



JUDICIAL EDUCATION NEWSLETTER SOUTH AFRICA

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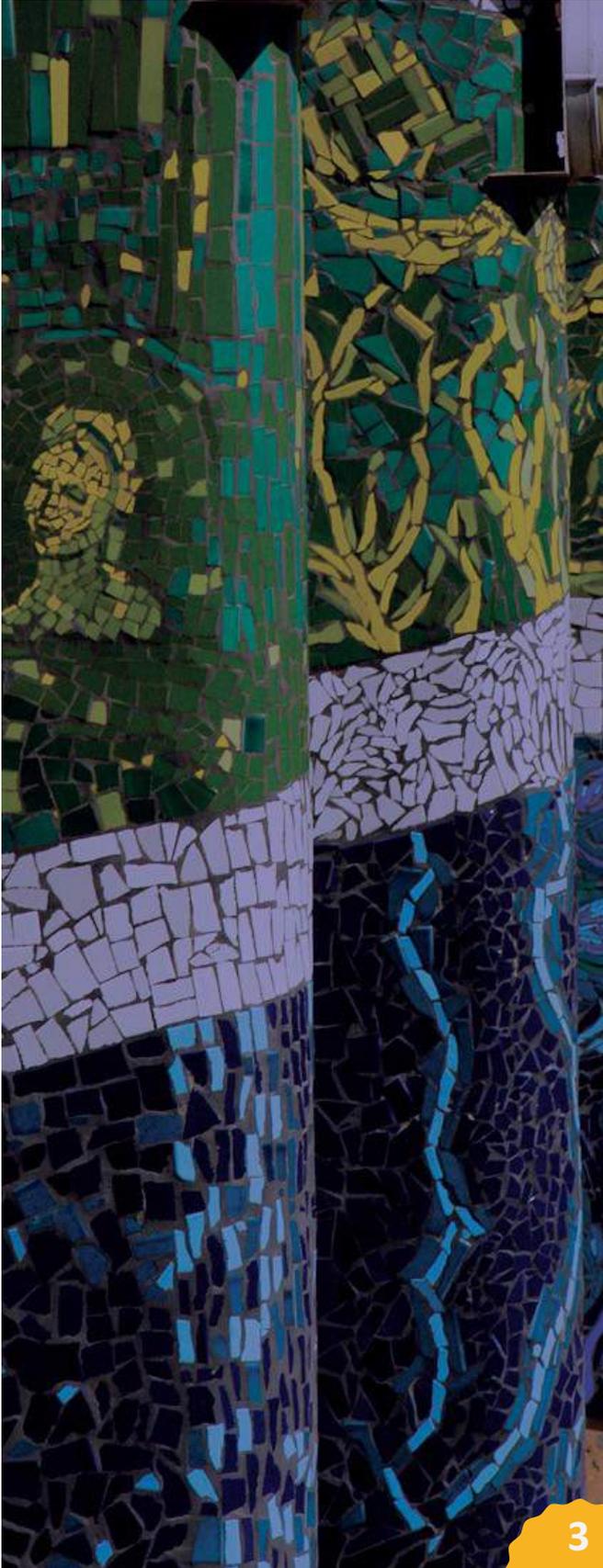
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TheSouthAfricanJudiciary



FROM THE DESK OF THE CEO



Dr Gomolemo Moshoeu
CEO of SAJEI

“Welcome to the fifth edition of the Judicial Education Newsletter, our electronic publication on judicial education and related matters. The aims of the Newsletter are as follows:

- To create a platform for knowledge sharing and candid expression of ideas beneficial to Magistrates.
- To engender a culture of writing on relevant topical issues of interest.
- To be a source of information on SAJEI activities and commentary thereof, and
- To share current developments in law.

SAJEI has an African and international footprint and your contributions are greatly appreciated.

Dr G. Moshoeu



FROM THE DESK OF THE EDITOR-IN-CHIEF



Mr TV Ratshibvumo

Editor in Chief

In this edition, we once more offer a platform through which Magistrates can share their experience in court with a view of applying law with some consistency and uniformity countrywide through peer training. Articles should conform to all requirements in terms of length, topic and language; and the Editorial Committee reserves the right to edit them before publication.

In this edition, we also introduce a national list of legal practitioners who have been struck off the roll, or suspended from practice as provided by the Legal Practice Council. Up to now, each province had been compiling its own list and therefore there is no consolidated resource document. Consolidated documents will help judicial officers in rooting out the practice of individuals who appear in courts with no right of appearance which is an offence. This has unfortunately become common lately especially in big cities.

It is often said that an average person in South Africa knows justice as it is dispensed at the Magistrates' Courts. While judgments from the highest courts in the land always impact on all of us as the citizens, it is in the Magistrates' Courts that almost everyone of us will in his/her lifetime come face to face with the judicial officer and have justice meted out to him/her. Even if we are law abiding citizens, we may not escape this fate as victims of crime who constantly give evidence in courts detailing how we were violated; as parents of the children whose other parents are unwilling in taking part in the upbringing and maintenance of the children or as motorists who for one reason or another may have violated traffic regulations. If it is not in the criminal courts, it could be in civil courts where each one of us is bound to have his day there for recovery of debt litigation.

To these members of public, justice will be meted out by the Magistrates who are often described as the coalface of justice. These are the men and women whose graduations did not mark the end of their studies as it is often the case in many careers, but its genesis; for they have to keep up to date with the recent laws enacted by the Legislature and the judgments handed down from time to time by the High Courts.



SAJEI TEAM



SAJEI welcomes Mr Ngwato Thomas Maseko as the newly appointed Assistant Director: E-Learning Administrator. He has extensive experience in the software development environment and innovation strategy particularly in the electronic learning space. We hope his inclusion in our team, will aid SAJEI to effectively participate in the fourth Industrial Revolution while bringing change in how judicial training is done in Africa.

Norms and Standards Corner

The following norms are hereby established:

- I. Every Judicial Officer must dispose of his or her cases efficiently, effectively and expeditiously.
- II. The Head of each Court should encourage Judicial Officers to ensure that all courts and related services should be open and accessible.
- III. The Heads of all Courts must take all necessary initiatives to ensure a thriving normative and standardized culture of leadership and must ensure that these core values are adhered to.
- IV. The Heads of all Courts should engender an open and transparent policy of communication both internally and externally. Collegiality amongst Judicial Officers should be fostered and encouraged.



NEWS FLASH

Government Gazette notice number 42740 dated 4/10/2019

PAIA & PAJA **Rules** finds its application in the Magistrates Court as from 4/11/2019. Note pages 34 - 36 provides for Rules relating to PAIA and pages

40- 43 provides for Rules relating to PAJA. This effectively means that from 4/11/2019 PAJA applications will follow these **Rules** in the Magistrates Courts.

Government Gazette notice number 42739 dated 4/10/2019

Pages 77- 89 are important for purposes of the Civil Court regarding Rules for Contingency Fee Act 66 of 1997, as amended and pages 89 -90 relates to Legal Practice Act 28 of 2014, as amended.



RECENT JUDGEMENTS AND COMMENTS



Mr TV Ratshibvumo
Regional Magistrate

I.

S v Serame (Case no. SS126/2018, GLD - Johannesburg).

Recusal of a judicial officer. Accused pleaded guilty and handed in a statement in terms of sec 112 (2) of Act 51 of 1977 confirming his plea on a charge of murder. Grant AJ of the Gauteng Local Division JHB, wanted to know the state of “his capacity” at the time the crime was committed. The defence admitted to not having questioned the accused over “his capacity” and suggested that the court should question him. The accused was sworn in to answer questions relating to his plea and in particular, his capacity. Not happy with the accused’s “capacity and voluntariness”, the court “rejected” the guilty plea and postponed the matter with a view to commit the accused for observation at a mental institution.

Aggrieved by the turn of events and in particular, the procedure adopted, the State applied for the presiding officer’s recusal based on “irregularity” of eliciting evidence under oath at plea stage. Recusal application was refused with the court holding that recusal based on irregularity is foreign in our law. The judge however recused himself because “he could no longer trust the counsels.” This is because the judge was accused of striking evidence from the record. From the judgment, it appears as though the counsel for the State relied on his personal electronic recording to reach this conclusion. Unfortunately the judgment is not detailed on the contents of that recording as it zoomed on it as unauthorised recording that could be contemptuous.

Judicial conundrum introduced by Serame: For reasons that this judgment was subject to media debate and that as a High Court judgment, it is binding on the Lower Courts, it is necessary to unpack its future impact.

- Can lack of trust in legal practitioners be a reason to recuse ourselves as judicial officers? Attached to the same question would be whether we should recuse ourselves each time the same practitioners appear before us in other cases and whether they too would be entitled to ask for our recusal when we don’t, at all times, citing the lack of trust that was once an issue some years ago between them and the court.
- Practice manuals and directives of various courts do not permit the filming or electronic recording of court proceedings without prior authorisation by the court. This has been enforced in that various media houses approach the court before broadcasting the court proceedings. Does this directive extend to recording by way of electronic taking of notes by the legal practitioners which is common in courts lately?
- Is intoxication a ground for referral for mental observation in terms of sec 78 of Act 51 of 1977? What is the impact of Section 1 of the Criminal Law Amendment Act 1 of 1988 in circumstances where one commits a crime after voluntary intoxication?



- To what extent can the psychiatrists inquire into the criminal capacity of the accused? In *Serame*, the psychiatrists were ordered to inquire into the accused's "intention to unlawfully kill the deceased – or anyone, including his foresight and reconciliation to the risk of doing so; - of the accused, at the time of the conduct in question, including at any time before that which could give rise to antecedent liability."

II

S v Ndlovu (Case no. AR96/2018, KZN - Pietermaritzburg).

Mr Ndlovu was convicted by the Regional Court on a charge of rape. The victim was kidnapped and raped by several men who were not arrested. Only Mr. Ndlovu was arrested and convicted. In line with sec 51 (1) of Act 105 of 1997 which provides for mandatory life sentence when the victim was raped by more than one person, the Regional Court imposed life imprisonment as the sentence. On appeal, the High Court found itself bound by the unreported decision of *S v Mahlase* ([2015] JOL 32894 (SCA)) where the SCA held that the mandatory life imprisonment is only applicable when other persons who take part in the rape are also arrested and convicted, and that it cannot be applied when only one person from the group is arrested. Various decisions of the High Courts have been successful in avoiding the binding effect of *Mahlase* (see for example *S v Khanye* (A66/2015) [2017] ZAGPJHC 320 (13 March 2017) and *S v Cock* 2015 (2) SACR 115 (ECG) where life imprisonment was imposed/confirmed even though only one offender was arrested and convicted of rape in which the victim was raped by more than one person. Those who found themselves bound to follow it, did so in protest voicing the injustice consequences flowing from it – like in this majority judgment (*Ndlovu*) decided by the KZN Division on 12 August 2019. *Hadebe J* followed the reasoning in decisions such as *Khanye* and *Cock*; but was in the minority. Although *Mahlase* was criticised in all the above judgments, it remains binding until it is revisited and reversed by the SCA itself or by the CC.

III.

S v Vilakazi, Mkhize, Dudula & Gumede (Review Case no. DR81/2019, R82/2019, R83/2019 & R84/2019 KZN Local Division, Durban).

All four cases were sent to the High Court on special review in that irregular or incompetent sentences were imposed by the trial court. All cases involved rape of children in circumstances that mandatory life sentences were applicable, but not imposed by the same judicial officer.

- Vilakazi was sentenced to "5 years imprisonment wholly suspended for 7 years on condition the accused is not convicted of any offence in contravention of any section in Act 32 of 2007." In terms of sec 297 (1) (b) of Act 51 of 1977, a court can suspend a sentence for a period not exceeding 5 years.
- Mkhize was sentenced to "10 years imprisonment, half of which was suspended for 10 years..."
- Dudula was sentenced to "4 years imprisonment wholly suspended for 6 years on condition the accused is not convicted of any offence in contravention of, as stipulated in Act 32 of 2007."
- Gumede was sentenced to 25 years imprisonment with an order of non-parole period of 18 years. Beside numerous decisions to the effect that non-parole period can only be ordered in exceptional circumstances, sec 276B (1) (b) authorises a court to fix a non-parole period for a duration not exceeding two thirds of the sentence imposed. 18 years is way above the statutory limit of two thirds. All the sentences were set aside and remitted back with an order for sentencing proceedings to commence afresh before a different magistrate.



THE MAGISTRATES (JUDICIARY) AND THE FOURTH INDUSTRIAL REVOLUTION (4IR)



Mr Thabo Boase
District Magistrate

A world renowned economist Klaus Schwab, founder and Executive Chairman of the World Economic Forum explains that we have an opportunity to shape the fourth industrial revolution, which will fundamentally alter how we live and work. Schwab argues that this revolution is in different scale, scope and complexity from any that has come before. Klaus Schwab submits that the developments are affecting all disciplines, economies, industries and governments.¹ As we are living in the ever changing world, the Judiciary is not immune from technological changes which surround us daily.

Professor Tshilidzi Marwala urged² that the South African government departments should develop strategies to address the impact of the fourth industrial revolution in their areas of responsibilities. I submit that the Judiciary forms part of the global community and the fourth industrial revolution will affect it in one way or the other. This raises a need for Judicial Education Institutes to develop efficient information and communication technology (ICT) skills for Judicial Officers. This will of course come at a cost as budget needs to be allocated to SAJEI in order to fulfil its statutory mandate.

We cannot ignore that since the fourth industrial revolution will affect all spheres of life, legal disputes emanating from the fourth industrial revolution are bound to be brought before the courts for adjudication. The question which might follow is whether the Judicial Officers are capacitated enough or ready to deal with matters of this nature. This will also affect Judicial Officers in the execution of their functions. This may be in a form of a paperless court, digitalised court filing systems, digitalised access to case records during the proceedings and/or digitalised case allocations. Some argue that the fourth industrial revolution will also assist in delivery of services to the poor and others argue that technological changes will improve both access to and efficiency of the justice system and this should be embraced by all.³

If the way people work, live and play is changing, the fourth industrial revolution will no doubt affect the administration of justice as it is part of the changing world.² The Judiciary ought to take advantage of the new developments that may enhance the delivery of its own services. It is the duty of any judicial system to prepare and meet these challenges and at the same time it is the duty of the Judiciary to take advantage of new opportunities offered by information technology to offer a professionally excellent service to the communities.²

The Minister of Finance, Mr. Tito Mboweni in his 2019 budget speech noted the importance of getting our government tech-ready but historically we have been very slow on this front. While the world invests heavily in tech, as the Digital Evolution Index shows, South Africa remains in danger. Jackie Nagtegaal wrote⁴ that South Africa can do with technology to transform the justice system and she argues that South Africa stands to gain a more just society and that should be regarded as a trump card when we think about implementing technology and the future law. The Minister of Communications and Digital Technologies Stella Ndabeni-Abrahams said⁵ the department of Communications, with the advice of the Fourth Industrial Revolution Commission, will develop a strategy and framework for government, which will enable every government department and organs of state, to develop their own plans to integrate fourth industrial revolution in everything they do, and ensure that the sectors in which they function align accordingly.

The benefits of employing fully fledged information technology in the courts of South Africa would be endless.⁶ The Judiciary has recognised the progression of advancements of information technology as steps in the right direction for the utilisation of information technology to improve levels of efficiency.⁷

Therefore, the Judiciary should take part in this new era and this can be archived by budget allocation to SAJEI to continue to offer skills development in Information communication technology (ICT) aligned to the approaching fourth Industrial revolution.

References.

- 1.) The Fourth Industrial Revolution by Professor Klaus Schwab, World Economic Forum Annual Meeting, 7 January 2016 (www.weforum.org. Accessed 14 May 2019)
- 2.) Fourth Industrial Revolution Centre Launched. Article by Rebecca Campbell, 19 April 2019. www.engineeringnews.co.za (Accessed 15 May 2019)
- 3.) Virtual evidence in courts-a concept to be considered in South Africa, Dr Izette Knoetze, De Rebus, September 2016
- 4.) Justice for All. Why South Africa should invest in legal technology. Opinionista, 08 March 2019,
- 5.) Preparing for South Africa for the Fourth Industrial Revolution. Wednesday, May 15, 2019. www.sanews.gov.za (Accessed 31 May 2019)
- 6.) Rashri Baboolal-Frank, University of Pretoria, Faculty of Law,
- 7.) Media statement, Strategic Planning Session for the South African, Judicial Arm of the State, 18 August



WHAT MUST BE DONE WITH A STALE SUMMONS?



Mr Hein Viana
District Magistrate

Until 2010 the previous rules (hereinafter “the Old Rules”) to the Magistrate Court Act 32 of 1944 (all references are to this Act unless shown otherwise) contained a provision providing guidance where the prosecution of an action is delayed.¹ On 15 October 2010² the current rules (hereinafter “the New Rules”) came into operation. The Rules Board omitted to add to the New Rules a provision similar to the one contained in the Old Rules.

Under the Old Rules a summons lapsed if the plaintiff did not take any further steps to prosecute the action. However, subject to certain conditions the plaintiff was allowed to file with the clerk of the court an affidavit for an extension for a further period of twelve months prior to the lapsing of the summons. The court had a discretion to allow on application for a further extension prior or subsequent to the lapsing of the summons.³

Rule 10 (or a rule with similar provisions) seems to have been part of the rules since at least the 1940s of the previous century.⁴ Its omission is unfortunate and may cause some difficulties in what some authors termed “gaps, glitches and gremlins” which can lead to problems in the smooth functioning of the legal system.⁵

The current difficulty – and the concern this note intends to address - is that one finds on occasion in practice a request for default judgment where the summons was served an extensive period⁶ prior to the application for default judgment. The provisions of the New Rules are silent insofar as the procedure to follow in this regard.

The High Courts have inherent power to dismiss an action for failure to prosecute the action expeditiously.⁷ Where any unopposed application is made six months or longer⁸ after the application or summons was served in the High Court, the practice directive in the Gauteng South (Johannesburg) High Court⁹ provides that a notice of set down must be served on the defendant. As creatures of statute the magistrates’ courts are not vested with inherent judicial powers.

But is there a way around this impasse?

Where a party applies for a default judgment the court may (besides other orders) in terms of Rule 12(7)(f) “make such order as it deems fit”. May the court – as is the practice in the High Court – order a notice of set down to be served upon the defendant where the plaintiff requests default judgment where the summons was served more than six months prior to the request for default judgment?

Ordering the plaintiff to give notice to the defendant is perhaps a viable option to navigate around the impasse. Such an order would satisfy the constitutional imperative of access to court. But another option – to create certainty and uniformity - would be for the Rules Board perhaps to amend the Rules and regulate the position.

References

- 1) This provision was contained in Rule 10.
- 2) Published under GN R740 in Government Gazette 33487 of 23 August 2010.
- 3) See *Manyasha v Minister of Law and Order* 1999(2) SA 179 (SCA).
- 4) See *Bernstein v Bernstein* 1948(2) SA 2015 (W) at 2016.
- 5) D. Hulme and S. Peté ‘Houston, we have a problem! Gaps, glitches and gremlins in recent amendments to the law of civil procedure pertaining to the magistrates’ courts’(2012) 45 *De Jure*, 359-378 at 360. Online access <http://www.dejure.up.ac.za/images/files/vol45-2-2012/Chapter%207.pdf>
- 6) On some occasions more than four years.
- 7) *Cassimjee v Minister of Finance* 2014 (3) SA 198 (SCA) at paragraphs [22] and [23].
- 8) The High Court considers service of the summons and application stale after six months.
- 9) Chapter 9 Practice Manual – Gauteng Local Division – Johannesburg February 2018 and signed by the Judge President Mr Justice D Mlambo.



DISCRETION OF THE COURT ITO SECTION 50 of Act 32 of 2007—Is there Any



Mr Greg Nel
Acting Regional Magistrate

The topic discussed in this article is a controversial and often emotive one since the offences under discussion are those where the victims are children or persons with mentally disability.

While the purpose and goals set to be achieved by Section 43 (establishment of a National Register of Sex Offenders) and in particular Section 50 (recording of particulars of offenders) of Act 32 of 2007 (as amended) are to be commended it may be that circumstances arise where a judicial discretion is not only warranted but imperative, if true justice is to be done to all the parties.

Our legal system and procedure (whether it be criminal or civil in nature) are firmly based on the audi alteram partem principle (all parties have a right to be heard). In essence it will be argued that Section 50 completely extinguishes that principle in so far as a convicted offender's right to address the court regarding the recording of his/her name in the National Register of Sex Offenders.

Section 50 states as follows:

(2) (a) A court that has in terms of this Act or any other law—

(i) convicted a person of a sexual offence against a child or a person who is mentally disabled and, after sentence has been imposed by that court for such offence, in the presence of the convicted person; must make an order that the particulars of the person be included in the Register. (Own Emphasis)

The legislature when drafting this particular Act made use throughout of the word “must” whenever ordering a court or person to perform any particular act or comply with a duty. This is a deviation from the norm of almost exclusively using “shall” in legislation where certain acts or duties are mandatory or peremptory.

A comparative analysis of Section 103(1) of the Firearms Control Act 60 of 2000 which also provides for a mandatory declaration, albeit ex lege, of a convicted person's unfitness to possess a firearm provides for a judicial discretion by inserting the words “unless the court determines otherwise”. The court in this regard is free to receive evidence and/or submissions on behalf of the defense before exercising such discretion.

There is no indication that Section 103(1) of the Firearms Control Act 60 of 2000 has not been effective and achieved the purpose for which it was intended despite the court having a judicial discretion.

The order whereby the name of the accused be recorded in the Sexual Offenders Register in terms of Section 50 is mandatory see the matter of *J v the National Director of Public Prosecutions and Others* [2014] ZACC 13 where The Constitutional Court was afforded an opportunity to confirm the ruling of unconstitutionality by the Western Cape High Court of Section 50 in as far as it does not afford all convicted offenders an opportunity to address the court as to whether the offenders' name be entered in the register or not; where after a judicial discretion would be exercised by the court.



Honorable Justice Skweyiya ADCJ in a unanimous decision states as follows at paragraph 41;

“[41] The wording of section 50 of the Sexual Offences Act, read as a whole, indicates that a court has no discretion whether or not to include an offender’s particulars on the Register. Section 50(1) provides that the particulars of the offender “must be included in the Register.” [46] Section 50(2)(a) provides that the relevant court “must make an order that the particulars of the person be included in the Register.”

The Constitutional Court, however, elected not to confirm the ruling in respect of adult offenders ruling as follows at paragraph 31;

“[31] The facts before the High Court raised the application of the provision to child offenders. Different considerations apply to child and adult offenders. These considerations have not been ventilated properly on the facts or in legal argument in the Court below or in this Court, notwithstanding the opportunity that this Court gave to the parties to make further submissions. It was inappropriate for the High Court to consider the provision’s constitutional validity in relation to adult offenders and to extend its order to cover all offenders. It is similarly not in the interests of justice for this Court to make findings on the provision’s application to adult offenders.”

The Constitutional Court, however, did confirm the ruling in respect of child offenders in its ruling at paragraph 51;

“[51] I conclude that the limitation of the right of child offenders in section 50(2)(a) is not justified in an open and democratic society. While the limitation promotes legitimate and constitutionally sound aims, there exist accessible and direct means to achieve the purpose that are less restrictive to the child offender’s rights. Section 50 (2)(a) is constitutionally invalid and must be declared so.”

As a consequence of the above Constitutional Court ruling, Section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, was amended in so far as children are concerned to provide as follows:

- 1) The court may not order the inclusion of a child’s name in the Register unless;
 - I) The prosecutor makes an application for such an order: and
 - II) A report is obtained from a probation officer referred to in section 71 of the Child Justice Act, 2008, which deals with the probability of the juvenile offender committing another sexual offence against a child or a person who is mentally disabled, as the case may be, in future: and
 - III) The court is satisfied that substantial and compelling circumstances exist based upon such report and any other evidence, which justify the making of such an order: and
 - IV) The court must enter such circumstances on the record of the proceedings.

Section 52(2) provides that the accused person’s name may only be removed and in certain cases never; dependent on the sentence imposed.

The Constitutional Court in both *J v NDPP* and *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* 2014 (1) SACR 327 (CC) highlighted the adverse consequences of such inclusion.

The Honourable Justice Skweyiya in the *J v NDPP* at paragraph 43 states,

“[43] Being placed on the Register bears serious consequences for the offender. As outlined above, restrictions are placed on the ability to work, on the ability to license certain facilities or ventures, and on the privileges of certain roles in the care of children or mentally disabled persons.”

The inclusion of the personal details of sex offenders in a register without their permission and without the right to be heard and even sometimes without their knowledge amounts to a violation amongst other rights of the right to privacy stipulated in section 14 of the Constitution of the Republic of South Africa, 1996. See in this regard *The viability and constitutionality of the South African National Register for Sex Offenders: A comparative study*_by Professor N Mollema.

South Africa already possesses the Child Protection Register (CPR) provided for by Chapter 7 of the Children’s Act 38 of 2005, making the National Register for Sex Offenders an unnecessary duplication. The Child Protection Register records all reported instances and convictions of all sexual offences and violent crimes against children; all attempts to commit violence against a child and possession of child pornography, and also the names of persons deemed to be unsuitable to work with children.

I share the sentiments expressed by Professor Mollema and foresee that should the constitutionality of the mandatory provisions of Section 50 be challenged they will in all probability fail such constitutional challenge.

In light of the decisions in *Johannes v S* 2013 (2) SACR 599 (WCC) and *J v the National Director of Public Prosecutions and Others* [2014] ZACC 13 which dealt with the constitutionality of Section 50 in respect of juveniles I believe that the issue in respect of adult offenders may be ripe for consideration by our Superior Courts.



Proper procedure for evictions in the Magistrates Courts, in terms of section 4 of Prevention of illegal Evictions and Unlawful Occupation of Land Act of 1998 (PIE). McNeil v Aspelung (A18/18) [2018] ZAWCHC 188, 28 June 2018 eradicating all confusion.



Ms Jinx Bhoola
Judicial Educator

During the series of District Court workshops held in various provinces, countrywide on Evictions and Housing rights in collaboration with the International Commission of Jurists, it was apparent that Magistrates Courts in provinces are applying different procedures in terms of the Prevention of Illegal Evictions and Unlawful Occupation of Land Act 19 of 1998 (PIE).

This article is an attempt to create directives countrywide for eviction matters and to eradicate any disparity and confusion that exists in the District Magistrates Courts. The reason the confusion exists is that prior to the amendment of Rule 55 of the Magistrates Court in 2010, the application for the procedure was laid down in Cape Killarney Property Investments v Mahamba [2001] 4 All SA 479(A). This case dealt with evictions in the High Court. At the time that this case was decided, the High Court Rule 6 for applications differed substantially with Rule 55 in the Magistrates Court. The effect thereof was that because the Rules in both these courts were not identical, the procedure laid down in Cape Killarney could not be followed in the Magistrates Court.

The practice then developed in the District Magistrates Court whereby the notice in terms of section 4(2) of PIE could be combined with the notice of motion (substantial application for eviction) and both these applications could be served simultaneously. Theart and Another v Minnaar NO Senekal v Winskor 174 (Pty), Ltd (A99/2008 [2008] ZAWCHC] 43. This procedure continued in the Magistrates Court despite the amendment of Rule 55 of the Magistrates Court in 2010.

In terms of this amendment, Rule 55 reads identically to Uniform Rule 6 of the High Court Rules in all material aspects. Now that both the High Court and Magistrates Court Rules are identical, it means that the procedure as set out in the Cape Killarney Property Investments v Mahamba must be complied with in the Magistrate's Court.

Rule 55(1) of the Magistrates Court Rules provide that every application must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief and must be addressed to the party or parties against whom relief is claimed and to the registrar or clerk of the court. In motion proceedings for the substantive or main application for evictions, form 1A, must be used which form is similar to motion proceedings in the High Court.

Section 4(1) of PIE provides that notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section (section 4 of PIE) apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier. Effectively what this means is that the application procedure in terms of Rule 55 of the Magistrates Court Act must be complied with and section 4 of PIE must be complied with in addition to usual motion court proceedings. In addition, section 4(1) makes it clear that section 4 is peremptory for the eviction of an unlawful occupier – where the occupation is unlawful. It is important to note that non-payment of rental does mean the tenant is in unlawful occupation. The defaulting tenant remains in lawful occupation until such time that the lease entitling him or her to occupy the premises is cancelled.....

to be continued on the next Newsletter.



IOJT CONFERENCE 2019

South Africa



The 9th international conference on judicial training was recently held at the Cape Town International Convention Centre, the first of its kind in Africa. The Conference was hosted by IOJT supported by SAJEI. The IOJT Local Organising Committee was led by Justice Sisi Khampepe who provided leadership and unwavering support from the beginning to the end of the conference, for that the SAJEI team is very thankful.

IOJT is a volunteer non-profit organization established in 2002 to promote the rule of law by supporting the work of judicial education institutions around the world. The organization has 129 member organizations (mainly judicial education institutions) representing 79 countries. SAJEI was exempted from the member fees.

The key initiative of IOJT is the biennial conference on judicial training which is usually attended by Judicial officers, Judicial Educators, leaders of judicial education institutions, academics, etcetera. The conference serves as a platform for development and exchange of international best practices in judicial training, sharing expertise and experience on judicial education, benchmarking and interaction of Judicial officers from various jurisdictions around the world. The conference provides a remarkable opportunity for the local Judicial Institute to showcase its institutional strength and determine the program thus acquiring experience and expertise to organize an international event as well as on judicial education.

The 9th IOJT conference was attended by more than 250 delegates from over 45 countries. A total of 117 papers were delivered from the 23rd to 26th September 2019. Amongst others the themes for sessions were leadership development for Judges, judicial case management, social media and Judiciary, curriculum development, artificial intelligence, technology and judicial training, public confidence in the Judiciary, etcetera. Kindly refer to the website of IOJT for detailed information.

SAJEI would like to commend the team that assisted in making the conference a success, they consist of colleagues from SAJEI and Western Cape High Court.

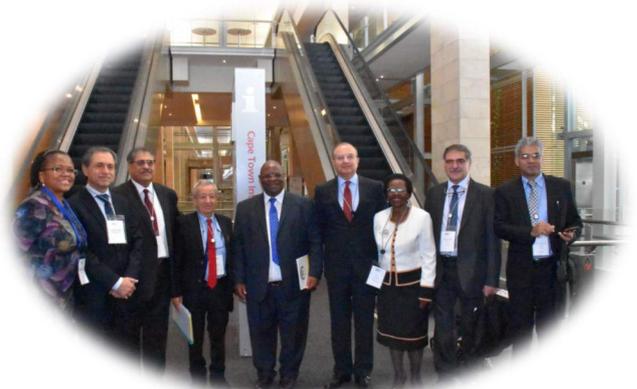
By Dr Gomolemo Moshoeu

Also read the comments from the delegates below.



IOJT CONFERENCE 2019

South Africa



“Congratulations to SAJEI and Justice Khampepe for successfully hosting an international conference of that magnitude- I am filled with elation after learning that our South African judicial training methods are on par with international standards”
 – Mumtaz Dawray

“What a privilege to attend such a well-run and interesting conference with judicial officers and trainers from all around the globe”. - Ugashnee Gangadu



“Congratulations and thanks to SAJEI and IOJT for putting on a successful and perfectly organized conference. It was such a worthwhile and a wonderful experience. Sessions were relevant, interactive, stimulating and insightful. The content and the presenters were excellent. I also thoroughly enjoyed meeting delegates from other countries. Planning committee did a splendid work.” - Constance Nziweni

“Technology is changing the way we work in the Judiciary, Change and embrace it or be left far behind.” - Pieter Du Plessis”



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“I take this opportunity to thank you for the wonderful experience of IOJT 2019 conference. It was an enriching event where the exposure to the training methodology of the international community broadened my approach towards training in South Africa.” - Tinus Boonzaaier

“To me the conference was very much eye opening. We ingested and digested valuable information from colleagues around the world” – Dr James Lekhuleni



“To say the conference was an eye-opener would be an understatement. It was more than that, it was empowering, enlightening, a confidence and morale booster. It gave one hope that there is a future for the Judiciary in this country. Well done to Dr. G and your wonderfully exceptional team. You truly outdid yourselves, you deserve much more than a round of applause.” - Xhanti Zeka

“Congratulations to Dr G and SAJEI team. The conference was both enriching and empowering.” - Sharon Marks



IOJT CONFERENCE 2019

South Africa



“An awesome collaboration of International Judicial leaders focussed on unity and cooperation in enhancing judicial excellence.” - Nelandren Karikan



“The topics covered are trending, the standard of the papers delivered exceptional and the conference support beyond reproach. Thank you for a wonderful experience.” Sadia Jacobs”



“The conference was exceptionally informative and a forecast of future judicial training and working environment.” - Boitumelo Chulu



“This is what Africa needed. Enriching experience indeed. Well done South Africa!!!” - Audrey Mashigo



NEW INITIATIVES

ASSISTANCE TO FOREIGN JUDICIAL INSTITUTIONS AND COURTS



Training of Newly Appointed Magistrate of Botswana conducted by SAJEI from 5th to 8th August 2019 in Gaborone

In terms of Section 5 (f) of the SAJEI Act 14 of 2008, one of the functions of SAJEI is “to render such assistance to foreign Judicial Institutions and Courts as may be agreed upon by the Council”. In May 2019, the Honourable Chief Justice Terence T. Rannowane of Botswana requested assistance on the training of Magistrates. Honourable Chief Justice Mogoeng Mogoeng acceded to the request. The training was conducted from 5th to 8th August 2019 in Gaborone, Botswana.

The training was conducted by Magistrates from South Africa and Botswana. The South African team consisted of Ms J. Ikaneng, Chief Magistrate; Mr M. Ramalebana, Regional Magistrate (Judicial Educator), Ms M. Dawray, Senior Magistrate and Mr Karikan, Senior Magistrate. The Botswana team consisted

of Judges and Regional Magistrates. They were Justice Moroka (Judge President), Justice Ketlogetswe, Justice Moesi, Justice Dr Radijeng Mr Makofi, (Chief Magistrate) and Mr Mathaka (Regional Magistrate). A working session was held on the 4th August 2019 in Gaborone. It was attended by the Facilitators and administrative support officials. The purpose of the session was to prepare for the workshop.

The workshop was attended by 38 Magistrates and the topics addressed were as follows:

- A. Judicial Caseload Management
- B. Judicial Ethics
- C. Importance of Record Keeping
- D. Sentencing and Social Context
- E. Appeals and Reviews
- F. Judgment writing (incl assignment)
- G. Trial Management in Civil Court
- H. Application and Action Procedure
- I. Maintenance
- J. Domestic Violence

The training was well received by the participants.



NEW INITIATIVES

WILDLIFE TRAFFICKING



Members of the Wildlife Core Group attending a working session

On the 29th-30th July 2019, members of the working group met in Skukuza in order to review submissions and finalize the Handbook on Adjudication of Environmental Crimes in South Africa. Members attended to all matters listed on the action log and collated the information on the handbook. The Handbook has since been finalized and submitted to SAJEI for editing, type setting and publishing.



NEW INITIATIVES

WORKSHOP FOR CHIEF MAGISTRATES



He stated that a learning process between a mentor and mentee is critical in a learning organization. He implored the Chief Magistrates to think about how they will be remembered when they leave office. He asked them whether they will leave a vacancy or legacy? He stated that *“a good leader is the one who looks back and say that those are my protégés”*. He also stressed that time management skills are essential for professional development, if one has the right skills, personal productivity soars while anxiety and stress reduce.

From left: Mr E Ngubane, Ms N Mviko, Ms K Hlalele, Dr G Moshoeu,

For the first time in the history of SAJEI, a workshop was conducted for Chief Magistrates from 21st to 24th August 2019 in Limpopo. The topics covered were HIV/TB, Gender and Human Rights; Emotional Intelligence; Judicial Quality Assurance; Leadership and Stress Management. Deputy Judge President Aubrey Ledwaba, in his capacity as Chairperson of the Magistrates Commission delivered opening and welcoming address which focused on the importance of Magistrates Courts and Judicial training.



Deputy Judge President Ledwaba stated that the right to fair trial is entrenched in our legal system. Magistrates are receiving most of the cases and therefore it is imperative that they be more equipped though sharpening their skills. DJP Ledwaba informed the Chief Magistrates that as leaders they need to be exemplary, they should also be updated on legal developments so that they can share with their colleagues. The Program Director thanked the Deputy Judge President for words of wisdom.

Ms D Ringane, Mr B Dehaloo, Mr R Nethengwe
Front row: Ms S Mosaka, Ms S Raphahlelo, Mr O Krieling, Ms P Mogale, Ms N Jebese

The presenters included Prof Saths Cooper, a world renowned Psychologist, Prof Lesiba Teffo who is also a SAJEI Council member, Prof Mzi Nduna and Dr Anastacia Thomson.

His presentation was well received and recommended to all members of the Judiciary especially the aspect of *“Judicial Hygiene”* which refers to the importance of character and dignity in the Judicial profession.

Prof Teffo presented on *“Transformative leadership in the Judiciary: Meeting the current challenges”*.

The workshop provided a platform for Chief Magistrates to share common challenges and best practices. One of the comments from the evaluation feedback was that *“This was a life changing session that prepared Chief Magistrates to make a difference in their Clusters”*. As part of wellness and team cohesion, delegates and SAJEI team participated in morning walks on a daily basis. Chief Magistrates committed to continue with the practice in their personal lives and also in their Clusters.

Prof Teffo highlighted the importance of learning organizations and learning cultures.

By: Poso Mogale



LIST OF STRUCK OFF LEGAL PRACTITIONERS

WESTERN CAPE

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Barend Solomon Terblanche King William's Town	•			27 November 2018
Siyakudumisa Mlunguza Engcobo	•			28 November 2018
Ronel Swart Betty's Bay	•			12 February 2019
Derick William Brown Saron	•			20 March 2019
Uvile Octavia Siyo Pinelands	•			10 June 2019



LIST OF STRUCK OFF LEGAL PRACTITIONERS

KWAZULU NATAL

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Azgar Ally Khan		•		6 November 2018
Christel Moodley		•		1 March 2019
Bhekikazi Cyprian Poswa		•		18 March 2019
Sifiso Wiseman Nkosi		•		29 April 2019
Verusha Suchit	•			14 June 2019
Lekena Moleko		•		10 June 2019
Siegfried Karl Heiriss		•		30 August 2019
Bongekile Precious Mzila	•			13 September 2019
Alwyn Eden Volsum	•			20 September 2019



LIST OF STRUCK OFF LEGAL PRACTITIONERS

GAUTENG

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Andreas Johannes Oberlechner		•		6 November 2018
Musa Timonthy Sibiya		•		6 November 2018
Matshobane Michael Kekana	•			8 November 2018
Peter Lesetja Nkoana	•			13 November 2018
Michael Masilo	•			13 November 2018
Yozan Bothma (Pretorius)		•		22 November 2018
Monamodi Enock Bapela		•		27 November 2018
Brandon Perumal	•			27 November 2018
Themba Benedict Langa		•		27 November 2018



LIST OF STRUCK OFF LEGAL PRACTITIONERS

GAUTENG

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Simon Nkuva Mokone		•		4 December 2018
Ignatius Stefanus Le Roux	•			10 December 2018
Barend Oosthuizen		•		21 December 2018
Lodwick Makgahlela Mashaba		•		8 January 2019
Johannes Petrus van Niekerk		•		31 January 2019
Anton Fourie		•		5 January 2019
Virginia Sphiwe Mbowane	•			7 February 2019
Obed Mhongo Mtimbane		•		12 February 2019



LIST OF STRUCK OFF LEGAL PRACTITIONERS

GAUTENG

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Debbie Pretorius		•		21 February 2019
Michael Arthur McLougin		•		5 March 2019
Matsobane Nathaniel Motlhasedi	•			5 March 2019
Ramolangwana Patrick Mariri	•			14 March 2019
Jacques Hendrik Jansen		•		27 March
Mafanela Petrus Mashaba	•			4 April 2019
Lorraine Vuyokazi Luke	•			18 April 2019
Tumelo Israel Moagi	•			18 April 2019



LIST OF STRUCK OFF LEGAL PRACTITIONERS

GAUTENG

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Makgweba Paul Bally Chuene	•			30 April 2019
Madumetja Lawrence Kekana		•		28 August 2019
Babatunde Bamidele Adeyeke	•			2 May 2019
Johann George Niehaus	•			10 May 2019
Louise Adriana Ellis	•			14 May 2019
Isaac Rahube Khunoana		•		14 May 2019
Matome Alpheus Mamorobela	•			15 May 2019
Thabiso Martin Maseko	•			16 May 2019



LIST OF STRUCK OFF LEGAL PRACTITIONERS

GAUTENG

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Phumo Gerald Macheka	•			21 May 2019
Terrence Nkuna	•			21 May 2019
Carike Van Der Westhuizen		•		23 May 2019
Selby Segopotse	•			6 June 2019
Peter Avhasei Mukoma			•	18 June 2019
Itumeleng Elizabeth Tlang	•			18 July 2019
Phillipus Andries Coetzee	•			1 August 2019
Hyman Chait	•			6 August 2019



LIST OF STRUCK OFF LEGAL PRACTITIONERS

GAUTENG

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Claudius Chiyaka		•		8 August 2019
Ntokozi Cedric Buthelezi	•			15 August 2019
Ockert Johannes Stoltz	•			15 August 2019
Logaragan Padayachy	•			16 August 2019
Ludwe Mbasu Biyana	•			23 August 2018
Sibusiso Vusa	•			23 August 2019
Ngwako Auriel Phooko		•		29 August 2019
Wycliffe Ernest Thipe Mothuloe			•	20 August 2019



LIST OF STRUCK OFF LEGAL PRACTITIONERS

FREE STATE

<u>PERSON</u>	<u>STRUCK</u>	<u>SUSPENDED</u>	<u>INTERDICTED</u>	<u>DATE</u>
Solomon Solly Kamati	•			22 November 2018
Siseko Leonard Cengani	•			20 June 2019



UP COMING WORKSHOPS

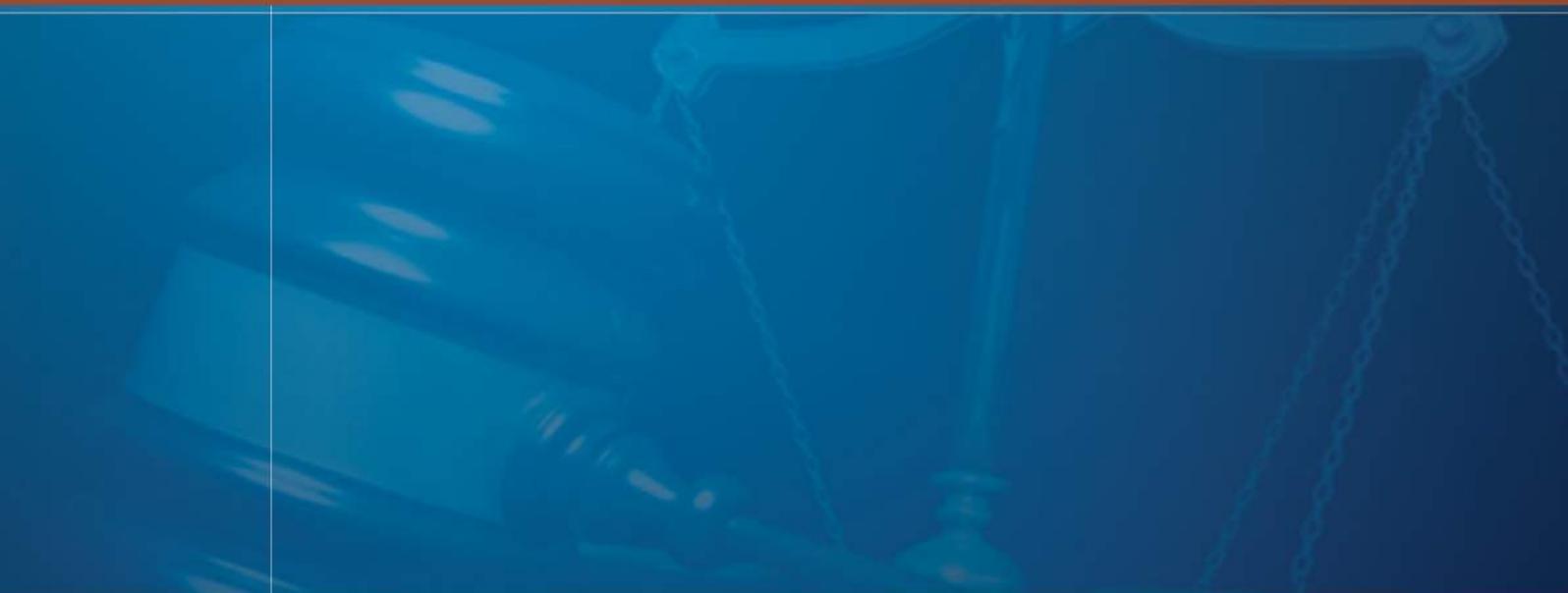
DATE	WORKSHOP	PROVINCE
October 2019		
01 – 04 October 2019	Family Court Skills	Mpumalanga
02 – 04 October 2019	Equality Court Skills	Gauteng
03 – 04 October 2019	Judicial Management	KZN Region 2 (PMB)
07 – 11 October 2019	Child Justice Act	North West
09 – 11 October 2019	Emotional Intelligence and Stress Management	Western Cape Cluster A & B
9 – 11 October 2019	Civil Court Skills	Eastern Cape Region 2 (Mthatha)
14 – 16 October 2019	Criminal Court Skills	Mpumalanga
16 – 18 October 2019	Civil Court Skills	EC Region 1 (PE)
16 – 18 October 2019	Basic Management and Leadership	Northern Cape
21 – 23 October 2019	Judicial Leadership and Management	Free State Cluster A
21 – 23 October 2019	Civil Court Skills	Eastern Cape Region 2 (Mthatha)
22 – 25 October 2019	Civil Court Skills	Western Cape Cluster A & B
23 -25 October 2019	Family Court Skills	Limpopo
28 -30 October 2019	Judicial Management Skills	Mpumalanga
28-31 October 2019	Judicial Skills for Presiding Officers in the Children's Court	Eastern Cape Region 2 (Mthatha)



UP COMING WORKSHOPS

DATE	WORKSHOP	PROVINCE
Nov-Dec 2019		
02 November 2019 – Children 09 November 2019 – Criminal 16 November 2019 – Civil 23 November 2019 – Family	Aspiring District Magistrates	KZN Cluster B (PMB)
04 -07 November 2019	Civil Court Skills	Mpumalanga
6 – 8 November 2019	Family Court Skills	EC Region 2 (Mthatha)
06 – 08 November 2019	Civil Court Skills	Limpopo
11-13 November 2019	Children’s Court Skills	EC Region 2 (Mthatha)
11 - 15 November 2019	Children’s Court Skills (Beginners course)	Western Cape Cluster A & B
14 – 15 November 2019	Civil Court Skills	Mpumalanga
16 November 2019 – Civil 23 November 2019 – Criminal 30 November 2019 – Children 7 December 2019 – Family	Aspiring District Magistrate	Northern Cape
18 – 22 November 2019	Criminal Law	North West
20-22 November 2019	Children’s Court Skills	EC Region 2 (Mthatha)
20 – 22 November 2019	Social Media, Electronic evidence and the Law	KZN Cluster A (Dbn)
25 – 27 November 2019	Judicial Management Skills	Mpumalanga
4-6 December 2019	Children’s Court Skills	EC Region 2 (Mthatha)
9-11 December 2019	Children’s Court Skills	EC Region 2 (Mthatha)





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