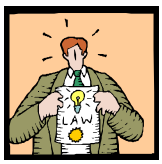
E - M A N T S H I

A KZNJETCOM Newsletter

February 2008: Issue 25

Welcome to the twenty fifth issue of our KwaZulu-Natal Magistrate's newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Your feedback and input is key to making this newsletter a valuable resource and we hope to receive a variety of comments and suggestions – these can be sent to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or faxed to 031-368 1366.



New Legislation

1. The South African Police Service is reviewing the present notices issued under the Dangerous Weapons Act, Act 71 of 1968. A Proposed Notice has been drafted for consultation purposes and published in Government Gazette No. 30717 dated 1 February 2008. Comment on the draft notice is invited within 6 weeks of the publication. The notice contains a list of objects which are in the opinion of the Minister dangerous weapons. Some of the objects listed are spear or assegai, panga and dagger. (These items are listed in schedule 1.) To control these dangerous weapons the following is proposed in schedule 3 i.r.o. the sale of such items:

"Any object specified in Schedule 1, may be sold or supplied only from a registered business premises which does not include any open air, street or flea market, on condition that it may be sold only –

(a) to a person who is older than 18 years;

(b) to a person who identifies himself or herself by means of a green bar-coded identity document;

(c) if the transaction is recorded in a register kept for that purpose, reflecting the full names, address and identity number of the buyer and the purpose for which it is bought;

(d) if the register is kept available for inspection, and inspection thereof by a police officer is allowed at any time during business hours;

(e) if the transaction is performed face-to-face and not by mail, post or internet order."

2. A Second-Hand Goods Bill, 2008 has been tabled in Parliament. It was published on 8.2.08 and can be accessed at www.pmg.org.za/node/10196. The objects of the Bill are to regulate the business of dealers in second-hand goods and pawnbrokers and to promote ethical standards in the second-hand goods trade.

Recent Court Cases

1. S v MBHELE 2008(1) SACR 123 (NPD)

An accused person has the right to elicit evidence from his witness in mitigation of sentence without the magistrate dominating questioning and asking what sentence the court should impose.

The accused was convicted in a magistrates' court of assault with intent to do grievous bodily harm. After conviction the accused elected to address the court in mitigation of sentence in terms of s 274(2) of the Criminal Procedure Act 51 of 1977 and call his brother and his mother as witnesses. When his brother was called to give evidence, the magistrate dominated the questioning and repeatedly asked him what sentence he would like the court to impose on the accused. The witness's replies were confused, but he did appeal for a fine. The accused was not given an opportunity to put questions to the witness and elicit such evidence as he wished from the witness as to sentence. The magistrate then enquired from accused whether he confirmed the testimony of his witness, which eventually resulted in the witness confirming that the accused wanted a suspended sentence and that the accused suffered from asthma. The accused then indicated that he was 'satisfied'. The accused's mother was also asked what sentence she would like the court to impose. She was also asked three further questions and then excused with no opportunity given to the accused to put any questions to her.

Held, that a mere invitation as to whether the accused confirmed the evidence of his witness was improper and fell far short of the rights an accused enjoyed to adduce evidence on sentence in terms of the provisions of s 274 of the Criminal Procedure Act. Denying the accused the opportunity to elicit from his witness by questioning (with assistance where necessary), whatever evidence the accused believed his witness could contribute on sentence, was a serious irregularity. Not only did it offend against the spirit and ambit of s 274 of the Criminal Procedure Act, but it also seriously infringed and defeated the accused's right to a constitutionally fair trial in terms of s 35(3) of the Constitution of the Republic of South Africa, 1996. (Paragraph [5] at 124j-125b.)

Held, further, that the line of questioning adopted by the court was tantamount to an abdication by the court of its duty and responsibility to determine an appropriate sentence. It was undesirable, if not simply improper, to enquire of lay witnesses what they would like the court to impose by way of a sentence. Any answer would amount to irrelevant and inadmissible opinion evidence. In addition, it was cruel and degrading to the witnesses to tax them with such an issue where they were related to the accused and obviously wished for the lightest possible sentence. (Paragraph [6] at 125c-d.) Matter remitted to magistrate for sentence to be imposed afresh.

2. S v HLANGABEZO & OTHERS 2008(1) SACR 218 (ECD)

If an unrepresented accused raises an alibi defence which could be supported by witnesses the presiding officer should inform the accused of the importance of calling these witnesses and to assist him to call them.

In an appeal to a High Court against their convictions in a magistrates' court of 'housebreaking with intent to commit an unknown offence' it appeared that the appellants had raised alibi defences against the charge. The magistrate had, in his judgment, drawn an inference adverse to the appellants from their alleged failure to inform the court of their alibi defences in their respective plea explanations. The record revealed, however, that, when the first and third appellants had proffered their plea explanations, the magistrate had intervened, telling them that he did not want the whole story. Furthermore, each of the appellants had indicated that they had possible witnesses who could substantiate their alibis. Despite this the magistrate made no effort whatsoever to inform the unrepresented appellants of the importance of such witnesses being called or to assist the appellants to call them.

Held, that, in stopping the appellants from giving a full plea explanation, and especially bearing in mind that all three appellants were unrepresented and had denied their presence at the scene, there was no basis upon which any inference adverse to them could properly have been drawn from their alleged failure to disclose their alibis and the magistrate had seriously misdirected himself in this regard. (At 221i.)

Held, further, that the magistrate had not informed the unrepresented appellants of the importance of their possible witnesses being called or to assist the appellants to call them. (At 222a-b.)

Held, accordingly, that the appellants had not had a fair trial and the convictions had to be set aside. (At 222b.) Appeal allowed.

3. S v DE VOS 2008(1) SACR 175 (NPD)

The maximum fine that can be imposed by a magistrate's court is R60 000. 00

Section 89(3) of the National Road Traffic Act 93 of 1996, which provides that '(a)ny person convicted of an offence in terms of ss (1) read with s 17(4), 18(5), 59(4), 61(2), 66(3), 68(1), (2), (3), (4) or (6) shall be liable to a fine or to imprisonment for a period not exceeding three years', has to be read with s 92(1)(a) of the Magistrates' Courts Act 32 of 1944, which provides that a magistrates' court, which is not a court of a regional division, may upon conviction impose a sentence of imprisonment for a period not exceeding three years or may impose a fine not exceeding the amount determined by the Minister of Justice from time to time by notice in the Gazette. In terms of GN R1411 of 30 October 1998, a magistrates' court other than a regional court cannot impose a fine exceeding R60 000. The failure by the legislature to prescribe the maximum fine in s 89(3) must be interpreted to mean that the limit specified by the Magistrates' Courts Act must apply, namely, R60 000. (At 176h-j and 177b-c.)

From The Legal Journals

1. Pillay, D (Judge)

"Legal Writing: Part 2: Writing effective paragraphs"

January/February 2008
De Rebus p35

2. Van Logggerenberg, D; Dicker, L + Malan, J

"Aspects of debt enforcement under the National Credit Act"

January/February 2008-02-12
De Rebus p40

3. Dicker, L.

"The new age of majority revisited"

January/February 2008-02-12
De Rebus p46

(*The above articles can be accessed on the web-site of De Rebus at* www.derebus.org.za)

4. Snyman, C.R.

"Die begrip "besit" in die strafreg (1)"

THRHR 2007 p 540
V 70(4)

5. Phelps, K and Kazee, S

"The Constitutional Court gets anal about rape-gender neutrality and principle of legality in *Masiya v DPP* *SACJ 2007 p 20*

(*A copy of the above articles can be requested from* gvanrooyen@justice.gov.za)

Contributions from Peers

"ASPIRANT JUDGES OR LAZY CIVIL SERVANTS"

S60 (11) (a) and S 60(11) (b) SIMPLY NOT IMPORTANT ENOUGH OR TOO INCONVENIENT TO BE APPLIED

A great deal of effort has been put into improving the lot of magistrates and in attaining the goal of a single judiciary by certain magistrates. I am humbled reading some of the well researched and well presented submissions that have been put forward by magistrates and in particular by Mr R Laue in which he and others have endeavoured to improve the lot of magistrates.

The time and effort that has been put in on my behalf and other magistrates is obviously enormous.

When I was a young man I naively said that one day I would love to be a judge, ironically this was shortly after I handed in a research project at UKZN in 1987 calling on "right minded judges" to resign rather than uphold repressive laws. Being older, wiser and perhaps a little more cynical I realise that attaining that naïve goal is unlikely unless magistrates are in fact afforded the title of judge.

However as things currently stand I believe that we as a body of jurists are not deserving of the title Judge.

Today we have a magnificent Constitution and a Bill of Rights enshrined therein that has possibly no peer. We have the benefit of magnificent precedents to guide us and to follow from the Constitutional Court, the supreme court of appeal as well as numerous high court decisions that we as jurists have every reason to be proud of.

I was motivated as a young prosecutor and inexperienced magistrate (appointed a month before my 29th birthday) by the intellect and ability in court of many of my seniors and peers, some of whom are still a motivation to me.

The most significant lesson learned from them and from my on going legal education is that magistrates, and all judicial officers for that matter, have an onerous task in giving effect to the law and to their oath of office.

S165 (2) of the Constitution provides **"The courts are independent and subject only to the constitution and the law which they must apply…."**

Magistrates' oath of office provides, inter alia, that judicial officers **"will uphold and protect the Constitution …and the fundamental rights entrenched therein and in doing so administer justice in accordance with the Constitution and the law…"**

It angers and saddens me when trained judicial officers deliberately ignore and refuse to apply sections of the Criminal Procedure Act simply because it is inconvenient to do so.

When I first started at my current office in November 2003 I observed, when scrutinising charge sheets that in many bail applications in respect of offences that fell within the ambit of schedule 5 and 6, there was no indication on the record that the accused had adduced evidence, as is peremptorily required by S60 (11) (a) and (b) of Act 51 of 1977 as amended.

Within a few days a local attorney walked into court and in an application for bail on his client's behalf where the charge was one of Rape, after the State had said it did not oppose bail he stood up and said that his client could afford bail and would abide by conditions imposed and sat down. When asked about complying with the relevant bail provisions he flatly stated that this is not the way it is normally done here in an unopposed application.

At this juncture I explained to him that I did not care too much if other magistrates ignored the law: in this court the law would be applied. This was reported to a colleague who was angry at the fact that this was said in open court and that I should have spoken directly to the presiding officer.

This to me seems to miss the point that courts are open and public proceedings and the proper place to inform practitioners that the law should be applied at all times is in open court.

It is particularly galling to me that this practice of ignoring the law continues unabated despite the best efforts of the area cluster head who continually stresses at training meetings the necessity for complying with the relevant sections of the CPA.

In January and February 2007 I acted in the regional court and found similar occurrences emanating from the district courts in the various areas that I presided in.

On my return I observed many cases where there had been no effort to comply with the sections and in desperation I spoke to a senior magistrate who is involved in training and he told me that he was similarly frustrated and embarrassed by magistrates who ignore their oaths of office thereby bringing the profession into disrepute.

He "tongue in cheek" told me that his teenage daughter was too ashamed to tell her classmates that her father was a magistrate - instead preferring the more exotic description of a stripper as her dad's profession.

On the 25th day of October 2007 in frustration I quickly typed and sent the following mail to my head of office and to my area cluster head. The area cluster head then forwarded this mail to various heads of office and as I have been lead to believe fairly widely disseminated especially in my area cluster.

This mail was neither proof read nor checked for grammatical errors, however I believe the gist of what is contained in the e mail conveys the point I was trying to make. The problem I believe lies in the inability or unwillingness of some magistrates to respect their oath of office.

"**HEADING: - S60 (11) (a) and (b)**

Sirs,
The manner in which bail applications adjudicated in terms of the above sections of the Criminal Procedure Act are of concern to me. The sections appear to me to be peremptory, i.e "accused shall adduce evidence" prior to his or her release.

Indeed when looking for a confession form while in Richmond I saw a minute of a cluster meeting dated back to 1999 where the cluster head stresses that magistrates must adduce evidence in these applications.

*Furthermore at a training session held by the cluster head the supreme court of appeal decision in **S v Mabena** was brought to the attention of magistrates in the cluster and discussed. It is worth noting that in that case the SCA held that the release of an accused without proper compliance with the requirements of the section render the proceedings a "nullity".*

I am not aware of any decision or legislation that has modified this position and if there is one I would appreciate it if it be furnished to me.

A large number of cases have been put before me in this cluster and in other clusters where there has been no effort whatsoever to comply with the provisions of the section. Yesterday an attorney applied for a reduction of bail in a matter in which the provisions of S60 (11) (a) were patently not complied with.

If the original setting of bail is a nullity, how is the presiding officer supposed to deal with the matter?

Does the fact that the state does not oppose the release of the accused mean that the relevant sections of the bail legislation are not applicable or are magistrates ignoring the law as it is inconvenient or time consuming?

What is disturbing to me is that unless the law has been modified either by legislative intervention or by precedent that I am not aware of, the requirement of adducing evidence is now long established in our law and

jurisdiction. To err is human and I as probably all presiding officers do err on occasion however, when magistrates deliberately ignore the law (let's not pretend that magistrates do not know what their duties are in terms of these section) this should be a matter of concern."

I am sure a few magistrates are reading this thinking that their courts are too busy and I accept that it can be a time consuming procedure although it need not necessarily be so. However, in courts such as the ones that I normally preside in, in which I find it increasingly difficult to maintain reasonable court hours this "excuse" rings a little hollow. In any event even if one's court is labouring under the excessive workload it is still not a justification for ignoring the law.

The response of some of the Heads of Office and Senior Magistrates was heartening to me, here are some of their responses:-

"**Time and time again this particular issue is raised in workshops, circulars; a meeting etc., but the problem still persists. In fact so much information has been published on the procedure as prescribed by law, that any magistrate not adhering to the prescript cannot be heard to say that they did not know. Although there is no harm in again disseminating the provisions of the legislation, I am of the view that it is time that the culprits are identified for the purposes of one on one peer training.**"

Another response came from the Cluster Head of in my area:-

"**I do not think that any of our magistrates will maintain the view that evidence does not have to be adduced in these instances. This has in fact been a matter of grave concern.**"

Mr Nieuwoudt who worked in the quality assurance office in Durban pointed out that this failure was often picked up at magistrates' offices during quality assurance assessments.

Indeed I was pleased and sent e- mail copies of the decision in ***S v Mabena*** **[2006] SCA 132 (RSA)** to those magistrates who requested it, including a head of office. Sadly, knowledge of what is required is of no value if the person in possession of the knowledge lacks the will to apply the law or in fact finds it too inconvenient or time consuming to apply.

I am extremely disappointed when I come across numerous charge sheets showing that the presiding officers concerned make no effort whatsoever to comply with the requirements of the legislation. To illustrate:

1. A2839/07 Rape matter: - schedule 5 offence.
Facts alleged by the state are set out on the record, followed by the statement that the PP "has no objection to the release of the accused on warning, accused is not a flight risk and not a danger to the complainant."

R O W to 29/1/8 @ 8.30 A court ffi and legal aid application.
Accused warned for court.

2. A743/07 charge of Murder schedule 5
Facts: - accused stabbed a fellow pupil inside a school. Pupil died.

PP no objection to release of accused

Acc released i/c of guardian ffi.

3. A690/07 Charge of Rape of a 14 year old. Schedule 6.
Victim is 14 years of age. She is staying at the accused's place because her parents passed away.

P/P the victim has been removed and placed in a place of safety.

Defence addresses court:-
He is 22 years of age residing with his girlfriend. Unemployed but living on temporary jobs. He has no children, no pc's or pending cases. He is a scholar at… doing grade 9. No need for him to relocate as complainant has been removed. I request he be released on warning.

State: - no objection to release on warning.

R O W 26/4/07 A court FFI o/w

I was asked to prepare an article on the issue so that it may be published in e-Mantshi and have found it difficult to add to the mail as I firmly believe that all magistrates are aware or should be aware of their obligations in this regard and what the section requires.

Justice College has provided detailed notes on the required procedure to be followed and if you do mainly criminal court matters then as a magistrate you will deal with these matters on a daily basis.

Release of an accused from custody

S 35(1) (f) of the Constitution provides **"everyone who is arrested for allegedly committing an offence has the right…..to be released from detention if the interests of justice permit, subject to reasonable conditions."**

In ***State v Dlamini and others*** **1999 (2) SACR (CC)** at paragraph [6] the constitutional court remarked when considering this provision in the constitution: "**Section 35(1)(f)** ……..*The person concerned has a right but a circumscribed one, to be released from custody subject to reasonable conditions". Further, that flowing from this proposition the constitutional court concluded that "the criterion for release is whether the interests of justice*

permit it".

Release of an accused person has been regulated through statute and in particular by the provisions contained in chapter 9 of the Criminal Procedure Act. The factors that a court takes into account when deciding if the interests of justice permit an accused person's release have been amended and codified into law by S60 (4) to (9) of the CPA.

The role of the presiding officer in bail applications prior to the Interim Constitution was a very limited one, particularly when bail was unopposed by the investigating officer or the state.

The 'Justice College' notes titled "**BAIL AND RELATED TOPICS"** as updated by Senior Magistrate B J King in 2003 illustrate what the presiding officer's role (or rather lack thereof) was in a bail application prior to the interim Constitution of 1995 and 1997 amendments to chapter 9 of the Criminal CPA.

Pages (ii) to (v) illustrate the position prior to 1995. on page (ii) the following is set out:-

> "*During the pre-Constitution era the process was, as some would say, simple. To a large degree the investigating officer was the main decision-maker. The investigator usually advised the prosecutor of his or her attitude to bail, the prosecutor conveyed the sentiments to the presiding officer and the decision was made. If there was no objection the prosecutor usually suggested a sum of money, (also usually based on the investigators' suggestion), and bail was fixed without further ado. Should the investigator have opposed bail, and 'sufficient' reason for opposing was often "pending further investigation", this was conveyed to the magistrate and more often than not the accused would be summarily returned to custody without having much say.*
>
> *Magistrates were, in the application of the 1995 provisions, now required to take on a new role in pre-trial proceedings.*
>
> *The decision to release an accused or not was now statutorily entrenched as solely their decision; the prosecutors' attitude or the investigators' suggestions were now just another factor to consider. The magistrate's role changed too, from what he or she was accustomed to in the accusatorial trial proceedings to the now inquisitorial bail proceedings."*

Mainly as a result of the failure of magistrates to grasp this new inquisitorial function and to counter a widespread perception that dangerous persons were granted bail too easily, bail legislation was radically amended by the legislature through Act 85 of 1997 and also by subsequent legislation.

Indeed, factors that a court must take into account when deciding bail matters have been further extended by amendments contained in Act 62 of 2000 and Act 55 of 2003.

These amendments clearly stipulate precisely the role and factors that the presiding officer takes into account in a bail application. This role has been set out in various judicial manuals and in precedent. There is therefore no place in our law for bail applications, even if unopposed, to be conducted according to pre 1995 precepts.

I cannot agree more with the comments contained in "**BAIL AND RELATED TOPICS"** (supra at par. (iii)) that:-

> *"Presiding officers should be wary of falling into the trap of conducting bail in the 'old' and 'easy' way, that is, the 'rubber stamp' method, as their non-compliance with the strict legislative directives might possibly cause them to be cited as a defendant as were the prosecutor and the policeman in the matter of* ***Carmichele v Minister of Safety and Security and Another*** **2002(1) SACR 79 (CC)***".*

It is in my opinion necessary to note that the horrific consequences of the ***Carmichele*** matter should have been and could easily have been avoided if the respective parties had been less derelict in the exercise of their duties. Under the amended bail legislation the kind of scenario that occurred in ***Carmichele*** can and should almost always be avoided if the law is correctly and properly applied.

In order to prevent such anomalies recurring **s 60(11) (a)** and **s 60(11) (b)** were promulgated into law by **s 4 (f) of Act 85 of 1997.**

They in essence provide:-

> S60 (11)(a)- ***the accused having been given a reasonable opportunity to do so is obliged to adduce evidence that satisfies the court that exceptional circumstances exist which in the interest of justice permit his or her release.***
>
> And
>
> S60 (11) (b) ***in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.***

In *S v Mabena* (*supra)* at paragraph [5] **Nugent JA** said:

> *"Graver offences (the offences listed in Schedules 5 and 6 of the Act) are subject to a more stringent regime… While an arrested person is generally entitled to be released on bail if a court is satisfied that the interests of justice so permit, the reverse applies where a person has been charged with a Schedule 6 offence."*

Obviously the same is applicable in respect of a schedule 5 offence, except that the

accused would have to prove on a balance of probabilities that it is in the interests of justice that he be released; whereas in a schedule 6 application the higher burden of showing exceptional circumstances is required.

This reversal of the general rule pertaining to the adjudication of bail applications passed constitutional muster in ***Dlamini's*** case *(supra),* the Constitutional Court holding per **Kriegler J** that these two sections were a limitation on the accused's right to apply for bail, but it was a limitation which was reasonable and justifiable in terms of s.36 of the Constitution in our current circumstances.

Although this section places a formal onus or burden of proof on the applicants to adduce evidence which satisfies the court that exceptional circumstances exist (in schedule 6 offences), which in the interests of justice permit their releases, it has been held to be constitutional and therefore **must** *(my emphasis)* be applied by all presiding officers, whether or not the state or the investigating officer oppose the release of the accused.

Nugent JA puts the crux of this entire issue far more eloquently than I ever could when he states at [2]:-

> ***"The Constitution proclaims the existence of a state that is founded on the rule of law. Under such a regime legitimate state authority exists only within the confines of the law, as it is embodied in the Constitution that created it, and the purported exercise of such authority other than in accordance with law is a nullity. That is the cardinal tenet of the rule of law. It admits of no exception in relation to the judicial authority of the state. Far from conferring authority to disregard the law the Constitution is the imperative for justice to be done in accordance with law. As in the case of other state authority, the exercise of judicial authority otherwise than according to law is simply invalid."*** *(My emphasis)*

Further in ***Dlamini*** *(supra*), **Kriegler J** held at paragraph [61] that:-

> *"(a) The subsection says that for those awaiting trial on the offences listed in Schedule 6, the ordinary equitable test of the interests of justice determined according to the exemplary list of considerations set out in ss (4)-(9)* ***has to be applied differently****.*
>
> *(b) Under ss (11) (a) the lawgiver makes it quite plain that a formal onus rests on a detainee to 'satisfy the court'.*
>
> ***(c) Furthermore, unlike other applicants for bail, such detainees cannot put relevant factors before the court informally, nor can they rely on information produced by the prosecution; they actually have to adduce evidence.***

d) In addition, the evaluation of such cases has the predetermined starting point that continued detention is the norm. *(My emphasis)*

(e) Finally, and crucially, such applicants for bail have to satisfy the court that 'exceptional circumstances' exist.'

And further in ***Mabena*** (*supra*) at [6]:

"Section 60(11) (a) contemplates an exercise in which the balance between the liberty interests of the accused and the interests of society in denying the accused bail will be resolved in favour of the denial of bail unless 'exceptional circumstances' are shown by the accused to exist. This exercise is one which departs from the constitutional standard set by s 35(1) (f).

Its effect is to add weight to the scales against the liberty interest of the accused and to render bail more difficult to obtain than it would have been if the ordinary constitutional test of the 'interests of justice' were to be applied.

That legislative scheme for the grant of bail, whether generally or in relation to Schedule 6 offences, necessarily requires a court to determine what the circumstances are in the particular case and then to evaluate them against the standard provided for in the Act.

A court is afforded greater inquisitorial powers in such an enquiry, but those powers are afforded so as to ensure that all material factors are brought to account, even when they are not presented by the parties, and not to enable a court to disregard them." *(My emphasis)*

It is clear that where the state or defence does not adduce sufficient evidence it is incumbent upon the court to inquire and if necessary call the evidence necessary for the court to properly exercise its discretion in the adjudication of the application.

It is my contention, and one that has never been disputed, that all permanently appointed magistrates as opposed to "contract magistrates" are fully aware of the need for a court in all applications for bail or release from custody to satisfy its mind after a proper consideration of all the facts that:-

1. In bail applications not falling within the ambit of schedule 5 or 6 the interests of justice permit the accused's release.

2. In schedule 5 or 6 offences the statutory requirements need to be present and discharged before the court may order the release of an accused.

It is self evident that a presiding officer is required to exercise, in terms of the requirements of the legislation, a judicial discretion after fully complying with the relevant legislation. Not to do so, with respect, means that the presiding officer concerned simply is not in possession of sufficient information to properly exercise

the discretion.

CONCLUSION

I am fully aware that a great majority of magistrates are very diligent and conscientious in their approach and application of the law. I am aware that many magistrates frown upon colleagues who ignore the law, however, unless the Magistracy as a whole is not willing to take steps against those who flout their oath of office and act in complete disregard of the constitutional duty to uphold the laws of this country, then we quite frankly do not deserve the lofty title of judge.

This article will no doubt incur the ire of those who those who are party to the practices described herein and the accusation that I am acting in an “uncollegial” manner will be levied against me. However, to stand by and allow this disregard of the principles that I hold up as important is not acceptable. My only regret is that I did not formally put in writing my objection to this and practices that besmirch the name of presiding officers far earlier.

I believe that our inaction against those culprits for so long has already affected our reputation both in the eyes of the public and the profession. Some remedial steps should be taken for it will not be long before we slide down a greasy pole that should be reserved for pole dancing strippers and a talented middle aged colleague. That sight may well be very scary indeed.

It is suggested, with respect to my seniors, that urgent intervention is required by the heads of offices, those that are not culpable that is, to remedy the situation as unpalatable as that may be.

Garth Davis

Magistrate KZN

If you have a contribution which may be of interest to other Magistrates could you forward it via email to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or by fax to 031 3681366 for inclusion in future newsletters.

Matters of Interest to Magistrates

DEPARTMENT: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
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Enquiries: MR T C MABASO/mj Reference: 1/4/25 [LCJ]

6 February 2008

To All Stake Holders and Role Players in the Justice System

PRACTICAL GUIDE TO CRIMINAL COURT AND CASE FLOW MANAGEMENT IN S A : PROJECT TO UPDATE AND ENHANCE THE PRESENT PUBLICATION

The booklet "Practical Guide to Court and Case Flow Management for South African Lower Courts" was first published in October 2006 and has served us well as a tool to engender co-operation between different role players and stake holders in attempts to bring about improvements in the day to day running of the courts. Indeed, the majority of us now utilise the practices and principles set out in the guide and those who have not yet realised its material value are finding it difficult to abstain from contributing in some way or other to these methodologies.

The task team of the judicial Lower Court Management Committee who produced the first edition of the booklet, has embarked on a project to upgrade it. The intention is to produce a second edition which is more comprehensive than the present one. Criteria based on its simple wording and style, and drawing on common approaches to existing principles and practices - i.e. not creating new regulations or systems - will still be adhered to. It is envisaged that the new publication will be more formal in nature, possibly in a hard cover loose leaf binder.

The task team presently consists of a small group of members from a variety of sectors, under the Chairmanship of the Judiciary. During its work on the new CFM booklet, the project will be extended to engage representatives from all sectors of the criminal justice system who engage at any time with criminal courts and cases.

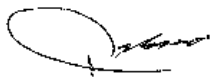
The first phase of the project will be to review the current publication from cover to cover, together with material received from contributors.

You are accordingly invited to forward written submissions for consideration by the task team, in respect of the current publication and / or new material which merits inclusion, and which is aimed at enhancing the management of criminal courts and cases. Submissions may be individually or collectively made from offices or departments of any role player / stake holder concerned with the matter.

The forwarding address for this input is:

To Maria Malatji - MarMalatji@justice.gov.za

The closing date for initial contributions is 1 April 2008.



T C MABASO
CONVENER: CFM COMMITTEE

"Always quote our reference number"

Enquiries in this regard may also be directed to:

Ms Maria Malatji	012 315 1581
Mr Eric Sibeko	031 302 4224
Mr Deon Boardman	012 357 8849
Mr Ray Sansom	031 302 4269

A Last Thought

- "Corruption and hypocrisy ought not to be inevitable products of democracy, as they undoubtedly are today."
  –*Mahatma Gandhi*

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