



# JUDICIAL EDUCATION NEWSLETTER SOUTH AFRICA

MARCH 2020

ISSUE 7



# TABLE OF CONTENTS

1.	EDITORIAL TEAM.....	2
2.	FROM THE DESK OF THE CEO.....	3
3.	FROM THE DESK OF THE EDITOR-IN-CHIEF.....	4
4.	RECENT JUDGEMENTS AND COMMENTS.....	5-6
5.	NORMS AND STANDARDS CORNER.....	7
6.	NEWSFLASH.....	8
7.	COVID-19 PANDEMIC	
	7.1 COVID-19: A FEW DAYS INTO LOCKDOWN.....	9
	7.2 COURTS OPERATING SMOOTHLY DESPITE COVID-19.....	10
	7.3 COVID-19: COMMITMENT TO MY OATH OF OFFICE .....	11
	7.4 UNDERSTANDING THE IMPLICATIONS OF REGULATION 4 APPLICATIONS FOR WARRANTS: GG 318 OF 18/03/2020 FOR MAGISTRATES' IN SOUTH AFRICA : A SIMPLIFICATION OF CONCEPTS.....	12-13
8.	TRAINING OF NEWLY APPOINTED DISTRICT MAGISTRATES: FEBRUARY 2020 INTAKE.....	14
9.	AMENDMENT TO MAGISTRATES COURT RULE 14 IN RESPECT OF SUMMARY JUDGMENT APPLICATIONS.....	15
10.	TRIBUTE TO THE LATE SENIOR MAGISTRATE AND HEAD OF COURT, PINETOWN, MR THEMBA NICHOLAS SISHI.....	16

## CONTRIBUTIONS BY SAJEI TEAM

11.	COVID-19 RELATED OFFENCES.....	17
12.	SAJEI TRAINS 203 NEW DISTRICT COURT MAGISTRATES.....	18
13.	SWEARING IN CEREMONIES OF NEWLY-APPOINTED DISTRICT MAGISTRATES.....	19-21
14.	THROUGH THE EYE OF AN EVENT COORDINATOR: 2020 SAJEI ADVANCED ASPIRANT JUDGES WORKSHOP.....	22
15.	SAJEI RIDING THE 4 <sup>TH</sup> INDUSTRIAL REVOLUTION (IR) WAVE.....	23
16.	IN MEMORIAM: MR M. XOLO, REGIONAL MAGISTRATE AND MR T. SISHI, SENIOR MAGISTRATE.....	24
17.	LIST OF STRUCK OFF THE ROLL LEGAL PRACTITIONERS .....	25-33
18.	NEW APPOINTMENT OF PA TO SAJEI CEO: MR KARABO MOKGANYA.....	34
19.	UPCOMING WORKSHOPS .....	35-39

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# FROM THE DESK OF THE CEO



**Dr Gomolemo Moshoeu**

**CEO of SAJEI**

This issue is published at a historic moment in time globally. COVID-19 as a life threatening pandemic has impact on all aspects of life, including Judicial training. In February 2020, SAJEI completed the training of 203 newly appointed District Magistrates over a period of a month. SAJEI is ever grateful for the immense contribution of the Chief Magistrates and Facilitators towards this training. The support rendered by the SAJEI Event Co-ordinators and Law Researchers did not go unnoticed.

SAJEI received a number of contributions for this newsletter on COVID-19 and training of new District Magistrates from Magistrates and the SAJEI team. We are especially thankful for the contributions of the newly appointed District Magistrates and appreciate their efforts in supporting this Newsletter. May they continue to do so during their careers. As SAJEI's CEO, I acknowledge the positive energy shown by the SAJEI team through contributions and wish them well as budding writers.

# FROM THE DESK OF THE EDITOR-IN-CHIEF



**Mr TV Ratshibvumo**  
**Editor-in-Chief**

Covid-19 is finally upon us. This is unlike any attack by any virus in the past in our lifetime. As members of the Judiciary we have to lead from the front even in the face of a disaster. As our services are essential, we are part of those who have to be brave and face the risks head on and serve our people. This we can do with great care by looking after ourselves, treating everyone we meet including ourselves as if we have already tested positive.

This virus does not discriminate based on status, social standing, race or religion – for it does not respect whether people have gathered for purpose of worship or for enjoyment. It also does not distinguish between first world and third world countries, whether developed or developing. In fact it is shocking to see countries worldwide with established health systems brought on their knees while the developing Africa is currently in a lockdown, learning from those countries that have applied lockdown and the viral infection under control. The first victim in South Africa to succumb to this virus was treated at a private facility while many others remain under treatment in both private and public institutions. Like in Titanic pandemonium, life divided us into various classes, but we face death as one class, the human class.

It is our responsibility as Magistrates to lead the decreed lockdown from the front. The orders and directives prescribed by our Judicial Heads are meant to protect us and the public we serve. Members of the public need to learn from us that laws of the country need to be obeyed without threats from the law enforcement agencies. We owe it to our survival as a human race to do so. As leaders, we do not abuse our permits but we choose to use them only for what they were issued for. In doing so, we can expect the same from the public and that way we work together to flatten the curve of infections.

It is also our responsibility to let the public see the silver lining in the dark cloud, light at the end of the tunnel and laughter amidst grief. It is our choice to see the lockdown as house arrest or an opportunity to be with our families. I choose to see this as an opportunity to take a break from our heavy schedule as Judicial Officers. We seldom have time to do anything and to attend to important chores at home, all because of our work. Now we have the opportunity to bond with our kids and all housed under our roof, a chance to read some more, do research, spend more time on outstanding judgements and come out of this lockdown more knowledgeable. As a bonus, this can also be the time to fix that which was falling apart at home whilst we were buried in our busy schedules. Once we embrace these positives and find a way to appreciate the challenge we face, then we will survive this lockdown, not only physically but mentally too. We can even prepare our minds for a real possibility that the lockdown can be extended before a lasting solution can be found.

This too, shall pass. I pray that when we meet on the other side of the storm and the lockdown is over, we as members of the Lower Court Judiciary will all be accounted for. May God guide our leaders and protect us all!

**Reminder:** Every Magistrate is welcome to contribute by writing articles on law, judgments analysis or any topic that can enhance the judiciary. Articles will be reviewed by the Editorial Committee before publication. Articles need not exceed 600 words (two pages). You are all encouraged to contribute to your newsletter.



# RECENT JUDGEMENTS AND COMMENTS



**Mr TV Ratshibvumo**

**Regional Magistrate, Johannesburg**

On appeal, the full court found no causation between the Magistrate's order and the refusal by the Correctional Services officials to release the accused. Equally, no malice could be found on the Magistrate refusing to hear bail application in that forcing a hearing in a language not understood by the accused and in the absence of a legal representative would have gone against her constitutional rights. Appeal was upheld and the claim was dismissed.

## I.

***Habib v Du Plessis* (Case no. A117/2015, Date: 23 March 2020, Gauteng Pretoria).**

Regional Magistrate Habib had remanded a case with the accused in custody over the Easter Weekend. Although the matter was before her for Schedule 5 bail application (which the State did not oppose), she did not hear it as the accused spoke only Afrikaans, a language she was not well conversant with, the interpreter had already left and the legal representative was not allowed to appear for not being properly dressed (dressed like going on a "road trip"). The High Court was approached the same day and bail was fixed, overruling the earlier detention order by the Magistrate. The accused was however not released because the officers in the Department of Correctional Services could not verify the authenticity of the High Court order. The accused had successfully sued the Magistrate and the Minister of Correctional Services for unlawful detention.

## II

***Mabunda Incorporated & Others v RAF* (15876/2020) [2020] ZAGPPHC 47 (27 March 2020):**

In one of the first judgments to be handed down electronically due to the National State of Disaster declared by the President, RAF's attempts to move away from litigation by panel attorneys was given thumbs up. Forty three law firms brought an interdict application against the RAF trying to force it to continue using the panel attorneys in third party litigation when their contracts come to an end in May 2020. RAF opposed the application claiming that the current litigation model was unsustainable and causing the Fund billions of rands in legal fees for matters that eventually get settled. RAF hopes to save up to R10 billion in settling over 98% of the claims against it and referring others to mediation. The interdict was dismissed with costs and a counter application to force one of the forms to return the files to RAF was allowed.

## III.

***S v Nxele* ((271/19) [2020] ZASCA 6 (12 March 2020)).**

A 19 year old scholar was convicted of murder in which he shot and killed a taxi owner after he was hired for R10 000. The High Court sentenced him to life imprisonment following a trial and a conviction. The indictment had made no reference to sec 51(1) of Act 105 of 1997 – a provision for mandatory life imprisonment in case of premeditated murder. The appeal challenged the sentence in that the imposition of life sentence without it averred in the indictment was a misdirection.

The SCA dismissed the appeal finding no misdirection as the common law penal jurisdiction for the High Court extends to life imprisonment even without reliance on Act 105 of 1997.

## IV.

***S v Ndlovu* (Case no. 05/2013, Gauteng Johannesburg, Date: 10 March 2020).**

For some years now, High Courts have always found a reason to bypass *S v Mahlase* [2015] JOL 32894 (SCA) decision [see for example *S v Cock*; *S v Manuel* 2015 (2) SACR 115 (ECG) and *S v Khanye* (A66/2015) [2017] ZAGPJHC 320 (13 March 2017) where the courts did not follow *Mahlase* suggesting it was wrongly decided]. In *Mahlase*, the Supreme Court of Appeal had held that for the prescribed sentence of life imprisonment to apply in cases of gang rape, the co-perpetrators should have been arrested and convicted too. In *Ndlovu*, the High Court did not follow *Mahlase* and this time it may have found a lasting solution in invoking the recent judgment of *S v Tshabalala* by the Constitutional Court where common purpose was found to be also applicable in rape matters. In essence, *Tshabalala*, so held Fischer J, reverses the *dicta* in *Mahlase*.

# NORMS AND STANDARDS

## Norms and Standards Corner

Extract from Norms and Standards for Judicial Officers issued by the Chief Justice of the Republic of South Africa:

### 5.2.2 Assignment of Judicial Officers to Sittings

- (i) The Head of each Court must assign Judicial Officers for the hearing of cases. Such allocation must be done in an equitable, fair and balanced manner and must as far as practicable, be effected in transparent and open manner. Exchange of cases between Judicial Officers is to be done through, or in consultation with, the Head of Court or a Senior Judicial Officer assigned for that purpose.
- (ii) The Head of each Court must ensure that there are Judicial Officers assigned for all sittings so that cases are disposed of efficiently, effectively and expeditiously.
- (iii) Every effort must therefore be made to ensure that an adequate number of Judicial Officers is available in all courts to conduct the court's business.
- (iv) The Head of each Court must ensure that a written record is kept of vacation and other leave, or extraordinary absence affordable to all Judicial Officers.
- (v) Where applicable, during each recess period the Head of court must ensure that an adequate number of Judicial Officers are available in that court to deal with any judicial functions that need to be dealt with.
- (vi) Recommendations for the appointment of acting Judicial Officers to a court must be made in instances where a Judicial Officer is not available to conduct the duties of that court for whatever reason, or as the need may arise, for example to address the backlogs.
- (vii) The Head of Court may from time to time assign other judicial or related duties to another Judicial Officer
- (viii) A Judicial Officer shall not absent him or herself without the permission of the Head of the Court or a designated Judicial Officer where applicable.





## Newsflash

The prescribed Rate of Interest has been changed to 9.75% as from 1 March 2020 in terms of Government Gazette 4318 dated 27 March 2020.

# COVID-19: A FEW DAYS INTO LOCKDOWN



**Ms Chetna Singh**

**District Magistrate, Evander**

On the 23<sup>rd</sup> March 2020, shortly after the declaration of a National State of Disaster, President Ramaphosa announced the implementation of a national lockdown in South Africa, the first restrictive measures imposed since the dawn of democracy in 1994.

The effect of the announcement led to the passing of a number of legislative pieces, in which cabinet worked swiftly to create a draft set of Regulations, later to be finalized and consolidated. It also led to panic and confusion as lawyers (and the like) debated just how far a legal representative could be said to be “essential to the running of the court” insofar as case management, the jealously guarded territory of the presiding officer concerned, had been subverted in favour of Disaster Management Regulations.

Insofar as the Judiciary was concerned, Courts were required to remain open in response to various legal challenges that could be brought as a result of the President’s announcements concerning this National Disaster. Indeed, in due course, legal challenges relating to the Disaster Management Regulations were mounted in the hope of, as in the case of *Ex Parte Van Heerden*, overturning bans on travel restrictions, to the application for direct access to the Constitutional Court, brought by an organization calling itself the *Hola Bon Renaissance Foundation* (“HBRF”)

The District Courts, often described as the coalface of the justice system, diligently remained open to service the Criminal and Family divisions of the Courts. Shortly after the announcement, Chief Justice Mogoeng Mogoeng delegated his powers. The overall effect was that each Head of Court would be free to determine its own directives within the ambit of the prevailing legislation.

For the Magistracy, it remained imperative that Judicial Officers received permits under Regulation 11B allowing the Magistrate to perform duties without the threat of penal sanction.

For many, a rotational system was adopted, equalizing the balance of work. Others, who lived in one Province but travelled to another for work purposes, were exempted during the lockdown period from travelling to work and therefore stayed at home.

The Criminal Courts, aware of the directives relating to postponements in Criminal cases, processed accused persons carefully according to their status (*viz* in custody or on bail or warning) within the ambit of the final Regulations. This proved to be an exercise in the application of judicial discretion, almost all matters except first appearances were postponed to dates after the anticipated end of the lockdown.

The Domestic Violence sub-division of the Family Courts remained open to process new applications for domestic violence. It is imperative that the Domestic Violence court is given priority in order to curb the scourge against violence on vulnerable groups. Gender Based Violence (“GBV”) is diametrically opposed to the ideals of social-distancing and isolation in a home-based environment with an abusive partner, which may prove to be an outlet for disaster and a barrage of applications. At this stage, the applications for Domestic Violence (DV) is increasing phenomenally. Statistics indicate a global increase of 30% to 40% of new applications, whilst in South Africa about 148 persons have already contravened the existing DV orders since lockdown.

What is predictable is the commitment and bravery of each court personnel, from the front-desk security to the court orderlies, as well as the prosecutors and clerks who made a personal effort on all fronts, to wear their face masks, and/or gloves, as well as regularly sanitize during adjournments. Most importantly, to treat each individual as they appeared before the Court, with dignity as enshrined in s10 of the Constitution, despite the presence of the unknown killer COVID-19.

# COURTS OPERATING SMOOTHLY DESPITE COVID



Exactly a month ago 203 newly appointed Magistrates were dispersed to every nook and cranny of the Republic of South Africa.

The 2 March 2020 heralded a new era in their lives as they took their oaths of office to form an integral part of the judiciary and to uphold the Constitution of the Republic of South Africa. The words set out in Section 9 of the Magistrates Court Act 32 of 1944, as amended, reverberated in many Courts as they solemnly repeated ".....and without fear, favour or prejudice in accordance with the Constitution and the law"

Barely three weeks in their new domain, uncertainty surfaced regarding the functioning of the judicial system as a result of the Disaster Management Act 57 of 2002 being promulgated together with the Regulations.

The prevention and combating the spread of COVID-19 in all courtrooms, court precincts and justice service points was hot on the lips of the legal fraternity. Following the declaration of a national 21 day lockdown, the functioning of courts and Judicial Officers was classified as essential services.

Manfully and in keeping with their oath of office, Magistrates have reported to their Courts, and they are dealing with Court rolls of between 50 and 60 first appearances. Whilst the lockdown is necessary, an equal call is made for additional measures to protect Magistrates.

Following closely on the heels of the legal system in Europe, unlike our British counterparts who are gearing up to celebrate the investiture of Queen's Counsels, the decision to have no Court shutdown over Corona virus is appropriate and rightly so.

Notwithstanding adversity, calamities and catastrophes never lose FAITH for the Lord knows best the outcome of our destiny.

Remember" Dulce et decorum est, pro patria mori."

**By: Pramil Rajcoomar**

**District Magistrate Pretoria**





# COMMITMENT TO MY OATH OF OFFICE



**Ms Leeander Carolus**

**District Magistrate, Vanderbijlpark**

Over the past two weeks, news of COVID -19 has consumed the minds of South Africans and people around the world alike. Social media, television adverts, radio news, and word of mouth, gave and gives us statistics that we are unable to comprehend about the disease. Despite this, seemingly the virus is marching relentlessly over the seas and sand which covers our beautiful land.

On a daily basis, I sit on the bench in a packed court of people, not knowing whether the enemy has made its way into our territory. While I must administer justice in a fair, efficient and expeditious manner, without fear, favour or prejudice, my mind cannot help but to think how COVID-19 is unfairly, and speedily taking over how I have taken an oath to uphold the Constitution of our country.

Inundated with directives and rules which are able to change without timeous notice, I take pride in the fact that I am an essential worker. Therefore, I discharge my responsibilities despite the Presidents call for South Africans to stay at home during the period of lockdown. I am proud to say that I am able to assist in administering justice to those who are in need of assistance in this uncertain time.

As a recently appointed Magistrate, I now realise the absolute important responsibility that I have in administering justice. Awaiting trial detainees have been my main concern over the last two weeks. I have had the eye opening experience to have visited the correctional centre where the inmates are detained and now, more than ever, do I work even harder and smarter to see that their matters are finalized as speedily as possible.

Vulnerable persons such as women and children are also a concern as we enter the period of lockdown, they are mostly confined to homes which are not safe spaces. The current crisis will inevitably cause disruption in the court system and all its outcomes, but working together with the common goal of dispensing matters fairly will have to be another factor that essential service employees must look forward to.

Covid-19 has had a shocking effect on the administration of justice in a short period of time and with the uncertainty of how long the pandemic will last, we can but only take things one day at a time. For now, I will maintain and practice social distancing, put on my gloves and mask if necessary, wash my hands with sanitizer and soap, and maintain a positive attitude that if we work together and follow instructions and directives, that we will win the war against the disease. ... Nkosi Sikelele iAfrica.

# UNDERSTANDING THE IMPLICATIONS OF REGULATION 4 APPLICATIONS FOR WARRANTS: GG 318 OF 18/03/2020 FOR MAGISTRATES' IN SOUTH AFRICA: A SIMPLIFICATION OF CONCEPTS



**Mr Boitumelo Chulu**  
**Senior Magistrate, Ditsobotla**

The interest of this paper is on Regulation 4 as appearing on Government Gazette No. 318 of 21/03/2020. Regulation 4(1) was amended by Regulation 5 in Government Gazette No. 11062 dated 25 March 2020. The amendment only relates to a competent Court instead of a Magistrate only being approached for a warrant. The new amendment also created an annexure for the order of court in this regard.

It is important for Magistrates to appreciate the profundity of implications of the lockdown phenomenon; to also appreciate the prescripts or guidelines from other government agencies in related matters, like the National Institute for Communicable Diseases draft guidelines in response to COVID-19; and ultimately to be awake to social context issues under these trying times. It must also be borne in mind that the situation requires pro-activeness and a tipping of the scales towards greater public good as opposed to individual comfort and resultant contribution to public hardship.

The term Enforcement officer is defined in the Regulations as including a member of the SAPS; SANDF; and a Peace Officer as defined in Section 1 of the Criminal Procedure Act 51 of 1977. To these members may approach a court with evidence on affidavit or affirmation applying for a warrant under Regulation 4. The number of persons who can make this application is strictly specified.

The application does not have to be served on the “respondent patient”. The content of the evidence placed before the deciding judicial officer should clearly disclose the basis for the application, which should clearly be in line with what the regulation prescribes. The person suspected of being exposed or “the infected patient respondent” must on credible information have been exposed as such or infected. Bare disclosures to this effect may not suffice. The regulation itself specifies laboratory confirmed cases, amongst others. There should be preliminary test results of some sort. It may be from an actual test conducted on such a “patient respondent” or responses given to a health questionnaire, in cases of a suspicion. It may be that a family member has been found to be infected or exposed and there is a suspicion that the “patient respondent” may be at risk of infection. The suspicion must be reasonable. It may be that the “patient respondent” was in the same space with a person who had recently been found to be infected. The examples might be infinite.

It must be clear that the “patient respondent” is refusing to give consent to be subjected to measures provided for in regulation 4(1) (a)-(c). The “patient respondent” could have fled, could have fought the enforcement officers, could have refused to give them access to their residence or could have flatly threatened harm to anyone who touches or approaches them, etc. A reading of the proviso to this regulation appears to indicate that at the time the application for a warrant is made, if the application is for the “patient respondent” to be subjected to medical examination, the “patient respondent” would already have been forcefully placed under isolation or quarantine for a period not exceeding 48 hours.

# UNDERSTANDING THE IMPLICATIONS OF REGULATION 4 APPLICATIONS FOR WARRANTS: GG 318 OF 18/03/2020 FOR MAGISTRATES' IN SOUTH AFRICA: A SIMPLIFICATION OF CONCEPTS

The forceful isolation and quarantining for 48 hours for purposes other than for medical examination does not seem to be sanctioned by the proviso to the regulation. This might have been an omission by the drafters.

The application for the warrant in question therefor requires careful and diligent consideration. The Magistrate considering the application for the warrant in question has a discretion whether or not to authorize the warrant. Should a warrant be authorized the terms of the warrant must be clear. It should be clear that the enforcement officer is authorized by the warrant to proceed in terms of Regulation 4(1)(a) to ensure a medical examination is conducted. The other provisions and annexure A are clear that Magistrates cannot issue a warrant that relates to a Regulation 4(1)(b) admission to a health establishment / quarantine site / isolation site; or a Regulation 4(1)(c) mandatory prophylaxis, treatment, etc.

The Magistrate may attach restrictions relating to the execution of the warrant. In my view this could relate to the considerations of Ubuntu, dignity and respect during the execution process and the time of execution.

All other considerations generally applicable to applications for warrants, in terms of the Criminal Procedure Act 51 of 1977 and other legislations should still be thought of and applied. Any warrant authorized in terms of this regulation may surely still be contested by any affected party. The challenge may be in the court that issued it or a differently constituted court of similar status in the same district or the High Court.

The authorization may only be done on Annexure 'A' attached to the amendments issued on the 25<sup>th</sup> of March 2020.



# TRAINING OF NEWLY APPOINTED DISTRICT MAGISTRATES: FEBRUARY 2020 INTAKE



**Mr Jaco Van Niekerk**  
**District Magistrate, Tembisa**

People shall perish for lack of knowledge. Words spoken almost 2800 years ago by Prophet Hosea. Heeding this still relevant augury, at Misty Hills in Gauteng the statutorily ordained SAJEI imbizo, involving the biggest single intake consisting of 204 newly appointed Magistrates in the history of SAJEI, captured the month of love to embrace and prepare its fledglings for the judicial road ahead. The holiness of Sunday afternoon, the 2<sup>nd</sup> of February 2020, set in the tranquility of a splendid venue was displaced with the anxious bustling of black and white draped judicial legionaries embarking on a new chapter in their lives. With dignified pomp, the leadership of the Magistracy kicked off proceedings and welcomed all with encouraging words of wisdom. Even the Deputy Minister, Honourable John Jeffery clipped his Sunday routine to add impetus to the event with some more heartening words.

Mindful of our late State President, Nelson Mandela's vision that education is the most powerful weapon which we can use to change the world, the parting of knowledge began. Amidst some nagging deficiencies with laptops, administrative uncertainties and the like, the newest members of the Judiciary commenced the month long solitude with diffident optimism. Bursting with experience and expertise, the Judicial Educators skillfully set about showering bucket loads of knowledge onto the newly appointees. The impression gained, from the onset, was that the seeds of knowledge fell on receptive soil for the

The newly appointed District Magistrates were indeed the proverbial mixed basket: from the old hands who have been on the bench for more than a decade, to real newbies having had exposure to only one field of the law and no presiding experience. But as all, Facilitators and Judicial Educators included, have to concede, something new is always learnt. Being a perpetual student permeates the life of any jurist and ought to be a top priority for any decent judicial officer. In main, there was an air of excitement for most of the time. Not for all though. Accepting the position of Magistrate came with a big bag of inconvenience: Some having to find a new home, a new school for their children and everything that goes with starting a new life at a new place, on very short notice; having to provide for their newly born babies; some to go through the trauma of having lost a loved one. While still having to cope with the barrage of information comprising of essential tools to discharge duties.

But not all was doom and gloom. The luxury of the venue provided some solace. A very exotic restaurant provided exhilaration for the carnivorous adventurers (such as a smoked Crocodile Fillet, Zebra Stew and Blesbok Rump) though some preferred the more traditional tastes. Despite the intensity of the training, opportunities to mingle, forge new allegiances and bonds or just enjoy the reprieves offered at the venue were plentiful.

Overall, a grand production: the selfless support of admin, logistics, IT, human resources, travel and accommodation arrangements, through to the diligent management of SAJEI in making this event possible and the excellent training, which was the core function of it all, must all be applauded.

It's just that with this COVID 19 having overtaken all .... Can we uninstall the current version of 2020.1 and get version 2020.2 – it seems 2020.1 has a virus.

# AMENDMENT TO MAGISTRATES COURT RULE 14 IN RESPECT OF SUMMARY JUDGMENT APPLICATIONS CAME INTO EFFECT ON 16 MARCH 2020

Old Rule 14 of MCR	New Rule 14 of MCR
<b>NOTE THE AMENDMENT DOES NOT APPLY RETROSPECTIVELY</b>	
Under old Rule 14(1) plaintiff, who instituted action based on a liquid document, for a liquidated amount in money, for delivery of specified movable property or for ejectment could have applied to court for summary judgment against the <b>defendant where the latter had delivered notice of intention to defend.</b>	<b>The first significant change</b> is found in Rule 14(1) read with Rule 14(2)(a), which provides that plaintiff cannot institute an application for summary judgment until such time as <b>defendant has delivered a plea.</b> The focus now is no longer on the delivery of notice of intention to defend, but rather on the delivery of a plea.
Rule 14 (2) requires that an application for summary judgment, together with an affidavit must be delivered within 15 court days after the delivery of the notice of intention to defend, <b>by the plaintiff or another person who can swear positively to the facts of the matter or verify the cause of action and the amount, and state that in the opinion of the deponent there is <i>no bona fide</i> defence to the action and that notice of intention to defend has been delivered solely for purposes of delay.</b>	<b>The second significant change</b> is found in Rule 14 (2)(b), which deals with the content of the affidavit, delivered in support of an application for summary judgment. The amended Rule 14, requires the deponent in addition to verifying the cause of action and the amount claimed, <b>must, in addition identify any point of law relied upon and state facts upon which the plaintiff's claim is based. The deponent is furthermore required to explain why the defendant's defence as set out in its plea does not raise any issue for trial.</b>
In terms of the old Rule 14 (2)(d), the application for summary judgment had to state that the application will be set down for hearing on a stated day not being less than <b>10 court days</b> from the date of delivery of the application.	<b>The third significant change</b> is found in Rule 14(2) (c), which provides that plaintiff can set the application for summary judgment down for hearing on a stated day not being less than <b>15 court days</b> from the date of delivery of application.
The old Rule 13(3)(a) provided for security to be provided to the plaintiff by the defendant to the satisfaction of the <b>Clerk of Court.</b>	The new Rule 13(3)(a) provided for security to be provided to the plaintiff to the satisfaction of the <b>Court.</b>
The old Rule 13 (3)(b) provided for the defendant's affidavit to be <b>delivered 1½ before</b> the day on which the application is to be heard.	The new Rule 13 (3)(b) provides for the defendant's affidavit to be delivered <b>5 days before</b> the day on which the application is to be heard.

By: Jinx Bhoola

# TRIBUTE TO THE LATE SENIOR MAGISTRATE AND HEAD OF COURT, PINETOWN, MR THEMBA NICHOLAS SISHI.



**Mr Themba Nicholas Sishi**

Mr Sishi participated in the training and mentoring of Magistrates and Traditional Leaders at the request of the South African Judicial Education Institute. South Africa has lost a man who was deeply committed to our new South Africa.

**By: E Ngubane**  
**Chief Magistrate**

Mr. Themba Nicholas Sishi who was a Senior Magistrate and Judicial Head of Court at Pinetown Magistrate's Court, Kwa Zulu Natal, sadly passed away on 1 February 2020. In his 41 years experience on the bench, he served in various capacities as Prosecutor, Magistrate and Senior Magistrate. He leaves behind his beloved wife and two children

Amongst the dignitaries at his funeral service held on 9 February 2020, was the former Chief Justice of the Republic of South Africa, the Honourable Mr Justice Sandile Ngcobo, who paid a suitable tribute to Mr. Sishi which bears repetition and encapsulates the type of individual he was.

The former Chief Justice referred to Mr Sishi as a calm and respected Judicial Officer who was prudent in exercising judicial power, and firm in defending the dignity of the office.



# CORONAVIRUS-RELATED OFFENCES

Recent media reports regarding Covid-19 virus infected tourists evading authorities, or a departing British Airways plane returning to the airport terminal after discovering a passenger had tested positive for the virus, bring into the spotlight the different kinds of activities associated with the virus that can be prosecuted as criminal behavior.

On 18 March 2020 the Minister of Cooperative Governance and Traditional Affairs signed into law regulations under the Disaster Management Act, 2002 which criminalised certain conduct associated with the spread of the virus. These included refusing to undergo medical treatment or diagnosis procedures, gathering in large groups, or spreading misinformation about the virus. The regulations contained a lacuna, however, and the Minister therefore passed amendments to the regulations on 25 March 2020 – Regulation number 43148 in Government Notice number 11062.

Under the regulations as amended, it is a criminal offence for anyone to convene a gathering, defined as ‘an assembly, concourse or procession’ in or on a public road or ‘any other building, place or premises, including wholly or partly in the open air ...’. Enforcement officers are given certain powers under the regulations, including the power to disperse gatherings and compel individuals to undergo medical testing. It is an offence to hinder, interfere or obstruct an enforcement officer from exercising their powers.

All schools and child care facilities are required to be closed in terms of the regulation 6. Failure to comply constitutes an offence under Regulation 11(2).

If a person deliberately and falsely misrepresents that they or anyone else has the virus, they too commit an offence, as does anyone who deliberately publishes a statement with the intent to deceive another regarding the virus, a person’s infection status or any measures that the government has taken to address the virus. Perhaps most seriously, if a person intentionally exposes another person to the virus, they can be charged with assault, attempted murder or murder as the case may be.

Chapter 2 of the Regulations deals with restrictions placed on the public during the lockdown period, defined in the chapter as in force and effect from 23H59 on Thursday, 26 March 2020 to 23H59 on Thursday, 16 April 2020. Regulation 11B (1) requires that during the lockdown, every person must be confined to their place of residence, unless they are required to perform an essential service, or need to obtain an essential good or service, collect a social grant, or seek medical attention. Travelling between provinces is prohibited, as is travelling between metropolitan and district areas.

All businesses and entities, including retail stores and malls, must cease operation during the lockdown, except those involved in the manufacture, supply or provision of essential goods and services. The regulations include an annexure which lists what constitutes an essential good or service. Those businesses that are permitted to continue operations are prohibited from selling any other goods other than essential goods, and must put in place measures to ensure that their customers keep a distance of one square metre from each other, and adhere to all directions relating to hygienic conditions and COVID-19 exposure.

Regulation 11G provides that any person who fails to comply with the regulations in Chapter 2, is guilty of an offence and liable to a fine or imprisonment for a period not exceeding six months, or both.

**By: Bradley Swanepoel**  
**Law Researcher**

# SAJEI TRAINS 203 NEW DISTRICT COURT MAGISTRATES

During February 2020, SAJEI conducted a month long training conference for 203 Newly Appointed District Magistrates in Gauteng. They were trained on various judicial skills imperative to their new role in the South African judicial system.



## Newly appointed Magistrate during the workshop

The workshop started with a plenary session on the 2nd February 2020. The session chaired by Mr O Krieling, Chief Magistrate Northern Cape and SAJEI Counsel Member. In attendance were the following dignitaries: Mr. John Jeffery, Deputy Minister of Justice & Constitutional Development, Deputy Judge President Aubrey Ledwaba Chairperson of the Magistrates' Commission, Mr. D Thulare Chairperson of the Chief Magistrates Forum, Mr. E Ngubane Chief Magistrate, Durban, Ms S Raphahlelo Chief Magistrate Port Eleberth, and Ms Y Sidlova Chief Magistrate Johannesburg.

On 7 February 2020, The Minister of Justice & Correctional Services Hon Ronald Lamola addressed the Magistrates and highlighted the importance of Judicial accountability and independence. The Minister stated that the Magistrates were at the coalface of the administration of justice.

Prior to the workshop, delegates were divided into four groups, namely King Protea, Springbok, Yellowwood and Blue Crane, according to their professional experience namely; Prosecutors; Attorneys; and those who have acted at the District Court. The groups were rotated on a weekly basis in order to enable them to attend all four streams: Criminal Court Skills, Civil Court Skills, Family Court Skills and Children Court Skills. Participants were also trained on Judgment writing, Court etiquette and basic case flow management. The training included practical exercises, mock trials and procedures. In addition, participants watched short videos to supplement the theory.

The courses were facilitated by 25 experienced Magistrates including four SAJEI Judicial Educators. A total of five Chief Magistrates rendered mentoring during the training. The participants provided online evaluation feedback on the topics, facilitation logistical support. In sum, the feedback was positive although there were few challenges listed.

In the near future SAJEI research team will be conducting field work research to determine the impact of training and identify gaps for future training. SAJEI officials will be looking forward to interacting with Magistrates during the field work as they progress through their Judicial career.

**By: Bradley Swanepoel & Sizo Sokhela**

# SWEARING IN CEREMONY OF NEWLY-APPOINTED DISTRICT MAGISTRATES

On the 2<sup>nd</sup> of March 2020, the newly appointed District Magistrates reported for duty at their respective offices. The swearing-in ceremony took place at these offices in compliances with: Section 9 (2)(A) of the Magistrates Court Act 32 of 1944. SAJEI was pleased to receive photos of swearing-in ceremonies that took place in Palmridge, Johannesburg, Germiston and Kimberley. This was evident of the unwavering support and loyalty of the Facilitators' during month-long training in February.

Judicial education cannot be successful without the leadership of the Chief Magistrates and the support of the Facilitators. SAJEI appreciates the mentoring support provided by Ms Sibongile Raphahlelo, Mr Edmond Ngubane, Ms Yoliswa Sidlovu, Ms Elmarie De Klerk, Mr Oswald Krieling, and Mr Irfaan Khalil. The objectives of the training would not have been achieved without the participation and commitment of the newly appointed District Court Magistrates.

## PALMRIDGE



**Mr Saunders; Mr Kroukamp; Mr Hlubi; Ms Polo; Ms Mushi; Ms Saulse; Mr Naidoo; Ms de Klerk (Chief Magistrate); Ms Singh; Mr Shelane; Mr Booysen & Mr Mathe**

## JOHANNESBURG



**FRONT ROW – Ms Komillaveli Pillay; MsYoliswa Sidlova (Chief Magistrate) & MrPieter Koen**

**2ND ROW – Ms Lihle Maseme; Ms Lindiwe Mkhize; Mr Simphiwe Mkhatha; Mr Cameroon Rooy; Ms Boitumelo Molusi; Ms Phindi Kheswa; Ms Cheryl Slack & Ms Tazlin Kolbee**

**3RD ROW – Ms Helena Engelbrecht; Ms Laura Ntoko; Mr Lincoln Matjele; Mr Sthembile Matroko; Mr Tshepo Twala; Mr Siphso Sibanyoni; Mr Pieter Du Plessis; Ms Susan Du Pisanie & Mr Mohammed Jajbhay**



# SWEARING IN CEREMONY OF NEWLY-APPOINTED DISTRICT MAGISTRATES

## GERMISTON



From the front left to right: Mr Z. Kathrada; Ms T. Sebothoma; Ms I. Noble; Ms V. Naidoo; Mr A. Knight; Ms S. Isaacs; Mr T. Claassen; Mr A Agenbag; Ms M Dawray; Mr KI Geber; Ms A Ludick and Mr M Pienaar



Mr Chabeli Mafohla, Prieska

## NORTHERN CAPE



Ms Salome Maimane – Booï, Kimberley



Ms Doll Mokoto, Upington

# SWEARING IN CEREMONY OF NEWLY-APPOINTED DISTRICT MAGISTRATES

## KWAZULU-NATAL



Newly appointed Magistrates for the Durban Cluster and the Area Cluster Heads

Ms Y Hariprasadh



Mr S Mthethwa



Ms N Hlongwana

By: Poso Mogale

DD: Executive Support

# THROUGH THE EYE OF AN EVENT COORDINATOR: 2020 SAJEI ADVANCED ASPIRANT JUDGES WORKSHOP

On the 22<sup>nd</sup> to 24<sup>th</sup> January 2020 SAJEI hosted an Aspirant Judges Course in Gauteng. Participants were selected from Candidates who attended an interview for the Aspirant Judges Workshop and were successful.

The purpose of this workshop was to equip the aspiring Judges on skills to adjudicate all matters in the High Courts. The workshop covered the following topics, namely Constitutional Litigation, Civil Procedure, Management of Criminal Trials, Ethics as well as Judgment Writing.



**Delegates at the Advanced Aspirant Judges Workshop**

The resource persons comprised of 8 (eight) esteemed members of the Judiciary from the Superior Courts, with the lead convener from Supreme Court of Appeal. The participants showed great interest and engagement during presentations. Participants relished the experience of interacting with the resource persons and they were able to share practical challenges whilst acting as Judges. The resource persons were able to direct them on how to approach those challenges in a correct manner.

It is a daunting task and worthwhile experience for an Event Coordinator to provide support during the preparation of the workshop. One has to ensure that correct training materials are circulated, logistical arrangements are communicated timeously to the participants and resource persons. The opportunity of providing support for this workshop has left an indelible mark on me as an Event Coordinator.

**By: Mampotse Mokgetle**

**ASD: Event Coordinator**



# SAJEI RIDING THE 4TH INDUSTRIAL REVOLUTION (IR) WAVE

With technology being at the cornerstone of everyday living, corporate and government institutions are incorporating technology within workflow processes in order to maximize output. The technologies have undergone several changes from the first to third industrial revolution. The fourth industrial revolution, commonly known as 4IR has invariably occasioned improved work processes and training delivery models within educational institutions and universities alike.

4IR has widely introduced a combination of multiple technologies integrated in the Cloud, commonly referred to as IOT (Internet of Things). It is characterized by increased rapid access to information, improved service delivery, automation and control, just to name a few benefits introduced by 4IR. SAJEI is gradually introducing innovative web based tools for distributing training resources as well as for evaluation.

During workshops, delegates access training programmes through the use of QR codes. Delegates are requested to download a free QR scanner on their mobile devices. Once installation is complete, delegates hover their mobile devices over a QR code. The mobile device automatically scans the code, then redirects to the required webpage or resource document.

At the end of each day during the workshops, SAJEI has implemented online evaluation to maximize participation and openness of delegates. This evaluation also ensures anonymity of participant and quick feedback to SAJEI. A link is provided to delegates, the link is clicked and redirects users to an evaluation page. The evaluation page consists of a series of grading questions and open-ended questions. Delegates are required to complete the questions, then click submit anonymously.

Civil Court Stream – Group A

\* Required

How would you rate the following session? (1 = Fair 2 = Good 3 = Excellent)

General application and record keeping in Civil Courts \*

1 2 3

Action procedure \*

1 2 3

## Civil Court Stream online evaluation

Although eliminating manual work processes contributes to the improvement of the environment and is responsive to climate change, there are challenges relating to the implementation of 4IR such as connectivity, paucity of skills and reluctance to use electronic devices due to cyber security. As the saying goes: challenges serve as preparation for a successful future. What the future holds is that 4IR will be embraced across a wide spectrum of judicial training with the unwavering support of all Judicial officers.

In the next issue, I will provide update on how SAJEI is riding the 4IR wave.

By: Thomas Maseko

ASD: E-Learning Administrator



QR Code for the Joint Colloquium RSA and Mozambique Conference Programme





# IN MEMORIAM: MR M. XOLO, REGIONAL MAGISTRATE AND MR T. SISHI, SENIOR MAGISTRATE



Two gracious and selfless souls have departed who immensely contributed to Judicial education. They are late Mr Madlala Xolo and Mr Themba Sishi, men of great honour from Kwa Zulu Natal.

Their lives were characterized by professionalism, respect, calmness, humility and immeasurable commitment to judicial education. They were both members of a formidable team of experienced Judicial officers who spearheaded the development of a Judicial skills course for the Traditional leaders within SAJEI. Their passion and respect for Traditional leadership surpassed human understanding.

Of note, Mr Xolo led the development of the training materials on the above mentioned course. He was thorough, pedantic and ensuring that nothing fell in between the cracks. Just before Mr Xolo's passing, when he was visibly unwell, he attended a SAJEI planning session with Traditional leaders and other Magistrates in East London. His commitment has left an indelible mark in my mind, there are lots of lessons to be learned. It is this beautiful memory that I shall cherish and keep in my heart.

During my last interaction with Mr Sishi at one of SAJEI workshops, he expressed willingness to continue supporting SAJEI with training of Traditional leaders. Mr Sishi was committed to the growth of Judicial education in South Africa and beyond.

I send out prayers to the family and loved ones for the loss of these two great giants. Indeed, no one will understand the depth of the pain they endure. May they find comfort in the Redeemer. May the souls of the departed rest in eternal peace and rise in glory.

**Dr Gomolemo Moshoeu: SAJEI CEO**

# LIST OF STRUCK OFF LEGAL PRACTITIONERS

## GAUTENG

<u>NAME OF LEGAL PRACTITIONER</u>	<u>STRUCK OFF</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Hermanus Johannes Wessels Bothma		•		5 September 2019
Johannes Petrus van Niekerk	•			12 September 2019
Leon Etsebeth		•		8 October 2019
Ramere Simon Mametja	•			15 October 2019
Dinga Rammy Nkhwashu	•			15 October 2019
Ellahn Santso	•			15 October 2019
Johannes Karel Schaefer		•		5 November 2019

GAUTENG

<u>NAME OF LEGAL PRACTITIONER</u>	<u>STRUCK OFF</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Nathan Jared Len	•			19 November 2019
Obed Mhongo Ntimbane	•			21 November 2019
Stephen Melamed	•			22 November 2019
David Neil Kahn			•	3 December 2019
Naushad Gattoo	•			6 December 2019
Titus Matsiepane Mphela	•			11 December 2019
Rochelle Maistry	•			28 January 2020
Prenika Munu	•			30 January 2020
Anton Pretorius	•			30 January 2020
Jabulani Happy Nkuna	•			04 February 2020
Claudius Chiyaka	•			10 March 2020

# LIST OF STRUCK OFF LEGAL PRACTITIONERS



## GAUTENG

<u>NAME OF LEGAL PRACTITIONER</u>	<u>STRUCK OFF</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Stephen Mangolela		•		21 January 2020
Thabo Andrew Mogale		•		21 January 2020
Mandhlaenkosi Nkala		•		28 January 2020
Thotogelo Sharon Thantsha		•		28 January 2020
Sandile Amos Khumalo		•		4 February 2020



# LIST OF STRUCK OFF LEGAL PRACTITIONERS



## GAUTENG

<u>NAME OF LEGAL PRACTITIONER</u>	<u>STRUCK OFF</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Darryl Lloyd Morris		•		06 February 2020
Bavuyise Allen Monde Mamane		•		11 February 2020
Totolo Lehumo Paul Masha		•		18 February 2020
Eseu Nke Msiza		•		18 February 2020
Zukiswa Inert Skepu-Lyimo		•		05 March 2020 Return date 6 October 2020 for striking
Russel Ntuli		•		20 February 2020

# LIST OF STRUCK OFF LEGAL PRACTITIONERS



## MPUMALANGA

<u>NAME OF LEGAL PRACTITIONER</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Theron Wessels	•			11 December 2019
Bigboy Victor Mdhlovu	•			31 January 2020

# LIST OF STRUCK OFF LEGAL PRACTITIONERS



## WESTERN CAPE

<u>NAME OF LEGAL PRACTITIONER</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Wybrand Albert Barnard	•			12 March 2020

# LIST OF STRUCK OFF LEGAL PRACTITIONERS



## KWAZULU-NATAL

<u>NAME OF LEGAL PRACTITIONER</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Arisha Ramjanek Govender		•		8 January 2020
Nevendra Singh		•		30 January 2020
Barend Oosthuizen		•		21 December 2018
Sibusiso Sydney Dlamini		•		4 February 2020
Pranel Ramcharan		•		4 February 2020
Arisha Govender		•		4 March 2020
Vusi Prince Zoko		•		11 March 2020
Bonga Sandile Ngobese		•		13 March 2020



# LIST OF STRUCK OFF LEGAL PRACTITIONERS



## KWAZULU-NATAL PROVINCE

<u>NAME OF LEGAL PRACTITIONER</u>	<u>STRUCK OFF</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Bhekisigcino Kenneth Ndlovu		•		13 March 2020

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# NEW APPOINTMENT: MR KARABO MOKGANYA

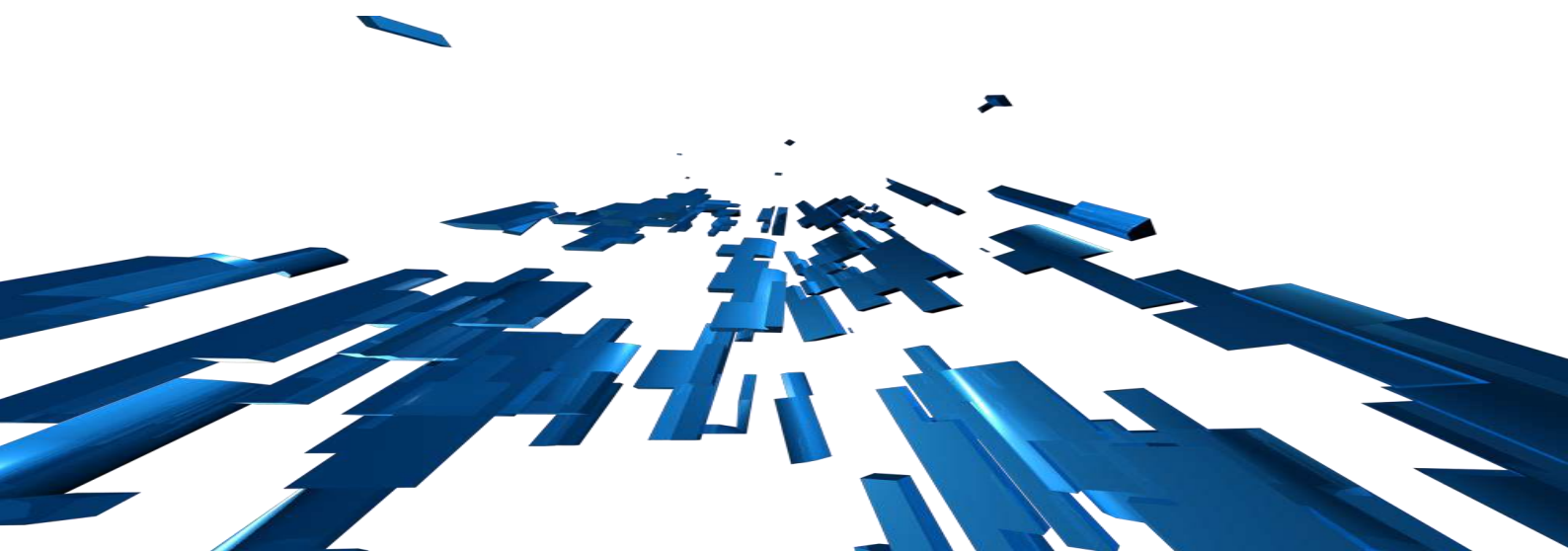


SAJEI welcomes Mr Karabo Mokganya as the Personal Assistant to the Chief Executive Officer of SAJEI. He assumed duties on the 1<sup>st</sup> April 2020. Mr Mokganya has over six years' experience in administrative support in the public service. He holds National Diploma in Government Management and a B Tech in Public Management and is a graduand of the Tshwane of University of Technology having recently completed a Masters degree in Public Administration. The SAJEI team looks forward to his contribution.

All correspondence for SAJEI CEO should be directed and/or copied to [kmokganya@judiciary.org.za](mailto:kmokganya@judiciary.org.za). The office telephone number is +27 (0)10 493 2618

# UPCOMING WORKSHOPS

Date of workshops	Title of Workshop	Province
20-22 April 2020	DCM04 Family Court Future Maintenance, Maintenance Amendment Act, C/Section 31 Matters, Orders by Default	Free State (Bfn)
20-23 April 2020	DCM06 Equality Court PEPUDA	Mpumalanga
20-24 April 2020	DCM07 Criminal Court Bail, Sentencing, Cybercrime, Evidence, Trial within a Trial	North West (Rustenburg)
20-24 April 2020	DCM08 Civil Court PAIA & PAJA	Western Cape





# UPCOMING WORKSHOPS

Date of workshops	Title of Workshop	Province
22-24 April 2020	DCM09 Criminal Court Judgement Writing, Sentencing, Orders following	Gauteng
22-24 April 2020	DCM10 Equality Court PEPUDA	KZN Dbn
07-08 May 2020	DCM11 Criminal Court Section 60 Bail Applications, W/A Authorise/	KZN Pmb
09,16,23,30 May 2020	DCM12 Aspiring DCM	North West
12-15 May 2020	DCM13 Family Court Maintenance, REMO	Western Cape

Postponed Due to COVID-19

# UPCOMING WORKSHOPS

Date of workshops	Title of Workshop	Province
16 May, 6 June, 25 July, 15 August	DCM14 Aspiring DCM	Free State (Bfn)
18-20 May 2020	DCM15 Family Court Maintenance	Gauteng
18-20 May 2020	DCM16 Civil Court Admission of Liability Undertaking to pay debt, consent to judgment, Execution proceedings	Free State (Bfn)
20-22 May 2020	DCM17 Equality Court PEPUDA	EC 1 PE & EL (PE)
25-29 May 2020	DCM18 Civil Court TBC	Limpopo (Bela Bela)

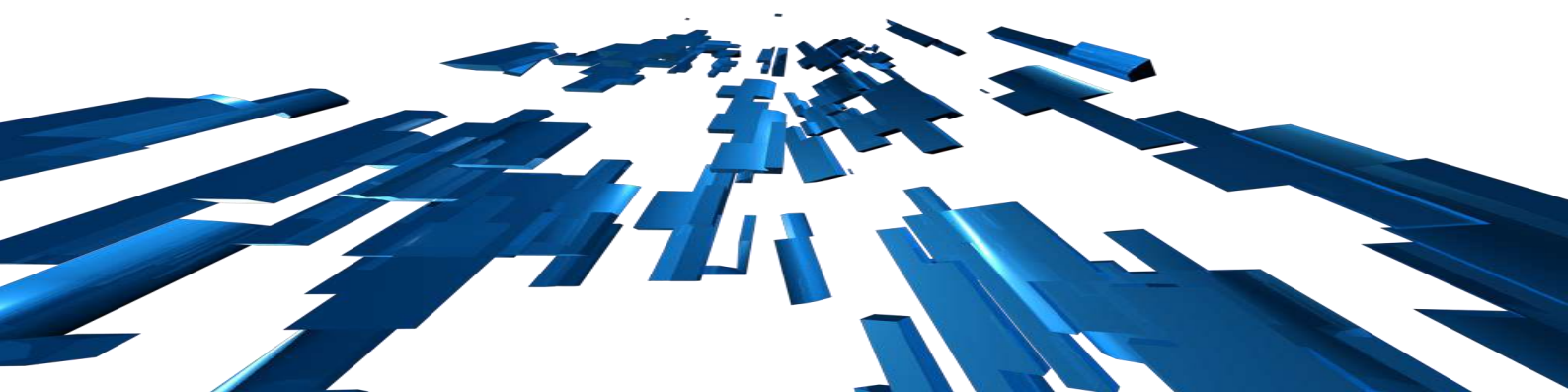
# UPCOMING WORKSHOPS

Date of workshops	Title of Workshop	Province
01-04 June 2020	DCM19	Mpumalanga
	Family Court	
	Maintenance, Vulnerable Groups	
04-05 June 2020	DCM20	KZN Pmb
	Criminal Court	
	Sentencing, Suspended Sentence,	
08-10 June 2020	DCM21	Gauteng
	Criminal Court	
	Bail Applications, Inquests, Plea and	
08-12 June 2020	DCM22	Western Cape
	Civil Court	
	National Credit Act	
	Default Judgments, Insolvency, Amend-	

# UPCOMING WORKSHOPS



Date of work-shops	Title of Workshop	Province
15-19 June 2020	DCM23 Children's Court Adoptions, Ancillary, Parental Responsibilities	Limpopo
22-24 June 2020	DCM24 Civil Court Default & Summary judgments, Debt Review, Interdicts	Gauteng
22-24 June 2020	DCM25 Child Law Diversions, Preliminary enquiries, Child Justice Court	Free State (Bfn)
22-26 June 2020	DCM26 Civil Court PAIA & PAJA	KZN Dbn
24-26 June 2020	DCM27 Family Court Maintenance	Northern Cape







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