JUDICIAL EDUCATION NEWSLETTER

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2023

19th Edition

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Ms. Jinx Bhoola Editor-in-Chief

2023 has been a phenomenal year which was impacted by a fruitful and rewarding year for the South African Judicial Education Institute ("SAJEI"), SAJEI has been growing from strength to strength. Judicial education was put through its paces from COVID-19 times, transforming into a hybrid system of training which Judicial Officers adapted to with ease, despite challenges affecting online training such as load shedding and connectivity issues.

SAJEI continued with its usual programmes of centralised and decentralised training for the District Court Magistrates. I would like to thank all the Training Facilitators from all streams 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 intervention of the Chief Magistrates, and Acting Chief Magistrates who selflessly supported the initiatives and objectives of advancing judicial education.

SAJEI's Chief Executive Officer ("CEO"), Dr. Gomolemo Moshoeu, worked effortlessly and continuously, in providing new innovations to judicial education. When I look back at our curriculum, what SAJEI has achieved in advancing judicial training is remarkable. SAJEI has embarked on both National and International training. Dr. Moshoeu raised the bar, and the standard of judicial education and provided many specialised trainings such as the Aspirant Women Judges Training Programme, Human Rights training and, whenever, there were new amendments to legislation, centralised training was immediately embarked on to ensure that judicial officers in the Magistrate's Courts were sufficiently equipped to preside on maters. Thank you, Dr. Moshoeu, for the many sacrifices and the long hours you put in to ensure that judicial education maintains high international standards.

In 2016, SAJEI appointed its first four Judicial Educators, (myself, Ms. Theresa Horne, Ms. Audrey Mashilo and Mr. Mashao Ramalebana). Ms. Horne and I, left SAJEI in 2023 and returned to the Judiciary, we remain guest facilitators for SAJEI. Thank you, Ms Horne, for the sacrifice, passion and commitment to judicial education. SAJEI, has secured the appointment of Ms. Tracy Bossert and Ms. Chetna Singh as Judicial Educators on a full-time basis and the assistance of Ms. Sibongile Mpontshana and Mr. Nicolaas van Niekerk on a contract basis. They are doing a phenomenal job, we wish them well and they will continue to receive our support.

The Judicial Education Newsletter transformed in that we commenced with the regular writers and then saw many new writers rising to the occasion who penned topical articles which was beneficial to the Judiciary as a whole. I witnessed SAJEI giving birth to phenomenal writers who grew from strength to strength. Thank you, dear writers, for your invaluable contributions on all facets of law. You made sacrifices despite your demanding work schedules and that is greatly appreciated. In return for your eagerness towards writing, SAJEI is arrange a writer's workshop and we will encourage each of our regular writers and budding writers to attend the training so that we can improve from strength to strength. We hope to see you at the training in March 2024.

To end the year on a high note, SAJEI embarked on 16

days of Activism for No Violence against women and children. In addition, SAJEI celebrated Human Rights Week. SAJEI has provided career opportunities for many women who aspire to be elevated to the High Court Bench, by providing a six months training programme for Aspiring Women Judges. Many of them have already had the opportunity to act in the High Court and a few have penned their acting experiences in this Newsletter.

SAJEI also celebrated 100 years of women in the Judiciary by producing a special edition of the Newsletter (the 18th edition), highlighting the advancement of women in judicial leadership and management positions. The Chief Justice concluded the year with the Judicial Dialogue focussing on the Judiciary's Annual Report and the performance of the Courts. Issues of judicial accountability, a single judiciary and other topical issues were addressed. The event proved to be a great success.

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. Create memories, reflect on positive changes for 2024 and always remember that unity is strength. May God guide and protect each of you and your families and may you return with renewed strength as you reflect on your journey for 2023.

Everyone in the legal fraternity is welcome to contribute to the Newsletter 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 should not exceed 600 words (not more than two pages). The next Newsletter edition (20th edition) will be published in June 2024. The Call for Contributions will be issued early next year. You are all encouraged to take part in this, as it is your Newsletter.

Dr Gomolemo Moshoeu

Chief Executive Officer, SAJEI

As the year comes to an end, it is time to reflect, count our blessings, and plan for 2024. Since its inception, SAJEI has published 18 editions of the Newsletter with contributions largely from the Magistracy, which is commendable given their hectic work schedules.

In this edition, we continue to publish thought provoking and insightful contributions. The seminal pieces from Honourable Judge President Dunstan Mlambo and Justice Fiona Mwale from Malawi Judiciary on Refugees and Trafficking in Persons, respectively still feature in this issue. It is a continuation of the previous edition.

Three Acting Judges (AJ Coetzee; AJ Bhengu; and AJ Strydom) who were candidates of the 2022/23 Aspirant Women Judges Programme share their experiences on the bench. SAJEI appreciates their selflessness and willingness to share, we wish them well for the future.

Our esteemed contract SAJEI Judicial Educator, Mr Jaco Van Niekerk, has provided a brief overview of the amendments to the Children's Act 38 of 2005 to serve as a quick reference point for Judicial Officers. This is commitment surpassing human understanding as he prepared it for the Newsletter while on a well-deserved break.

Kindly note the announcement of the upcoming Writers Workshop and list of upcoming 2024 seminars. The workshop is intended to ignite the enthusiasm to contribute to the SAJEI publications. No one is born a writer. This is an opportunity not to be missed.

SAJEI wishes you the very best for 2024 and beyond.
Your support is much appreciated.

Judge President Dunstan Mlambo[1]

1. The amendments to the Refugees Act[2]

Between 2008 and 2017, there were four amendments to the Refugees Act, although they only came into effect on 1 January 2020:

- Refugees Amendment Act, No. 33 of 2008
- Refugees Amendment Act, No. 12 of 2011
- Refugees Amendment Act, No. 10 of 2015
- Refugees Amendment Act, No. 11 of 2017

The effect of these amendments was to make the application for refugee status more stringent.

2. Case law

2.1.*Abore v Minister of Home Affairs and Another*[3]

Mr Abore, a national of Ethiopia, unlawfully entered South Africa by crossing the border into South Africa from Zimbabwe, without a visa. He was arrested in June 2020, convicted in July 2020 and sentenced to imprisonment of 50 days with an option to pay a R1500 fine for contravening the Immigration Act[4] – which he paid, but was not released. In the period that followed, Mr Abore obtained an interim interdict from the KZN High Court, but it was discharged after he failed to prosecute the matter further, thus remaining in custody. The Department of Home Affairs ("DHA") followed by obtaining a 30-day deportation order from the Eshowe Magistrates Court, causing him to be moved to Lindela for deportation, where he was not immediately deported, instead the DHA obtained a further 90 day deportation warrant. Mr Abore then unsuccessfully launched an application in the Johannesburg High Court, seeking an order that he be released and allowed to apply for asylum.

The High Court held that Mr Abore was detained in terms of the Immigration Act with a Court order extending his detention for a further 90 days, and thus rejected his contention that he was unlawfully detained. It also found his version of when he arrived in South Africa contradictory and accepted the earlier date he provided to the DHA - that of 2017 - and not the later one of 2019 that he had provided to his attorneys. Having considered previous decisions from the Supreme Court of Appeal ("SCA") and the Constitution Court ("ConCourt") such as *Ruta*[5], *Ersumo*[6], *Abdi*[7], *Bula*[8] *and Arse*[9], the High Court acknowledged that ordinarily an asylum seeker should be released and allowed to apply for asylum once evincing their intention to do so. However, it declined doing so for Mr Abore, as it found that he unlawfully resided in South Africa for years and only evinced his intention once the law caught up with him. Unhappy with this finding, Mr Abore successfully appealed to the ConCourt.

The ConCourt identified the issues as those already decided in *Ruta, Ersumo, Bula, Arse, Abdi* – i.e. an intention to apply for asylum, with or without delay in doing so, and release from detention. The novel issue was whether the amendments and the new regulations changed anything that was said in those cases. It found that they did – applications for asylum made after 1 January 2020 have to comply with more stringent requirements than those before. It also found, importantly, that section 2 of the Refugees Act was not amended and the *ratio* from decisions on non-refoulment remains good law. It ordered his release and that he be allowed to apply for refugee status.

2.2. *Ashebo v Minister of Home Affairs and Another*[10]

Mr Ashebo, a national of Ethiopia said he fled his country, fearing for his life, after his family was torched and killed as a result of his political and religious views. In June 2021, he illegally entered South Africa from Zimbabwe as he had no passport or documentation with him. This was due to fears of being deported back to Ethiopia. A short while later, he says he launched an application to compel his asylum application to be considered but later abandoned it due to a lack of funds. In July 2022, he was arrested for contravening the Immigration Act. During the arrest, Mr Ashebo says he told the officials of his situation along with his intention and attempts to apply for asylum but was ignored as they claimed he was in South Africa for economic reasons. Pending his trial, Mr Ashebo unsuccessfully launched an urgent application in the High Court to prevent his deportation pending determination of his asylum application.

The High Court heard argument on the matter and during the hearing asked counsel to address the Court on what it perceived as self-created urgency. Mr Ashebo argued that the matter was urgent as he would be convicted at his trial in a few days from the application date – which would result in his deportation. Unconvinced, the High Court held that the matter was not urgent and struck it from the roll. Mr Ashebo then launched an urgent application in the ConCourt. The ConCourt accepted Mr Ashebo's plea that his matter was urgent because, if convicted and deported, he would be refouled to Ethiopia, where his life was at risk. Thus, the ConCourt phrased the issues as:

- the effect of the 2020 amendments on Mr Ashebo's delay in applying for asylum; and
- whether Mr Ashebo was entitled to be released from detention, following his intention to apply for asylum.

As with the *Abore* matter, the ConCourt found that the first question was answered affirmatively in *Ruta* i.e. delay was no bar to applying for asylum. Relying on article 31 of the 1951 Convention, the ConCourt held that, although more stringent, the requirements that Mr Ashebo provide good cause for his illegal entry did not violate the principle of non-refoulment. For the second question, the ConCourt held that as stated in *Ruta*, the purpose of the Immigration Act is of great importance and responsibility – maintaining the sanctity and sovereignty of our borders. Thus, the ConCourt found that there was no automatic release from detention if a person in the position of Mr Ashebo is detained in terms of section 49(a) of the Immigration Act.

The ConCourt held that the United Nations Refugees Convention does not provide a blanket immunity from all penalties – it confirmed that asylum seekers had to promptly present themselves to officials and show good cause for their illegal entry. An issue that arose was on the Department's failure to assist Mr Ashebo in applying for asylum, having evinced an intention to do so. The ConCourt held that detention in these circumstances would only be lawful for a reasonable period and beyond that would be unlawful. Thus, although not ordering his release, it held that the Department had a duty to assist him, and if he shows good cause for his illegal entry then an entitlement to be re-

leased is present, until the finalisation of the application process.

3. Effect of the "ConCourt Trilogy" on the "SCA Quartet"

The SCA quartet of cases (*Ersumo*, *Abdi, Bula* and *Arse*), established the following principles, before the amendments:

- Intention: a mere intention to apply for asylum brought the protection of the principle of non-refoulment (*de jure* refugee protection)
- Delay: Delays in applying for asylum, even considerable ones are of no effect on their own, and are a mere factor in determining authenticity
- Release from detention: Once an intention has been evinced, a release with a 14-day temporary visa should follow

The ConCourt Trilogy of cases clarified the principles from the SCA Quartet as follows:

- Applicability of the amendments: the ConCourt found that the earliest objectively ascertainable date as the date of arrival in South Africa (*Abore*).
- Intention (before and after the amendments): a mere intention to apply for asylum brought the protection of the principle of non-refoulment (*de jure* refugee protection).
- Delay (before the amendments): the ConCourt confirmed the SCA's findings that such delay was a mere factor in determining the truthfulness of a claim for asylum.
- Delay (after the amendments): the ConCourt found that delay remained a factor to consider in relation to the requirement that "good cause" be shown to explain the delay and illegal entry before an application can be considered.
- Release from detention (before the amendments): the ConCourt confirmed the SCA's findings that release should follow after an intention to apply for asylum is shown.
- Release from detention (after the amendments): the ConCourt found that release did not necessarily follow, if it was in terms of an Act other than the Immigration Act.

4. Tension or synthesis?

In *Ruta*, the ConCourt found that the Refugee and Immigration Acts can be read in harmony with one another. Where the possible tension arises is from section 2 of the Refugees Act, which places its provisions above all others within it, and any other law. This, as explained in *Ruta,* is not a mere provision, but a "remarkable" one that incorporates not only our South African history, but our South African future as well. It tells the world about the country we want to be. The effect is that the non-refoulment principle intercedes on behalf of an illegal foreigner – and only once the process is completed, can its protection fall away. It is then that the Immigration Act can have effect.

5. The risk of abuse in the asylum system

Both domestically and internationally, there is recognition that the refugee regime created under the 1951 Convention is a broad and generous one – thus making it susceptible to abuse. In South Africa, section 4 of the Refugees Act regulates exclusions from refugee status under a number of specified grounds covering crimes under various acts, such as terrorism and fraud. However, it is with the asylum application before refugee status is determined where abuse is most likely to manifest itself. Abuse of the asylum system is real – Courts should be careful not to create opportunities for the system to be abused.

6. Points to ponder

- Persecution – when does it cease? – beyond the borders of an asylum seekers country of origin – ConCourt (*Ruta* and *Abore*) accepted without question that illegal entry is from vulnerability – is this necessarily correct?
- In the vast majority of the cases that have been entertained by the SCA and ConCourt, all the asylum seekers entered illegally from the borders of friendly countries and were arrested after long periods in the country; clearly the threat of persecution had dissipated when they entered South Africa.
- Why then enter illegally and why prolong their stay without applying for asylum upon entry?
- Intention and delay no matter how long – are these not incentives to asylum system abusers?
- The ConCourt has said once an intention to apply for asylum is expressed, protection ensues.[11]
- Does an asylum seeker have a choice where to run to?
- Are we dealing with genuine political persecution or is it economic migration under the guise of asylum?
- In all the cases we have dealt with – asylum seekers sometimes pass through more than 3 countries before arrival in South Africa. Why not apply for asylum in the first country of refuge?
- South Africa utilizes an urban model as opposed to an encampment model – freedom of movement and to work or conduct business – could this be an incentive?
- Almost all countries in our region host refugees in camps and that's how South African refugees in the apartheid era were hosted elsewhere.

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[1]Paper delivered by Judge President Mlambo at the Judges' Seminar, 2023.

[2]Act 130 of 1998.

[3]2021 ZACC 50.

[4]Act 13 of 2002.

[5]Ruta v Minister of Home Affairs 2019 (2) SA 329 (CC).

[6]Ersumo v Minister of Home Affairs & others [2012] ZASCA 31; 2012 (4) SA 581 (SCA).

[7]Abdi & Another v Minister of Home Affairs & others [2011] ZASCA 2; 2011 (3) SA 37 (SCA).

[8]Bula & others v Minister of Home Affairs & others [2011] ZASCA 209; 2012 (4) SA 560 (SCA).

[9]Arse v Minister of Home Affairs & others (2010) (7) BCLR 640 (SCA).

[10]CCT 250/22 [2023] ZACC16.

[11]Rafea Ahmad Faqirzada and Others vs Minister of Home Affairs B25/2023 (Afghanistan).

Judge Fiona Mwale[1]

1. Types of exploitation

People are trafficked for many exploitative purposes such as:

- Forced labour.
- Child soldiers.
- Forced begging.
- Sexual exploitation.
- Forced marriage.
- Selling children.
- Removal of organs.

2. National Legal Framework

- The Constitution of the Republic of South Africa.
- The Prevention and Combating of Trafficking in Persons Act 7 of 2013 ("PACOTIP").
- Various other laws that procedurally and substantively apply to elements of the trafficking in persons offence or case management.
- Interim laws may still be applicable if offence occurred pre PACOTIP Act.
- Case law.

THE ROLE OF THE JUDGE IN TRAFFICKING IN PERSONS CASES PRESENTED AT THE JUDGES' SEMINAR, JULY 2023 (CONTINUATION FROM THE JUDICIAL EDUCATION NEWSLETTER, 18TH EDITION)

The Constitution

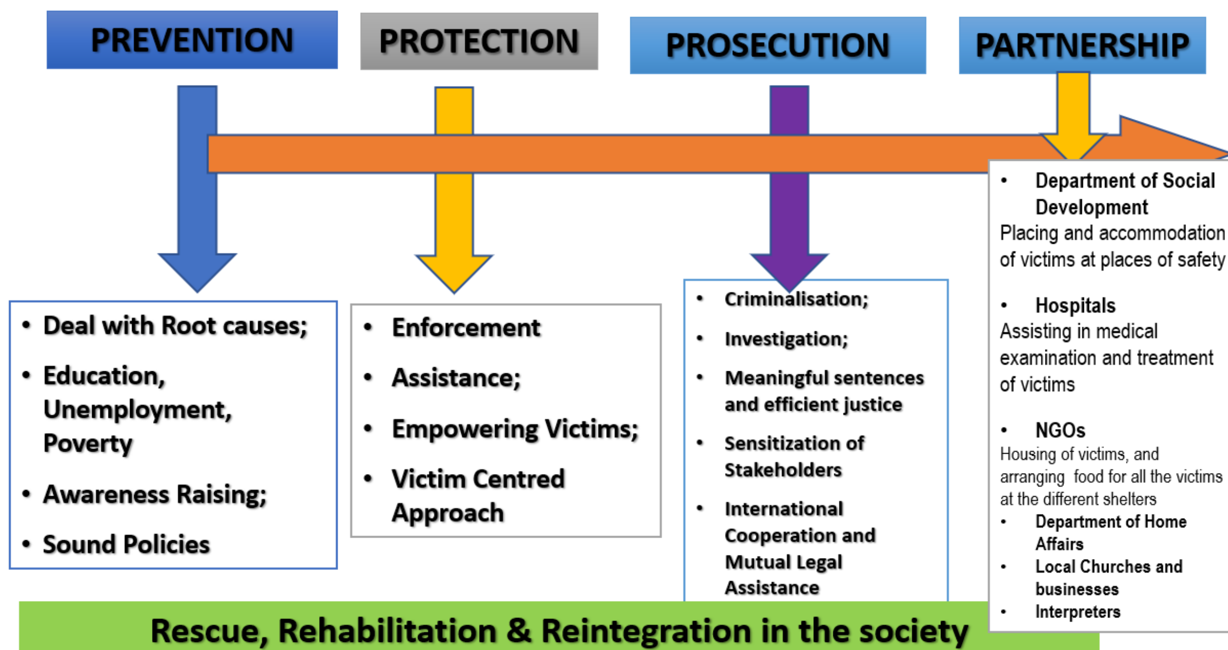
THE CONSTITUTION: RIGHTS BASED APPROACH, PHILOSOPHY AND VALUES

- The uniqueness of the South African Constitution is in its generosity as it has more universal rights than non-universal rights
- Not just civil and political rights, but even most of the economic social and cultural rights guaranteed under the Constitution are also available to non-citizens
- This means that non-documented migrants are just as entitled to most of the rights guaranteed to citizens.

3. Statutory interpretation – when adjudicating upon TIP cases

When interpreting statutory laws in TIP and all other cases, judicial officers are required to adjudicate in a manner that complies with the Bill of Rights. Section 35(5) of the Constitution provides for the exclusion of unconstitutionally obtained evidence when presiding over criminal cases. The provision reads as follows:

> *"Evidence obtained in a manner that violates any right contained in the Bill of Rights must be excluded if the admission of such evidence would render the trial unfair or otherwise be detrimental to the administration of justice."*



4. Role of the Judge in TIP cases

Judges have a critical role to play in fighting trafficking in persons cases, in regard to their rulings, their ability to identify victims, and to contribute to the protection of victims.

5. Identifying victims

In the context of domestic violence or any form of gender-based violence, "self-help" refers to improving oneself without relying on anyone else. This means that the individual should take it upon themselves to recognize the numerous clues and red warning flags that are potentially dangerous. Once the individual learns about these warnings and understands them, they will be better able to protect themselves and their families.

Judicial officers need to be aware of the ever-present possibility that any one of the parties in any matter before them could be a victim of trafficking. Because victims will not readily self-identify, it is incumbent upon judicial officers to identify persons who could be victims and take necessary action. In a way, the concept of "self-help" can be applied to judicial officers who must take it upon themselves to learn about the signs and indicators of TiP so as to be able to take action to protect the victim, especially as the victim is usually not in a position to seek help for themselves. Failing to effectively identify victims of trafficking undermines the values, credibility and role of courts as a crucial component in ensuring access to justice for victims.

Above and beyond Judges' capacity to restore a balance of justice to the world by means of their rulings, they can also function as identifiers of victims. Sometimes, in the course of a civil case, a Judge will discern a pattern which speaks of trafficking. It will then be his function to refer the case to the police, for example, in *Eze*[2], a victim came before a Judge in the Children's Court in a matter relating to her children. She told her story to the Judge, who immediately referred the case to the police. They subsequently arrested the perpetrator and rescued an additional victim. The perpetrator was convicted of trafficking for sexual exploitation.

TOOLS TO IDENTIFYING VICTIMS - INDICATORS

People who have been trafficked may: • Believe that they must work against their will • Be unable to leave their work environment • Show signs that their movements are being controlled • Feel that they cannot leave • Show fear or anxiety • Be subjected to violence or threats of violence against themselves or against their family members and loved ones • Suffer injuries that appear to be the result of an assault • Suffer injuries or impairments typical of certain jobs or control measures • Suffer injuries that appear to be the result of the application of control measures • Be distrustful of the authorities • Be threatened with being handed over to the authorities • Be afraid of revealing their immigration status • Not be in possession of their passports or other travel or identity documents, as those documents are being held by someone else • Have false identity or travel documents • Be found in or connected to a type of location likely to be used for exploiting people • Be unfamiliar with the local language	• Not know their home or work address • Allow others to speak for them when addressed directly • Act as if they were instructed by someone else • Be forced to work under certain conditions • Be disciplined through punishment • Be unable to negotiate working conditions • Receive little or no payment • Have no access to their earnings • Work excessively long hours over long periods • Not have any days off • Live in poor or substandard accommodations • Have no access to medical care • Have limited or no social interaction • Have limited contact with their families or with people outside of their immediate environment • Be unable to communicate freely with others • Be under the perception that they are bonded by debt • Be in a situation of dependence • Come from a place known to be a source of human trafficking • Have had the fees for their transport to the country of destination paid for by facilitators, whom they must pay back by working or providing services in the destination • Have acted on the basis of false promises

6. Protection of victims

Judges can also contribute to the protection of victims in a number of ways: by ruling that the victim should be compensated; by holding the proceedings in protective ways such as in camera, by closed circuit television, by allowing the victim to be accompanied by support staff; and by not allowing the victim to be harassed and interviewing her or him in a sensitive and respectful way.

7. The victim centered –approach: case management for victim protection

The victim-centered approach refers to the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of judicial services in a nonjudgmental manner. A victim-centered approach also entails prioritizing the victim's safety in all matters and procedures in the court room, including minimizing re-traumatization often associated with the court process. Judges can only minimize trauma if they have a level of understanding as to how it operates.

8. Dealing with evidential challenges

Mosaic of evidence as a tool: Tools to evaluate victims' testimonies when they contradict themselves or lie -

- The nature of the inconsistency or lie – is it material or peripheral? Is it a genuine or seeming inconsistency?
- Is the testimony otherwise coherent, logical, plausible? Is the demeanour of the victim credible?
- What does a holistic evaluation of the evidence yield? Is there corroboration to the testimony?
- Is there an explanation for the inconsistencies or lies? (the time that elapsed since the crime? the fading of memory? the natural process of wishing to forget harrowing experiences? fear? a desire to placate the lawyers examining the victims? obscure or unclear questions by defense counsels? another explanation offered by the victim?)

9. Questions to ask in evaluating the evidence

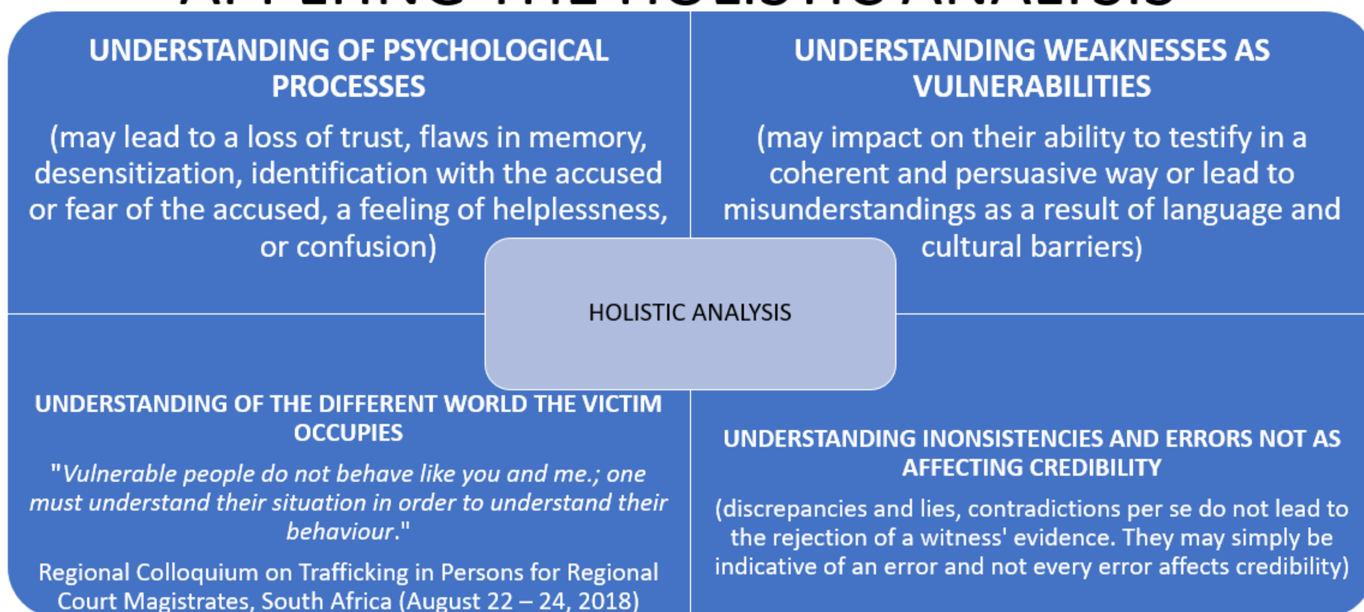
- Can psychological processes explain the inconsistencies and lies? (What are the psychological motivations of the victims? Are they suffering from confusion or shame? How might trauma be affecting them?)
- How are vulnerabilities affecting victims? (children may be taught not to contradict adults; victims who are isolated may be subject to fear; should the standards for child testimony be different than for adult testimony?)
- Can the inconsistencies actually point to the credibility of victims in that they were clearly not coached? Conversely, does the victim have a motive to lie?
- Can the lie or inconsistency proceed from the fear that the truth will seem implausible?
- Is it possible that the contradictions emanate from different individual powers of observation among different victims?
- Are the falsehoods or contradictions limited to an early stage of the investigation?

- Are cultural or sociological factors at play? (the different backgrounds of police and victims which may lead to misunderstandings? Language barriers?)

10. Creative tool: The holistic approach

Holistic analysis of the entire evidential picture can be used, in distinction from isolating any one weakness and automatically ruling that the witness is not credible. Corroboration is actively sought to the victim's story and take pains to analyze the nature of the weaknesses, in order to assess if they are substantive or marginal. Holistic analysis is not about ignoring the weaknesses, but actively dealing with them in a manner that appreciates the nature of trafficking, its socio-cultural context and its effect on victims!

11. Concluding thoughts on judicial role



- Judges are a critical crossroads in trafficking cases. They interpret the law and thus breathe life into it; can take into account the need to protect victims during the course of trials; and may identify victims of trafficking, even if the case before them does not revolve around trafficking.

- The first brick to be used by Judges is South Africa's PACOTIP Act which provides the elements of the crime and various other crucial provisions. However, the law is not sufficient in itself to differentiate between cases where it is appropriate to convict on trafficking and cases where other crimes are more appropriate. In order to assist judges in making these decisions, they need to understand the values which underlie the crime; the socio – economic background of the phenomenon; and case law from the country, region and world.

- UNODC tools can assist judges to perform their critical tasks and in particular the UNODC Case Law Database, the Global Case Digest on Evidential Issues in Trafficking in Persons Cases, the Issue Papers, and the Anti Human Traf-

ficking Manual for Criminal Justice Practitioners, and the Regional Case Digest on Evidential Issues in Trafficking in Persons.

- Armed with this understanding and these tools, judges can restore the balance of justice to the world, and the faith of those whose trust has been abused.

12. Ethical considerations – red flags

- Acting or appearing to act as an advocate for a human trafficking victim within the context of a criminal prosecution, and not compromising their neutrality.
- Undermining the prosecutors. For example, if the Judge identifies a criminal case specifically as a trafficking case, even though the case was filed under an alternative charge, the judge could undermine the prosecutor's credibility which could indicate that the judge questions the decision of the prosecutor.
- Offering support to a potential trafficking victim in cases where trafficking could have occurred but the victims are not part of the legal proceedings. An example might be occupational health and safety violations in the labour industry. Even raising the possibility that human trafficking is involved may affect the court and compromise the judge's neutrality.
- Any actions that might disqualify or support a motion to recuse the Judge. Examples of this could include ex parte discussions, independent investigation of the facts in the case, or any actions that might give rise to a reasonable belief that the judge has predetermined a particular result.
- Actions that give an appearance of bias.
- Being perceived as interfering with the attorney-client relationship.

Once a victim is acknowledged, there are several actions that Judges may want to take that can raise ethical concerns. Some examples that the collaborative identified are as follows:

- Taking steps to promote safety for a suspected trafficking victim;
- Asking questions of the prosecutor or attorney for a party to a case;
- Asking questions of a party, victim, witness, prosecutor, or defense attorney in open court or in chambers;
- Meeting with a party, victim, witness, prosecutor, or defense attorney privately in chambers; and
- Asking questions aimed at revealing signs that the person may be a trafficking victim without giving rise to an appearance that the judge has already decided that the person is a trafficking victim.

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[1] Judge Fiona Mwale presented on the role of the Judge in Trafficking in Persons cases: Promising practices, ethical considerations and beyond, at the Judges' seminar held in July 2023.

[2] The State v. Eze, CASE NO: 14/546/2013, before the Regional Division of Gauteng, Pretoria, 27 November 2017.

Adv. Lezanne Coetzee[1]

Introduction

Embarking on the dynamic journey of the legal profession, the continuous pursuit of knowledge and experience has been a defining aspect of my career. A transformative chapter unfolded with my participation in the Aspirant Women Judges Training Programme (2023), marked by a rigorous selection process, immersive training sessions, and the subsequent emergence of unforeseen opportunities. This article endeavours to delve deeply into my experiences within this programme, capturing not only the journey to the participation but also the invaluable experiences gained along the way.

The Path to Participation

Seizing the Opportunity

My journey with the Aspirant Women Judges Training Programme nearly took an unexpected turn, underscoring the unpredictable nature of life's opportunities. Having applied early in 2022, I found myself on a journey to Cape Town for the Easter Weekend in April 2022. Little did I know that a pivotal email from the South African Judicial Education Institute ("SAJEI"), hidden in my spam folder, awaited my discovery. The email stipulated a daunting challenge to submit a judgment on a specific set of facts, with the due date set for midnight on that very day. Faced with a tight deadline and the pressing decision of whether to seize the opportunity or let it slip away, I chose to give it a go. In the airport lounge at 17:00, I embarked on a race against time, boarding the plane at 18:00 and landing in George at about 20:00. Arriving at my destination in Witsand around 22:00, I encountered an unforeseen challenge of no electricity. Undeterred, by the flickering candlelight and with my computer's battery teetering on the brink, I managed to submit the assignment at 23:50. This whirlwind of events, thought initially fraught with uncertainty, proved to be the catalyst for the transformative journey that followed, altering the course of my professional life in ways I could not have foreseen.

The Journey Begins with Application

The Aspirant Women Judges Training Programme began with a meticulous application process. The significance of this initiative resonated deeply with my commitment to personal and professional growth. The application required a submission of a written judgment, a testament to the Programme's emphasis on practical skills and legal acumen.

The Crucial Interview

The selection process included a nerve-wracking yet insightful interview. Facing a panel of esteemed Judges, I was prompted to articulate my passion for the legal profession and convey how I envisioned contributing to the Judiciary. This step, though challenging, underscored the program's commitment to identifying individuals dedicated to the cause of advancing women in the legal field.

Monthly Training Sessions

Upon successful selection, the Programme unfolded as a series of immersive training sessions held one week per month. What made this experience truly exceptional was the diversity of perspectives shared by Judges from various corners of the country. Each training week offered a unique opportunity to delve into different aspects of the judicial process, enhancing both theoretical knowledge and practical skills.

A Tapestry of Growth and Opportunities

Building Confidence

One of the most notable outcomes of my participation in the Aspirant Women Judges Training Programme has been the tremendous boost in confidence. The exposure to a multitude of legal scenarios, coupled with constructive feedback from experienced Judges, has fortified my abilities as a jurist. This newfound confidence has not only enhanced my courtroom presence but has also permeated other aspects of my professional life.

Opening Doors to Opportunities

The Programme has proven to be a gateway to a myriad of opportunities. Since completing the training, I have had the privilege of acting in the Pretoria High Court, an experience that enriched my practical understanding of the legal system. Furthermore, the Programme has extended invitation for me to act in the Mpumalanga High Court, broadening my scope and allowing me to contribute to different legal landscapes.

A Milestone in a Century: Celebrating 100 Years of Women in the Legal Profession

The timing of my participation in the Aspirant Women Judges Training Programme holds a special significance, aligning with the centenary celebration of women in the legal profession. This initiative stands as a beacon of progress, acknowledging the achievements of women in a historically male-dominated field and paving the way for future generations of women in law.

Conclusion

In conclusion, my journey through the Aspirant Women Judges Training Programme has been an enriching odyssey, shaping me both personally and professionally. From the initial steps of application and judgment submission to the monthly training sessions and the subsequent opportunities that unfolded, this programme has been instrumental in my growth as a woman in the legal profession. As we commemorate a century of women's contributions to the legal field, the Aspirant Women Judges Training Programme stands as a testament to the strides made and the milestones yet to be achieved. My gratitude extends endlessly to the SAJEI team, the invaluable contributions of the Judges, and the remarkable women with whom I forged enduring bonds. I will forever cherish the transformative experience made possible by their collective support and guidance.

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[1]Ms Coetzee is a practising advocate of the High Court and was a participant to the Aspirant Women Judges Programme, 2023.

Ms. Lungile Bengu[1]

1. I received a notice of appointment as an acting Judge in the Gauteng Division of the High Court, Pretoria, in August 2023. The appointment was from 06 November 2023 to 01 December 2023. As this was my first appointment as an acting Judge, it assisted that I received the notice well in advance. This assisted me to prepare myself mentally for the challenge that laid ahead.

2. The warm and welcoming atmosphere helped to alleviate the anxiety that comes with being in an unfamiliar environment. Some Judges offered advice regarding the unwritten rules of the bench and how to keep up with the workload in the fast-paced work environment. I count myself as privileged to have been part of the Aspirant Women Judges Programme, 2023. The most benefit from the course for me was training on judgment writing and exposure to different areas of law. The training bridged the gap created by non-exposure to certain areas of law in practice. This equipped me to effectively deal with all the matters that were before me as an acting Judge.

3. The practical knowledge gained during the second phase of the Aspirant Women Judges Programme i.e. the Mentorship Programme, equipped me with skills on how to manage my Court roll, how to approach complex matters and to be solution oriented. My mentors, who are Judges, also made themselves available for support during my acting appointment. The experience that I gained during this period is invaluable. I am grateful for the opportunity.

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[1]Ms Lungile Bengu is a practising attorney who was part of the 2023 cohort of the Aspirant Women Judges Programme.

Adv. Karin Strydom[1]

If advocates are the voice of the law, your first acting stint can only be compared to hearing yourself speak on a tape recorder for the first time. When your term ends you return to practice, humbled, self-conscious and oddly embarrassed. You immediately set about changing your entire approach and tenor in presenting cases before Court, lest your voice "really sounds like that."

Having recovered from this initial rude awakening, your second or third stint opens your ears and mind to the content of not only each individual voice, but also the underlying rhythm and melody that unifies the multitude of voices into the exquisite opera that is the Law. Relinquishing your starring role as diva in your own small part thereof, you become a lone conductor, producer, and critic of the whole production.

This is when the true breadth and *gravitas* of your role hits like a tsunami. In order to identify the cause of any dissonance, missed beat or off-key note, you need to study and know every single piece of sheet music, stage direction and lyric better than the artists. You have to manage artistic temperaments, grasp and decide differences between maestros, spend hours composing or transposing music supplementing any silences in the original and ensure that, when all is said and done, the manner in which the opera is conducted enthrals the audience. It is at this stage that you would be excused for considering disavowing the arts completely.

But, when the call comes, do put down the shower head you have been crooning into and sign up for another stint? Because with perseverance, preparation and, perhaps more crucially, the guidance, mentorship and solidarity of those that have conducted this opera before, a day will arrive when you enter a packed court room, bow to the counsel present and, for a brief, beautiful, entirely addictive moment, sit down and just relish in the music…

Until the sound of a false note sounds or an amendment of the opera makes you, confidently, open your bench book and pick up your pen.

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[1]Ms Karin Strydom is an Advocate of the High Court who was part of the 2023 cohort of the Aspirant Women Judges Programme.

Mr. Nicolaas van Niekerk[1]

The Children's Amendment Act 17 of 2022 ("Amendment Act"), came into operation on 8 November 2023. Its amendments to the Children's Act, 38 of 2005 ("Children's Act"), have a significant impact on the Children's Court. The two major changes are:

1) The Children's Court has been given the substantive jurisdiction to deal with guardianship in respect of a child; and

2) The criteria for determining whether an orphaned or abandoned child is in need of care and protection has been substantially changed.

Guardianship

The powers of the Children's Court had, prior to these amendments, specifically excluded matters pertaining to the guardianship of a child.

The Children's Court now has concurrent jurisdiction with the High Court to grant an application for guardianship of a child (sections 24, 45(1)(bA) and 45(3A) of the Amendment Act). The concurrent jurisdiction with the High Court is also extended to the Regional Court in respect of aspects relating to assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child (section 45(3B) of the Amendment Act).

Abandoned or orphaned children

The term of 'abandoned' has been changed to 'abandoned child' and, in addition to the existing two paragraphs (a and b) of the definition of 'abandoned', a further paragraph (c) has been added. An abandoned child, after the amendment, is now defined as a child who:

a) Has been deserted by a parent, guardian or care-giver;

b) For no apparent reason, had no contact with the parent, guardian or care-giver for a period of at least three months for no apparent reason; or

c) Has, if applicable, no knowledge as to the whereabouts of the parent, guardian or care-giver and such information cannot be ascertained by the relevant authorities.

In addition to the above additions, the Amendment Act has amended the definition of orphan. An orphan is now defined as a child whose parent or both parents are deceased. Before the amendments, the Children's Act defined an orphan as a child who has no surviving parents caring for him or her[2].

While the amendments to these definitions are not major changes, it is important to note these changes to be able to apply them correctly to the major change in section 150(1)(a) of the Children's Act.

Children in need of care and protection

Prior to the amendment of the Children's Act, section 150 (1)(a) provided that a child is in need of care and protection if the child *has been abandoned or orphaned* ***and***

does not have the ability to support himself or herself and such inability is readily apparent. The amended section 150(1)(a) now provides that a child is in need of care and protection if the child *has been abandoned or orphaned* ***and has no family member who is able and suitable to care for that child***.

The focus has shifted from the financial position of the child, which included an inquiry into the legal duty to maintain the child resting upon others, to the availability, ability and suitability of a family member of the child to care for that child. This amendment, together with other provisions, is part of the Department of Social Development's ("DSD") solution to resolve the ongoing difficulties around foster care of abandoned and orphaned children.

Further amendments that were effected, that are linked to DSD's solution are:

- Section 159(2A) of the Amendment Act – This provision was inserted to allow the Children's Court to extend an alternative care order (which is not limited to foster care orders) that has lapsed.
- Section 159(2B) of the Amendment Act – This is a type of a transitional provision that was inserted. It provides that – notwithstanding the amendment to section 150(1)(a), an order placing an orphaned or abandoned child in the foster care of a family member in terms of section 156 before or on the date of the amendments (8 November 2023), may be extended by the court in terms of section 159(2) or section 186(2) of the Amendment Act.

Other changes

1. Section 45(2) of the Children's Act, prior to its amendment, empowered the Children's Court to enforce non-compliance with its orders by exercising criminal jurisdiction over such dispute. The Amendment Act has removed that power of the Children's Court and replaced it with a duty upon the Children's Court to refer any mater arising from non-compliance of its orders to a criminal court having jurisdiction.
2. Section 45(1)(jA) was inserted to give substantive jurisdiction to the Children's Court for matters involving an unaccompanied or separated migrant child, or a child who is an asylum seeker or refugee. This was necessary to align the provisions of the Children's Act with section 21A of the Refugees Act 130 of 1998, which requires that a child who is found in circumstances where the child is clearly an asylum seeker, must be brought before the Children's Court.
3. Section 150(1)(j) was inserted to make provision for an unaccompanied child. The section provides that an unaccompanied migrant child from another country is a child in need of care and protection.
4. Sub-Sections 150(1)(j), (k) & (l) were inserted to provide additional grounds upon which a child is in need of care and protection, namely:
   - 150(1)(k) – Victim of trafficking; and
   - 150(1)(l) – Sold by parent, care-giver or guardian.

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[1]Mr Van Niekerk is a Senior Magistrate who is currently based at SAJEI as a Judicial Educator.

[2]Section 1 of the Children's Act 38 of 2005.

FAIR AND REASONABLE COMPENSATION IN UNLAWFUL ARREST AND DETENTION CASES IN THE CONTEXT OF MOTLADILE V MINISTER OF POLICE[1]

Mr. Tshepang Monare[2]

1. Introduction

The amount of damages to be awarded to a plaintiff in a deprivation of liberty case is in the discretion of the trial court which must naturally be exercised judicially. In ***Dikoko v Mokhatla***,[3] the Constitutional Court decided that a Trial Court in assessing appropriate compensation it must have due regard to all facts and circumstances of the case.

2. Facts

On 23 December 2014, Mr DM Motladile (the appellant) who was, at the time, in the business of transporting passengers, was requested by a man whom he did not know to transport him to a farm to purchase cattle, which he did. The man purchased the cattle, but unbeknown to the appellant the man apparently defrauded the seller of the cattle. On reporting the incident to the police, the seller approached the appellant for his contact details as he considered him to be a potential witness in his criminal case against the man who defrauded him.

On 24 December 2014, the investigating officer visited to the appellant's home. On being advised by his wife, Mrs Motladile, that the appellant was in Gaborone, the investigating officer provided her with his telephone number and asked that the appellant call him on his return.

On Christmas morning, the appellant travelled to the police station where he expected to be of assistance in the investigation. But instead, on his arrival at the police station, the investigating officer promptly arrested and detained the appellant for the offence of theft under false pretenses. The appellant spent the following four days (and nights) in detention in the police cells at the police station

3. Legal question

The issue before the Supreme Court of Appeal ("SCA") was whether damages in the amount of R60 000, which the high court awarded to the appellant, arising from his unlawful arrest and detention, was fair and reasonable having regard to the circumstances of case.

4. SCA decision

The High Court found that having regard to the facts and circumstances of the case, an adequate award would be an amount of R15 000 per day, which amounts to R60 000 for the four days that the appellant spent in detention. In adopting the amount of R15 000 per day, the High Court followed a practice that has developed in the North West Division of the High Court, Mahikeng (North West Division) of applying a 'one size fits all' approach of R15 000 per day to damages claims for unlawful arrest and detention.

The Court decided that there is a misnomer that the High Courts have set as a benchmark an amount of R15 000.00 per day as the norm for unlawful arrest and detention. The Court also decided that the benchmark is incorrect and misplaced and that each case must be decided in its own peculiar facts and circumstances (merits). Lastly the Court decided that there is no benchmarking nor is there a one size (or amount) fits all practice that must be followed as this will most definitely erode the judicial discretion of presiding officers.[4]

The Court also decided that the High Court's award of damages in respect of the unlawful arrest and detention of the appellant was not commensurate with the injuries suffered by him and awarded the appellant an award of R200 000.

5. Importance of the judgment

Presiding officers have a judicial discretion in determining a fair and reasonable compensation which must be determined after considering all circumstances of the case.

The assessment of the amount of damages to be awarded the plaintiff is not a mechanical exercise that has regard only to the number of days that a plaintiff has spent in detention. Other factors must be considered such as (a) the circumstances in which the arrest and detention occurred, (b) the presence or absence of improper motive or malice on the part of the defendant, (c) the status and standing of the plaintiff and (d) the simultaneous invasion of other personality and constitutional rights.

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[1]414/2022 [2023] ZASCA 94.

[2]Mr Tshepang Monare is an Acting Magistrate based at the Sebokeng Magistrate's Court, Gauteng.

[3]2006 (6) SA 235; 2007 (1) BCLR (1) CC par 57.

[4]Ibid fn para 16.

Mr. Mohammed Moolla[1]

Victims of sexual offences bring with them to the courtroom the disturbing experience of abuse, violence, and family conflict. These experiences are traumatic with the result that these victims may suffer from symptoms associated with trauma. These include symptoms of complex post-traumatic disorder, such as fear, low self-esteem, the inability to trust, anger, hostility, depression, guilt, shame or stigmatization, disassociation, and feelings of powerlessness. In addition, they have to try and cope with the stress of the impending trial and all the complexities of being a witness in Court. A Court process is also a form of secondary traumatization.

Any person who has been sexually abused suffers from trauma; the trauma may manifest itself in various manners and the victim may actually relive the trauma when they have to testify about the abuse. Many a time the victims have trust issues. They internalize and even blame themselves for what has happened and may even experience flashbacks every time they talk about the event.

In most cases, the perpetrator is known to the victim. The victim has trust in the perpetrator and the victim is then betrayed. When it comes to the trial, the victim has difficulty in narrating what happened. Victims may find themselves in situations where they experience a 'complex narration of engagement, reliance, trust, intrusion, invasion, violation and betrayal.'[2]

Criminal trials take a long time before a matter can be set down for trial. Thus, protracted time span may cause a victim to forget certain details of the offence.[3] Section 170A of the Criminal Procedure Act[4] was introduced in 1993 by the legislature to alleviate problems faced by child witnesses especially victims of child abuse. The accused rights to a fair trial, which includes the right to see and hear witnesses, traumatises the child.

Pursuant to research by the South African Law Reform Commission ("SALRC"), section 170A of the Criminal Procedure Act[5] ("CPA") was introduced, which makes provision for a witness to testify through an intermediary. The SALRC investigated and recommended that child witnesses must be protected and that they should testify in a child-friendly environment as opposed to the traditional courtroom. The SALRC found that the accused's right to a fair trial which included the right to see and hear witnesses traumatised the child. It also found that children were often unwilling to testify or they were poor witnesses when they did.

The Constitution of the Republic of South Africa, 1996 as well as international instruments including the United Nations Convention on the Rights of the Child have guaranteed the rights of a child to participate effectively in court proceedings.

In *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development and Others*[6], the Constitutional Court held that Section 170A of the CPA aims to prevent a child from undergoing undue mental stress or suffering while giving evidence. It does this by permitting the child to testify through an intermediary. The intermediary is required to convey the general purpose of questions put to the child. In fact, section 170A(3) allows the child who testifies through an intermediary to give evidence in a separate room away from the accused and in an atmosphere designed to set the child at ease. Many courts have intermediary rooms away from the courtroom, cordoned off from the normal public area. It is very close to the courtroom itself and linked to the court via an audio as well as a visual link. The court and everyone in the court can then hear and see the witness sitting in the intermediary room. To a very large extent, it is also possible to see the witness is alone in the room.

In *S v Staggie and Another*[7], it was stated that the interests of the accused must also be borne in mind when it came to the question of whether or not closed-circuit television ought to be used. When a witness testifies via closed circuit television, the size and resolution of the television set, as well as the way the camera was positioned is crucial. There should be no reason why all the parties could not view the witness fully on the monitor and accurately observe the reaction and physical demeanor of the witness.

In fact, when using such equipment, the parties to a case could have a better view of the witness than if the witness were in the courtroom, as in the court room the witness could at times be a distance away from the parties, whereas with closed circuit television the parties could be close to the monitor. Thus, from the perspective of watching the demeanor of the witness, it was not automatic that the use of the close circuit television was worse than having the witness in the courtroom. The difference between observing the reactions of the witness via a television monitor and in the witness box could often be significant and could, in fact, be beneficial at times. Questions could be posed directly to the witness in the normal fashion. The only difference was that the witness did not have sight of the court personnel and received all questions via a set of headphones. Section 170A of the CPA was amended and before 5 August 2022, the relevant parts of the section provided as follows:

(1) Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the biological or mental age of eighteen years to undue mental stress or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

(2) (a) No examination, cross-examination, or re-examination of any witness in respect of whom a court has appointed an intermediary under subsection (1), except examination by the court shall take place in any manner other than through that intermediary…."

Subsections 1 and 2(a) were amended and new subsections 11, 12, and 13 were added to the section. The relevant parts of the section are as follows:

"(1) Whenever criminal proceedings are pending before any court and it appears to

such court that it would expose any witness—

(a) under the biological or mental age of eighteen years;

(b) who suffers from a physical, psychological, mental, or emotional condition; or

(c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act 13 of 2006), to undue psychological, mental, or emotional stress, trauma, or suffering if he or she testifies at such proceedings, the court

may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary…"

A child witness has to be protected from undue mental stress or suffering whilst giving evidence. Evidence through intermediaries is widely recognized as an effective procedure in criminal proceedings to protect a child witness or complainant. The intermediary service was not available to any other witness or complainant who may be exposed to undue mental stress, trauma, or suffering. The service was also only available in criminal proceedings.

The Criminal Law Amendment Act 12 of 2021 increased the power of the courts to appoint intermediaries. It now includes any person who suffers from a physical, psychological, mental, or emotional condition. There is no age bound or limit and an intermediary can now also be appointed for witnesses over 18 years of age. It also includes a person who is defined in section 1 of the Older Persons Act 13 of 2006 in the case of a male who is 65 years or older and a female who is 60 years and older. Courts may use the service of an intermediary where such witnesses would be exposed to undue stress and suffering if they testify in an open court. It also includes where such witness would suffer undue psychological or emotional stress, trauma, or suffering if he or she testifies at such proceedings.

In terms of sections 51A and 51B of the Magistrates' Courts Act[8] and Sections 37A and 37B of the Superior Courts Act[9], the services of intermediaries are also available in proceedings other than criminal matters. Witnesses who meet the threshold may testify through the assistance of an intermediary. However, a Court has to make the determination.

In *State v Elton Lenting and 19 Others (WCD) Cape Town*[10], Judge Lekhuleni stated that in considering an application in terms of section 170A, the court must engage in a two-pronged approach. The court must first determine whether the witness is one defined either in subsections 1(a) to (c) of Section 170A as amended. For instance, the court must determine whether the witness has a physical condition or mental age below 18. Once the court has made a finding in this regard, the court must decide whether the proceedings would expose such witness to undue psychological, mental, or emotional stress, trauma, or suffering if he or she testifies at such proceedings without the assistance of an intermediary. If the court is satisfied that the witness meets two requirements, the court may appoint an intermediary to enable such witness to give his or her evidence through that intermediary.

The Courts are empowered to request birth certificate of the child witness and a psychologist's report to determine whether a witness is below the mental age of 18. An identity document of the witness should be provided to prove the older person's age as defined in the Older Persons Act. A psychologist's report must be filed to satisfy the court that a person is suffering from a psychological or emotional condition. The CPA also refers to physical condition and this may include witnesses who are visually impaired or those suffering from speech disorders. A medical report explaining the extent of such impairment and the extent to which the witness would suffer undue psychological, mental, or emotional stress or trauma if the witness would testify at such proceedings without the assistance of a Court-appointed intermediary. In terms of section 170A(7) of the CPA, a Court is required to provide reasons for refusing an application for the appointment of an intermediary.

In *State V Lenting and 19 others (supra)* the Court found that the children who reached the age of majority were still suffering from post-traumatic stress disorder (PTSD)

and psychological problems, having witnessed the killing of their parents whilst they were minors. The court ordered that they testify through the assistance of an intermediary, through close circuit television in terms of section 158(2) of the CPA and their evidence be heard behind closed doors in terms of section 153 of the CPA. It was also ordered that the names and identities shall not be disclosed to the public.

In S *v Staggie*[11] *(supra)*, it was also stated that as far as sexual offenses were concerned there was often no need for public testimony by the complainant. The public had no need to know the full details of the circumstances that the women went through in such a case. From the standpoint of the criminal justice system, many more women would be willing to lay charges and pursue in the court those who perpetrate these types of crimes, if they were spared the public embarrassment of testifying in open court about these matters.

In conclusion, women were reluctant to report crimes of a sexual nature, fearing humiliation and embarrassment. They often view the criminal justice system as unsympathetic. They often view it as a process that does not allow them to come out on the other side with their dignity intact. There is a dire need for greater assistance to be given to those women who wish to report rape and sexual offenses. If women know and see that they would be spared public humiliation and embarrassment they may be more willing to lay charges and be witnesses in such cases. The use of intermediaries is in the best interests of all victims especially children and must therefore be available to all children in the court room including child offenders.

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[1]Mr Mohammed Moolla is an Acting Regional Court Magistrate in Parow, Cape Town.

[2]S v Marx (2005) ALL SA 267 (SCA) par 196-197.

[3]Muller, K and Hollely,K *Preparing Children for court: a handbook for practitioners. (2004) 14.*

[4]Act 51 of 1977.

[5]Act 51 of 1977.

[6]2009(2) SACR 139 (CC) at para 94.

[7]2003 (1) SACR 232 at 251 d-e and 252 b-e.

[8]Act 32 of 1944.

[9]Act 10 of 2013.

[10]CC08/2018 at para 36.

[11]See footnote 5 above, at 244i to 245 b.

Mr. Modise Khoele[1]

Introduction

An exception is a pleading in which a party raises an objection to the summons or plea on the basis that the pleadings is vague and embarrassing or lacks the necessary averments to disclose a cause of action or defence.[2]

The Distinction between Rules of Magistrate's Court and High Court

In the Magistrate's Court, exceptions are dealt with in terms of Rule 19(1) of the Magistrates' Court Rules ("the Rules"), whereas in the High Court exceptions are dealt with in terms of Rule 23(1) of the Uniform Rules of Court.

Rule 19(1)(d) provides that an exception may set an exception down within 10 days after delivery thereof, failing which it shall lapse. The lapsing of exception in the Magistrate's Court was introduced through the 31st of May 2019 amendment, which *prima facie* signified a change of intention.

The use of the word "may" in the formulation of Rule 19 (1)(d) suggests that it is discretionary for the excipient to set an exception down for hearing. However, in the same breath, the Rule also expressly provides for the consequences for the failure to set the exception down for hearing, which it is that it will lapse.

On the other hand, Rule 23(1) of the Uniform Rules of Court, which is the equivalent of Rule 19(1), does not attach any consequences for failure to set an exception down for hearing. It is not clear why there should be a difference between the position in the High Court and Magistrate's Court in this regard. This article explores the legal effects of a lapsed exception in the Magistrates' Courts.

The intention of the drafters

The High Court found, in *SB v Storage Technology (Pty) Limited*[2] that, if it was the intention that in the High Court an exception would automatically lapse if the excipient failed to set down within the prescribed period, the rule that drafters would have made this a peremptory requirement. It was further held that the drafters would also have explicitly spelt out the consequence of a failure to set down an exception for hearing.

The above reasoning was followed in *Compensation Solutions (Pty) Ltd v The Competition Commissioner and Another*[4], where the court held that the respondent had misconstrued Rule 23(1), primarily on the basis that the Rule uses the word 'may', which does not oblige the excipient to apply for a hearing date but confers only an entitlement to apply for a date. The court further held that, had it been the intention of the rule-maker to visit the failure to timeously apply for a date with the penalty of a lapsed exception, the rule-makers would have crafted the Rule to expressly say so.

From the above decision it is clear that an exception in the High Court does not automatically lapse if it is not set down. This renders the automatic lapse of exceptions un-

der the Rules of the Magistrate's Court, novel to the jurisprudence in the lower courts.

The legal effect of lapsing and its effects

There is no established authority in our courts dealing exclusively with the lapse of an exception. There is also no definitive commentary on what the effects of a lapsed exception would be in relation to the pending suit. However, the Court opined in Compensation[5] that the effect to the lapsing of an exception is that the excipient is barred from participating in the action. The lapsing of processes of court is not new to our legal discourse. In *Pietermaritzburg Corporation v Union Government*[6], the term 'lapse' was described to mean "to come to an end", "to become ineffectual or void" and "the termination of a right or privilege through neglect to exercise it within the limiter time".

In the context in which the term 'lapse' is used in Rule 19 (1)(d), it appears to connote some form of ending of an exception or the loss of its efficacy. In the event where the term connotes the meaning as suggested by the decision referred to above, the question that arises is whether it can be revived or be reinvested with legal efficacy. In *Manyasha v Minister of Law and Order*[7], the court, concerned with the revival of a lapsed summons was competent under the Rule 60(5) which provides for the extension of "any time limit" prescribed by the Rules. All things being equal, it is respectfully submitted that the same should apply to a lapsed exception.

Conclusion

In the absence of a defined rule on procedure, the application of Rule 19(1)(d) will likely be the subject of legal discourse in the Magistrate's Courts until settled by the Superior Courts or recognised by the Rules Board for Courts of Law.

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[1] Mr Modise Khoele is an Acting Senior Magistrate based at the Tshwane Central District Court, Pretoria.

[2] Steve's Wrought Iron Works and Others v Nelson Mandela Metro 2020 (3) SA 535 (ECP) at para [21].

[3] (15550/2020) [2021] ZAWHCHC 210 (21 October 2021).

[4] 6994/2019 [2022] ZAGPPHC 720.

[5] Note 2 above.

[6] 1935 NPD 36.

[7] 1999 (2) SA 179 (SCA).

Adv. Themba Mathebula[1]

Discussion

Often, it has emerged that there is some controversy when it come to the issue of who should consider the interests of the minor child between unmarried parents. Our courts are critical about who should consider the interests of such minor child. Disputes often arise regarding visitation rights, physical contact, vacations or pick up from schools amongst many other things. However, section 21(1)(a) of the Children's Act 38 of 2005 ("Children's Act") has made it somewhat complex as how the law should be applied in the situation where a father is not present at the time the child is born. Therefore, it is necessary to set out the parental rights in relation to the minor child.

The argument here goes deeper to criticise the purpose in the Children's Act. Section 21 of the Children's Act sets out requirements for biological father to acquire full parental responsibilities and rights. Most surprising, is the fact that, the Children's Act speaks of the father who must meet legislative conditions. Ostensibly, section 9 of the Constitution of the Republic of South Africa, 1996 specifically section 9(3), speaks of equality and prohibition of discrimination on any of the listed grounds therein. Undoubtedly, men and women, are for the reasons provided by section 9 of the Constitution and subsequent case law and jurisprudence, considered equal. Both parents can enjoy the same and paralleled protection emitted by the Constitution. In the modern times, a child may can give indications as to how he/she would probably like to spend time with any of the parents. Dictating child interests by legislative restrictions and further separating the child from the other parent often bear some excruciating eventualities. Some children who grow up without both parents present often get lost and the likelihood is that they can resort to resistance and sometimes, dangerous street life because of lack of guidance. Although parental rights and responsibilities can largely be determined structurally in line with the law, it is critical to consider the self-determined interests of the child alone as well. Therefore, denying the father access to the child and to make the father to rely on courts' rulings in order to contest parental rights and responsibilities, is nothing but a practise of punishment to the father.

Children are born of both parents, however, the law should intervene in situations where the interests of the minor child are at risk. Placing legislative requirements on the side of the father is tantamount to discrimination. Although total and deliberate absenteeism by either parent should be strongly interrogated, and if proven the father should then be allowed fulfil future legislative requirements. When the respective rights are finally weighed up against each other, it would seem as though the limitation of the parents' right to equality is currently justified by the child's overriding right to parental care, which in terms of the best interests standard is currently limited to committed parental care, as defined by sections 20 and 21 of the Children's Act.

Therefore, section 21(1)(a) of the Children's Act should be revised, as the case is under the Amendment Bill of 2018, to do away with the limitations. Children still need both parents, whether the child was born during the requirements in section 21(1)(a) or not, the child will still need both parents and there is no need to legislate absent fathers who later want to be part of their children.

[1]Advocate Themba Mathebula is a Law Lecturer at the University of Limpopo.

CASE SUMMARIES IN RELATION TO AMENDMENTS OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 (“CPA”)

1. The Criminal Procedure Amendment Act 16 of 2021 amends the CPA:

***Centre for Child Law and Others v Media 24 Limited and Others*[1]**

In *Centre for Child Law and Others v Media 24 Limited and Others* (‘‘Centre for Child Law judgment’’), the Constitutional Court held that section 154(3) of the Criminal Procedure Act, 51 of 1977 does not afford protection to child victims of criminal offences and that the protection does not continue to apply even after a child accused, witness or victim turns 18 years of age, whereas it ought to, and section 154(3) is, for those reasons, inconsistent with the Constitution of the Republic of South Africa, 1996 (“the Constitution’’). The declaration of constitutional invalidity was suspended for 24 months to afford Parliament an opportunity to correct the defect giving rise to the constitutional invalidity. The Constitutional Court granted an interim relief by way of a reading-in to ensure that, during the period of suspension of invalidity, the protection— (a) afforded by section 154(3) is also extended to child victims of criminal offences; and (b) continues to apply after a child accused, witness or victim turns 18 years of age.

As a result of the Centre for Child Law judgment, the Criminal Procedure Amendment Bill, 2021 (the ‘Bill’) was drafted with the intention to amend section 154 to address the constitutional invalidity of the provision.

The Supreme Court of Appeal (“SCA”) had previously declared section 154(3) unconstitutional for not protecting the identity of child victims but dismissed the appeal regarding ongoing anonymity protection for child participants once they turn 18. The case involved a minor child (“KL”), who was abducted as a baby and later found by her biological parents. Facing media attention, KL sought legal support from the Centre for Child Law (“CCL”) to protect her identity. The High Court granted interim relief, and the applicants argued that section 154(3) should be interpreted to protect child victims and participants beyond the age of 18.

In the Constitutional Court judgment, the majority judgment declared section 154(3) unconstitutional for not protecting child victims and ordered a reading-in to remedy the defect. It also found the lack of ongoing protection for child participants unconstitutional and ordered an interim reading-in, allowing individuals to consent to identity publication after turning 18 or to approach a Court for continued protection. The minority judgment, who concurred on victim protection but differed on ongoing protection, emphasized the importance of balancing freedom of expression and open justice. The minority judgment argued for a default regime where anonymity protection ends at 18 unless expressly extended by a Court.

The majority and minority judgments both highlighted the need to balance child protection with the principles of freedom of expression and open justice.

2. The Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Act 15 of 2020 amends the CPA:

***Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others*[2]**

The constitutionality of Section 18 of the CPA was questioned and was found to be unconstitutional in *Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others*. Section 18 of the CPA, which imposes a prescription period of twenty years for prosecuting sexual offences (excluding rape or compelled rape), was deemed irrational and arbitrary as it distinguished between different sexual offences. The amendment of the Criminal Procedure Act, 1977 provides for the extension of the list of sexual offences in respect of which a prosecution may be instituted after a period of 20 years has elapsed since the

date of the alleged commission of the sexual offence, and to provide for matters connected therewith.

The Constitutional Court confirmed the High Court's declaration of constitutional invalidity of section 18 of the CPA. Section 18 prescribed a 20-year limit for instituting criminal prosecutions for sexual offences, excluding rape and similar crimes. The applicants, survivors of alleged sexual assaults, argued that section 18 was irrational, arbitrary, and violated various constitutional rights.

The High Court declared section 18 unconstitutional, citing irrationality and unjustifiable limitation of survivors' rights. It suspended the declaration for 18 months, ordering Parliament to remedy the defect and read-in wording to temporarily exclude the 20-year prescription for other sexual offences. In an appeal to the Constitutional Court, the applicants supported the ruling of the High Court but opposed the suspension, calling for an immediate declaration of invalidity.

The Constitutional Court, in a unanimous decision, found that section 18's distinction between sexual offences was irrational, emphasizing the harm caused to survivors rather than the nature of the offence. It concluded that section 18 was unconstitutional, preventing survivors from pursuing charges after 20 years and undermining the state's gender-based discrimination obligations.

The Court suspended the declaration for 24 months to allow Parliament to address the defect. During the suspension, section 18(f) was read as including "all other sexual offences." If Parliament failed to act within 24 months, the interim reading would become final, applying retrospectively from April 27, 1994.

3. The Cyber Crimes Act 19 of 2020 ("Cyber Crimes Act") amends the CPA:

AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others[3]

The Constitutional Court, in *AmaBhungane*, had to determine the constitutionality of mass surveillance and state-initiated searches under the RICA Act 70 of 2002 ("RICA Act"). The Court employed a two-stage analysis, firstly, the court assessed whether a constitutional right, particularly the right to privacy, was violated, and secondly, the court examined if such a right was violated, whether the infringement could be justified under section 36 of the Constitution, which deals with limitations of rights ("limitation clause"). Section 14 of the Constitution provides that everyone has a right to privacy, However, the right to privacy is not absolute and can be restricted or limited by general application if competing public interests or conflicting rights of others are present in terms of section 36 of the Constitution.

In applying this analytical framework, the Apex Court concluded that the state's surveillance methods encroached upon section 14 of the Constitution (right to privacy) in terms of the RICA Act and when subjecting the matter to the limitation clause in section 36, the Constitutional Court ruled that the RICA Act failed the constitutional validity test due to inadequate safeguards concerning independent judicial supervision and the notification of individuals under surveillance.

It is worth noting that the RICA Act specifically pertains to communications, dealing with verification of personal data whereas the Cybercrimes Act encompasses a criminal connotation. It has a broader scope, encompassing not only the interception of communications but also the unauthorized access to any type of data, computer program, computer storage medium, and computer system.

Minister for Safety and Security v Van Der Merwe and Others[4]

On June 7, 2011, the Constitutional Court delivered a judgment on an application seeking leave to appeal a decision from the SCA. challenging the legitimacy of search and seizure warrants issued under section 21 of the Crimi-

nal Procedure Act which, amongst others, authorised the seizure and duplication of electronic devices which had a bearing on the investigation.

These warrants stemmed from suspicions by the Commercial Crime Unit of the South African Police Service (SAPS) that Mr. Van der Merwe, three other individuals, and several companies linked to him financially were engaged in money laundering, financial irregularities, and tax offences.

The SAPS obtained warrants from a Magistrate in Cape Town, leading to searches at the residences of Mr. van der Merwe and Mr. Fanaroff, as well as at the business premises of certain respondent companies. Subsequently, various items were seized. However, the warrants were deemed invalid by both the High Court and the SCA because they did not specify the offences. In a unanimous decision, the Constitutional Court asserted that a warrant under section 21 must clearly state the underlying offence, and the failure to do so rendered the warrants invalid. Consequently, the application was dismissed.

It is important to note that not only articles involved in the commission of offences under the Cybercrimes Act can be seized, but also any data, computer program, computer data storage medium or computer system that can be related to or may provide evidence of the commission of a crime. The warrant application and the search warrant should identify the articles to be seized with sufficient particularity.

Cybercrimes or crimes involving the use of computers may make it difficult to establish the exact location where the offence was committed. In such cases, a warrant can be issued if it appears that the article is within the Republic, but its location or involvement in the crime is uncertain. It is essential to present these jurisdictional facts to the judicial officer considering the application for a warrant. The judicial officer must ensure that the affidavit contains sufficient information about the existence of the jurisdictional facts. If not, the judicial officer should refuse to issue the warrant.

For a warrant to be understandable, it must specify the empowering legislation and the offence. As a result, the Cybercrimes Act aims to better oversee the authority to investigate cybercrimes by establishing offences that relate to cybercrime. This results in the amendment of the Criminal Procedure Act which will provide for cybercrimes and warrants will contain specific offences and clear instructions on which items will be confiscated during the search.

4. The Domestic Violence Amendment Act 14 of 2021 amends the CPA

Van As v Additional Magistrate Cape Town and Others[5]

This case discusses the issue of bail in the context of domestic violence cases, particularly focusing on the Criminal Law Amendment Act 32 of 2007 (“Criminal Law Amendment Act”) and relevant sections of the CPA. It emphasizes the importance of a proper bail application process and the consideration of protection orders. The cancellation of the applicant's warning by the lower Court was deemed unlawful, rendering subsequent decisions, including incarceration and bail proceedings, invalid. The High Court stated that the Court is mandated to consider various factors, including the safety concerns of the complainant when deciding on bail.

Section 60(12)(b) of the CPA has been amended in a way that disregards the importance of s 6(1)(b) and s 6(2)(a) of the Domestic Violence Act 116 of 1998 (“DVA”). These subsections provide the basis for an order to be made in accordance with s 6(4) of the DVA. Subsection (1) states that the application must contain *prima facie* evidence of domestic violence committed or being committed by the respondent. Subsection (2) requires the court to consider any evidence that has been previously received under section 5(1) of the DVA.

The recent amendments made to sections 59 and 59A of the CPA state that bail should not be granted by the police or prosecutor for an offence committed against a person in

a domestic relationship, as defined by the DVA. This includes cases where a protection order has been issued under the same Act.

The High Court declared the lower Court's decision, cancelling an applicant's release on warning without proper adherence to statutory provisions, as unlawful and unconstitutional, setting aside various decisions related to the applicant's release and protection orders. The High Court judgment further discussed the requirements in respect of the issuance of final protection orders during bail proceedings, highlighting the need for a fair and impartial process.

5. The Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Act 23 of 2022 amends the CPA:

S v Okah[6]

The Constitutional Court, in a unanimous judgment, reinstated the convictions and 24-year sentence of Mr. Henry Emomotimi Okah for terrorist acts under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004. The court rejected his jurisdictional challenge, stating that South African courts have extraterritorial jurisdiction for terrorist offences beyond financing. Mr. Okah's application for exemption under section 1(4) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act was denied as the bombings violated international humanitarian law. While dismissing certain special entry applications, the Supreme Court of Appeal found an error in the High Court's refusal to acknowledge Mr. Okah's right to consular access, allowing him the right to appeal his conviction. Section 317 of the CPA allows for special entries. However, irregularities should only be refused if the application is deemed to be in bad faith, frivolous or absurd, or if granting the application would constitute an abuse of the court process. Despite this irregularity, the Court determined it did not result in a failure of justice. Consequently, the Constitutional Court set aside the SCA's judgment, reinstating all convictions and the original 24-year sentence.

[1] 2019 ZACC 46.

[2] 2018 ZACC 16.

[3] 2021 ZACC 3.

[4] 2011 ZACC 19.

[5] 2023 ZAWCHC 170.

[6] 2018 ZACC 3.

We are pleased to announce that the South African Judicial Education Institute ("SAJEI") in partnership with JUTA, will host a writers workshop in March 2024. The objectives of the workshop are to, *inter alia*, enhance participants' writing skills, provide a platform for participants to share writing ideas and experiences, as well as to strive towards uniformity and similar writing style for the Newsletter's articles.

SAJEI publishes three (3) Judicial Education Newsletters per annum and largely our contributors are Magistrates and University Law Lecturers. However, contributions are welcomed from anyone in the legal fraternity.

The writer's workshop will be held in the first week of March 2024. The final date will be communicated in due course. If you are interested in attending the workshop and contributing to the Newsletter, kindly send your name and contact details to Ms. Hangwelani Maringa at HMaringa@judiciary.org.za no later than 31 January 2024. The workshop will be held in Gauteng. See you there!

5.2 STANDARDS

The following standards are hereby established:

5.2.1 DETERMINATION OF SITTING OF THE SPECIFIC COURTS

(i) Judicial Officers shall at all times strive to deliver quality justice as expeditiously as possible in all cases.

(ii) It is noted that there is a significant difference in the manner in which courts and the Constitutional Court, the Supreme Court of Appeal and Specialist Courts (the Labour Court, Labour Appeal Courts, Land Claims Court and the Competition Appeal Court) perform their work, as well as the case loads they carry. The standards set out herein must be applied within that context. The Head of each court must ensure that Judicial Officers are always available to handle cases.

(iii) The Head of each Court will be responsible for determining the sittings of each court, subject to the directives and oversight of the Chief Justice.

(iv) Trial courts should strive to sit for a minimum of 4.5 hours per day and all Judicial Officers should strictly comply with court hours, save where, for good reason, this cannot be done.

(v) In the event that a Judicial Officer should become available e.g. where the roll collapses, the Judicial Officer should make him or herself available to be allocated other work by the head of the Court or a designated Judicial Officer.

WALL OF FAME

Ms M Lebese

Mr B. Chulu
John Meeks (USA)
Mr O. Kingsley
Ms K. Motlhabane
Ms D. Dijong
Ms T. Modungwa
Mr L. Claasen
Ms N. Engelbrecht
Mr D. Mogotsi
Mr T. Lelliot (JUTA)
Mr N. Karikan
Mr C. Barnard
Mr I. Botha
Mr Greg Nel
Mr Jan Greyvenstein
Dr J. Lekhuleni
Mr C. Nekosie
Ms R. Sepato
Dr F. Tladi
Justice Gaswaga (Uganda)
Mr L. Moeng
Judge Wallace (USA)
Ms O. Seleke
Ms M. Dawray
Mr M. Jooma
Ms A. Ramlal
Mr K. Mphephu (SAPS)
Ms R. Matthys
Ms M. Jordaan
Mr S. Harichand
Ms Smile

STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS JANUARY 2023 TO DATE

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
1.	Teboho Bernett Mtholo	Attorney	Suspended	Free State	2023-10-04
2.	Rehan Coetzee	Attorney	Suspended	Free State	2023-09-26
3.	Izak Jacob Steenkamp	Attorney	Suspended	Free State	2023-09-26
4.	Doré Mostert	Attorney	Suspended	Western Cape	2023-09-07
5.	Michael Leonard Jennings	Attorney	Suspended	Western Cape	2023-09-07
6.	Du-Wayne Stoltz	Attorney	Suspended	Eastern Cape	2023-09-05
7.	Mthunzi Patrick Magwaza	Attorney	Suspended	KwaZulu-Natal	2023-09-04
8.	Martins Matlakala Sebueng	Attorney	Suspended	Gauteng	2023-08-29
9.	Jacobus Philadelphius Symington	Attorney	Suspended	Northern Cape	2023-08-25
10.	Kelawathee Bejai Singh	Attorney	Suspended	KwaZulu-Natal	2023-08-24
11.	Mpho Lendl Phosa	Attorney	Struck From Roll	Western Cape	2023-08-22
12.	Samkelisiwe Sthandwa Makhanya	Attorney	Struck From Roll	KwaZulu-Natal	2023-08-21
13.	Nhlakanipho Sandile Mncube	Attorney	Struck From Roll	KwaZulu-Natal	2023-08-21
14.	Theodore Avel Tromp	Attorney	Suspended	Gauteng	2023-08-15

STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS
JANUARY 2023 TO DATE

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
15.	Tsepo Luthando Masango	Attorney	Suspended	Gauteng	2023-08-15
16.	Sithembiso Yena	Attorney	Suspended	Gauteng	2023-08-15
17.	Francois Andre Mostert	Attorney	Struck From Roll	Eastern Cape	2023-08-29
18.	Nomfundo Nicolette Nyembe (Mnisi)	Attorney	Suspended	Gauteng	2023-09-05
19.	Hendrik Cornelis Viljoen	Attorney	Suspended	Gauteng	2023-09-05
20.	Senzo Wiseman Mkhize	Advocate	Struck From Roll	Gauteng	2023-09-08
21.	Leigh Dorothy Harper	Attorney	Suspended	Gauteng	2023-09-11
22.	Mxolisi Adolphus Cassius Ndhlovu	Attorney	Suspended	Gauteng	2023-09-19
23.	Jacobus Cornelius Van Eden	Attorney	Suspended	Gauteng	2023-09-19
24.	Petrus Makhabane Thobejane	Attorney	Suspended	Gauteng	2023-09-26
25.	Rudolf Daniël De Beer	Attorney	Suspended	Free State	2023-09-29
26.	Cliffort Jabulane Chauke	Attorney	Suspended	Gauteng	2023-10-03
27.	Walter Du Toit	Attorney	Struck From Roll	Free State	2023-10-05
28.	Raymond Tonderayi Bombo	Attorney	Struck From Roll	Gauteng	2023-10-12
29.	Kulani Lionel Dhumazi	Attorney	Struck From Roll	Gauteng	2023-10-12
30.	Ury Ngwanaletshaba Ratseke	Attorney	Struck From Roll	Gauteng	2023-10-17

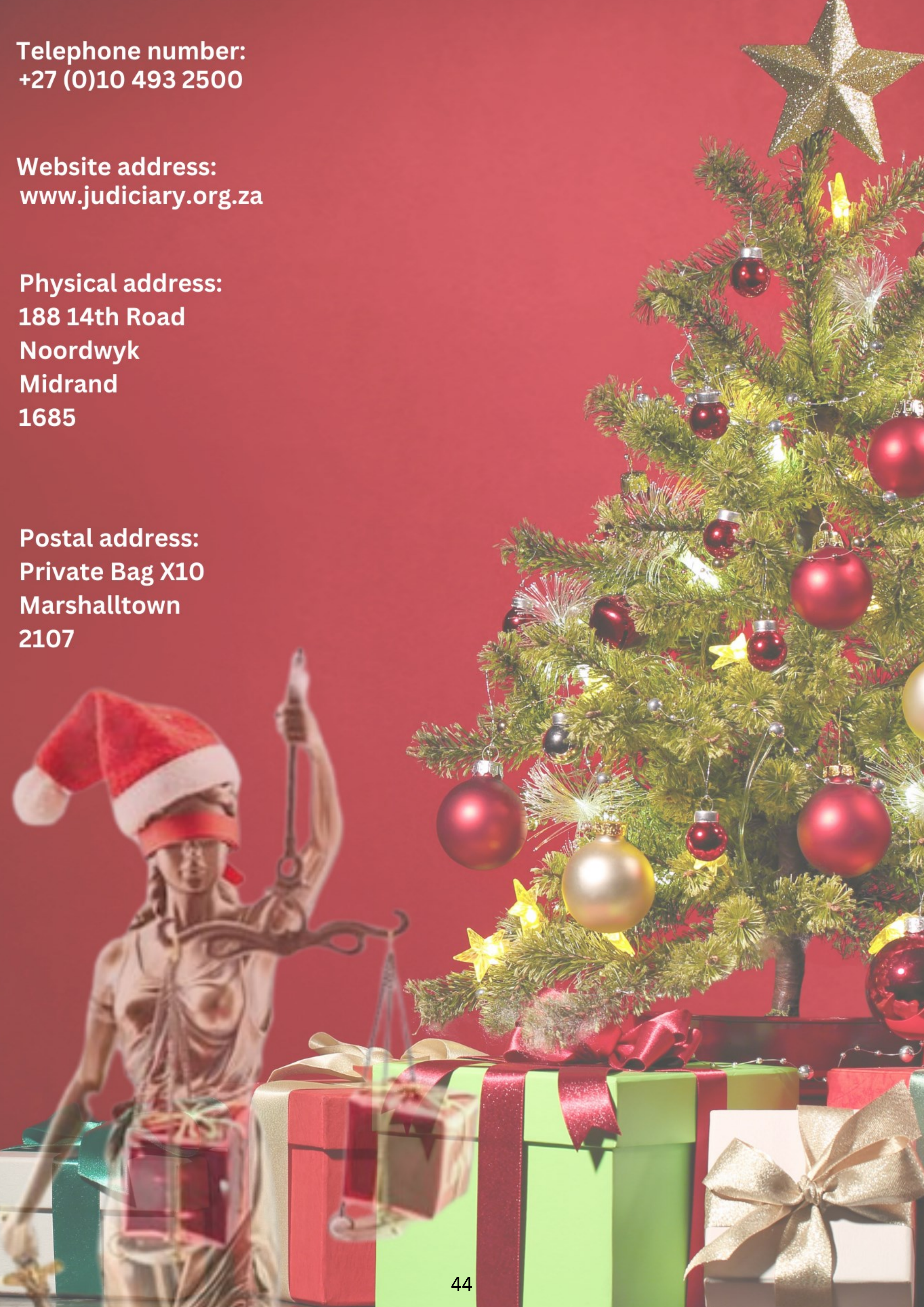
STRUCK-OFF AND SUSPENDED LEGAL PRACTITIONERS JANUARY 2023 TO DATE

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
31.	Alex Molefe Methula	Attorney	Suspended	Gauteng	2023-10-17
32.	Mbongeni Progress Magoqo	Attorney	Suspended	KwaZulu-Natal	2023-10-26
33.	Mbalenhle Immaculate Kubheka	Attorney	Suspended	KwaZulu-Natal	2023-10-26
34.	Darren Philip Carpenter	Attorney	Struck From Roll	Gauteng	2023-10-26
35.	Tshepang Walter Mokotedi	Attorney	Suspended	Gauteng	2023-11-09
36.	Lebogang Aubrey Manong	Attorney	Suspended	Gauteng	2023-11-09
37.	Elizabeth Magdalena Van Coller	Attorney	Suspended	Western Cape	2023-12-10
38.	Oagile Ben Kgang	Attorney	Suspended	Free State	2023-11-23
39.	Ahmed Asmal	Attorney	Suspended	KwaZulu-Natal	2023-11-17
40.	Johannes Jacobus Bekker	Attorney	Suspended	Free State	2023-11-16
41.	Clement Chris Harrington	Attorney	Suspended	Free State	2023-11-16
42.	Jacobus Adriaan Meintjes	Attorney	Suspended	Free State	2023-11-16
43.	Odette Laura-Joeann Viljoen	Attorney	Suspended	Free State	2023-11-15
44.	Naomie Marais	Attorney	Struck From Roll	Gauteng	2023-11-14
45.	Manfred Chinamasa	Attorney	Struck From Roll	Eastern Cape	2023-11-14

NO	NAME	DESIGNATION	STATUS OF LEGAL PRACTITIONER	PROVINCE	DATE OF ACTION
36.	Lebogang Aubrey Manong	Attorney	Suspended	Gauteng	2023-11-09
37.	Elizabeth Magdalena Van Coller	Attorney	Suspended	Western Cape	2023-12-10
38.	Oagile Ben Kgang	Attorney	Suspended	Free State	2023-11-23
39.	Ahmed Asmal	Attorney	Suspended	KwaZulu-Natal	2023-11-17
40.	Johannes Jacobus Bekker	Attorney	Suspended	Free State	2023-11-16
41.	Clement Chris Harrington	Attorney	Suspended	Free State	2023-11-16
42.	Jacobus Adriaan Meintjes	Attorney	Suspended	Free State	2023-11-16
43.	Odette Laura-Joeann Viljoen	Attorney	Suspended	Free State	2023-11-15
44.	Naomie Marais	Attorney	Struck From Roll	Gauteng	2023-11-14
45.	Manfred Chinamasa	Attorney	Struck From Roll	Eastern Cape	2023-11-14
46.	Andy Zakhele Ndlovu	Attorney	Suspended	Gauteng	2023-11-07
47.	Matome Ignatious Seanego	Attorney	Suspended	Gauteng	2023-09-07
48.	Johann Koorts	Attorney	Struck From Roll	Limpopo	2023-09-06
49.	Labry Laenat Nkuna	Attorney	Suspended	Gauteng	2023-09-05
50.	Sheik Muhammad Qiamuddin Kader	Attorney	Suspended	Gauteng	2023-08-10

LIST OF UPCOMING TRAINING

NO	DCM	COURSE	IN PERSON/	DATE	PROVINCE
		JANUARY 2024			
1	DCM133	Evictions	Virtual	22 – 25 Jan	FS A&B
2	DCM132	Action Procedure	In person	29 – 31 Jan	PMB
3	Ad Hoc	Aspirant Judges	In Person	29 Jan – 02 Feb	TBC
4	DCM134	OPA	Virtual	5 – 6 Feb	GP
5	DCM135	Bail	Virtual	5 – 6 Feb	DBN
6	DCM139	Maintenance	In person	6 – 8 Feb	NC
7	DCM136	Action procedure	Virtual	12 – 15 Feb	DBN
8	DCM137	Child Justice Act	Virtual	12 – 15 Feb	GP
9	DCM77	New Amendments - PRR- Guardianship	In person	12 – 16 Feb	WC
10	DCM140	Maintenance	In person	19 – 22 Feb	DBN
11	DCM141	Evidential Aspects	In person	19 – 22 Feb	EC 1
12	DCM144	Applications	Virtual	19 – 22 Feb	PMB
13	DCM142	Delict	In person	26 – 28 Feb	LP
14	DCM143	Cybercrime	Virtual	26 – 28 Feb	FS A&B
15	DCM145	Adoptions	In person	26 – 28 Feb	DBN
16	DCM146	PFHA and Mainte-nance	In person	4 – 7 March	WC
17	DCM147	Evictions	In person	11 – 14 March	LP
18	DCM148	Evictions	In person	11 – 13 March	PMB
19	DCM149	Domestic Violence	In person	11 – 14 March	EC 2
20	DCM150	Execution	Virtual	25 – 28 March	FS A&B
21	DCM151	Inquests + S77- 79	In person	26 – 28 March	WC



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