

JUDICIAL EDUCATION NEWSLETTER

SOUTH AFRICA

13th Edition
DECEMBER 2021

10 YEARS
2011 - 2021



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FROM THE DESK OF THE CEO



Dr Gomolemo Moshoeu
CEO of SAJEI

In this special edition we reflect on the inception of SAJEI and highlight the contributions of some who laid its foundation.

The SAJEI road from ideation to operation has been long, arduous and challenging. We have so much respect for those who were involved in the initial discussions of considering the idea of establishing a Judicial Education Institute. Our thoughts go to the giants who have passed on like honourable former Chief Justice Pius Langa, Ms Belinda Molamu, Ms Seka Moneledi, Mr Nic Swart and others. May their beautiful souls rest in eternal peace and rise in glory.

Furthermore, we appreciate the gracious and selfless departed souls who immensely contributed to Judicial education. They are late Mr Madlala Xolo (Regional Court Magistrate), Mr Themba Sishi (Senior District Magistrate) and Mr Rudzani Nethengwe (Director: SAJEI), men of great honour. Their commitment to judicial training has left an indelible mark in our minds, there are lots of lessons to be learned from their contributions.

Despite the endless negotiations of establishing an Institute which is Judge-led, South Africa boasts an Institute which has to an extent entrenched judicial training in South Africa and beyond. Kudos to the members of the Judiciary especially members of the SAJEI Council who kept on pursuing the goal despite the lingering clouds of despair. When one goes through the records of the Advisory Committee on the establishment of a Judicial Education Institute, Judicial Education and Training Committee and SAJEI Council, one realises that to an extent there were ups and downs preceding the establishment of the Institute.

We also salute the dedicated members of the Judiciary who are sacrificing their time to prepare and present on various topical issues to their fellow colleagues in South Africa and beyond the borders. Some of the Judicial Officers are burning the midnight oil in order to contribute to SAJEI budding publications (Newsletter and Journal). Of note is the leadership of Justice Mbuyiseli Madlanga, Editor-in-Chief for the SAJEI journal who has tirelessly ensured that four editions are published. Silently and without fanfare these luminaries have carried SAJEI on their shoulders and continue to do so. We applaud their efforts during this epic moment of 10-year anniversary.

The former Chief Justice Mogoeng Mogoeng provided unparalleled leadership to the Institute and was always available for guidance to SAJEI management. For that, we are very thankful.

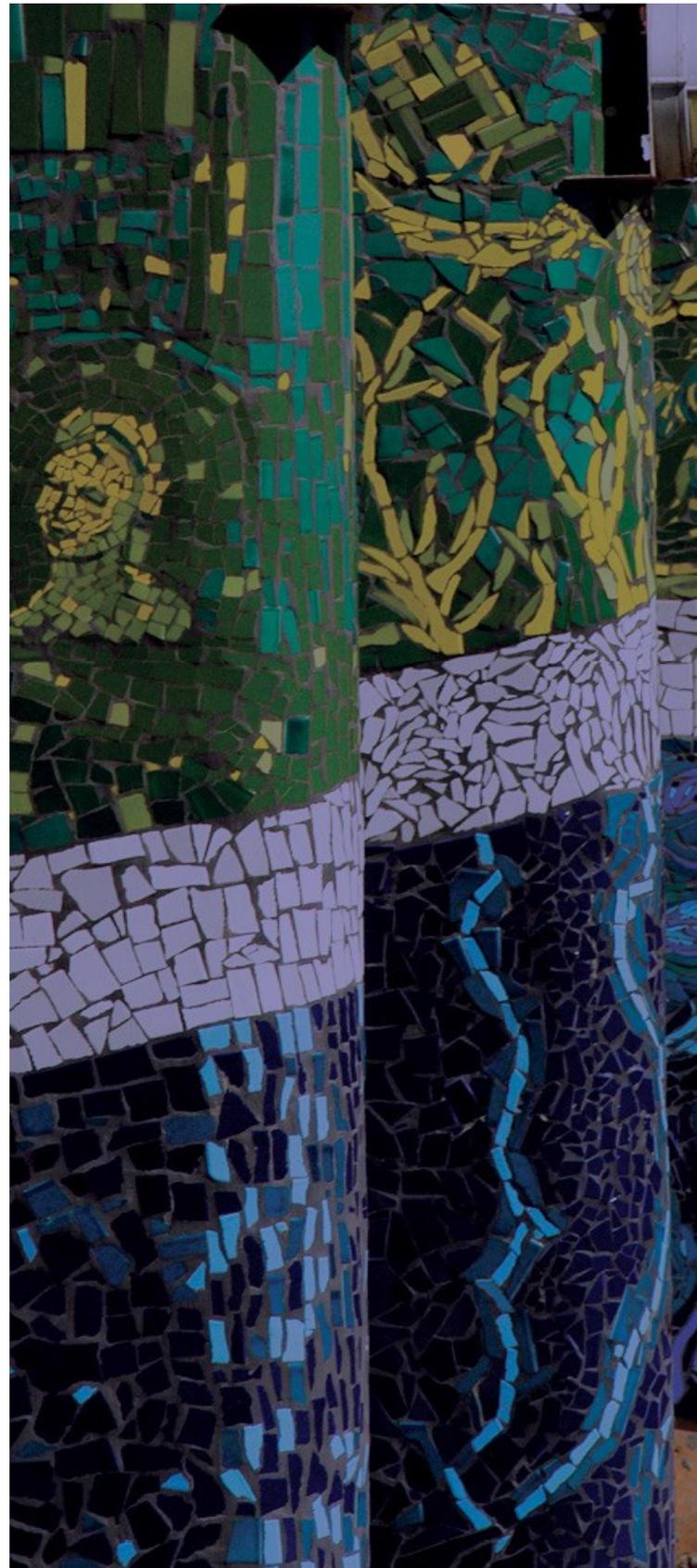


FROM THE DESK OF THE CEO

Other architects of SAJEI are the various external stakeholders. Some have sent messages of support for the 10-year anniversary which are included in this special Newsletter. No Judicial Training Institution operates in a silo; Law is a broad discipline with all kinds of nuances which require expertise from various fields. It is against this background that SAJEI maintains close relationships with judicial and non-judicial stakeholders.

The former Chief Justice encouraged and supported networking with other established Judicial Training Institutes in the world for the exchange of best practices. To date, SAJEI has both a Regional and international footprint. SAJEI has led the establishment of a network on integrating environmental law into judicial curricula in African judiciaries. SAJEI serves as the Secretariat of the African Judicial Education Network on Environmental Law (AJENEL).

Another challenging year has passed, we have made it. Take stock, reflect and plan for the year ahead. Merry Christmas and a happy New Year.



10 YEARS
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REFLECTIONS OF TEN YEARS WITH SAJEI



Ms Jinx Bhoola
Editor-in-Chief

It is exciting times at the South African Judicial Education Institute (“SAJEI”), as we reminisce in our 10th years of existence. I was one of the fortunate Magistrates and thereafter, Judicial Educators who has been with SAJEI since its inception. I recall the first interview with the (CEO) of SAJEI, Dr. Gomolemo Moshoeu, who was frank and candid about the status of training in the District Courts.

I also recall the Regional Court President, Ms. Jakkie Wessels, putting us through our paces on the “Train the Trainer Course”, teaching us how to become “Lecturers” with our law degrees. Nonetheless we were all up for the challenge and persevered to give the best we possibly could.

The trainings offered by SAJEI did not come without hardships, however the successes throughout the years superseded the before challenges. I remember the first year of training, when a day before the in person training was to commence, a number of facilitators had withdrawn from the training and only three (3) facilitators continued with the training. It turned out to be a resounding success, and proved that from inception, SAJEI dug deep and rose against all odds.

My reflection of the travelling and training of Judicial Officers in various parts of the country proved to be fruitful and beneficial to the Judicial Officers. Since my joining SAJEI, as a Judicial Educator it pleases me to note that there is always great enthusiasm and excitement, to attend Civil Court Training, although some Judicial Officers found it very challenging. I am really proud of all the colleagues who have put on the full armor and tackled the elephant in the room, despite not having any experience in the Civil Stream.

The collegiality of colleagues in making the training a success cannot go unnoticed. In each stream, we selected a group of Judicial Officers who were knowledgeable on the topics and willing to impart their skills to other colleagues. In addition, these Judicial Officers assisted the Judicial Educators as Training Facilitators. I would like to thank all the Training Facilitators for their invaluable contributions and the sacrifices that they made in enhancing Judicial Education.

The success of SAJEI’s trainings and the assistance of Training Facilitators would not have been possible without the help of the Chief Magistrates, who selflessly supported the initiative of advancing Judicial Education. Special accolades to all the Chief and acting Chief Magistrates for this is before the unwavering support and encouragement they provided.



REFLECTIONS OF TEN YEARS WITH SAJEI

Then came COVID-19 in 2020 and this forced the Judicial Educators to think out of the box to advance Judicial Education and usher in the Fourth Industrial Revolution which became the new normal. I anticipated that in person training would be impossible during the pandemic and quickly familiarized myself with research on virtual training as we were engaging in uncharted territory. I recall the first virtual training in the District Court was on Evictions. There we were with the full support of the Chief Magistrates in District Courts, making history and going live with our first webinar in the District Court. I could not have done it without the support of Mr. Neelan Karikan and Mr. Henro Du Plessis, thank you for your invaluable contributions and support in assisting in the Civil Stream when always called upon to do so.

2021 saw an advancement once again on the digital platform. SAJEI's CEO, Dr. Moshoeu, once again in collaboration with the Chief Magistrates, raised the bar, and the standard of Judicial Education was elevated. With history being made once again, SAJEI, despite all technological challenges put together an excellent session of blended training. Whilst the Judicial Educators embarked on webinars on the virtual platform, the introduction of Assistant Training Facilitators (ATFs) in the training of Newly Appointed District Court Magistrates 2021, took the training to new heights. The ATFs reinforced the virtual training by assisting the Newly Appointed Magistrates with the practical aspects of the training, under the guidance of the Judicial Educators.

When I look back at our curriculum, what SAJEI has achieved in advancing Judicial Training brings joy to my heart. SAJEI has climbed the rungs of the ladder in Judicial Education, both Nationally and Internationally with flying colors. I had the opportunity to travel abroad and engage with Judicial Educators from different countries. When comparing our standards with other countries, South Africa was praised for advancing Judicial Education in many disciplines of Law. This clearly displayed the fact that SAJEI is a formidable force to be reckoned with in advancing Judicial Education.

All credit to Judicial Education must be given to the CEO of SAJEI, Dr Moshoeu. She has made many sacrifices and put in long hours to ensure that Judicial Education maintains international standards. She will forever be known as a strong determined leader who grew the institute from strength to strength.

As we take a short break from Judicial Education Training, we reflect on the fact that COVID-19 had forced us into a new normal of the Digital Age. We reflect on many incidences that occurred in the past year that have changed the course history of our country and strengthened our Constitution. We learnt lessons in many areas and when all just seemed to be returning to normal, the fourth wave of the COVID-19 Omicron variant hit and infiltrated the global stage once again – fortunately not as viciously as the previous variants but the rate of infection is reportedly rapid.

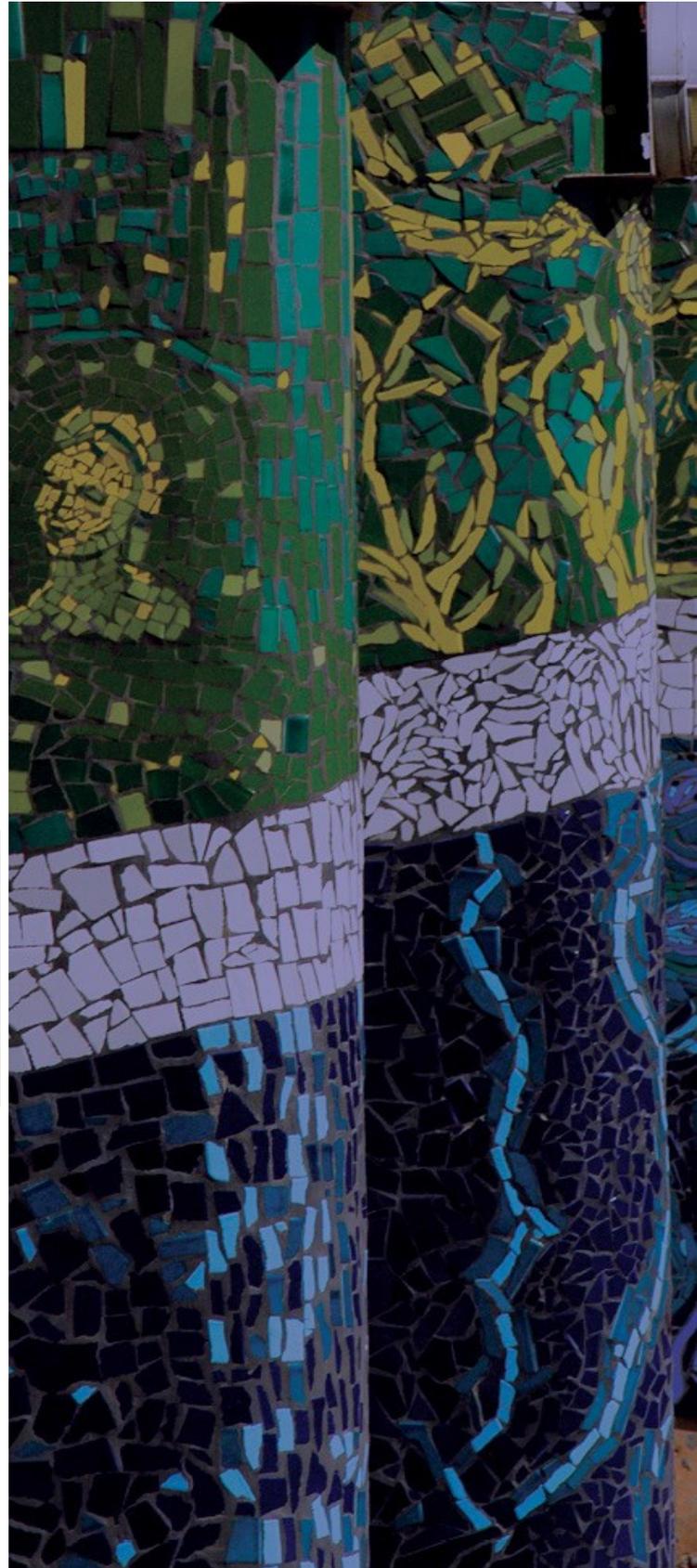


REFLECTIONS OF TEN YEARS WITH SAJEI

To end the year on a high note, SAJEI embarked on 16 days of Activism and Femicide against women and children and SAJEI celebrated Human Rights Week. We also built solid relationships with colleagues from different provinces across the country and built capacity in our respective streams as Judicial Educators. We interacted with experts in various fields at Regional and International level to keep abreast of what is happening globally in Judicial Education. The highlight of it all was the fact that SAJEI has achieved goals in the Training environment (for both in person and virtual training) and can compete with the very best on an international platform.

I want to take this opportunity to wish the Judiciary, the CEO of SAJEI, Judicial Educators, Authors of various articles, Training Facilitators and the Staff of SAJEI nothing but the best over this festive season, stay blessed and stay safe. May God guide and protect each of you and your families.

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 edited by the editorial team before publication. Articles need not exceed 600 words (not more than two pages). You are all encouraged to take part in this, for it is your newsletter.



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NORMS AND STANDARDS

6. MONITORING AND IMPLEMENTATION

I. The Chief Justice as the Head of the Judiciary shall exercise responsibility over the monitoring and evaluation of the performance of each Judicial Officer as well as the monitoring and implementation of norms and standards for the exercise of leadership and judicial functions all courts.

I. Everything reasonably possible should be done to ensure that Judicial Officers have all the resources and tools of trade availed to them to enable them to perform their judicial functions effectively. Reporting is an essential and integral part of ensuring effective monitoring and implementation of the norms and standards. All Judicial Officers shall submit data on their performance and the workflow of cases for collating and analysis following upon which a comprehensive report by the Head of Court will be compiled.

The report must be submitted to the Head of a Court who will, in the case of Regional and District Courts, first submit to the Regional Court President and the Head of the Administrative Region, who in turn will submit it to the Judge President concerned for further submission to the Chief Justice to assess the functioning and the efficiency of the courts. Each Head of Court shall monitor and evaluate performance of the Judicial Officers serving in his or her court on a daily basis to ensure optimal utilization and productivity.

The Head of a Court shall determine the sitting schedules and places of sitting for Judicial Officers. Without derogating from the above-mentioned general standard, presiding Judicial Officers shall retain the discretion to arrange sittings in the cases before them to make efficient use of court time.

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SAJEI: ADVANCING THE FOURTH INDUSTRIAL REVOLUTION



SAJEI has embarked on paperless training. As a result of this initiative by the CEO, we have elected to provide you with very interesting links that will assist you in the execution of your duties as well as topics of general interest. Access the hyperlink and it will provide you with immediate access to the relevant journals, legislation, and articles.

Website links for South African Government

- [A guide to latest Legislation in South African Government;](#)

Website links for further reading:

- <https://www.africa-legal.com>: What's going on legally in the rest of Africa – commercially orientated, and specialized law interests;
- <https://www.polity.org.za>: Offers free access to SA legislation;
- <https://www.withoutprejudice.co.za>: interesting articles are drawn from all areas of practice including Civil Law, Black empowerment, and Banking law to name a few;
- www.crimsa.ac.za: Promoting the relevance of criminology;
- <https://www.saripa.co.za>: South African Restructuring and Insolvency Practitioners;
- [Riots in SA](#): what happens under a state of emergency declaration?;
- [Riots in SA](#): Social Media, riots and Consequences;
- [Criminal Law](#) (Sexual Offences and Related Matters) Amendment Act Amendment Bill
- [Act 1 of 2021](#): Recognition of Customary Marriages Amendment Act, 2021;
- [LLM Programs | Master of Laws Course Search | LLMStudy.com](#): Master of Laws programmes worldwide.

SAJEI: ADVANCING THE FOURTH INDUSTRIAL REVOLUTION



Law Journals available through SAFLII:

- [Constitutional Court Review](#)
- [African Disability Rights Yearbook](#)
- [African Human Rights Law Journal](#)
- [African Law Review](#)
- [De Jure Law Journal](#)
- [De Rebus Law Journal](#)
- [Obiter](#)
- [Potchefstroom Electronic Law Journal](#)
- [SADC Law Journal](#)
- [South Africa: Law, Democracy and Development Law Journal](#)
- [Speculum Juris](#)
- [Tydskrif vir die Suid-Afrikaanse Reg \(TSAR\)](#)

SUMMARY OF RECENT CIVIL AND CRIMINAL CASES



Ms Jinx Bhoola

Snr Magistrate, Judicial Educator

Can an Attorney sign an affidavit on behalf of a client?

Masako v Masako & Another (Case no 724/20)
[2021] ZASCA 168 (3 December 2021).

In this matter, the Regional Court in Garankuwa, whose decision was confirmed by the North West Division of the High Court, Mafikeng, held that an attorney was required to obtain authorisation from the client before deposing to an affidavit on behalf of the client in a rescission application.

The parties in this matter were previously married, and their marriage was dissolved by a decree of divorce incorporating a settlement agreement. Despite this agreement, the first respondent launched an application in the Regional court seeking an order, amongst other things to appoint a Receiver and Liquidator of the assets of the joint estate subsisting between the parties.

The appellant appointed an attorney, to act on her behalf in opposing the application. An answering affidavit was thereafter delivered and the matter was subsequently set down for hearing. In the absence of the appellant, an order was granted in favour of the first respondent. This subsequently led to the appellant launching an application for the rescission of the order granted. The founding affidavit in support of the application for rescission was deposed to by the appellant's attorney. She alleged that an administrative error in her office had led to the rescission application being incorrectly diarised.

The rescission application was opposed and a *point in limine* was raised challenging the attorney's '*locus standi*' on the basis that, as the attorney for the appellant, she was not the person affected by the judgment sought to be rescinded. It was argued that the attorney did not have a 'direct and substantial interest in the main application', which would entitle her to bring the rescission application. In reply, the appellant filed a confirmatory affidavit in which she attested to having instructed her attorney to represent her in all proceedings brought by the first respondent in the matter.



SUMMARY OF RECENT CIVIL AND CRIMINAL CASES

The Regional Court agreed with the first respondent and upheld the point *in limine*. It found that the attorney had not been authorised to bring the application by the appellant. It held that the appellant's confirmatory affidavit was

'...an attempt to usher in her authorisation through the back-door...in that nothing prevented her giving her authorisation earlier, other than wait till a point is reached attacking the attorney's *locus standi*. The fact that the attorney takes the position of the real applicant has the potential of muddling the waters further. . . which creates the impression that she was the purchaser of Erf 477, which is factually not correct. The result of the point *in limine* is that it succeeds on the basis of her lack of standing.'

The appellant appealed the ruling of the *point in limine* to the High court, who dismissed the appeal on the same basis as the Regional Court. It found that the attorney 'lacked *locus standi* to bring the application for rescission in the absence of authorisation by the appellant'.

The High Court considered section 36(1) of the Magistrates' Courts Act 32 of 1944 and rule 49 of the Magistrates' Court Rules, and concluded that an attorney and an advocate are not 'a party' for the purposes of rule 49(1) in that they do not have a 'legal interest' in a matter. Theirs is an indirect, general interest to advance their client's case and bring it to conclusion.

It held further that 'section 36(1)(a) requires the applicant to have been 'affected' by such a judgment. "Affected party" is defined by **Erasmus** as:

[a person who] has an interest in the subject matter of the judgment or order sufficiently direct and substantial to entitle him to intervene in the original application upon which the judgment was given or granted. He must have a legal interest in the subject matter of the action which could be prejudicial to the judgment of the Court.'

According to the Supreme Court of Appeal ("SCA"), both the Regional court and the High court appeared to have conflated

- (1) the legal standing of the party seeking rescission of judgment;
- (2) the basis for deposing to an affidavit and
- (3) the authority to represent a party.

With regard to the first issue, *De Villiers and Others v Trustees for the Time Being of the GJN Trust and Others* [2018] ZASCA 80; 2019 (1) SA 120 (SCA) para 22, a court held a party will have legal standing (*locus standi*) if he or she has a direct and substantial interest in the subject-matter of the judgment sought to be rescinded.



SUMMARY OF RECENT CIVIL AND CRIMINAL CASES

The appellant, as the respondent in the main application, had opposed the main application brought by the first respondent relating to the appointment of a Receiver and Liquidator of the assets in the joint estate. She appointed her Attorneys in opposing that matter. Upon learning of the default judgment granted against her, the appellant instituted an application seeking rescission of the default judgment. She accordingly had the necessary standing as she was the party affected by the judgment sought to be rescinded. The inquiry into the attorney's legal standing was thus irrelevant in the matter.

Referring to the issue of authority to depose to an affidavit, the court referred to the judgment of *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA); (2004) 25 ILJ 995 (SCA); [2004] 2 All SA 609 (SCA) para 19.

which held that:

' . . . it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent.

That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See Eskom v Soweto City Council 1992 (2) SA 703 (W) at 705C - J.)'

The attorney alleged that her reason for deposing to the founding affidavit was that the facts that gave rise to the need for a rescission application lay squarely within her knowledge as the attorney who was dealing with the matter. The reason for the delay lay with the fact that the matter was not properly diarised, which was within the attorney's personal knowledge. She attests to an affidavit. She is no different from a witness who testifies orally, on oath or affirmation, regarding events within her knowledge. Thus, when the attorney deposed to the founding affidavit, she needed no authorisation from her client.

Regarding the third issue, the appellant indicated that she had given her attorney instructions to act on her behalf in all proceedings. Her attorney stated that she was the attorney who had been instructed by the appellant to oppose the main application and had accordingly been involved in the matter from its inception.



SUMMARY OF RECENT CIVIL AND CRIMINAL CASES

She went further in the replying affidavit, and said that her mandate had never been questioned by the first respondent and that her instructions came from ‘a person who had been affected by the order that was granted and [she] was not acting on the frolic of [her] own . . .’. She confirmed that she had instructed the attorney to institute the rescission application. These allegations were not challenged.

Referring to rule 52(2)(a) of the Magistrates’ Court Rules, an attorney does not need to allege that they are authorised to act for a party. A party wishing to challenge an attorney’s authority to represent a party may do so in terms of the procedure outlined in that rule. The first respondent brought no such challenge.

The SCA accordingly, upheld the appeal with costs, set aside the High Court order and the ruling of the Regional Court, Garankuwa was set aside and replaced with the order that ‘*The point in limine was dismissed with costs. The matter was remitted to the Regional Court, Garankuwa for the determination of the merits of the rescission application.*’

Appeal or Review proceedings in Extradition Matters?

Kouwenhoven v Director of Public Prosecutions (Western Cape) and others [2021] 4 All SA 619 (SCA).

This case Involved an appeal regarding Extradition which dealt with the discharge of a person whose extradition is requested. The Appeal Court dealt with against dismissal of review – Section 310(1)

of the Criminal Procedure Act 51 of 1977 conferring right of appeal on Director of Public Prosecutions where a magistrate has given a decision in criminal proceedings in favour of an accused, on any question of law

Criminal Law and Procedure – Extradition – In terms of meaning of “committed within the jurisdiction” in section 3(1) of the Extradition Act 67 of 1962, underlying criminal activity not intended to be confined to territorial jurisdiction of court of the requesting State.

The appellant, a Dutch citizen who was arrested pursuant to a warrant of arrest issued in terms of section 5(1)(b) of the Extradition Act 67 of 1962 (the “Act”). He challenged his arrest in review proceedings before the High Court where he was unsuccessful.

He also challenged the decision of an extradition enquiry held before the fourth respondent, by alleging that he was not subject to extradition in terms of section 3(1) of the Extradition Act because the crimes of which he had been convicted in the Netherlands had been committed in Liberia and not within the **territorial area of jurisdiction** of the Netherlands itself.

The Magistrate upheld the point and held that the appellant was not a person liable to be extradited in terms of the provisions of section 3(1) of the Extradition Act and he was subsequently discharged in terms of section 10(3).



SUMMARY OF RECENT CIVIL AND CRIMINAL CASES

The National Director of Public Prosecutions, Western Cape (the “DPP”), then requested the Magistrate to state a case for consideration of the High Court in terms of section 310(1) of the Criminal Procedure Act 51 of 1977, as read with rule 67(12) of the Magistrates’ Court Rules.

The Magistrate complied, and the DPP subsequently lodged a notice of appeal in the High Court.

Arising from this appeal, the appellant launched a fresh application for review against the DPP, the State and the Minister of Justice and Correctional Services. The review was based on the fact that section 310(1) of the Criminal Procedure Act was not available to challenge the outcome of an extradition enquiry. In the alternative, the appellant alleged that the statement prepared by the Magistrate for the DPP was invalid and was to be set aside because the appellant had not been afforded an opportunity to state his case, nor was he given an opportunity to make representations to the Magistrate when the Magistrate was preparing the statement for the DPP.

The DPP’s appeal was upheld and the appellants’ review proceedings were dismissed. This subsequently resulted in two appeals before the SCA.

In interpreting Section 310(1) of the Criminal Procedure Act, the court held that

“Section 310 (1) of the Criminal Procedure Act confers a right of appeal on the DPP where a magistrate has given a decision

- (a) in criminal proceedings;
- (b) in favour of an “accused”;
- (c) on “any question of law”;

The magistrate’s decision to discharge the appellant was a decision based on a question of law. Noting that the decision was given in **criminal proceedings** *[my emphasis]* and, for the purposes of those proceedings, **the appellant** *[my emphasis]* **was an accused**, *[my emphasis]* the court confirmed that it was open to the DPP, to challenge, **by way of an appeal on a case stated**, *[my emphasis]* a magistrate’s decision to discharge an accused at the end of a preparatory examination on the basis of a conclusion on a **question of law**.” *[my emphasis]*

The SCA examined the nature of extradition proceedings and held that they were criminal proceedings for the purposes of section 310 of the Criminal Procedure Act and the decision by the magistrate was appealable in terms of section 310 of the CPA. Having considered the procedure for stating a case, the court dismissed the appeal in respect of the procedure followed in this case.

When considering section 3(1) of the Extradition Act, the Court considered the meaning of “committed within the jurisdiction” and found that the criminal activity was not intended to be confined to territorial jurisdiction of court of the requesting State.

Both the appeals by the appellant were dismissed.



SUMMARY OF RECENT CIVIL AND CRIMINAL CASES

Section 342A of Criminal Proceedings

S v Kwanza and others [2021] 4 All SA 906 (WCC).

This case was set down for trial from 3 August 2021 until 31 August 2021. The matter was postponed several times and as at 9 September 2021, the matter was not finalised. After having heard only three witnesses, Counsel for the third and fourth accused, requested the court's permission to withdraw from the matter. He relied on alleged lack of financial instructions from the clients, and a prior commitment to attend a part-heard matter in the Eastern Cape Circuit Court.

The Court elected to conduct an inquiry in terms of section 342A of the Criminal Procedure Act 51 of 1977 (CPA) in order to investigate whether there had been an unreasonable delay on the part of Counsel in the completion of the proceedings and considered the various explanations advanced for the postponements.

Accordingly, section 342A(1) of the CPA, allows a court before which criminal proceedings are pending, to investigate any delay in the completion of proceedings which appears to the court to be unreasonable, and which could cause substantial prejudice to the prosecution, the accused or his legal advisor, the State or a witness. In considering whether any delay was unreasonable, the court is obliged to consider the factors set out in section 342A(2) of CPA.

The court found the accused's legal representative to have been responsible for a significant part of the delays in this matter. In doing so, the court found that the delays caused by the legal representative was due to his poor timekeeping, and was solely attributed to Counsel's misconduct and blatant dishonesty in providing false explanations to explain absences from court. The court emphasized the duty of integrity and honesty which legal representatives owe to the court, and held that the legal representative's behaviour warranted the intervention of the Legal Practice Council.

In applying the criteria set out in section 342A(2), the court found that there had been an unreasonable delay in the proceedings caused by the legal representative's unauthorized absences, and that the wasted costs to the State occasioned by such delays amounted to an aggregate of not less than approximately R4 551,24. The court made an order under section 342A(3)(f), and referred the matter to the Legal Practice Council for consideration of appropriate steps to be taken against the legal representative.

CONGRATULATORY LETTERS: (OHCHR REGIONAL OFFICE FOR SOUTHERN AFRICA)



The Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for Southern Africa congratulates the South African Judicial Education Institute (SAJEI) on reaching this important milestone and is honoured to be part of this important commemoration.

The Regional Office provides technical assistance on the promotion and protection of human rights to countries in Southern Africa, namely South Africa, Angola, Botswana, Comoros, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Zambia and Zimbabwe.

As part of its work to enhance equality, counter discrimination in the Region, and address gender-based violence, the OHCHR Regional Office for Southern Africa has worked with SAJEI to ensure access to justice for women through strengthening the capacity of the judiciary to address gender stereotyping, encourage judicial activism on gender-based violence and sexual and reproductive rights.

Since engaging in 2019, the interaction between the OHCHR and SAJEI has rapidly evolved in response to the needs of Magistrates and has provided greater opportunities for SAJEI to shape and contextualise this unique technical cooperation as well as identify mutual objectives and areas for mainstreaming human rights into judicial decision-making. The COVID-19 pandemic provided us with the opportunities to use unique platforms to capture more immediate insights from Southern African Magistrates on access to justice.

Engagement with SAJEI has allowed OHCHR to further advance its work with the judiciary and effectively refine how it can conduct targeted and useful learning that can capacitate and help inform wider judicial activism.

For the Regional Office, SAJEI is a critical partner, and through our collaborative work, the Institute has added significant value to our work on sexual and reproductive health rights. We are excited about the next 10 years and look forward to mutual learning on addressing gender stereotypes and judicial advocacy on sexual and reproductive health and rights.

We look forward to 10 more years of catalytic engagement!



CONGRATULATORY LETTERS:

THE EASTERN CAPE HOUSE OF TRADITIONAL LEADERS CELEBRATES WITH SAJEI



Nkosi L Mavuso

**Acting Chairperson: Eastern Cape House of
Traditional Leaders**

The relationship between the Eastern Cape House of Traditional Leaders and the South African Judicial Education Institute (“SAJEI”) commenced when the Institute trained forty (40) traditional leaders on Judicial Skills from 16 to 20 June 2014. This was based on a request made by the former Chief Justice Mogoeng Mogoeng. The training was a success, and as a result, traditional leaders and Magistrates participated in District Judicial Forums which assisted in ensuring that they have a good working relationship.

It is said that ‘the significance of the diamond is its beauty and strength’, and that ‘the achievements of an organisation are the results of the combined efforts of every individual’. We think that it is also the case with SAJEI. We have seen the Institute’s level of professionalism and commitment. The CEO was part of the delegation that came, and they truly honoured the briefing session. That on its own indicated to us that *sikhona isikhokelo apha kule institution*.

Biblically, the number ‘10’ signifies testimony, law, responsibility and the completeness of order. As you are celebrating 10 years of existence, it is unfortunate that this occasion is being held when our society in general, and rural community in particular is drifting into lawlessness.

We fondly remember Magistrate Madlala Xolo and Mr Themba Sishi ...*isisele senyathi*, that have since departed whilst we were busy with the project, *yanga imiphefumlo yabo ingalala ngoxolo*. Let us use this time to recall all our achievements and celebrate like there is no tomorrow. Happy 10th anniversary SAJEI, *ukwanda kwaliwa ngumthakathi, Makwande!*

CONGRATULATORY LETTERS:

(My journey with the South African Judicial Education Institute (SAJEI) and how SAJEI contributed to my vision)



Prof Mzikazi Nduna

Executive Dean - University of Fort Hare

I live to contribute to the realization of a violent-free society where men, women and gender non-binary persons are free to express who they are, without fear of judgment and violence. A world where men, women and gender non-conforming persons have equal opportunities in every aspect of their lives. A world where differently abled persons can live in a society that accommodates the array of abilities that exist in our communities and create opportunities for them to realize a meaningful life without unnecessary impediments. It is my wish to contribute to a world where religious choice is respected. It is going to take each one of us to do our small bit to change the social order and replace it with the one where race, sex, and disability, culture, religion are not impediments to equality. To realize this society, we need to work together.

Race, racialized groups, and racism remain a very big part of the problems that people of South Africa face. The right to vote is very important, but franchise rights do not remove racism. Racism is a social ill and needs to be consistently addressed in all sectors; the Judiciary plays a crucial role in preventing and addressing racism. I am honoured to be part of an institution like SAJEI which is committed to the values of our society. I consider myself privileged to be part of an esteemed institution that does not only politicize race and

racism, but lives out the values of a non-racial society. I have had both personal and professional encounters with the Judiciary through SAJEI and I am humbled by the staff's consistency in maintaining a gap between personal and professional values, and this is what the country needs to have trust and confidence in the Judiciary

It was roundabout 2017 when I was first introduced to SAJEI. Since then, we have been married to each other through common values and a shared vision. I have participated in several workshops, on average 3 per year. I attended as a guest lecturer, presenter and/ or facilitator. It is in these workshops where I find fertile ground to contribute to the transformation of our Judiciary. Particularly, in the areas related to the Promotion of Equality and Prevention of Unfair Discrimination Act.

As a Sexual and Reproductive Health Rights (SRHR) Advocate, I talk a lot about sex and unfortunately, the respectable Judiciary does not. In the five years that I have been with SAJEI, I found them not only willing to learn more about the social context that breeds sexual crimes and discrimination based on sex and gender, but they enjoy the conversation about human sexuality. It is my wish that the 'Let's Talk About Sex' sessions continue as new members of the Judiciary join and as part of continuous professional development; these conversations are important to facilitate courtrooms that serve victims of gender-based violence and other crimes of discrimination.

Through my partnership with SAJEI, I have grown personally and professionally, and I have been able to introduce colleagues from both academia and civil society to the work of SAJEI. I feel very proud to be associated with the Institute and I would like to congratulate SAJEI for reaching its 10th year anniversary. I look forward to my continued relationship with SAJEI: to share and to learn.

CONGRATULATORY LETTERS: (Message from the Singapore Judicial College)



We extend our heartiest congratulations on SAJEI's 10 year anniversary and look forward to celebrating more of your stellar achievements and many good years of our partnership to come.

Justice Paul Quan
Executive Director, Singapore Judicial College

Congratulations

We are absolutely delighted to share in your joy on the occasion of the 10th anniversary of the South African Judicial Education Institute ("SAJEI"). SAJEI's solid reputation as a judicial training institution belies its years. This is nowhere more evident than the superb conference that SAJEI had put together for the International Organization of Judicial Training ("IOJT") in Cape Town in 2019.

We are very heartened by the fact that SAJEI counts the Singapore Judicial College as its esteemed partner and we are honoured to be invited to participate in its 10th-anniversary celebrations. The challenges of the current climate did not stop us from forging closer ties through regular dialogue online on how we can better serve our constituents with the ubiquitous adoption of virtual judicial training and to ensure that judicial training remains relevant in a world living with COVID-19.



RAISING AWARENESS ON FREEDOM OF EXPRESSION SECTION 16 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996



Ms Jinx Bhoola

Snr Magistrate, Judicial Educator

Section 16 of the Constitution of the Republic of South Africa, (1996) provides for Freedom of Expression

16 Freedom of expression

(1) **Everyone** has the right to freedom of expression, which includes-

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to-

It is important when adjudicating any matter that Magistrates are mindful that the Press and the Media are at liberty to inform the public of what actually happens in the Courtroom. Journalists have a right to report accurately what happens in Court without fear or favour. This must be juxtaposed with the fact that Magistrates are public figures and it is expected that they will be subject to a higher level of criticism from the media and should therefore always be mindful about how they conduct themselves both in and outside the courtroom.

The United Nations Educational Scientific and Cultural Organization (UNESCO) in partnership with the African Court of Human and Peoples Rights conducted a 5-day Training of Trainers (ToT) for African Judicial Training Institutes in Nairobi, Kenya. The training was attended by 28 Judges and Magistrates from 13 different countries namely; Cameroon, Ethiopia, Ghana, Kenya, Mozambique, Namibia, Nigeria, Senegal, South Africa, Sudan, Tanzania, Uganda, and Zimbabwe.

The training focused on Regional and International standards on freedom of expression and safety of journalists, with particular attention to African jurisprudence. There was reference to key decisions from the African Court on Human and Peoples' Rights, the ECOWAS Court of Justice, and the East African Court of Justice

Section 16 of our Constitution is consistent with Article 19 of the *Universal Declaration of Human Rights*, Articles 19 and 20 of *International Covenant on Civil and Political Rights* and article 9 of the *African Charter on Human and People's Rights*.



RAISING AWARENESS ON FREEDOM OF EXPRESSION SECTION 16 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

The Training of Trainers was part of the Judges initiative of UNESCO which aimed to empower the capacities of Judicial Officers, on a global front, to promote freedom of expression and safety of journalists, when adjudicating matters in court. Judicial Officers should be progressive in court by ensuring prosecutions and trials of perpetrators responsible for attacks against journalists and those who discriminate against free speech, should be dealt with appropriately and in accordance with International Standards and Treaties.

At the opening ceremony, the Director of Public Prosecutions in Kenya, Mr Noordin Mohamed Haji hailed the timeliness of the training. He argued that protecting the safety of journalists and fighting impunity required prevention mechanisms and actions to address some of the root causes of violence against journalists. He referred to several cases in African jurisprudence, particularly those of *Nobert Zongo v. Burkina Faso*, *the Issa Konaté v. Burkina Faso*, and *Jacqueline Okuta vs Attorney General of Kenya* which decriminalized defamation. Furthermore, these cases showcase some of the progress made in Africa, as a continent on safeguarding freedom of expression and safety of journalists.

UNESCO Regional Director for Eastern Africa, Prof. Hubert Gijzen called for the strengthening of National, Regional and International partnerships in promoting freedom of expression and safety of journalists. He proclaimed that it has been through partnerships that 28 resolutions and decisions on safety of journalists had been adopted by UN bodies, including UNESCO and other international organizations between 2016-2021.

Representing South Africa was Mr. Oswald Krieling, Chief Magistrate of Northern Cape and Chairperson of the Chief Magistrates Forum as well as Ms Jinx Bhoola, SAJEI Judicial Educator and Senior Magistrate. We appreciated the practical manner in which the training was conducted and the content of the training, which is relevant to current issues affecting journalists globally.

The participants were engaged in a collective exercise on how to take the lessons learnt from this ToT back to their respective countries, develop material using the UNESCO resources and conduct training in their respective countries, through their respective judicial training institutes, to ensure that Judicial Officers understand the importance and explanation of freedom of expression when conducting their duties as Judicial Officers.

SAJEI will be working on integrating Freedom of Expression into judicial curricula.

RAISING AWARENESS ON FREEDOM OF EXPRESSION SECTION 16 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996



Group photo of participants, Trainers and the UNESCO Team



The South African Delegates, Chief Magistrate Oswald Krieling and Judicial Educator and Senior Magistrate Jinx Bhoola



JUDICIAL TRAINING: NEWLY APPOINTED DISTRICT COURT MAGISTRATES.



Mr Thokozani William Nkabinde
District Magistrate

The newly appointed District Court Magistrates descended at various training centres for the month-long mandatory training as promulgated in the Magistrates Act 90 of 1993, under the auspices of the South African Judicial Education Institute (“SAJEI”). The purpose of training was to equip the newly appointed Magistrates with skills in Judgment Writing, Judicial Management, presiding in Family, Civil and Criminal Courts, to mention but a few.

The dawn of the COVID -19 pandemic era has called for inevitable human behavioural changes, albeit the way we generally interact as global citizens or otherwise. In the midst of the prevailing governmental restrictions aimed at curbing the spread of this deadly virus, SAJEI was bestowed with a mammoth task of ensuring that Judicial Training as the business of the day, proceeds unhindered while ensuring the health safety of the participants.

Due to the existence of the said virus, utilisation of the online platform ZOOM, became a permanent feature of communication, interaction and Training across the world. This was now the “new normal” in Judicial Training at SAJEI. The prevailing circumstances of Covid - 19 dictated for the presentation of online Judicial Training, an unprecedented experience.

To ensure that the quality of the training is not compromised as a result of the aforesaid, SAJEI also made use of the Assistant Training Facilitators (ATFs) who went out of their way in ensuring that participants were at home to any information that the Judicial Educators and Training Facilitators imparted and or sought from the participants.

The experience gained from the long hard shifts put by the Judicial Educators and Facilitators remains measurable and one can only be eternally grateful for the endeavours put in by the SAJEI team under extremely trying circumstances.



A first time for everything: success for SAJEI



Ms Saddiyah Moola
District Magistrate

The South African Judicial Education Institute (SAJEI) marked its 10th birthday by kicking off its first-ever compulsory training of Newly Appointed District Magistrates through a virtual platform. A 156 Newly Appointed Magistrates (NAMs), representing the generation of the 4th Industrial revolution, were the first participants to venture into uncharted waters alongside SAJEI. Of course this was a daunting experience at first for Judicial Educators and the participants alike, as one can only imagine the difficulty experienced with both presenting and learning virtually. However, the Judicial Educators in conjunction with SAJEI –as a support structure– made every effort for the sessions to be interactive and brought life to the screens that sat before each participant. Some of the Judicial streams experienced a little more difficulty in this regard during their presentations but overall, a great effort was made by the Educators to present the content.

Participants also encountered hurdles, in that all content was electronic (including the resource books).

Although all in favour of a paperless platform, it presented unique challenges in utilising the resources provided without a hard copy to make reference to. Nonetheless, this hurdle was overcome as we now each preside in our courtrooms with the resource books that were provided. The resources have been invaluable, alongside the effortless assistance provided by the Assistant Training Facilitators. Many participants grappled with the overwhelming deadlines for the submission of assignments during the training. However, this too was taken head-on by the NAMs. It is suggested that to ease Magistrates into the training, the implementation of mock trials would be practically useful, informative and ultimately make the voluminous content more digestible as was displayed by the Civil Stream.

When the dust had settled, the NAMs were well equipped to take on the onerous role of being Magistrates in what has often been termed “the boiler room of justice”. Therefore, on behalf of all the newly appointed Magistrates, extensive gratitude is expressed to the professional team of SAJEI, Judicial Educators and the Facilitators who worked tirelessly around the clock to provide a successful virtual training platform for the 2021 NAMs.



HUMAN RIGHTS WEEK



Ms Tracey Bossert
Acting Snr Magistrate,
SAJEI Contract Judicial Educator

29 November 2021 to 3 December 2021 marked the observance of the South African Judicial Education Institute's annual Human Rights Week. District and Regional Court Magistrates were invited to participate in a week long webinar on topical Human Rights issues which were presented by highly qualified and skilled presenters.

The theme to this year's topics focused on providing essential information and solutions to dealing with the application of Human Rights within the courtroom situation.

Justice Effie Owour, from Kenya, graciously opened the conference with a Gender perspective on Judicial Bullying and Judicial Collegiality. She provided a candid account of how Judicial Officers should treat all role-players within the justice system. This includes amongst others—legal representatives, colleagues on the bench, the court staff, witnesses and litigants. Justice Owour, a female judge, shared her personal experiences regarding the seriousness of judicial bullying.

Justice Fiona Mwale, from Malawi, dealt with the nominal topic of Trafficking in Persons. Justice Mwale highlighted that a Regional Case Digest of decided cases dealing with evidential challenges in Trafficking of persons is in the process of being compiled and will be made available to the Judiciary and other stakeholders upon completion. The Digest is a compilation of matters emanating from cases heard in twelve countries including South Africa. These cases set out details of successful and unsuccessful prosecution of matters. She alluded that the objective of this Digest is to become a tool for overcoming challenges encountered in trafficking cases.

On 1 December 2021, World Aids Day, the discussions revolved around a Judicial Perspective on Evictions and HIV/AIDS and the COVID – 19 pandemic which was presented by Magistrate Mpontshana – from the Durban Magistrates Court. An open dialogue on HIV/AIDS and the Judiciary followed, where issues of HIV/AIDS as a disability was debated, accompanied by a discussion on the role that HIV/AIDS plays in the adjudication of bail applications.

The focus on the fourth day was on Gender-Based Violence, Femicide and lessons for the Judiciary in respect of Gender-Based Violence and Cyberbullying. Dr. Nwabisa Shai, a Specialist Scientist for the Gender and Health Research Unit provided valuable insight into identifying Femicide in Gender-Based Violence matters, understanding the forms and extent of Femicide along with the role of the Judiciary in such matters. Ms. Jakkie Wessels, Regional Court President, Limpopo, shared vital information on the issue of Gender-Based Violence and Cyberbullying.

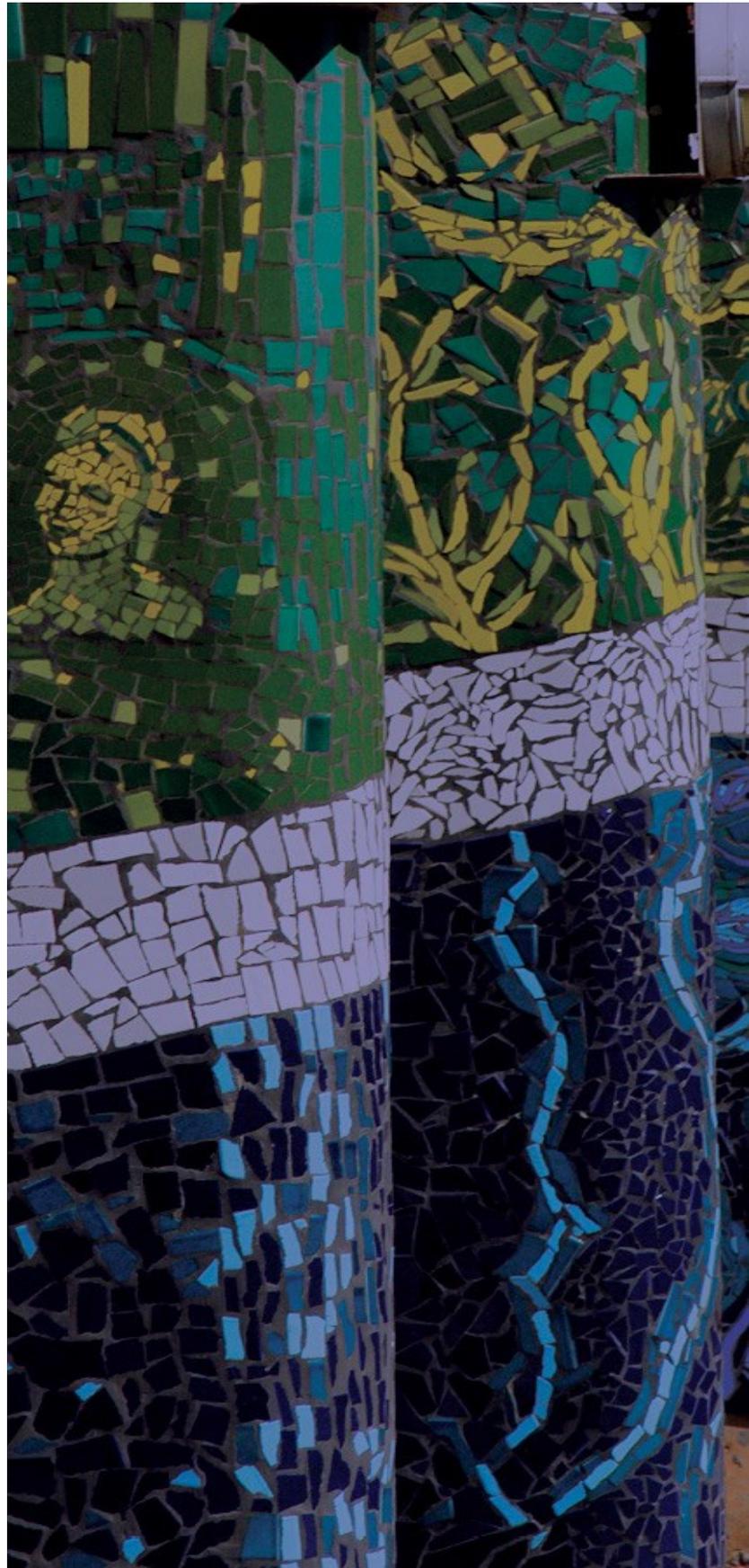


HUMAN RIGHTS WEEK

The week ended with Professor Susan Kreston shedding light on the complexities of online child sexual exploitation and abuse, an issue that has become increasingly difficult to police and stamp out.

Judge Ingrid Opperman, of the Gauteng Division, concluded by sharing insights into practical challenges experienced by Magistrates who dealt with sexual offences matters taken on review or appeal and providing valuable guidance on these aspects.

Thanks to the hard work and dedication of the presenters and the participation of District and Regional Court Magistrates, a successful Human Rights Week was conducted.



FROM SNAIL'S PACE TO A SPRINGBOK SPRINT – (A PERSONAL REFLECTION ON THE IMPACT OF COVID-19 ON JUDICIAL EDUCATION IN SOUTH AFRICA)



Ms Poso Mogale
Director Projects: SAJEI

When I joined the South African Judicial Education Institute (SAJEI) in October 2013, a lot of time was dedicated to the printing and binding of training materials which were sent by courier to the various training venues. The exercise of printing and binding training materials was labour intensive and included long hours, as well as excessive use of printing paper and toner. At that time, SAJEI was in operation for almost two years. The mandate of SAJEI is, *inter alia*, to provide judicial education and training to aspiring Judicial Officers and newly appointed judicial officers. Course content included substantive law and soft skills such as Basic and Advanced Computer literacy, Social context, Judicial wellness, Diversity and Inclusion, Mentoring, etc. For the 2019/20 financial year SAJEI conducted a total of one-hundred and forty-two (142) courses.

The largest group to be trained simultaneously, comprised of two-hundred and three (203) participants (Newly Appointed District Magistrates) who were trained over a period of four consecutive weeks. Prior to 2016, training of District Magistrates was conducted by practising Magistrates until four Judicial Educators who also served as Senior Magistrates were appointed at SAJEI for a period of five (5) years.

During 2014/2015 financial year, SAJEI engaged in a series of benchmarking meetings with Institutions of Higher Learning and other Adult Learning and Training Institutions with the intention of implementing online learning. In 2016, a vacancy for a Curriculum and E-learning specialist was filled. However the Official has since resigned. SAJEI officials attended two training sessions on how to implement online learning. With the onset of the COVID-19 pandemic and nationwide lockdown in 2019, SAJEI was compelled to implement online training as physical gatherings (face-to-face trainings) were prohibited. SAJEI offered its first online training via the ZOOM platform in June 2020 and it was a great success. For the previous financial year i.e. 2020/2021, SAJEI has offered a total of 123 online courses. The biggest group of cohorts who were trained online was the one hundred and fifty-five (155) newly appointed District Magistrates. This training was offered via ZOOM from 01 to 29 October 2021.



FROM SNAIL'S PACE TO A SPRINGBOK SPRINT – (A PERSONAL REFLECTION ON THE IMPACT OF COVID-19 ON JUDICIAL EDUCATION IN SOUTH AFRICA)

In 2017, a resolution was taken that training materials will no longer be printed instead they will be emailed to participants or uploaded onto their laptops during training. This decision was faced with a lot of resistance from both internal and stakeholders. In 2020, SAJEI implemented an online platform called Sajei.Online which serves as a platform for uploading training materials. Participants are provided with login credentials to access the training materials. To date, SAJEI continues with providing digital training materials through Sajei.Online.

In September 2019, an E-Learning Administrator commenced duties at SAJEI. This coincided with the International Organization for Judicial Training (“IOJT”) conference that was hosted in the same month in Cape Town, South Africa. SAJEI’s newly appointed E-Learning Administrator also participated in the conference. One of the invaluable lessons from IOJT conference was the use of QR Scan to access the conference program. From November 2019, SAJEI piloted the use of QR Scan as well as an online evaluation tool. The online evaluation tool can also be accessed through other electronic devices such as mobile phones and tablets. This method of using QR scans and online evaluation was presented to participants and also piloted on even date. The initiative was received with mixed feelings of excitement and a little bit of resistance from those participants who are not computer literate .

This means that SAJEI must accelerate its efforts to provide training on Basic Computer Literacy which is part of the soft skills training it offers. With effect from February 2020 manual evaluation of workshops is no longer utilised.

On 15th March 2020, the President of the Republic of South Africa declared a national state of disaster in terms of the Disaster Management Act 57 of 2002. The declaration of the state of disaster was a result of the global COVID-19 pandemic. The effect of this declaration was that all forms of gatherings are prohibited with the exception of a few gatherings such as funerals. With the approval of the Curriculum Planning and Development Committee, SAJEI had to postpone workshops scheduled to take place in March and April 2020. After further assessment, SAJEI also postponed workshops that were scheduled to take place in May 2020.

With effect from 27 March 2020, South Africa was placed under lockdown. The nation-wide lockdown was unprecedented and forced SAJEI to re-evaluate its *modus operandi* of offering face to face training. It was clearly no longer business as usual for SAJEI. It is in such critical conditions where Judicial Education becomes even more relevant. Suddenly Courts were flooded with applications pertaining to the gazetted lock down Regulations, most of which were around funeral permits and movement from one Province to the other. Judicial Officers looked up to SAJEI to provide guidance and clarity through training. An online live platform was urgently needed for Judicial Officers to ask questions, share challenges and best practices with immediate responses.



FROM SNAIL'S PACE TO A SPRINGBOK SPRINT – (A PERSONAL REFLECTION ON THE IMPACT OF COVID-19 ON JUDICIAL EDUCATION IN SOUTH AFRICA)

Due to the fact that the lockdown Regulations are constantly revised, SAJEI's training materials had to be relevant and up-to-date at all times. The question was: how does SAJEI reach its target group with the onset of limitations which were beyond human control. In light of the fact that most of the Applications before the courts were around permits for funerals, SAJEI was faced with a challenge of timeously reaching Judicial Officers who were in the deep rural areas with no access to/ or poor internet connection.

In June 2020, SAJEI consulted with similar Institutes regionally and abroad on how to implement online training urgently, which platforms to use, and how to train using virtual platforms keeping in mind the limited attention span adult learners have.

SAJEI could not avoid handling Change Management, as the Institute was required to swiftly transition from face to face workshops to online learning as its only practical and viable option. This move required the involvement and participation of all SAJEI officials. Judicial education did not come to a standstill, as work in the Judiciary is continuous and affected by current events. This means developments and changes in the law and the introduction of new case law relating to COVID-19 pandemic and subsequent lockdowns.

Personally, this is an interesting time for me, as the COVID-19 pandemic is pulling SAJEI to where it has always wanted to be in terms of offering quality judicial education and transitioning to online training. But this time around with the speed of a Springbok, SAJEI will now be on par with the best Institutes in the world and maintain its relevance in the Judicial Education sphere.

In July 2019, I had an opportunity to participate in an exchange programme in the United States of America and one of the recommendations in my report was that SAJEI should implement the use of technology in delivering Judicial education such as on-line evaluation of courses, E-learning and webinars. Little did I know that in just a few months, a global pandemic would compel SAJEI to implement webinars on an urgent basis.

Online learning is the new normal for the Judiciary.



EXPERIENCES IN THE VIRTUAL CLASSROOM BY THE NEWLY APPOINTED



Ms Sibongile Matjila
Magistrate - Bloemhof

The training was interactive and practical. Although the training was extensive, with often too much information to take in, the resources were of great assistance. I can now refer back to the Resource books and use them in my courtroom. As I am the only Magistrate at Bloemhof, these resources are very important and helpful to me.

The sessions with the Assistant Training Facilitators (ATFs) were also interactive and the discussions made difficult content easy to apply. The facilitators made me feel at ease and confident to ask questions on issues that I did not understand. Although I had previously acted as a Magistrate, the training put a lot of things into perspective, especially areas of the law in which I had minimal experience. I found that being trained by Judicial Officers who have a wealth of experience was highly advantageous. My overall experience was invaluable and I look forward to more training sessions from SAJEI.



Mr Duane Spandiel
Magistrate - Mmabatho

My experience with the virtual platform was both challenging and very exciting. Knowing that we were being trained in the middle of a pandemic drove us to see the training through as we wanted to be fully equipped to face the daily challenges we would encounter in our respective courts.

I learned how to apply my mind in all situations and to deal with challenges head-on. I also learned how to communicate effectively, through both the ZOOM chat box function and the Provincial WhatsApp Group, these platforms allowed for easy communication. This experience has taught me that virtual training is the way forward.



EXPERIENCES IN THE VIRTUAL CLASSROOM BY THE NEWLY APPOINTED



Mr A.D. Vermaas
Magistrate - Klerkdorp

“Extending a huge thank you to all the facilitators who have imparted great knowledge, and have equipped us newly Appointed Magistrates for the road ahead.”

I had an idea of what being a Magistrate entailed before being appointed, however the first week of training with SAJE really opened my eyes. This was the most intense and to top it off, the training was in Civil Court Skills. The presentations under this stream were very well prepared and contained lots of practical examples.

I also found that the Children’s, Family and Criminal Court Streams were equally enlightening. The facilitators were always willing to answer questions and assisted where I had doubts. The resource books are an invaluable tool and found them to be useful since the training. The checklists are especially handy when dealing with various issues for the first time. Although there were challenges with technology, from time to time, SAJEI facilitators were prepared. The Moderators usually had backup plans to ensure that the presentations could proceed as planned.



YOUNG BUT FEARLESS— SAJEI TAKES A GIANT LEAP OF FAITH



Mr Jessie Ditshego

Law Researcher Intern - SAJEI

One of the biggest challenges that Judicial Education Institutes face in the 21st century is the use of technology in the delivery of their training. More particularly, with the global COVID-19 pandemic, most institutions were forced to abruptly change the way they work or bring all their offerings to a standstill. The global pandemic brought an unprecedented push towards online learning and the success of judicial educational institutions during this time was dependent on their flexibility and rate of adaption to technological change. Judicial Education Institutions, especially in developing countries, have had to grapple with the application of Information Communication and Technology (ICT) in their practices and consider how to restructure their delivery methods from face-to-face workshops to digital learning platforms.

A good case in point is the South African Judicial Education Institute (“SAJEI”). SAJEI was forced ensure the continuation of teaching and learning within the Judiciary during the pandemic. Bringing its offering to a complete standstill was not an option as it would have resulted in adverse effects on the Judiciary. As a result, SAJEI implemented online learning on an urgent basis and offered its first ever online training in June 2020. Since the inception or transition to online training in 2020, SAJEI has successfully offered various online courses for Judicial Officers and Aspiring Judicial Officers across the country.

Of relevance to this opinion piece is the recent online training of newly appointed District Court Magistrates. The Institute took a giant leap of faith and catered for its largest audience of 2021 through a digital learning platform. From 1 to 30 October 2021, SAJEI hosted its first online Newly Appointed District Court Magistrates training program which was attended by a hundred and fifty-five (155) delegates. This was a first for SAJEI and it was a challenging task. Prior to the transition to online training, SAJEI had always offered face to face training to newly appointed Magistrates. The training of newly appointed Magistrates stands out as it is different from other courses offered. This training caters for various delegates with different backgrounds. Some of the delegates come directly from private practice or are academics and had not acted as Magistrates prior to appointments. In addition, the newly appointed Magistrates training programme is of paramount importance as it is mandatory training before the new Magistrates commence with their duties on the bench.



YOUNG BUT FEARLESS— SAJEI TAKES A GIANT LEAP OF FAITH

As a result, the training is intensive and lengthy and ideally under normal circumstances it should be offered using the traditional method of face to face training.

However, as a result of the current global pandemic and nationwide lockdown, the training of newly appointed District Court Magistrates was delivered live on ZOOM and took place over a period of four (4) weeks. Attendees received training on both substantive and procedural law related to Civil, Criminal and Children's Court, and Family Law.

The collected data revealed that the majority of the attendees practised as prosecutors, advocates and attorneys before their appointment. Orientation to the bench was thus essential to help this cohort transition from their previous roles as litigating parties in the court, to being impartial judicial officers. The main objective of the programme was to provide the newly appointed Magistrates with extensive training on various areas of the law as well as skills to adjudicate matters in court (this was achieved through the mock trials conducted during the training). The training also provided them with educational support and facilitated their access to professional assistance from Senior and Chief Magistrates. Delegates were equipped with the judicial knowledge and skills required to adjudicate matters effectively, impartially and efficiently.

In addition, through the sharing of their experiences, Senior Magistrates and Assistant Training Facilitators (who are also serving Magistrates) helped this group overcome their fear of being new to the bench. The month-long training was a success and attendees expressed that it had enhanced their understanding of the various procedures and areas of law.

The successful implementation and offering of this training virtually demonstrates how SAJEI was able to leverage technological solutions to ensure the continuity of its programs amidst the pandemic. Indeed, this move came with many benefits. For instance, through using ZOOM, SAJEI was able to extend the reach of its judicial education services across the country without having to physically deploy all of its staff across the country and to arrange for all 155 attendees to be in central venues. The use of ZOOM was therefore convenient and allowed the Institute to cut costs and increase its value for money whilst ensuring quality judicial education and training to the newly appointed Judicial Officers.

However, as one could have only expected in a developing jurisdiction, the required transition was not a smooth ride due to several challenges encountered in the preparation phase as well as during the training. The challenges that arose during the training were three-fold:



YOUNG BUT FEARLESS— SAJEI TAKES A GIANT LEAP OF FAITH

Firstly, some challenges were related to socio-economic issues. In order to engage and participate fully in virtual training, participants needed to be technologically savvy or literate. And in a country that has been ranked the most unequal in Africa (See the 2020 *Global Inequality Index*), it was inevitable that some of the attendees would not have the required level of computer literacy to participate in a new virtual learning platform. One suspects that the digital divide in South Africa is one of the reasons why face-to-face lectures and training were the preferred delivery method before the pandemic.

Furthermore, other challenges related to both South Africa's economic and infrastructural problems. The training was continuously interrupted by load-shedding and unstable internet connections. The country's lack of good mobile and fixed broadband infrastructure resulted in those without access to high-speed internet (i.e. individuals in the remote parts of the country), having an unpleasant experience and these individuals had a higher chance of falling through the cracks. To address these challenges, SAJEI booked central venues with generators and Wi-Fi routers for those most affected. However, even with these strategies in place, load-shedding remained an unsolvable problem. It is rather unfortunate that during the training, Eskom implemented various stages of load-shedding throughout the country for more than a week. This had a severe impact on the training as attendees affected by load-shedding had to leave the sessions for the duration of the load-shedding.

The challenges experienced revealed numerous barriers that delay the ability to effectively use technology and completely digitize judicial training in South Africa. And SAJEI's future initiatives can only be implemented effectively if attendees and facilitators have reliable access to the technology (including stable internet connection) and the resources needed for online delivery. There is also room for SAJEI to explore 4IR technologies and learn how to use and customize these to its specific training model, bearing in mind the economic and social landscape that the Institute exists in.

On the whole SAJEI's leap of faith during this time not only demonstrated its commitment to judicial education in South Africa but reminded other similarly situated Institutes that there is no better time than NOW. Judicial education in Africa has a long way to go, but with daring and fearless leadership, and the willingness to exchange knowledge through both regional and global networking, these Institutions can undergo significant growth and develop training strategies and teaching methods that will allow them to survive any crisis. SAJEI's survival and thriving online training success during this pandemic should serve as inspiration and evidence that judicial training Institutes in Africa can survive any crisis. This is particularly impressive bearing in mind that SAJEI is a young Institute that has only been in existence for ten (10) years.



THE ENFORCEMENT OF PARENTING PLANS IN TERMS OF THE CHILDREN'S ACT 38 OF 2005



Mr Tebogo Mokgatle
District Magistrate

The enforcement of parenting plans in terms of the Children's Act 38 of 2005

Is there any relief for the non-custodial parent where a parenting plan is violated?

This article deals with the process of the enforcement of parenting agreements entered into between the parties, before the Family Advocate, or after such agreements have been made an order of the court in terms of the Children's Act 38 of 2005 ('the Act').

What is a parenting plan agreement?

A parenting plan agreement is a legal agreement entered into in terms of sections 33 to 35 of the Act as well as the applicable Regulations. Such agreement is entered into between the parties, before the Family Advocate or in terms of an order of court, considering the best interests of the children.

What happens if there is non-compliance with such agreements?

Non-compliance thereto is an offence in terms of Section 35(1) of the Act, which provides for liability upon conviction to a fine or to imprisonment for a period not exceeding one year.

Section 106 of the Magistrates' Courts Act 32 of 1944 provides for "contempt of court" which creates an offence if any person willfully disobeys, refuses, or fails to comply with an order of a court. The penalty upon conviction is a fine or imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine. Steyn CJ in *S v Beyers* 1968 (3) SA 70 (A), held it is a crime to unlawfully and intentionally disobey a Court order, thereby violating the dignity, repute or authority of the Court.

The non-custodial parent of the minor child can cautiously threaten contempt of court charges against the custodial parent to force compliance with the parenting plan agreement. If such parent wants to avoid arrest and detention, which is a drastic measure, it should not be taken lightly.

In *Hepburn v Miller* [2008] JOL 21354 (W), an application for an order of contempt of court against the respondent proved beyond a reasonable doubt the existence of the Court order (that there was effective service on the respondent who has sufficiently failed to comply with such order of Court). The respondent failed to show beyond a reasonable doubt that non-compliance was not willful and *mala fide*. The respondent intentionally breached the Court order and was fined subject to conditions being attached to the sentence.



THE ENFORCEMENT OF PARENTING PLANS IN TERMS OF THE CHILDREN'S ACT 38 OF 2005

It is advisable for a non-custodial parent to approach the Children's Court to confirm the parenting plan agreed to before the Family Advocate to make such agreement an order of the Court. Such order of Court, will carry greater weight and enforceability.

Section 65 of the Act provides for the Children's Court to monitor compliance with its order or the circumstances of the child involved pursuant to its order. The non-custodial parent can approach the clerk of the court with a complaint of non-compliance. The clerk will then refer the matter to the Magistrate for direction. The Magistrate may direct an enquiry against the offending parent to be held.

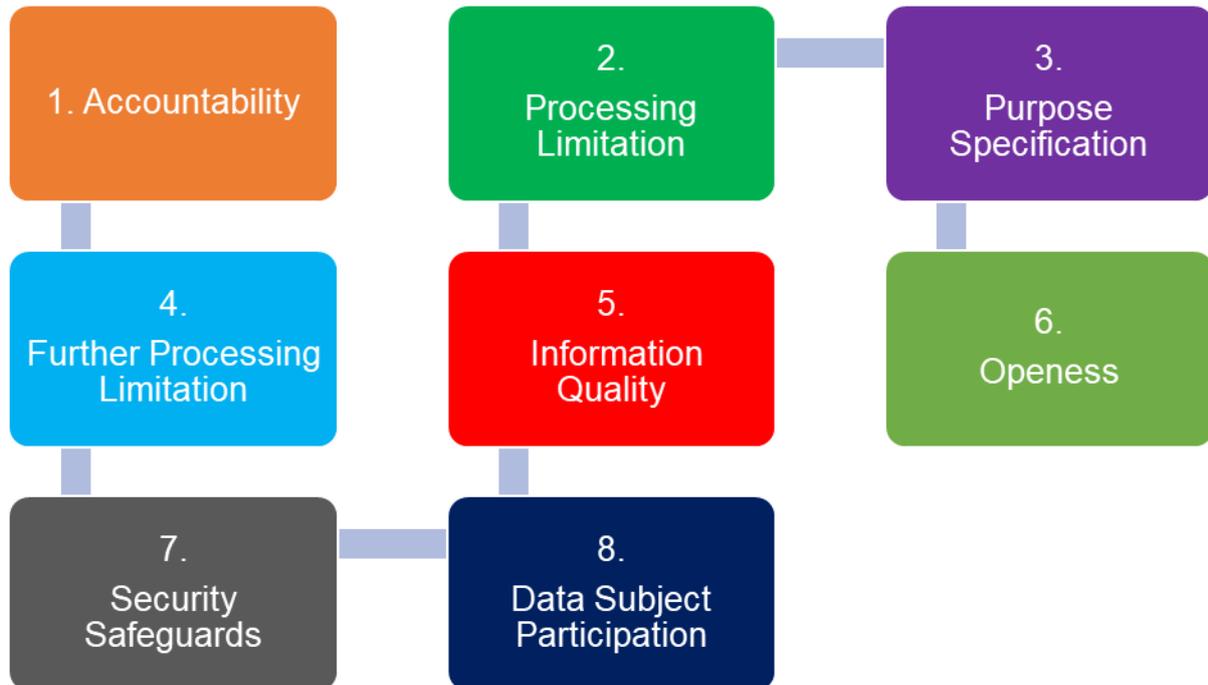
Upon enquiry, the court may confirm vary, withdraw the order, or enforce compliance with the order, through criminal prosecution in the Magistrate's Court in terms of section 45 (2) of the Act. This section empowers the Children's Court adjudicator to convict a person for non-compliance with an order of a Children's Court or contempt of such a court. However, this provision should be used with great circumspection. Since, the court may refer the matter to the prosecution to decide whether to prosecute.

Parenting plans and Maintenance

Parenting plans also provide for maintenance payments. The Maintenance Court can be approached for prosecution and the civil enforcement of maintenance agreements or orders, where applicable. Section 31(1) of the Maintenance Act 99 of 1998 makes the failure to maintain a child a criminal offence, punishable by way of a fine or imprisonment. Sections 27, 28 and 30 of the Maintenance Act thereof provide for a warrant of execution, the attachment of emoluments and a debt, respectively. The Maintenance Court is empowered to deal with the maintenance issues arising out a parenting plan.

ARTICLE 2 ON THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 (POPIA)

THE EIGHT CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL INFORMATION



No.	CONDITION	EXPLANATION	PoPIA SECTIONS
1.	Accountability	The responsible party must ensure that the conditions stipulated in POPIA will be complied with at the time of determination of the purpose and means of the processing and during the processing of the information itself.	Section 8
2.	Processing Limitation	The party collecting and processing personal information must ensure that the processing is lawful and does not infringe on the privacy of the party from whom such information is collected.	Section 9
3.	Purpose Specification	Personal information must be collected for a specific, explicitly defined and lawful purpose. It must relate to the intended purpose. Steps must be taken to ensure that the person from whom personal information is collected is aware of the purpose for which information is collected. Example if when applying to attend training, personal information relating to the residential address of a Magistrate is requested, the information is not rele-	Section 13

ARTICLE 2 ON THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 (POPIA)

THE EIGHT CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL INFORMATION

No.	CONDITION	EXPLANATION	PoPIA SECTIONS
4.	Further Processing Limitation	Further processing of personal information must be done in accordance with the purpose for which information was originally collected. It must be compatible with the intended purpose.	Section 15
5.	Information Quality	Information Quality relates to risk assessments. The responsible party collecting personal information must take reasonable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary. In obtaining such information, the Information Officer must have regard to the purpose for which personal information is collected or further	Section 16
6.	Openness	Transparency and fairness is of utmost importance. A party processing personal information must maintain the documentation of all processing operations under its control or responsibility. The responsible persons must ensure that the data subject is	Section 17
7.	Security Safeguards	A party processing personal information must secure the integrity and confidentiality of such information by taking appropriate measures to prevent loss, damage, and unauthorized access as well as unlawful access to processing personal information. Additionally, the responsible party must identify internal and external risks, establish and maintain appropriate safeguards, regularly verify that the safeguards are effectively implemented and updated with regard to risks and deficiencies. Safety will entail security and safeguards in place in the collection, processing, distribution, archiving and destruction of the	Section 19
8.	Data Subject Participation	The party from whom personal information has been collected has the right to request the party collecting the information to confirm, free of charge, that it is in possession of such personal information. The data subject has a right to amend data and to	Section 23

NON-VERBAL COMMUNICATION

BODY LANGUAGE OF A WITNESS IS EQUALLY IMPORTANT AS ORAL TESTIMONY



Ms Tracey Bossert
Acting Snr Magistrate,
SAJEI Contract Judicial Educator

Our entire body, from head to toe can communicate our true thoughts and feelings, without us even knowing that it is happening. To fully understand this communication, we need to have a keen sense of observation and an understanding of what the non-verbal communication means. A further important consideration is to understand the non-verbal behaviour within the context it is exhibited to avoid arriving at an incorrect conclusion of its meaning.

Listening skills are part of our essential “toolbelt” as Presiding Officers. Besides our listening skills, the additional tool which we need to make use of, is the tool of observation of parties appearing in our court rooms, whether they are parties to any proceeding, witnesses, or legal representatives. By observing the body language of a person, we receive messages about what they may truly be thinking or feeling, and in some instances the body language may contradict what is being said. This is non-verbal communication.

Non-verbal communication is a topic on which we, as presiding officers, have not yet formally received training on, yet it forms an integral part of our adjudication functions. In other legal systems, for example the United States of America, this topic receives a vast amount of attention. The use of non-verbal communication in the American courtroom is utilised daily. In a landmark U.S Supreme Court decision in 1968, it was concluded that police officers are entitled to stop and search individuals without a warrant when their behaviour reflects their intentions to commit a crime. This decision gave legal recognition to the importance of using non-verbal behaviour which has been interpreted correctly in combating crime.

Presiding officers make use of interpreting the demeanour of a person who gives evidence before them to try to establish truth or falsehood in their evidence. We use Paralinguistics, which is tone of voice and volume of the voice. Kinesics, which is posture of the body, hand and arm gestures, eye contact, facial expressions and even grooming habits also assist with interpretation.



NON-VERBAL COMMUNICATION

BODY LANGUAGE OF A WITNESS IS EQUALLY IMPORTANT AS ORAL TESTIMONY

The value of interpretation of demeanour as evidence has been regarded with scepticism by our Superior Courts. In *President of the Republic of South Africa v South African Rugby Football Union*, the Constitutional Court was of the view that “the truthfulness or untruthfulness of a witness can rarely be determined by demeanour alone without regard to other factors including, especially, probabilities”. The Constitutional Court however also found that the factfinder at first instance has an “advantage” over appellate courts because of the opportunity of “seeing and hearing the witness testify”.

Despite this scepticism, the South African Law of Evidence classifies demeanour as real evidence. Assessment of demeanour is thus one of the tools that we can use to help to assess whether there may be truthfulness in the evidence placed before us, but it cannot be used in isolation. However, to fully understand non-verbal communication we need to approach it from a social science perspective. Firstly, by understanding non-verbal cues that are displayed in certain circumstances (in context), and then to interpret what they could mean.

Without receiving some form of training on aspects of non-verbal communication we may very easily come to an incorrect conclusion regarding the truthfulness of evidence that we as factfinders are assessing. It would thus stand us in good stead to fill our toolbelt with knowledge of how and in what manner non-verbal communication takes place and how to interpret it.

It has been recognised that legal Non-verbal communication can be purposeful, or it may be entirely unintentional. Interestingly, most of our non-verbal communication is unintentional. Most often we will use the facial expressions of a person to confirm what they are saying, as what they are indeed thinking. This method of non-verbal communication is often the easiest to control and often makes it the least reliable method of interpreting non-verbal communication.

It is the unintentional (automatic) reactions that we should be focusing on. Scientifically these unintentional reactions or cues are caused by a part of our brain referred to as the Limbic brain, which reacts reflexively and instantaneously and gives off a true response to information coming from the environment. Since this is also our emotional centre of our brain it cannot be switched off and sends messages to other parts of brain that orchestrate our behaviour when related to emotions of survival.

Once we understand the unintentional cues caused by stress situations, we are more accurately able to interpret the meaning of the non-verbal cue and how it either contradicts or confirms the words being spoken during the evidence process. I submit that we will all benefit from training which could assist us with interpretation of non-verbal communication.

A BRIEF INTRODUCTION TO THE LIQUIDATION OF CLOSE CORPORATIONS



Ms Chetna Singh
District Magistrate

Introduction

Bankruptcy law, or insolvency, emanates from the Italian word *banca rotta* wherein a trader in Italy who could not pay his debts was declared bankrupt, and his work-bench would be broken in half, signalling for the community to take note of his insolvency.

Bankruptcy matters were up until the Renaissance period, quasi-criminal in nature by treating the debtor as a criminal. This was gradually phased out, notably by the English *Statute of Marlbrige* of 1267, and thereafter the *Statute of Ann* of 1705 which introduced the notion of a statutory discharge of the debts of an insolvent.

Applicable South African Legislation

Modern Insolvency Law concerns itself with the winding-up of the estate of a natural person, the insolvent, as well as the liquidation of a company or close corporation. The South African Insolvency regime is governed by four statutes, notably the *Insolvency Act 24 of 1936*, the *Close Corporations Act 69 of 1984*, the *Companies Act 61 of 1973*, and the *Companies Act 75 of 2008* (the 2008 Companies Act) respectively. Since the promulgation of the 2008 Companies Act, no new Close Corporations may be registered. This article is limited to the liquidation of a Close Corporation since these are the only applications that are heard in the Magistrates Court

A Close Corporation is not defined as a debtor under the *Insolvency Act of 1936*, and is consequently wound up in terms of Part IX, specifically section 66 (1) of the *Close Corporations Act* of 1984, as amended by item 7 of Schedule 3 of the 2008 *Companies Act*. This section simply put, imports the winding-up procedures found in section 339 of the *Companies Act* of 1973, *mutatis mutandis* to the winding-up of Close Corporation (to the extent applicable).

Substantive Legal Compliance

The liquidation of a Close Corporation may be brought in one of two ways: either voluntarily by a resolution taken by its members, or by a Court order upon application by its creditors. The order may be granted in the High Court or the Magistrates Court depending on the monetary jurisdiction of the Court, as well as the registered place of business of the Close Corporation.

A BRIEF INTRODUCTION TO THE LIQUIDATION OF CLOSE CORPORATIONS

One of the main differences between the winding-up of the insolvent estate of a natural person or liquidation of a company, is that in the above two situations a provisional trustee or liquidator is appointed. However, in a Close Corporation, a final liquidator is appointed after a provisional winding-up order has been granted

Secondly, extended powers such as the power to litigate, cannot be granted to the liquidator of a Close Corporation.

Procedural Legal Compliance

After the winding-up order is granted, the First Meeting of Creditors must be convened within one month, unless consent from the Master is granted to convene the meeting later. This meeting is important for many reasons, including whether to appoint a co-liquidator. Only after a decision is reached in the affirmative, can nominations for a co-liquidator be received.

It is the duty of the trustee or liquidator as the case may be, to convene the Meetings of Creditors, as well as to provide a report on the affairs of the Close Corporation. Late claims can be accepted in the winding-up of Close Corporations and companies, but not in the case of an insolvent estate

Where the Master does not have an office situated in the district of the winding-up concerned, the meetings alluded to above are held before a Magistrate upon receipt of a form J369 from the Master. Pursuant thereto, the Clerk opens a civil file, affixes a case number which is then taken to the Magistrate to consider the application.

Claims proved by creditors must be entered on a J223 form. Meetings can be adjourned from time to time (with valid reasons that must be recorded) but cannot be postponed *sine die*. At the end of the proceedings, the record must be certified by the Magistrate as a true and accurate reflection of the proceedings.

Conclusion

Magistrates presiding over these meetings, as well as possible interrogations of the members of the Close Corporation, to unearth assets belonging to the Close Corporation are urged to familiarize themselves with the “Estates Code” which is issued by the Department of Justice. The Code contains detailed guidance for the Magistrate in ensuring compliance with the formal requirements of the *Insolvency Act* (read with the *Close Corporations Act*, and *Companies Act*) to ensure a smooth facilitation of the winding-up of the Close Corporation.



UPCOMING WORKSHOPS

DATE	WORKSHOP	PROVINCE
DISTRICT COURT MAGISTRATES		
17 – 21 January 2022	Family Court Skills	Free State
25 – 29 January 2022	Civil Court Skills : Action Proceedings	Eastern Cape
24 – 26 January 2022	Judicial Quality Assurance	Gauteng
25 – 27 January 2022	Children’s Court Skills	Eastern Cape
01 – 04 February 2022	Civil Court Skills : Advanced Evaluation of Evidence	Gauteng
01 - 03 February 2022	Children’s Court Skills	Eastern Cape
07-10 February 2022	Civil Court Skills :Emolument Attachments Orders and Applications	Limpopo
07 – 11 February 2022	Criminal Court Skills	Free State
14 – 16 February 2022	Civil Court Skills	Eastern Cape
14-18 February 2022	Equality Court Skills	Northern Cape



UPCOMING WORKSHOPS

DATE	WORKSHOP	PROVINCE
DISTRICT COURT MAGISTRATES		
14-18 February 2022	Equality Court Skills	Northern Cape
15 – 16 February 2022	Family Court Skills	KZN
21 – 25 February 2022	Family Court Skills	Western Cape
22 – 25 February 2022	Civil Court Skills : Advanced Costs	Gauteng
1 – 5 March 2022	Civil Court Skills : Advanced Costs	Eastern Cape
1 – 3 & 8-10 March 2022	Children’s Court Skills : DHA Legislation	Eastern Cape
07 – 11 March 2022	Civil Court Skills : PAIA	Free State
08 – 11 March 2022	Civil Court Skills : Debt Reviews & Debt Intervention	Eastern Cape
14 – 18 March 2022	Domestic Violence Act	Western Cape
15 – 18 March 2022	Civil Court Skills	KZN
22-25 March 2022	Civil Court Skills	Limpopo
24-25 February 2022	Webinar on bringing International Principles of Judicial Education to Life	All Provinces





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