



# JUDICIAL EDUCATION NEWSLETTER

## SOUTH AFRICA

SEPTEMBER 2018 | ISSUE 2



*Enhancing Judicial Excellence*

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# Editorial Note

Welcome to the second edition of the Judicial Education Newsletter, our electronic publication on Judicial Education and related matters. The Institute intends to make the Newsletter more regular in the future to ensure that Magistrates are informed on topical issues.

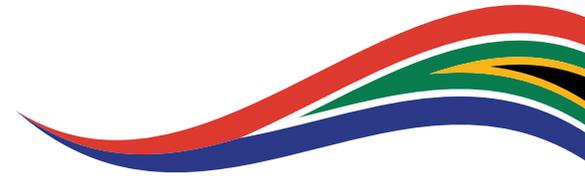
The Newsletter aims to:

- Create a platform for knowledge sharing and candid expression of ideas beneficial to Magistrates,
- Engender a culture of writing on topical issues of interest relevant to the bench,
- Be a source of information on SAJEI activities and commentary thereof, and
- Share current developments in law.

The Institute hopes to provide readers with information on judicial education and related activities.

The Editorial Committee for the Newsletter is as follows:

1. Mr Vincent Ratshibvumo - Regional Magistrate
2. Mr Dario Dosio – Regional Magistrate
3. Ms Shanaaz Mia – District Magistrate
4. Dr Gomolemo Moshoeu
5. Ms Poso Mogale





## Note To Authors

Contributions from Magistrates not exceeding 600 words will be appreciated. Articles should be addressed to Ms Poso Mogale at: [pmogale@judiciary.org.za](mailto:pmogale@judiciary.org.za)

- Articles should be in MS Word format (No PDF) and paginated
- Authors are encouraged to provide accurate references to sources
- Contributions should be original. SAJEI uses Turnitin software to check originality



# SAJEI AT A GLANCE

## SAJEI COUNCIL

The SAJEI Council chaired by The Chief Justice comprises of representatives of The Judiciary, Academia, Legal Profession, Executive and Traditional Leaders. Section 7 of the SAJEI Act provides for designation of Council members for a period of five years. Such members may be replaced or designated again. Tenure for the following Council members has expired recently:



**Ms Jakkie Wessels**  
*(Regional Court President – Limpopo)*

Ms Wessels has served in all Committees of the Council of the Institute. She has contributed immensely to the growth of the Institute. She spearheaded the development of training materials for Regional Magistrates as well as facilitated most of the workshops.

Ms Wessels is passionate about training and has played a role of providing support to the Judicial Educators in order to assist with their transition from the bench to the Institute. She showed commitment and dedication in making a difference to the training of Judicial Officers. Her participation in SAJEI governance structures will be sorely missed.

Ms Wessels has been replaced by Mr Daniel Mogotsi (Acting Regional President – North West). SAJEI is looking forward to his continued support of the Institute.



**Nkosi Winston Mavundla**  
*(Traditional Leader)*

Nkosi Mavundla has served in three Committees of the Council. He was instrumental in facilitating the training of Traditional Leaders by the Institute in six provinces, namely: KwaZulu Natal, Limpopo, Free State, Northern Cape, North West and Eastern Cape. The training was conducted by experienced Senior Magistrates most of them from the royal families. The training was well received by the Traditional Leaders and due to high demand three workshops were held in KwaZulu Natal. SAJEI is in the process of resuscitating the working relationship with COGTA in order to continue with such training. Nkosi Mavundla has been replaced by Nkosi Nondumiso Ngonyama.

## SAJEI TEAM

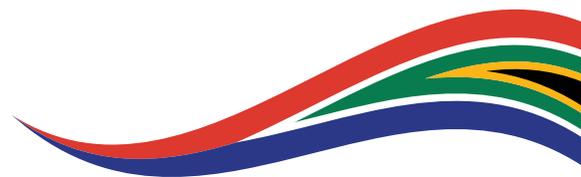
SAJEI has been joined by two new officials. They are:

### **Ms Mampotse Mokgetle** *Event Coordinator*

She is joining a team of Event coordinator's whose main responsibility is to coordinate logistics for workshops.

### **Ms Leana Diedericks** *Deputy Director: Judicial Education & Research*

One of the roles of Ms Diedericks is to provide support to Judicial Educators.



## Court Based Mediation: A Way To Go

The Benefits of Court Based Mediation are as follows:

- a. Facilitates expeditious resolution of disputes,
- b. Amicable resolution of disputes,
- c. Facilitates interaction between parties in a safe environment,
- d. Accelerates access to justice for parties,
- e. Promotes restorative justice.

Judges and Magistrates were trained on Court Based Mediation by Senior Judge and Chief Judge Emeritus Clifford Wallace in July 2018. Court Based Mediation is implemented in Tanzania and it is reportedly yielding positive results. There is a Judge who is in charge of the Mediation centre of the High Court

## Norms and Standards Corner

Excerpt from Norms and Standards issued by the Chief Justice in February 2014 binding on all Judicial Officers.

- i. Caseload Management shall be directed at enhancing service delivery and access to quality justice through the speedy finalisation of all matters.
- ii. The National Efficiency Enhancement Committee, chaired by the Chief Justice, shall co-ordinate caseload management at national level. Each province shall have only one Provincial Efficiency Enhancement Committee, led by the Judge President, that reports to the Chief Justice.
- iii. Every Court must establish a case management forum chaired by the Head of that Court to oversee the implementation of case flow management.
- iv. Judicial Officers shall take control of the management of cases at the earliest possible opportunity.
- v. Judicial Officers should take active and primary responsibility for the progress of cases from initiation to conclusion to ensure that cases are concluded without unnecessary delay.

# RECENT CASE LAW

Summary and analysis by Mr Vincent Ratshibvumo, Regional Magistrate, Johannesburg and Member of the Editorial Committee.

1. The Director of Public Prosecutions, Gauteng Local Division – Johannesburg v Pieterse Johannes Casper (Case no. A332/2017, GLD - Johannesburg (Fisher J & Van Vuuren AJ), 25 September 2018).

Prescribed sentences need not be deviated from for “flimsy reasons” (S v Malgas 2001 (1) SACR 469 (SCA) at 481F to 482F). The respondent pleaded guilty to raping his son (penetration per anus) for a period extending to a decade. First rape occurred when he was 7 years old and was repeated at least 2 to 3 times a week until he reported it to his teacher some 10 years later. The Westonia Regional Court found reasons to deviate from the prescribed sentence of life imprisonment and imposed a wholly suspended sentence plus 3 years of correctional supervision. The fact that after this long, “a person got used to it” and the accused’s financial standing in the family are some of the substantial and compelling reasons found by the magistrate justifying a lesser sentence. On appeal by the State, the High Court set aside the sentence and imposed the sentence of life imprisonment. It is not common for the High Court to identify by name magistrates who presided over trial in appeal or review matters. In this case however, the court of appeal named “Magistrate De Bruin” in no less than 5 times, in a rare display of displeasure on how he exercised his discretion.

2. Nedbank v Thobejane and 12 other matters (Case no. 84041/2015, GD – Pretoria (Ledwaba DJP, Tolmay & Mothle JJ), 26 September 2018).

The High Court finally dealt with its age old concern of litigants (in particular, the banks) preferring to enrol their matters before the High Court even when they fall within the monetary jurisdiction of the Magistrates’ Courts. In an attempt to promote access to justice, the Full Bench of the Gauteng Division ruled that from 02 February 2019, all civil matters falling within the monetary jurisdiction of the Lower Court shall not be enrolled in the High Court roll, unless with leave of the High Court. In order to deal with the matters already enrolled currently, it was further ruled that the High Court can *mero motu* transfer matters from its roll to the Magistrate Court with jurisdiction. The civil court roll in the District and Regional Courts in Gauteng is expected to swell. Al-

though this is only in Gauteng, it is expected that other divisions will follow.

3. Centre for Child Law and Others v Media 24 LTD and Others (Case no. ZASCA 140, SCA) 28 September 2018.

Parts of Sec 154 (3) of the Criminal Procedure Act 51 of 1977 were declared to be constitutionally invalid to the extent that they do not protect the anonymity of children as victims of crimes at criminal proceedings. Pending the confirmation by the Constitutional Court and the amendment by the Legislature, sec 154 (3) shall now read, “No person shall publish in any manner whatever any information which reveals or may reveal the identity of an accused under the age of 18 years or of a victim or of a witness at criminal proceedings who is under the age of 18 years: Provided that the presiding judge or judicial officer may authorise the publication of so much of such information as he may deem fit if the publication thereof would in his opinion be just and equitable and in the interest of any particular person.”

The SCA (by majority) dismissed the cross appeal seeking to extend the prohibition to continue even after child offenders have attained the age of 18. Two of the five judges were of the view that the prohibition should continue even after the child offenders attain the age of 18. It will be interesting to see the decision of the Constitutional Court on this aspect.

4. Bholu and Others v The State (Case no. ZASCA 121, SCA) 21 September 2018.

The three appellants were convicted of attempted robbery with aggravating circumstances by the Piet Retief Regional Court, following an incident where three men entered a jewellery store armed with firearms, but fled the scene empty handed after a panic button was pressed by the victim. They were sentenced to prescribed sentences in terms of sec 51 (2) of Act 105 of 1997 (the Criminal Law Amendment Act). Their appeal to the High Court was dismissed. The question before the Supreme Court of Appeal was whether prescribed sentences apply in case of conviction on crimes of attempt to commit a crime listed in the schedule II of the Criminal Law Amendment Act.



This question has featured many times in our courts. Those who argue in affirmation rely on sec 18 of the Riotous Assemblies Act which provides, "any person who attempts to commit any offence against a statute or a statutory regulation shall be guilty of an offence and, if no punishment is expressly provided thereby for such an attempt, be liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable".

The Western Cape High Court in *S v Silo* 2016 (2) SACR 259 (WCC) relied on similar provision to arrive at the conclusion that attempted rape attracts prescribed sentences. In reaching this conclusion, the High Court quoted sec 55 of the Sexual Offences Act (no. 32 of 2007) which provides, "any person who attempts . . . to commit a sexual offence in terms of this Act, is guilty of an offence and may be liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable".

The SCA settled this beyond dispute in *S v Bhola* when it held that prescribed sentences are attracted only when a conviction follows on crimes actually listed in the respective schedules; and not for attempt. Sentences were as such reduced.

5. *Masuku v The State* (Case no. A261/2016, GLD - Johannesburg (Vally, Van der Linde & Keightley JJ), 06 September 2018.

The appellant was convicted and sentenced to 15 years imprisonment by the Johannesburg Regional Court, on a charge of rape of a 7 year old child. The appeal court lamented how the trial court sat back and allowed demeaning, stressful and difficult questions to be asked in the cross examination of a child witness even when such questions did not help the case for the defence. The accused's defence was alibi. Questions on how the rape took place, the positions and the size of the manhood of the rapist were considered irrelevant by the court of appeal. Although there was no cross appeal by the State against the sentence, the appeal court increased the sentence to 18 years imprisonment even though the appeal by the accused was only against the conviction.

6. *Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton and Others* (Case no. ZACC 30, CC), 18 September 2018. Sections 4(b) and 5(b) of Drugs and Drug Trafficking Act 140 of 1992 and section 22A(9)(a)(1) of the Medicines and Related Substances Control Act 101 of 1965 were declared to be inconsistent with section

14 of the Constitution to the extent that they criminalise the use or possession in private or cultivation in a private place of cannabis by an adult for his or her own personal consumption in private. Sale of cannabis, its possession by any person in public or its possession or cultivation in private by children remains an offence.



# NEW INITIATIVES

The new initiatives focus on integrating new areas of law into Judicial curricula on a sustainable basis such as HIV/TB and Human Rights. The Model has been successfully tested on Environmental law. To date, this Model initiated by SAJEI has been shared with Judicial Education Institutes on the African continent.



Delegates: Magistrates; Traditional Leaders and Judicial Educators

SAJEI conducted a Judicial dialogue on HIV/TB and Human Rights from 21st to 22nd June 2018 attended by Regional, District Magistrates and representatives of the National House of Traditional Leaders. The outcome of the dialogue was the establishment of the Working Group whose main objective is to look at ways of integrating HIV/TB and Human rights into Judicial curricula. To date, the Working Group has developed a plan of action and the efforts are commendable. The members of the Working Group are as follows:

1. Mr Oswald Krieling
2. Mr Edmund Ngubane
3. Mr Marlene Greyvenstein
4. Ms Shanaaz Mia
5. Ms Teresa Horne
6. Ms Jinx Bhoola
7. Ms Mamello Thamae-Makotoane



Keynote Speaker on Housing Rights, Judge Geldenhuis (retired) and Delegates at the Human Rights Seminar

## Human Rights week

Judicial Officers have a responsibility of upholding human rights.....With the support of partners, SAJEI organised a week of deliberation with the theme being human rights. The Human Rights week allowed SAJEI Facilitators and resources persons to engage and deliberate on issues usually considered provocative and sensitive. The objective of the session was to find ways in which human rights guaranteed in the Constitution can be integrated into the judicial curricula. . Due to budget constraints, the Institute focused on the rights pertaining to Refugees, Housing, LGBTI, Gender and HIV.

The keynote address was delivered by Judge Jody Kollapen. He emphasised that the Constitution is the supreme law of the land therefore it should be a starting point for all Judicial Officers. It is imperative for Judicial Officers to have a good understanding of human rights as they bear enormous responsibility that needs to be discharged with integrity, respect and honour. He indicated that Judicial Officers need to recognise the rights of people despite their innate bias.

Training provided by SAJEI should not be divorced from day to day work responsibilities. Rather it should be embraced, integrated and enable Judicial Officers to deal with difficult questions.



Keynote Speaker: Judge Kollapen with the Leadership of the District Magistrates and SAJEI CEO



# UPCOMING WORKSHOPS

DATE	WORKSHOP	PROVINCE
03-05 October 2018	DCM75 Judicial Management & Judicial Ethics	Mpumalanga
03-05 October 2018	DCM76 Civil Courts Judgment Writing, Judicial Ethics, Appeals and Re- views	Western Cape
03-05 October 2018	DCM77 Criminal Court	KZN Cluster B (Pmb)
08-12 October 2018	DCM78 Civil Court Application procedure, Debt Collection	EC Region 2 Mthatha
08-10 October 2018	DCM79 Criminal Court Bail Applications & Inqui- ries, Section 77-79 CPA	Mpumalanga
10-12 October 2018	DCM80 Children's Court Children's Act & Regula- tions	Gauteng
16-19 October 2018	DCM81 Criminal Court Section 60 Bail Applica- tions, Section 77, 78, 79, & Referrals to Regional Court Sec 75 (2)(b) etc	North West
16-18 October 2018	DCM82 Administrative Justice PAJA	Mpumalanga
18-19 October 2018	DCM83 Children's Court Judicial Skills at the Child Justice Trial and Sentencing	EC Region 1

# UPCOMING WORKSHOPS... Cont

DATE	WORKSHOP	PROVINCE
18-19 October 2018	DCM84 Judgment Writing Judgment Writing	Mpumalanga
19-20 October 2018	DCM126 Civil Court NCA Section 65, Emolu- ment attachment orders, Debt review and Review of Taxation	Free State (Bfn)
22-24 October 2018	DCM77 Criminal Court	Free State Welkom
22-24 October 2018	DCM85 Criminal Court Section 77-79 CPA	Limpopo
22-24 October 2018	DCM86 Civil Court PIE, ESTA and NCA	Western Cape
24-26 October 2018	DCM87 Equality Court PEPUDA	KZN (Dbn)
31 October – 02 November 2018	DCM88 Family Court Maintenance Act	North West
29-31 October 2018	DCM89 Civil Court Evictions (PIE and ESTA)	EC Region 2 Mthatha
01-02 November 2018	DCM90 Judicial Skills for Aspiring Judicial Officers	KZN (PMB)
05-07 November 2018	DCM91 Civil Administrative PAIA	Mpumalanga

# UPCOMING WORKSHOPS... Cont

DATE	WORKSHOP	PROVINCE
05-09 November 2018	DCM92 Judicial Management Coaching, Mentoring, Leadership	Western Cape
08-09 November 2018	DCM93 Stress Management	Limpopo
13-14 November 2018	RCM18 Environmental Crimes	Eastern Cape
14-16 November 2018	DCM128 Family Court Maintenance, Reciprocal Maintenance, Harassment	Free State Welkom
14-15 November 2018	DCM94 Criminal Court Firearms Control, National Road Act	Mpumalanga
14-16 November 2018	DCM95 Criminal Court	Limpopo
14-16 November 2018	DCM87 Equality Court PEPUDA	Gauteng
15-16 November 2018	RCM19 Sexual Offences	Eastern Cape
19-21 November 2018	(Ad Hoc) Civil	KZN (PMB)
19-23 November 2018	DCM97 Criminal Court Introduction to Social Con- text and Sentencing	Western Cape
21-22 November 2018	DCM98 Family Court Applications in terms of Maintenance Act 99 of 1998	Northern Cape

# UPCOMING WORKSHOPS... Cont

DATE	WORKSHOP	PROVINCE
21-23 November 2018	DCM99 Children's Court Preliminary Inquiries Child Justice Act	North West
21-23 November 2018	DCM127 Civil Court Evictions PIE & ESTA	Free State Welkom
26-28 November 2018	DCM100 Children's Court Removals and Ancillary Orders	KZN Durban
28-30 November 2018	RCM20 Civil Course	Western Cape
28-30 November 2018	DCM101 Criminal Court Environmental Law	EC Region 1 PE

# INVITATION TO APPLY FOR BASIC ASPIRANT JUDGES PROGRAM JULY 2019

The South African Judicial Education Institute (SAJEI) hereby invites interested candidates to apply for the Aspirant Judges Program scheduled to take place from the 17th to 19th July 2019.

Application forms and selection criteria are available on [www.judiciary.org.za](http://www.judiciary.org.za)

Completed and signed application form, together with supporting documents should be submitted on or before 19th October 2018. Please note that no late or incomplete applications will be considered.

Applications should be forwarded to:

**Mr Mabete Kganakga**

E-mail: [MKganakga@judiciary.org.za](mailto:MKganakga@judiciary.org.za)

Tel: 010 493 2618

Hand delivery: 188 14th Road, Noordwyk, Midrand, 1687

Postal address: P/Bag x10, Marshalltown, 2000

Shortlisted candidates will be invited for interviews.

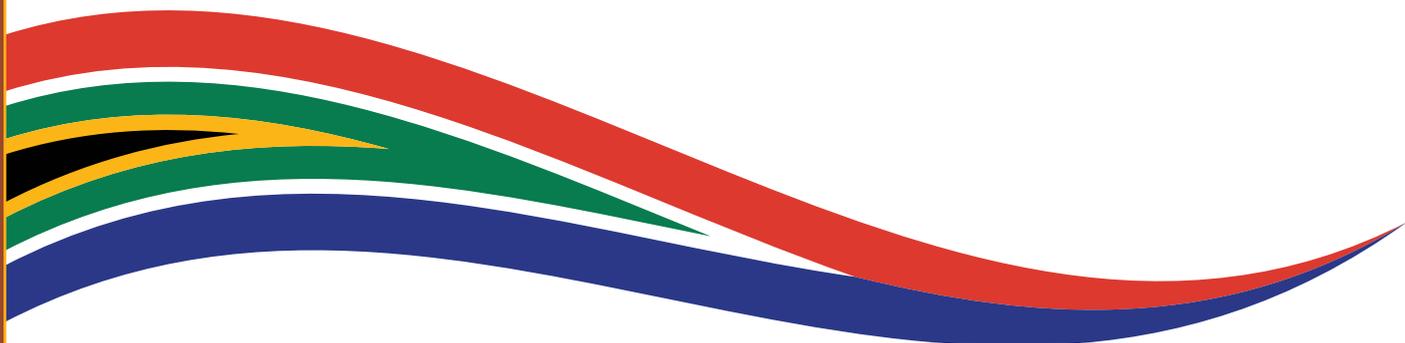
## REGIONAL INITIATIVES UNEP

From the 01st to 03rd August 2018 South Africa participated in the 2nd Regional Colloquium on greening the Judiciaries. The Symposium is a culmination of a model developed by SAJEI on integrating specialised areas of the law into Judicial Curricula. The first colloquium was held in January 2017, where a Johannesburg Action plan was adopted by participating countries. At this colloquium South Africa was nominated to be Secretariat for the Working Group. This was followed by Train the Trainers in June 2017.

South Africa was a member of the organising Committee for the 2nd Regional Colloquium. About 15 Chief Justices including Deputy Chief Justices were in attendance. Judiciaries and Judicial Training Institutes from Lusophone, Francophone and Anglophone countries were represented

SAJEI extended the invitation to a Judicial Training Institute in Brazil, a representative was also in attendance.

The African Judicial Environmental Network was launched and a Steering Committee established. The Institutes in Southern Africa are represented by SAJEI on the network.



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