chip performance, on data gathered, and on computer power — all at a reduced cost.[2]

Currently we can feed an AI system with vast quantities of data. Even then, an AI system, rather than human researchers, can identify the type of data required. An AI system can devise algorithms by means of advanced machine learning independent of human involvement.[3] It is also able to self-drive a car on motorways, engage in unscripted conversations with a human and can outplay the world’s top chess and Go[4] masters.

The fundamental difference between what humans have done until now and current AI systems is that humans are no longer involved in the computer’s process of reasoning, nor appear particularly interested in how it resolves the problem asked of it — apparently trusting that it will do so rationally and optimally.

Moreover the gathering of data cannot be regarded as a glorified accumulation of statistical information subject only to the laws of copyright.

AI provides scope for great advances in all aspects of our lives, such as health care, safety and security, as well as enjoying a more focused selection of options. But if left unchecked or if potentially pre-existing bias within the data used is not acknowledged or the values and norms which underpin its algorithms are not understood, AI has the potential of trampling on fundamental rights such as privacy, dignity, freedom of choice, rights of equality/non-discrimination and the presumption of innocence.

AI may also block attempts to override its own malfunctions.[5] And perhaps two of the most frightening prospects, if not already a reality: Are we as humans being reduced to a commodity and are we unwittingly being deprived of free will?

The last may come as a surprise, however the Cambridge Analytica revelations indicate that voters in the last presidential elections in the United States were unknowingly manipulated by AI.[6] The same is being said about the Brexit referendum. ■

Please use the QR code or link to read the full article: https://bit.ly/3nK04UB

2. Statistic of the arXiv pre-print server maintained by Cornell University: see https://arxiv.org/, accessed 3 March 2020. See generally, Stanford University Artificial Intelligence Index (AI100) at https://ai100.stanford.edu/aiindex, accessed 3 March 2020. (See also Moore’s Law and Fontama, Barga and Tok, Predictive Analytics with Microsoft Azure Machine Learning, 2nd edn, Apress, ch 1.
3. See below, Illustration of advanced machine learning — detection of banking fraud and money laundering.
4. Go is an abstract strategy board game for two players, in which the aim is to surround more territory than the opponent. The game was invented in China more than 2,500 years ago. Whereas there are some 35 possible moves in each turn of Chess, Go has about 250 with 361 possibilities for the first player’s opening move. See A Hern, “Google AI in landmark victory over Go grandmaster”, The Guardian, 27 January 2019 at www.theguardian.com/technology/2016/jan/27/google-hits-ai-milestone-as-computer-beats-go-grandmaster, accessed 13 March 2020.
5. For example, the two Boeing 737-800Max disasters during late 2018 and early 2019. Investigators determined that the MAX’s new Maneuvering Characteristics Augmentation System (MCAS), which was omitted from flight manuals and crew training, automatically and repeatedly forced the aircraft to nosedive.
6. The campaign was covert and the messages insincere as each profiled group of persuadable voters was targeted with a different message to the other. The information used to identify who fitted into which profile consisted of the data footprint left by some 70 million US Facebook users. This had been obtained by Cambridge Analytica, a data analytics firm, from Facebook without real user consent. The documentary “The Great Hack”, released January 2019 by Netflix, provides much insight on this and the role of Cambridge Analytica.

PRACTICAL GUIDE TO VIRTUAL HEARINGS IN MOTION COURT

BEST PRACTICES AND CHALLENGES

By Judge Glenn Goosen

Eastern Cape Division of the High Court, & currently Acting Judge at the Supreme Court of Appeal.

I wish to commence by making a few remarks about the phenomenon of remote court hearings as a global response to the Covid 19 pandemic. These remarks are ancillary to the very valuable presentation given by Mlambo JP earlier this week.

The adoption of digital and remote videoconferencing technologies has been almost universal in countries affected by the pandemic and the resulting national lockdown strategies employed to combat the spread of the virus. In many jurisdictions court leadership has been quick to emphasise the crucial need to ensure that pandemic – i.e. the public health crisis it engenders, does not also give rise to a further and related crisis of access to justice. And so courts have sought to provide for the deployment of electronic communication as a means of keeping the courts open and able to perform their adjudication functions.

The responses have, of course, not been uniform. But what is significant is that the courts have sought to address the broad range of real challenges posed by operating remotely with creativity and innovation. We have seen directions being issued which allow for contested and contested matters – whether by written evidence or oral evidence – being accommodated. And, importantly for us today, we have seen the rapid development of guidelines and protocols, of 'best practice guides' being developed by the judiciary and by the profession, in several jurisdictions.

This is important for us in South Africa because our own court responses (which were outlined by Mlambo JP on Tuesday) occur within the context of a global response. There is therefore a great deal to be learnt from how courts across the globe are dealing with the crisis we all face. I have put together a smattering of resources which will be posted on the SAJEI website. These resources are by no means all that are presently available. They serve merely to point to what is available and will, I hope provide each of you with some guidance and some material with which to work. It is my hope too, that the resources may assist in our collective efforts to chart a way forward for the South African courts over the next few months.

Before turning to the substance of what I wish to speak about today let me say a few words about the resources themselves. You will find a very useful document entitled Best Practice for Remote Hearings. It was prepared by the Ontario Bar Association and provides guidance for both courts and practitioners. There are guidelines too from United Kingdom, Hong Kong. There is an Impact Report just recently published which looks at the experience of remote or virtual hearings in England – from the perspective of users and practitioners. You will find that there are many aspects of that report that speak to some of the challenges we face here – from a technology and access point of view as also the concerns about lay participation and open justice.

There is one document I would commend to you and that is perspective from a Nigerian judge who speaks to the need to broaden the base of engagement amongst judges and, who importantly, speaks to the fact that even with limited resources and training it is possible to enter into this terrain.

Let me turn now to what I hope you may find to be some useful practical guidelines to assist in the conduct of remote / virtual hearings. Bear in mind that the focus is on motion court, where as we know in unopposed matters case volumes (and therefore the number of participants) may be large. But also that we have the benefit of all of the material in advance and therefore that the hearings themselves are able to proceed on the basis of prior preparation and a good understanding of the likely outcome of the proceeding in advance.

1. SETTING UP THE HEARING

Some of these functions will, routinely, be performed by the Registrar or by the Clerk. Nevertheless it is important that they are done well in advance.

- Notice of the Virtual Hearing – details of the platform to be used; access codes etc. Not only to participants – but to the press / public so that access to the hearing can be provided. I would suggest that it is important also that the public should know what hearings are to be held virtually.
- Publication of the Ground Rules or Protocols for the Hearing – may not be necessary to do this with each hearing notice if there is, in your Division, an operative protocol. I am not aware that any such Protocol has yet been issued in any Division. I am aware that within the Practice Directives that have been issued aspects such as dress, basic conduct etc. have been dealt with.

2. PREPARATION FOR THE HEARING

- Familiarity with the platform – once you have used the particular platform (Zoom / Teams / Webex) a few times this will become less critical, but is will provide assurance and confidence if you run through the various functions you may need to utilise during the course of a hearing (eg. Recording; muting; video; screen sharing; sound check etc.)
- Check connectivity (and possibly run a speed check). Where you are operating from your home be sure to make sure that there are no problems with connectivity and make sure that your devices are fully charged; that your Wi-Fi router is working; that you have data etc. Be aware of load shedding!
- Organise your Virtual Court – There are a few aspects to consider here. Choice of place to operate. If you can operate from the court building safely then there is a lot to commend the use of a court room / chambers as the venue for the virtual court, particularly with motion court proceedings. (The major advantage is that it provides for a relatively easy way to manage possible in-person appearances of litigants: e.g.: since you are sitting in the court the arrival of a litigant can be noted and dealt with; you can have support staff readily available at or in the vicinity of the court – Registrar; security personnel; clerks etc.)

> “courts have sought to provide for the deployment of electronic communication as a means of keeping the courts open and able to perform their adjudication functions

Whether you conduct the court from the court room itself or not, think about your presentation. Remember that the video screen serves as the court as far as participants are concerned, so think about framing. Think about what you look like on the screen – not too close – not too far – and try to avoid that unfortunate selfie look with which we are all too familiar. Make sure your head and shoulders are visible. Think about background. You want to avoid backlighting because it results in your face being shadowed. You want to keep the background fairly neutral and certainly not too dark. Make sure the room is well lit and that it is quiet. If you are at home, avoid background disturbances. Some people use the virtual backgrounds that the platforms offer. However in some instances when you move the virtual background can result in distortion of your image – which can be a little off-putting.

Organise your space. Bear in mind that unless you are in Gauteng using Caselines you will have a pile of files and bundles of documents on your desk or table and your computer. Your physical space can be challenging. As can the movement of bulky files and the shuffling of documents. These can cause significant problems with recordings. In fact the platforms are sound sensitive and use sound to shift between video of speakers. Shuffling paper can cause the speaker view to shift to you (or to counsel for that matter).

3. THE HEARING

- Hosting. I am aware that in some Divisions responsibility for organising the hearing and hosting it can be (or is) cast on the practitioners. I personally do not favour that approach and cannot appreciate why that is necessary. It may be an interim problem until appropriate licencing of software is secured. My approach is that it is the judge who conducts the court. For this reason I favour organisational arrangements to be made by the judge concerned (with administrative support that is ordinarily available i.e. the Registrar, Clerk etc.). If you host you control the hearing – recording; admission of person to the hearing etc.

- Start the Hearing 15 mins before the scheduled time. This allows for the admission of participants via the waiting room (in the case of Zoom) and for the 'host' to make sure that the necessary participants are present. I have made use of the pre-hearing period to engage 'informally' with the legal representatives – to check the sound quality; to ensure that all participants follow the hearing ground rules / protocols (and where it is an opposed hearing to discuss time frames and other aspects that may become relevant). Some judges may not wish to have such an 'informal' engagement prior to commencement. In that event it is possible to arrange the meeting in a way where your clerk / registrar is a co-host and therefore able to carry out those tasks in advance of your "entry". I personally do not think that the informal engagement detracts from the occasion. Instead it serves to allow both the presiding judge and the practitioners to familiarize themselves and relax before commencement. It is a matter of preference.
- Commencement. As with any court proceedings on-time commencement is critical. If you engage in the 'pre-hearing' session then it is advisable to announce the commencement immediately after commencing the Recording of the hearing.

  You may wish to consider the role that you Clerk / Registrar plays in the hearing from this perspective. I have found it useful when holding court from the motion court itself to have my registrar present although off-screen. She would call case as she would in a physical court hearing. This is recorded and the parties are then able to "rise" and place themselves on record and deal with the matter. You can then deal with the roll as you would during a physical court hearing.
- Recording. Recording the proceedings is crucial. We are courts of record and are obliged to maintain a proper record of proceedings. Therefore ensure that you are able to record the proceedings on the platform you are using. Also be familiar with where the recording is stored. It can either be stored in Cloud storage or on the device. Be sure to be able to retrieve the recording after the hearing and to secure it for record purposes.
- Live broadcast or streaming of hearings. Most platforms allow for the live streaming of a 'meeting'. What this means is that apart from recording the session it is possible to stream the hearing via an online platform such as You Tube or Facebook. There is, in my view, a great deal to be said for development of a default position which provides for the live streaming of all virtual court hearings. It would accord with open access to court proceedings given that on current platforms the 'general public' cannot be 'invited' to a meeting / hearing without publication of the meeting login details. Such general invitation may very well give rise to potential problems such as so-called 'zoom bombing'. Live streaming allows us to overcome the restrictions that necessarily apply to the use of remote technologies. There should of course be appropriate protocols in place for live streaming and the judge concerned would need to exercise controls which are well established in our jurisprudence. The choice of platform for live streaming and enabling the technology will need to be put in place.
- Short Adjournments. Every motion court requires an adjournment from time to time. Simply Pause Recording when taking a short adjournment and step out. It is possible to end a meeting and restart it.
- Termination. All good things come to an end and when the roll is completed or the matter is completed follow the usual process. End Meeting will result in the recording being processed and stored.

4. BACKUP DURING THE HEARING

- Set up a direct line to the Registrar. If a participant loses connectivity or cannot join the hearing for some reason they should be able to immediately contact the Registrar or an appointed official to bring this to the judge's attention. The Registrar should be able to communicate with your clerk (possibly via WhatsApp) to bring the problem to your attention. If you are operating remotely from your clerk you should maintain an open (albeit silenced) WhatsApp link with your Clerk. It is possible to have your WhatsApp messages come through on your laptop so that you do not have to manage two devices (go to web. WhatsApp in Google to set this up).
- Troubleshooting Connectivity. This happens! Sometimes even good connections result in a 'dropped line'. If you are hosting you can simply restart the hearing (I think Zoom does it automatically). The recording is paused and starts up again upon the host re-entering the meeting (another reason to host). The key is not to panic. As with physical court hearings unexpected things happen and we deal with them as the need arises. If of course the problem is such that you cannot re-convene the meeting then use of the direct line to Registrar should enable you to adjourn and re-schedule once the problem has been resolved.
- In Person Appearances. Lay litigants frequently appear in person in our motion courts. Since physical movement restrictions have eased this will occur with normal frequency. If you are conducting the virtual court from the court building / room, access to the court itself should be easily managed. In most instances the lay litigant appears as the respondent. In such instances the appearance may necessitate

an adjournment of the matter if there is no facility available at the court building to enable access to the remote platform. Each instance will of course need to be dealt with as would normally occur in physical court. There is a very strong case to be made for each court to set-up a simple facility for lay person to utilise to access the remote hearing. Once Wi-Fi is fully installed in each court building it would not require major capital expenditure to create such a facility.

5. OPPOSED HEARINGS

The basic guidelines set out above apply equally to opposed hearings. Opposed hearings are, if anything, easier to manage because they involve fewer participants.

- Consider discrete / separate hearings for each matter. Although this may not always be practical the advantage is that it allows for each hearing to be separately recorded and for the judge to organise the virtual court for each matter. This latter consideration is particularly important when having to deal with substantial volume of documents. It also allows for public / press notice of each hearing (possibly published as a hearing roll on the court's web page).
- Time management. You will notice from a reading of the guidelines on remote advocacy that practitioners are encouraged to be much more time-conscious in presentations in virtual courts. The medium has its own challenges and there is no doubt that an argument presented via video will be more effective if it is pithy and to the point. (All arguments are, but when you have to command a screen and there is no physical feedback-loop from the audience, it would be best to keep it tight and to the point). Imposing such discipline upon practitioners by imposing reasonable time limits may be worth considering.
- Managing Documents. Until all Divisions are utilising CaseLines, document management in virtual hearings will require careful consideration. The comments about paper shuffling made above must be borne in mind. It may however be useful to engage with the legal representatives prior to the hearing of the opposed application (in a sense by way of case management) to get the parties to identify particular documents to which reference will be made in argument where the volume is substantial. If this is not possible prior organisation of the space should suffice to enable the judge to deal with documents as she ordinarily would in an opposed application. Screen sharing is an option to be considered but it should be used by the judge with some caution.

6. ORDERS & JUDGMENTS

The only point I wish to emphasize is that relating to the recording of the proceedings, particularly if a judgment is to be delivered ex tempore.

By way of conclusion I wish to highlight a few challenges that we need to recognise. There are three I wish to raise.

The first is that of Open Justice. Court proceedings occur in public and the public has a right of access to the courts not only to engage the courts but also to observe court proceedings. Where court proceedings occur at a given physical location and at known times the 'problem' is easily addressed. However when the proceedings occur virtually open access is potentially compromised. I say potentially because there are mechanisms that can be put in place to provide far greater 'open access' than is available with physical hearings.

I have already mentioned public notice, use of court web pages, invitations to court reporters and live streaming of hearings. If our deployment of virtual court proceedings is to ensure that our courts remain open and accessible then we need to look seriously at these mechanisms. We also need to consider access to court documents (which are public documents) where we deploy digital filing systems. These are important policy issues we need to be discussing as we develop our online system.

The second challenge is Access to Technology. There are two components, technology provision for judges and courts and the question of access of lay persons (particularly the poor and marginalised). Both relate to budget. The economic devastation caused by Covid 19 will play a major constraining role as to what we can achieve in the months and years to come. We need to be creative. Access to justice requires that we draw on the legal fraternity and that we develop common strategies to ensure that our courts are appropriately resourced to guarantee access to all.

The third challenge is Consistency in Practice. While there is room for different responses by different Divisions what is required is a common strategy for dealing with the range of challenges that this pandemic poses to our court systems. A look at the countries where greatest progress is being made suggests that a coherent and conscious central vision plays a crucial role. I would therefore urge that the Heads of Court embrace this challenge and engage judges, practitioners and other stakeholders in a process of planning for a post-Covid administration of justice that draws on the growing body of learning from around the globe. ■

WOMANITY – WOMEN IN UNITY

'Womanity – Women in Unity' is a gender based radio program produced and presented by Dr. Amaleya Goneos-Malka and broadcast by SABC Channel Africa across the African continent and parts of Europe.

> "relaying their personal stories of challenges and triumphs in a bid to inspire the generations that follow

Commemorating Women's Month is an annual occurrence that seeks to shine the spotlight on the achievements of women across varied sectors, professions and disciplines.

Female Judges are no exception. Annually they are requested to shine a light on their personal and collective achievements by taking us on their personal journeys as legal professionals... relaying their personal stories of challenges and triumphs in a bid to inspire the generations that follow.

This year, the Office of the Chief Justice, in partnership with SABC Africa's Channel Africa radio programme called Womanity – Women in Unity, hosted by Dr Amaleya Goneos-Malka, interviewed five female Judges.

The following pages are excerpts from the interview transcripts.

To listen to the full audio interviews please visit the Judiciary website, through this address for more: https://bit.ly/3c8dGnh

JUDGE ANNA MALESHANE KGOELE

MPUMALANGA DIVISION OF THE HIGH COURT
16 JULY 2020

DR. MALKA: To start with, did you always envisage a legal career and eventually being part of the Judiciary?

JUDGE KGOELE: Not at all; I have to explain this a little bit. Yes, coming from a rural village called [Gomogomo] I did not at all have a vision of going to the university.

Initially I thought I would become a switchboard operator during those times, those olden days, but my principal then and the teachers at school had called me to a meeting where they asked me what I was going to do after Matric and I told them about this switchboard operator thing and they immediately started the forms and made me to fill the forms to go to a university and also caused me to apply for a bursary because my mother didn't have means to pay for my schooling, my mother was not working at that particular time.

So, when we were filling those forms, I opted for social worker, I thought that I will be a social worker, but when I arrived at the university unfortunately I could not register timeously and when I found that I couldn't register for social worker, the other students who were from the same school as me just influenced me and said I should do law and that's how I started doing law.

> "what prompted me to pursue law was the injustice which I observed happening in maintenance cases

To listen to the entire interview scan the QR code or go to: https://bit.ly/3iAH1ZZ

JUDGE MOKGERE MASIPA

KWAZULU NATAL DIVISION OF THE HIGH COURT
23 JULY 2020

DR. MALKA: Prior to becoming a judge, you established your own legal practice; Masipa-Nepaul Incorporated and thereafter Masipa Incorporated, you've been an arbitrator as well as a commissioner; what prompted you to pursue law as a career path?

JUDGE MASIPA: Well what prompted me to pursue law was the injustice which I observed happening in maintenance cases when I used to visit maintenance courts with my grandmother when I was young. I was also influenced in growing up by Judge Mokgadi Lucy Mailula, the first African woman to be appointed as a judge in 1995, whom I observed growing through the ranks of being an advocate to becoming a judge. I then believed from that that I could also achieve similarly if I worked hard and focused.

DR. MALKA: You know that aspect about role modelling is so important, one cannot underestimate it, of people being able to see other women achieving in their careers and providing a vision for one to follow through with.

JUDGE MASIPA: Yes it does, it does, in fact, you know, we have a whole lot of other strong women other than Judge Mailula; Judge Thokozile Matilda Masipa, who was the second African woman to be appointed as a high court judge. Judge Yvonne Mokgoro, the first African woman to be appointed in the Constitutional Court in 1994 and people like Judge Mandisa Maya.

> "I was also influenced in growing up by Judge Mokgadi Lucy Mailula, the first African woman to be appointed as a judge in 1995, whom I observed growing through the ranks

To listen to the entire interview scan the QR code or go to: https://bit.ly/3kh9m86

JUDGE TEBOGO DJAJE

NORTH WEST DIVISION OF THE HIGH COURT
30 JULY 2020

DR. MALKA: To begin with, you earned your BProc and LLB from the North West University; you went on to be admitted as an attorney, were appointed Magistrate in Klerksdorp in 2001, became a regional magistrate in Mmabatho in 2004 and in 2013 served as an acting judge and then elevated to the bench as Permanent Judge in 2017. Did you always envisage a legal career and eventually being part of the judiciary?

JUDGE DJAJE: Well yes, if I must say since high school I noticed that we had a few lawyers or practicing attorneys in our community and seeing how difficult it was for community members to access these legal services, I saw that as an inspiration for me to study law, but it did not come easy because, you know, when I was in my final year of high school and I spoke to one of my teachers that I was interested in pursuing a study in the legal field, the response I got from her was that you cannot go and study law because that's not a career for women, you should rather register a bachelor in public administration because that's what women do and that was motivation for me to now seriously pursue a career in the legal field.

But what I initially intended doing was just to practice law as an attorney where I would be representing our people because I saw the struggle that came with not having lawyers in our community who could represent out people or who were easily accessible to our people.

So, I started practicing as such after graduating and serving my articles, I practiced law, later on I went on to join the Law Clinic where I was also doing community service, assisting our indigenous people and also exposing the final law students to the practical side of the legal field and one day I then decided that I wanted to change and go onto the bench and that's when I became a magistrate and that was in 2001 and two years as a district magistrate I realised I wanted more, you know, I wanted to do more and I wanted to achieve; I wanted to help our people more because when you are in the district court as a magistrate, there are cases that you don't do and I wanted to be exposed to more matters in the legal field and that's when I applied to be in the Regional Court.

I served in the Regional Court for some time, from 2004 until I was appointed a judge, an acting judge first, in 2013 and permanently in 2017. So, as my interest grew in the legal field that's when I felt the need to go and do more and advance and achieve in this legal profession, which I enjoy so much.

To listen to the entire interview scan the QR code or go to: https://bit.ly/2ZA0p1K

JUDGE THOBA POYO-DLWATI

KWAZULU-NATAL DIVISION OF THE HIGH COURT
6 AUGUST 2020

DR. MALKA: Can you walk us through some of the key landmarks in your career to reach this point?

JUDGE POYO-DLWATI: I am a judge of the High Court as you've correctly said, I am currently acting in the Supreme Court of Appeal in Bloemfontein, but I still remain the judge of the High Court in KwaZulu-Natal.

I was appointed on the 1st of June 2014; this was after having graduated from my BProc degree at the University of Transkei, it was called that then, but now it's called Walter Sisulu University. After graduating there I came to KwaZulu-Natal and I wanted to study, which I did, I studied my Postgrad diploma in tax and after finishing that I got a place to do my articles of clerkship so that I could be admitted as an attorney.

Fortunately I was able to be exposed to conveyancing and then I was admitted in 1999 in February, I got admitted as an attorney and conveyancer of the High Court of South Africa and then I practiced as a professional assistant at the firm Hoskins Ngcobo at the time and in the year 2000 I became a partner of the firm and we changed the firm name to be Ngcobo Poyo and Diedricks Attorneys; that's where I practiced until I was appointed as a judge in in June 2014. I was a director, I practiced especially in conveyancing in estates and later commercial litigation.

DR. MALKA: Judge Poyo-Dlwati, August is celebrated as Women's Month in South Africa and it's a period of being able to reflect on the gains as well looking towards future change and this year's theme is Generation Equality, Realising Women's Rights for An Equal Future. Thinking about the recent past; in your opinion, what would you say are some of the important equality gains that women have attained?

JUDGE POYO-DLWATI: Thank you, thank you Dr. Amaleya for that question. If you look at the law reports in particular before we even go to generally, there is so much that women have gained. There are so many cases that have allowed women to participate in areas where they were not able to participate before. If you look at the case of the Constitutional Courts, it dealt with the Venda Chieftaincy, the ConCourt made it possible for women to be appointed as chiefs and if you look at the matter that was heard in Cape Town in 2018 and it also ended up in the Constitutional Court, it recognised the spouses in the Muslim marriages, the women in particular, of surviving spouses in terms of the Wills Act. So there are quite a few... In the judiciary itself we've got our first female president of the Supreme Court of Appeal, Judge Mandisa Maya. So, that's quite a gain for women, so and we know that in parliament we've had our first speaker of the National Assembly is a woman, so there are quite various gains that we have got as women in this country.

> “
> **The ConCourt made it possible for women to be appointed as chiefs**

To listen to the entire interview scan the QR code or go to: https://bit.ly/3kius5Z

JUDGE SEGOPOTJE SHEILA MPHAHLELE

MPUMALANGA DIVISION OF THE HIGH COURT
13 AUGUST 2020

DR. MALKA: You've served the High Court of South Africa since 2013 when you were first appointed to the Gauteng High Court, thereafter the Mpumalanga High Court where you've served as Acting Deputy Judge President as well as Acting Judge President; given your experiences with the High Court, can you tell us about some of the functions as well as it's jurisdictions?

JUDGE MPHAHLELE: Mainly, we as judges, it's contained in our oath, it's set out in our oath that we are here to administer justice to all persons alike without fear, favour or prejudice in accordance with the constitution and the law and mainly we deal with the civil matters which exceeds the jurisdiction of the lower courts, as well as serious criminal cases and regarding the criminal cases, the nature and seriousness is determined by the Office of the National Director of Public Prosecution.

DR. MALKA: Do you think that having more women in the justice value chain leads to decisions as well as public policies that are more considerate of issues affecting women, such as equality and employment discrimination?

JUDGE MPHAHLELE: Ya, like I said before, the qualities that we have and what we went through and endured and some of the issues that will arise are the issues that women have experienced themselves. So, women must be better placed to deal with those issues and they bring those values to those divisions.

> "it's set out in our oath that we are here to administer justice to all persons alike without fear, favour or prejudice in accordance with the constitution and the law

To listen to the entire interview scan the QR code or go to: https://bit.ly/3hwNFPH

Judges who have previously been interviewed on the programme

- Judge President of the Supreme Court of Appeal - Justice Mandisa Maya;
- Judge President - Free State High Court South Africa – Judge Mahube Molemela;
- Judge President – North West High Court South Africa – Judge Monica Leeuw;
- Justice of the Constitutional Court of South Africa - Judge Sisi Khampepe
- Judge of North Gauteng High Court - Judge Cynthia Pretorius
- Judge of North Gauteng High Court - Judge Wendy Hughes
- Judge of North Gauteng High Court - Judge Nicoline Janse van Nieuwenhuizen

SPECIAL TRIBUNAL HITS THE GROUND RUNNING

By Selby Makgotho
Spokesperson for the Special Tribunal

THE SPECIAL TRIBUNAL ON CORRUPTION, FRAUD AND ILLICIT MONEY FLOWS

As South Africa grapples with the scourge of corruption, the Special Tribunal of South Africa has been hard at work hearing civil litigation claims, interdicting pension pay-outs to suspected fraudsters, freezing bank accounts and other properties and granting default judgments.

President Cyril Ramaphosa announced the Special Tribunal (in terms of the SIU and the Special Tribunals Act 74 of 1996) and publicly committed it to recover a staggering amount of R14, 9 billion estimated to be lost to corruption over a number of years. The Special Tribunal has a statutory mandate to recover the illicit monies arising out of the proceeds of crime, malfeasance, and fraud and corruption from Government Departments, State-Owned Enterprises (SOEs), as well as District and Local Municipalities in South Africa. Judge Mlindelwa Gidfonia Makhanya, a retired Judge of the High Court in Gauteng, has been appointed on a three-year term to lead the Special Tribunal. He is assisted by seven High Court Judges drawn from different Provincial Divisions, namely:

- Judge Icantharuby Pillay,
- Judge Johannes Eksteen,
- Judge Selewe Peter Mothle,
- Judge Lebogang Modiba,
- Judge Thina Siwendu,
- Judge David van Zyl, and
- Judge Sirajudien Desai.

The first matter that came before the Special Tribunal is one of the SIU and Others v Lekabe[1] which was heard by Judge Makhanya on 21 January 2020. A total of 25 matters are currently before the Special Tribunal. The majority of the cases have gone through the case management process. The case management is a necessary judicial process and aims to achieve the following objectives: avoid delays during proceedings, address inadequacies in the files for the parties, as well as ensuring that cases are ready for hearing.

The impact of the Covid19 on the work of the Special Tribunal

The unprecedented Covid-19 pandemic inadvertently had adversarial effects on the work of the Special Tribunal. At the time, there was an urgent application of SIU and Another v Dr Andrew Thabo Lekalakala[2] scheduled for 30 March 2020. Unfortunately the matter could not proceed due to the lockdown. So too were the issuing of cases as well as the case management process. In the subsequent months (April and May) the work of the Special Tribunal slowed down significantly. The Lekalakala matter came back to the fore and was heard on the 9th July 2020. Judge Thina Siwendu granted judgment the following day[3].

On the 30th July 2020, Judge Peter Selewe Mothle heard an urgent ex parte application in the matter of SIU and Another v Herbert Msangala and 10 Others[4]. In the two matters (Lekabe and Lekalakala), the Special Tribunal interdicted the Government Employee Pension Fund (GEPF) not to pay the pension funds pending the conclusion of the investigations by the Special Investigation Unit. The R130 million Eastern Cape fleet management controversy as well as the R10 million scooter scandal are among the cases that are before the Special Tribunal. So too will many other Covid-19 matters occupy the Special Tribunal in the next few months.

At the end of the three year term, the Special Tribunal should have been able to restore the public confidence, and delivered ground-breaking judgments, orders and/or decisions with an effort to stop corruption in South Africa. ■

Webpage: https://www.justice.gov.za/tribunal/index.html

1. Special Investigating Unit and Others v Kgosiesephuthabatho Gustav Lekabe and others (GP/10/2019).
2. Special Investigating Unit and Another v Andrew Thabo Lekalakala and Others (NW 07/2020).
3. News24 and BusinessLive covered the proceedings live through virtual participation on the 9th and 10th July 2020.
4. Special Investigating Unit and Another v Herbert Msangala and 10 Others (GP 03/2020).

MAGISTRATES COURTS GET CAPACITY BOOST

Twenty nine (29) new Regional Court Magistrates have been appointed in various Regional Divisions across the country. The appointments took effect on 1 September 2020 and are expected to improve the capacity of the Magistrates' Courts to deliver justice.

The appointments were made in the following Magistrates' Courts:

- Soweto (Gauteng Province),
- Brits (North West Province),
- Tlhabane (North West Province),
- Moretele (North West Province),
- Bloemhof (North West Province),
- Taung (North West Province),
- Rustenburg (North West Province),
- Kimberley (Northern Cape Province),
- Thohoyandou (Limpopo Province),
- Mhala (Mpumalanga Province),
- eMkhondo (Mpumalanga Province),
- Worcester (Western Cape Province),
- Oudtshoorn (Western Cape Province),
- Port Elizabeth (Eastern Cape Province) x 4,
- Mdantsane (Eastern Cape Province),
- Mthatha (Eastern Cape Province),
- Bloemfontein (Free State Province),
- Heilbron (Free State Province),
- Kroonstad (Free State Province),
- Durban (KwaZulu Natal Province) x 2,
- Verulam (KwaZulu Natal Province),
- Port Shepstone (KwaZulu Natal Province),
- Pietermaritzburg (KwaZulu Natal Province),
- Umzimkulu (KwaZulu Natal Province), and
- Vryheid (KwaZulu Natal Province).

The appointments were made by the Minister of Justice and Correctional Services, Mr Ronald Lamola, after consultation with the Magistrates Commission.

In a media statement issued by the Ministry of Justice and Correctional Services, Minister Lamola noted that it was important for the Magistrates' Courts to work well in order to build trust and confidence in the justice system. He said the appointment of these Regional Magistrates would increase capacity and help to optimize service delivery in Magistrates' Courts. ■

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> **The appointments took effect on 1 September 2020**

> “Judge Jaji was a dedicated bastion of the Constitution and rule of law


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

A TRIBUTE TO JUDGE PATRICK JAJI

By Judge President Selby Mbenenge

Eastern Cape Division of the High Court

On 12 July 2020, the South African Judiciary lost one of its own, Judge Patrick Jaji of the Eastern Cape Division of the High Court. Following his untimely passing, the Judge President of the Eastern Cape Division of the High Court, Judge Selby Mbenenge, issued a tribute to Judge Jaji on behalf of the South African Judiciary. We reprint the tribute below in honour of Judge Jaji.

On behalf of the South African Judiciary, Judge President Selby Mbenenge, Judge President of the Eastern Cape Division of the High Court, has passed his condolences to the family and friends of the late Judge Patrick Jaji, who passed away on 12 July 2020. The Judges and staff of the Eastern Cape Division were shocked to learn of the sudden and untimely death of Judge Jaji. He had tested positive for COVID-19 and had been subsequently hospitalized.

Commenting on his passing, Judge President Mbenenge said “The effects of the COVID-19 pandemic have now reached the doorstep of the Judiciary in a very real and saddening way. Judge Jaji was a dedicated bastion of the Constitution and rule of law. His untimely death robs us of the opportunity to experience his future contribution to the Judiciary.” Judge Jaji was permanently appointed to the High Court on 1 November 2017. Prior to his elevation to the Bench he served as an attorney from 1996-2010.

He graduated from of the University of Durban Westville (Now University of KwaZulu-Natal), where he obtained his B. Proc and LL B degrees. In 2003 he obtained an MSc in Transport and Maritime Management, from Antwerp University in Brussels.

In 2015 he was appointed as a Magistrate in Cape Town until his permanent appointment as a Judge in 2017. He was previously appointed as an Acting Magistrate (2010-2015), then as an Acting Judge in the Free State Division of the High Court, Bloemfontein (2014); and the Eastern Cape Division High Court, Grahamstown and Port Elizabeth (2017). Judge Jaji’s loss will be deeply felt by his colleagues and the staff in the Eastern Cape Division of the High Court.

The Judiciary extends its heartfelt condolences to his wife, his children, family and friends. ■

May his soul rest in peace.

OUR COURTS, OUR HERITAGE

The country marked Heritage Month in September and Heritage Day on 24 September to celebrate our nation's diverse culture and heritage. In line with this commemoration, we share once more with the readers the heritage linked to the buildings that house the Constitutional Court, the Supreme Court of Appeal, and the Palace of Justice.

CONSTITUTIONAL COURT

Nestled between the Hillbrow, Parktown and Braamfontein, Constitution Hill is a historically rich site which is the home of the Constitutional Court, South Africa's apex court.

The court is a deeply symbolic and significant site, it was inaugurated by President Thabo Mbeki on Human Rights Day in 2004 - part of the celebration of 10 years of democracy.

The court emphasizes the synergy between the public (the people of South Africa) and the importance of the court being rooted in the South African landscape. Though dignified and serious, it was intended to be welcoming and open, a structure to make the public feel free to enter, and safe and protected once inside.

Of the hundreds of thousands of people that were jailed there, were famous figures such as Mahatma Gandhi, Albert Luthuli and Nelson Mandela. The prison was closed in 1983, leaving a scar on Johannesburg's metropolis - a bleak reminder of our painful past. It is unusual for a court to be built on the site of a prison, yet the Constitutional Court's Justices deliberately chose the Old Fort - for the very reason of its history.

Creating a site where remembrance and democracy to co-exist, the court chamber itself and Constitution Square have been constructed on the site of the awaiting-trial block, which was built in 1928 and demolished to make way for the Court. The architects have commemorated this important building by keeping four of its central stairwells and by using its bricks in the walls of the chamber.

"The court represents the conversion of the negative, hateful energy of colonialism, subjugation and oppression into a positive, hopeful energy for the present and the future; a celebration of the creative potential of our people that has given us an architectural jewel. Constitution Hill also makes the statement that central Johannesburg will continue to grow and thrive, no longer a place of segregation and urban decay, but a leader in our country and continent as the city of the future." - President Thabo Mbeki (21 March 2004). ■

"The court emphasizes the synergy between the public (the people of South Africa) and the importance of the court being rooted in the South African landscape

SOURCE:

https://www.constitutionhill.org.za/pages/building-the-constitutional-court

https://www.concourt.org.za/index.php/about-us/the-building

SUPREME COURT OF APPEAL

The court is the successor to the Appellate Division (AD) and was originally constituted in 1910 as the final South African court of appeal on the establishment of the Union of South Africa. With the creation of the Constitutional Court and the enactment of section 166 of the Constitution, 1996, the name of the court was changed to the Supreme Court of Appeal (SCA).

Originally the head of the court was the Chief Justice, but that changed in 2001 when the head of the Constitutional Court became the Chief Justice. The head of the SCA is now called the President of the SCA.

From 1910 the court used the chamber and accompanying suite of rooms in the Raadsaal, the building across the road in President Brand Street to the east of the current building. The Raadsaal was used by the legislative council in the Orange River Colony from 1907 to 1910 and at Union became the seat of the provincial council. It is now the seat of the provincial legislature of the Free State. In 1929 the Court moved to the present building, which was opened on 10 October 1929 by the Minister of Justice, Oswald Pirow KC. At the ceremony Jacob de Villiers, who was acting Chief Justice after the death of Sir William Solomon, said courts everywhere 'stand between the subject and the abyss.'

The original building was designed in a free Renaissance style by J S Cleland, the Chief Government Architect, who was also responsible for many other major public buildings in South Africa. The oldest part was built with sandstone from Ladybrand, the newer western wing with sandstone from Ficksburg, and the latest extension with sandstone from Mookgophong in Limpopo. On each occasion, the extensions were constructed so as to preserve the style and appearance of the building as far as possible.

> The two oldest works in the library are both dated 1544

The furniture and wall cladding in the two original courtrooms and the library are in stinkwood (ocotea bullata), a scarce and valuable indigenous tree. Above the main entrance and set in stone is, in the words of Jacob de Villiers, acting Chief Justice of South Africa, at the opening of the court: '... the Helmet of the armour of Faith, symbolical of the nation's fast faith in the justice and the power of the law; the Keys of Emancipation from Tyranny, where there is no law; and the Lamp and the Torches of Truth'.

The reference to the Helmet of the armour of Faith appears to be a reference to Paul's letter to the Ephesians in which he urges them to put on the whole armour of God including the 'helmet of salvation'. The south entrance bears the head of Minerva, the Roman goddess of wisdom and protector of art and science, and the northern door, that of Jupiter, the head of the Roman pantheon.

The building was a National Monument under earlier legislation and is now a National Heritage Site. Housed on the upper floor of the building, the Library itself is on two levels. The original Library consisted of a single chamber with alcoves on both sides, together with an upper gallery. The Library has now been considerably extended, and has an additional wing made up of what were formerly judges' chambers.

The Library houses approximately 43 000 volumes, of which about 4 000 titles are 'old authorities' which consist, for the most part, of the writings of the Dutch and Continental jurists of the 16th, 17th and 18th centuries. The two oldest works in the library are both dated 1544. These are the complete works of Bartolus (1313-1357) in ten volumes and those of his pupil, Baldus (1327-1400).

Written in Latin, they provide a commentary on the Corpus Juris Civilis of the Roman Emperor Justinian. Another unique item is the Tractatus Universi Juris, compiled at the end of the 16th century on the instruction of Pope Gregory. These works are not merely of antiquarian interest. Given the unique status of the 'old authorities' in the South African legal system, they are still consulted and occasionally referred to in judgments of the Court.

In the corridor leading to the Library hang photographs of the chief justices and most of the judges of the Court since its inception in 1910. There are paintings and busts of a number of the legal giants of the past, including the busts of South Africa's first five chief justices. ■

SOURCES:

https://www.supremecourtofappeal.org.za/

PALACE OF JUSTICE

Launched in 1897, the Palace of Justice is trove of South Africa's history designed by Dutch architect Sytze Wierda and built by John Munro, the palace is a monument to colonial opulence with an eclectic Wilhelmines style and Italianate influences.

The construction of The Palace of Justice was interrupted by the Anglo-Boer War, shortly before it was used as the Transvaal Supreme Court, the incomplete palace was taken over by military authorities and turned into a hospital (known as Irish Hospital) for British troops during the Anglo-Boer (South African) War.

The building has played host to many important trials, including the Rivonia Trail of 1964 at which Nelson Mandela and other prominent persons were sentenced to life imprisonment.

> "The building has played host to many important trials, including the Rivonia Trail of 1964

> In addition to the messages left behind, the walls carry a list of prisoners who have come through the spartan cell, including Tokyo Sexwale, Mosiuoa Lekota and Saths Cooper.

Since then, the building has seen many historically significant trials enter its doors. Fourteen steps below the famous dock and in the depths of the Palace of Justice is an austere corridor leading to the holding cells where Madiba and his fellow accused were detained.

Chief among them is a 5m x 7m room with a bare concrete floor, one narrow barred window, a wide ventilation shaft against one wall, and a heavy door with a turn handle and peephole. Coated in graffiti by generations of political prisoners, the musty, peeling walls bear messages of protest as well as the preamble to the Freedom Charter – a set of principles that laid the basis of the democratic dispensation which South Africans enjoy today.

“There comes a time in the life of any nation where only two choices remain - whether to submit or fight,” reads one of the messages. Another states: “My dream is to be free, one love.” Next to a drawing of a hangman’s noose is a vehement proclamation: “Detention or no detention, imprisonment or no imprisonment, death or no death, the struggle shall continue to re-vindicate the right of our people. Mayibuye I Africa. Amandla.”

In addition to the messages left behind, the walls carry a list of prisoners who have come through the spartan cell, including Tokyo Sexwale, Mosiuoa Lekota and Saths Cooper. The quaint interior boasts British floor tiles, a Dutch stained-glass ceiling, ornate sconce lamps, carved dark wood dais for the judge and a jury box with red leather seats that have been vacant since the South African jury system was abolished in 1969.

Today, the Palace of Justice is used as the headquarters of the Gauteng High Court. At the forefront of legal transformation and excellence, the Gauteng High Court has hosted a number of epoch-making cases. ■

SOURCES:

http://www.dutchfootsteps.co.za/palaceofjustice.html

https://www.southafrica.net/za/en/travel/article/beyond-a-reasonable-doubt-the-palace-of-justice-warrants-a-visit

https://www.artefacts.co.za/main/Buildings/bldgframes.php?bldgid=169

SPECIAL APPOINTMENTS/ COMMISSIONS

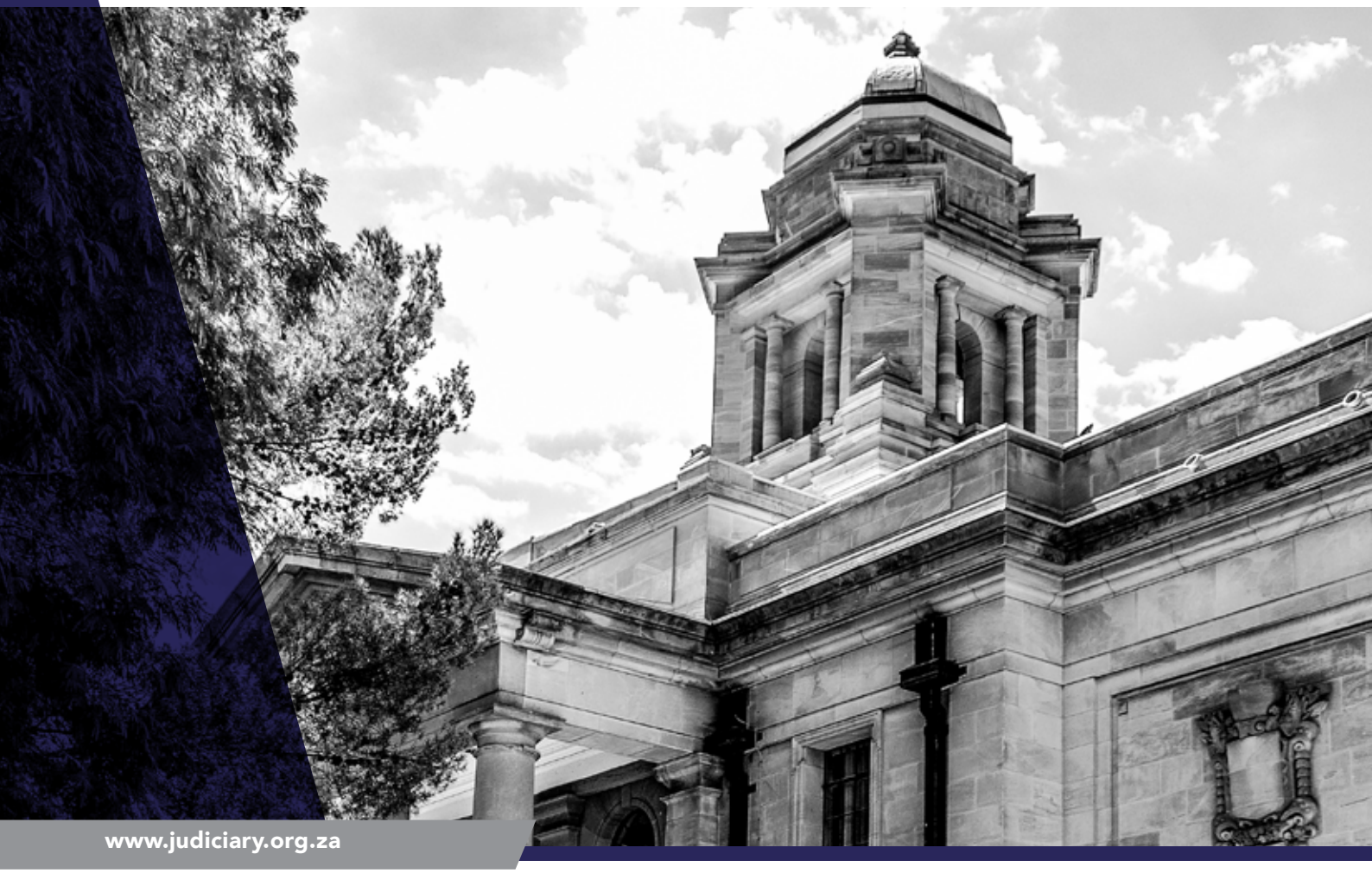
Justice Baaitse Elizabeth Nkabinde

Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002).

Justice Ntlupheko James Yekiso

Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of the State.

Photo source: http://jics.dcs.gov.za



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