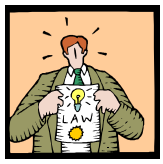
e-MANTSHI

A KZNJETCOM Newsletter

October 2009: Issue 45

Welcome to the forty fifth issue of our KwaZulu-Natal Magistrates' 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. A notice was published in Government Gazette no 32592 of 23 September 2009 in which Government Gazette no. 32258 of 27 May 2009 is amended by: extending the commencement date of the proviso clause after sub regulation (7) (f) of regulation 35 of the *National Road Traffic Regulations*, 2000 to 1 April 2010.

The relevant provision reads as follows:

"Provided that no person shall operate on a public road a motor vehicle first registered on or after 1 January 2009, unless the number plate fixed to such motor vehicle is affixed within 20 millimetres from the edges by means of 4 millimetres rivets or 4 millimetres one-way self tapping screws either directly onto the motor vehicle or onto an integral part thereof or onto an intermediate metal holding bracket approved by the Department of Transport, which is attached to the motor vehicle in such a way that it cannot be removed while the number plate is affixed to it in the aforesaid manner.".

2. The *Road Traffic Management Corporation Regulations* which have been promulgated in terms of the *Road Traffic Management Corporation Act* (Act 20 of 1999) have been amended by a notice in Government Gazette no 32591 of 23 September 2009.One of the amendments is an amendment to the fees that may be charged.

"Monies to be paid to the Corporation by registering authority as transaction fees

2(1) Subject to the provisions of sub regulation (2), the monies referred to as transaction fees to be paid to the Corporation by a registering authority appointed in terms of section 2 of the Road Traffic Act, 1989 (Act No. 29 Of 1989) or section 3 of the National Road Traffic Act (Act No. 93 of 1996) as amended from time to time, shall comprise of-

An amount of R36-00 (Thirty Six Rands) on the baseline fees as determined by the MEC of each province in terms of regulations 24(2) (b), 25(2) (a) or 30(3) (a) of the National Road Traffic Regulations in respect of every licence application for:-

(a) a motor cycle, motor cycle with a side-car, motor tricycle and motor quadrucycle;

(b) a tractor which is operated on a public road;

(c) a caravan, other than a self propelled caravan;

(d) a trailer, other than a semi-trailer, used by the owner thereof solely for his own farming activities, other than for the conveyance of goods for reward on a public road;

(e) a trailer or semi-trailer, used by the owner thereof solely for his own private activities or for the conveyance of goods for reward on a public road;

(f) a breakdown vehicle;

(g) a motor home, and

(h) any other motor vehicle, including a self propelled caravan".

3. A notice was published in Government Gazette no 32608 of 1 October 2009 in which the *Correctional Services Amendment Act* (25/2008) has been put into operation except sections 21, 48 and 49. The amendment Act came into operation on the same day.

4. The South African Police Service is consulting on regulations under section 41(1) (c) of the *Second-Hand Goods Act*, 2009 (Act No. 6 of 2009), with a view to submitting draft regulations to the Minister of Police for consideration when the Act comes into operation. A notice in this regard was published in Government Gazette no 32643 of 16 October 2009. Draft Regulations have been published for comment by any interested party within 30 days. Comments must be forwarded in writing to:

Director J A van der Walt
Legal Support: Crime Operations
South African Police Service
Private Bag X94

PRETORIA
0001

Street Address

Room No. 36
3rd Floor
Presidia Building
255 Pretorius Street
Cr. Paul Kruger and Pretorius Street
PRETORIA

5. In Government Gazette no 32622 dated 9 October 2009 Rules of procedure have been published for applications to Court in terms of the *Promotion of Access to Information Act 2 of 2000* and for the Judicial Review of Administrative Action in terms of the *Promotion of Administrative Justice Act 3 of 2000.*The rules are applicable to such applications in the Magistrates' Courts.

Recent Court Cases

1. Director of Public Prosecutions, KwaZulu Natal v Ngcobo and others 2009(2) SACR 361 SCA

A Departure from the prescribed minimum sentence is justified if an injustice would result from imposing such a sentence

[12] *Malgas* [2001(1) SACR 469 (SCA)] is not only a good starting point but the principles stated therein are enduring and uncomplicated. In *Malgas*, this court, whilst recording judicial hostility to legislative intrusions upon sentencing, rightly nevertheless stated that a court was now required to approach sentencing conscious of the fact that the legislature has ordained life imprisonment or a particular prescribed period of imprisonment as the sentence which should 'ordinarily' be imposed for the commission of the listed crime in the specified circumstances. This court noted the statutory requirement that, in the event of a finding of substantial and

compelling circumstances, such circumstances should be entered on the record of proceedings. The following passage is of importance:

'The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances.

[13] The following passage is equally deserving of consideration: 'But for the rest I can see no warrant for deducing that the legislature intended a court to exclude from consideration, *ante omnia* as it were, any or all of the many factors traditionally and rightly taken into account by courts when sentencing offenders.

[14] In *Rammoko v Director of Public Prosecutions* 2003 (1) SACR 200 (SCA) ([2002] 4 All SA 731), a later judgment of this court, it was thought fit to re-emphasise what was stated in *Malgas*, namely that a departure from the prescribed minimum sentence is justified if, in imposing it, an injustice would result. The imposition of a prescribed sentence need not amount to 'a shocking injustice'. If imposing the minimum sentence would be an injustice it should be departed from.

[26] Courts are expected to dispense justice. This kind of brutality is regrettably too regularly a part of life in South Africa. Courts are expected to send out clear messages that such behaviour will be met with the full force and effect of the law. The legislature is concerned and so too should we be.

2. S v Zenzile 2009 (2) SACR 361 SCA

When a court record is to be reconstructed it should be done in open court and in the presence of all parties to the trial

The accused was convicted in a regional court on two counts of rape and one of assault with intent to do grievous bodily harm. The matter was then referred to the High Court in terms of s 52(1) (a) (i) of the Criminal Law Amendment Act 105 of 1997 for purposes of sentencing. It transpired, however, that a portion of the trial record, pertaining to the whole of the State's case, was missing and could not be found despite a diligent search. The presiding magistrate had attempted to reconstruct the missing portion working from his trial notes, but there was no indication that the accused had been informed of the reconstruction or of his rights in connection therewith. When he had been asked to sign an affidavit verifying the accuracy of the reconstruction, he had refused to do so. The question thus arose as to whether or not the reconstruction process had conformed with the accused's right

to a fair trial.

Held, that the concept of a fair trial within the meaning of s 35(3) of the Constitution of the Republic of South Africa, 1996, was broader than simply the conduct of the trial in terms of constitutionally mandated rules and procedures; it included substantive fairness. The right to a fair trial extended up to, and included, sentencing proceedings. A determination of whether the proceedings had been held in accordance with justice could be made only on the basis of a proper, or properly reconstructed, record of those proceedings. The accuracy of the record, particularly where it had had to be reconstructed, was of paramount importance. (Paragraphs [16]-[18] at 413j--414a, 414g-h and 415a-b.)

Held, further, that the reconstruction of the record was part of the trial process,to which the right to a fair trial should apply. Fairness to the accused meant that he should have been informed of the need for a reconstruction and of his right to participate in that process, as well as of his right to legal representation and, if necessary, interpretation. In addition, the fact that the reconstruction had taken place entirely in the magistrate's chambers negated .the right of the accused to a public trial before an ordinary court, and his right to be present when being tried. In the result, the accused's right to a fair trial had been significantly compromised. (Paragraphs [19] and [20] at 415d-fand 415i.)

Held, further, that once a reconstruction had become necessary, the magistrate ought to have caused all the interested parties - the accused, his legal representative and the prosecutor - to be informed thereof; the parties should then have assembled in open court to undertake the reconstruction, it having been placed on record that that was the purpose; and the parties could then have expressed their views as to the accuracy of each aspect of the reconstruction, before it was transcribed in the normal manner. Had such a process been followed, none of the parties could have complained of a violation of rights. (Paragraph [21] at 416a-d.)

Convictions set aside.

3. S v Mabuza and others 2009 (2) SACR 435 (SCA)

The failure to record that an unrepresented accused's rights have beenexplained to him or her doesn't by itself render the trial unfair

[9] Our courts have indeed established guidelines dealing with what Goldstone J described in *S v Radebe; S v Mbonani* [1988 (1) SA 191 (T)] as the-

'general duty on the part of judicial officers to ensure that unrepresented accused fully understand their rights and the recognition that in the absence of such

understanding a fair and just trial may not take place.' He went on to say that:

'If there is a duty upon judicial officers to inform unrepresented accused of their legal rights, then I can conceive of no reason why the right to legal representation should not be one of them. Especially where the charge is a serious one which may merit a sentence which could be materially prejudicial to the accused, such an accused should be informed of the seriousness of the charge and of the possible consequences of a conviction. Again, depending upon the complexity of the charge, or of the legal rules relating thereto, and the seriousness thereof, an accused should not only be told of this right but he should be encouraged to exercise it. He should be given a reasonable time within which to do so. He should also be informed in appropriate cases that he is entitled to apply to the Legal Aid Board for assistance. A failure on the part of a judicial officer to do this, having regard to the circumstances of a particular case, may result in an unfair trial in which there may well be a complete failure of justice. I should make $_{it}$ clear that I am not suggesting that the absence of legal representation *per se* or the absence of the suggested advice to an accused person *per se* will necessarily result in such an irregularity or an unfair trial and the failure of justice. Each case will depend upon its own facts and peculiar circumstances.' This court quoted these dicta with approval in *S v Mabaso and Another* [1990 (3) SA 185 (A) at [203 C-G] ^{and} they have frequently been referred to since.

[10] When the State intends to rely on a specific sentencing regime, as in the present matter, our courts have in the same vein insisted that a fair trial requires that-

'its intention pertinently be brought to the attention of the accused at the outset of the trial, if not in the charge-sheet then in some other form, so that the accused is placed in a position to appreciate properly in good time the charge that he faces as well as its possible consequences., And it is evident, as Lewis JA said recently in *S v Sikhipha* [2006 (2) SACR 439 (SCA) at para 10] that-

'where an accused is faced with a charge as serious as that of rape, and especially where he faces a sentence of life imprisonment, he should not only be advised of his right to a legal representative but should also be encouraged to employ one and to seek legal aid where necessary. It is not desirable for the trial court in such cases merely to apprise an accused of his rights and to record this in notes: the court should, at the outset of the trial, ensure that the accused is fully informed of his rights and that he understands them, and should encourage the accused to appoint a legal representative, explaining that legal aid is available to an indigent accused.'

[11] But while the trial of an unrepresented accused might be unfair if he or she is not properly informed of rights that are relevant, it does not follow that the failure to record the fact that he or she was so informed (verbatim or otherwise) equally renders the trial unfair. On the contrary, the failure to record what was told to the accused does not impact upon the fairness of the trial and cannot by itself render the trial unfair. To the extent that the contrary was held in *Thompson* and *Sibiya,* those

cases were wrongly decided.

[12] There is no suggestion in the present case that the magistrate did not inform the appellants of their right to legal representation. On the contrary, it appears from his cryptic notes and also from his judgment, which was recorded verbatim, that not only did he inform them of their right to legal representation when they first appeared in court and again before the trial commenced, but he also explained its importance, the seriousness of the charges and their right to apply for legal aid. Nor is there any suggestion that they did not understand the magistrate's explanation when they elected to conduct their own defences. Each indicated he did.

4. S v Rowand and another 2009(2) SACR 450 (WLD)

Depending on the circumstances of each case an accused is entitled to all documents in the State's possession – it cannot deny accused access by simply leaving it out of the docket

The accused were facing a charge of fraud, as well as certain statutory counts which, it was common cause, involved complex financial, legal and commercial issues. They contended that it appeared from the documents to which the State had given them access, that there must be further documents in the State's hands which might be relevant to the case or to their intended application for a stay of prosecution. The accused accordingly applied for an order requiring the State to grant them access to all the information in its possession, as well as copies of the relevant documents. In addition to opposing the application, the State argued *in limine* that the application should properly be dealt with by the court that would hear the trial, the trial judge being in a better position to decide on the relevance of the documents requested by the defence.

Held, regarding the point *in limine*, that the State's argument flew in the face of established authority to the effect that pre-trial disclosure was to be made at the time when an accused was acquainted with the charge, or immediately thereafter, and certainly before the beginning of the trial. Secondly, an accused was - depending on the circumstances of each case - entitled to all the documents in the State's possession. The question of relevance was not a consideration at this stage of the proceedings, and in any event the State could not prescribe what was, or was not, relevant without even knowing what the defence might be. Thirdly, there was a constitutional entitlement to a speedy trial, and arguments relating to proper discovery of documents which were raised only during the trial could cause long and unnecessary delays, which would be to the prejudice of an accused. (Paragraphs [13]-[15] at 453*i*, 454 *a-d* and 454*j*-455*b*

Held, further, that the right to a fair trial, and the right to obtain access to the information in the State's possession for the purpose of ensuring a fair trial, did not give an accused person a right of access only to that which the prosecution had elected to make part of the docket. It was not up to the State to decide what was,

and was not, relevant to the defence case. The State could obviously not deny an accused person access to information in its possession simply by leaving it out of the docket. Neither could the State redefine itself and differentiate between 'the State' and 'the prosecution', as it appeared to have done in casu. 'The State' was a wide concept which comprised all its organs, including the prosecuting authority. Thus, if the National Director of Public Prosecutions held an important document, the State could not deny an accused access thereto on the basis that 'the prosecution'- in casu, the Directorate of Special Operations-did not have the document among the papers which it had designated as the 'docket'. Where such a document was in the possession of the State it ought to form part of the docket in any event, and it fell to be disclosed, particularly when directly called for. These principles related as much to other documents as to actual witness statements. (Paragraphs [17]-[20] at 455f-h, 455j and 456a-d.)

Semble: Since no formal procedure existed for obtaining access to information in the possession of the State, it was necessary that an amendment be made to the Criminal Procedure Act 51 of 1977 in order to regularise the question of discovery in criminal matters. Until the Act was amended a workable procedure would be for a simple letter, asking for a copy of the contents of the docket, to be delivered to the defence. It should call upon the State to provide all the information in its possession and to indicate what documents, if any, were being withheld, and on what basis. The accused was, at the very least, entitled to a sensible response from the State. (Paragraphs [26]-[28] at 457h, 457j and 458b-e.)

Application granted.

From The Legal Journals

Nyachowe, P

“Tough measures for tough times: How can an employer recover from the loss or damage caused by an employee? “

October 2009 De Rebus

Fick, J

“ Prevention is better than prosecution: Deepening the defence against cybercrime”

October 2009 De Rebus

Mould, K

‘Tacit responsibilities assigned to the drafter of a credit agreement by the National

Credit Act 34 of 2005: A critical analysis'

2008 *Journal of Juridical Science* 109.

Hoctor, S

'Ear print evidence'

2009 Obiter 175.

Du Toit, PG and Pretorius, WG

'Die verkryging van getuienis deur middel van gedwonge chirurgie'

2008 Journal *of Juridical Science 20*.

Bekker, P M & Janse van Rensburg, A

" Principles governing the recusal of a presiding judicial officer during a criminal trial"

2009 THRHR 531

Otto, J M

" Onteerde Tjeks, wanbetalings uit 'n kredietfasiliteit en die National Credit Act"

2009 THRHR 653

Watney, M

" Prosecuting without fear, favour or prejudice"

2009 TSAR 577

(Electronic copies of any of the above articles may be requested from gvanrooyen@justice.gov.za)

Contributions from the Law School

Legal representation of a child in civil matters – at State expense

Children are active legal subjects and the bearers of human rights. Civil matters dealing with or affecting children are a specialised area of the law that requires sensitivity towards the views and feelings of children. The right of a child to be heard

and the accompanying right to legal representation, at state expense, is not absolute and limited by the rights of others as provided for in the Constitution, but also by the availability of resources. In light of the probable expansion of jurisdiction in family matters to the lower courts, the legal representation of children in family disputes will become of greater importance to these courts.

The right to be heard and the right to legal representation is an international obligation arising from the ratification of, amongst others, the Convention on the Rights of the Child (CRC)(art 12. See also art 4(2) of the African Charter on the Rights and Welfare of the Child). State parties to the CRC are obliged to create a right to a child to express his opinion freely in matters affecting the child and that this opinion would be taken into account. The expression of the opinion may be either through direct participation as a party to a dispute, or through representation. The South African legal system has adopted these obligations to some extent.

The Constitution specifically provides that every child has the right to have a legal practitioner assigned to the child by the state, at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result (s 28(1) (h)). This section has resulted in the inclusion of s 10 and s 55 into the Children's Act 38 of 2005. Section 55 is ignored for current purposes, firstly as it will only be applicable to children's court matters; and two, as it has not yet become operational. The focus of this article is on s 10 of the Act that incorporates art 12(1) of the CRC into the South African law. The discussion is limited to family law matters. Representation in children's court matters and the appointment of a *curator ad litem* for a child are ignored for current purposes.

S 10 states that "every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning the child has the right to participate in an appropriate way and the views expressed by the child must be given due consideration".

With regard to divorce and custody (care) disputes, s 6(4) of the Divorce Act 70 of 1979 provides that a court may appoint a legal representative for a child at the cost of one or both of the parties. It is unable to do so where the parties will not be able to meet such costs. It has been noted that s 6(4) therefore does not comply with s 28(1) (h) as its effect is limited to the wealthy and as it does not make provision for representation at state expense. There is also no reference in s 6(4) to the "substantial injustice" test of the constitutional provision. This section is seldom used: firstly, as the Legal Aid Board Guide of 2002 provides that children are only entitled to legal representation at state expense with the consent of the CEO. It is argued that the report of the Family Advocate in family disputes notionally represents the views and interests of the children and that additional representation is unnecessary.

There has, however, been a slight shift in the courts with regard to the appointment of legal representation for children. A few cases are in point. The first case, *Soller v G* 2003 (5) SA 430 (WLD), dealt with a custody dispute where the 15 year old child approached the court for a variation of the custody order. The court, in what has

been described as a child centered approach, assigned a legal representative to the child. The court discussed in detail the distinction between the role of a legal representative and the role of the Family Advocate. Where the Family Advocate is an independent and neutral party that creates a communication channel between the court and the parties and in addition monitors and mediates settlement agreements and evaluates the interests of the child; the legal representative represents the child personally. Although he has to have the required legal knowledge and experience (s 28(1) (h) only makes provision for legal representatives), he is not merely the mouthpiece for the child. He has to bring adult insight to the situation when litigating from the perspective of the child. Furthermore, the court noted that such a representative would not always be required – only where a substantial injustice would follow where a representative is not appointed. The court also made a point to note the extent to which a child's wishes is decisive in making a determination. *In casu* the court did not grant the wishes of the child.

The second case is that of *Ex parte Van Niekerk: In re van Niekerk v Van Niekerk* [2005] JOL 14218 (T). The father brought an application to confirm his access right to his two minor daughters. There were conflicting expert reports. The court instructed the mother to take all reasonable steps to ensure that the children would be available for such access. The children, however, refused and the mother feared contempt of court proceedings. The mother approached the court for the appointment of either a curator *ad litem* or a legal representative. The judge was of the view that the State Attorney ought to appoint a legal representative. Although this was what transpired in the matter, it is not a general solution as the State Attorney is not generally accessible to litigants. The court specifically noted that the minors ought to become parties to the dispute as, should an order be made not be in their interests; they would have a right to appeal the decision.

The third saga, is that of the *LAB v R* 2009 (2) SA 262 (D). In an earlier custody hearing of the seven year old daughter, the court, after 22 days of expert evidence observed that legal representation for the child is required. The parties agreed that senior counsel is required in light of the complexity of the matter. A representative was appointed. The Legal Aid Board appealed this decision. The court found that there is no obligation on the Board to obtain consent from a guardian of a child when it appoints a representative for the child and neither can the guardian constrain the legal representative in his handling of the matter.

In general, the court will not in all matters give a child the opportunity to be heard directly. It would depend on the facts of the case: in certain matters it might be unnecessary; whilst in others it might be essential. In the matter of *Ford v Ford* [2006] JOL 16676 (W) the court noted its preference to receive the views of the child indirectly from experts or the Family Advocate in instances where direct participation would be stressful for the child. In addition, other concerns have been raised against direct legal representation: one, it places the child in a difficult position of conflict with his parent(s); two, it could lead to a further protraction of litigation; and three, the child is then interviewed by yet another person and it can rightly be asked whether that would be in the best interests of the child.

Finally, the question remains: when would it be appropriate to appoint a legal representative for a child in family matters? Sloth-Nielsen in her article “Realising children’s rights to legal representation and to be heard in judicial proceedings” (2008) 24 *SAJHR* 495 507, notes that it would be appropriate where the child holds an opposite view from the recommendation by the Family Advocate; where the Family Advocate did not consider the view of the child; or where the Family Advocate recommends the appointment of a legal representative. However, concern has been expressed that the appointment of a legal representative for the child may lead to a duplication of state resources where an unhappy adult party is given a second bite at the proverbial cherry.

What remains important is that the right to legal representation should not be automatic, but only be granted in instances where a substantial injustice would result from non-appointment. This criterion, however, remains too vague to be of much assistance. The possible factors that could play a role are: the facts of the dispute, the length of trial; the age of child; whether there are allegations of abuse; and what the impact of the acrimonious dispute is on child. It has been suggested that the (still non-operational) regulation 4A guidelines could be used in this regard (Regulation 4A was drafted to flesh out the uncertainties created by s 8A of the Child Care Amendment Act (also not yet operational and to be repealed by s 55 of the Children’s Act)). In terms of the regulations, a legal representative should be appointed at state expense, *inter alia*, where such representation was requested by a child; or recommended by a social worker; where there is evidence of deliberate neglect; where the placement of the child is contested (guardianship, care, contact, adoption or foster care); where the adult party is represented, but not the child - in instances where the child is a party to the litigation; where there is reason to believe that a party or a witness will give false evidence or withhold the truth; where the child will substantially benefit from such representation or where a substantial injustice would occur where there is no such representation.

The Legal Aid Board, in its Business Model has provided that, in divorce matters, financial aid would only be forthcoming if approved at senior level with the stipulation that where the Board already represents one parent in litigation, it would not represent the child as well. It will also not assist in maintenance matters, although where the child is a party to a dispute and the parent is represented, the Board will assist such a child.

The constitutional principle of legal representation of a child at state expense is yet undeveloped and uncertain. It will be up to the Legal Aid Board and presiding officers to develop the principles and provide legal certainty – especially with regard to the criteria as to when a legal representative should be appointed for a child.

Marita Carnelley
University of KwaZulu-Natal
Pietermaritzburg

If you have a contribution which may be of interest to other Magistrates you may 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

Jails do more harm than good

By WARDA MEYER Staff Reporter

The government should consider community service for those convicted of non-violent, petty crimes, because most people emerge from jail more damaged than before, Jody Kollapen, former chairperson of the Human Rights Commission, has said.

He was speaking at a public seminar on "Human Rights in African Prisons", at the Centre for the Book last night.

He acknowledged that most South Africans were angry about crime and did not want to be concerned with conditions in prison, but said that doing so was ultimately in everyone's best interests.

Kollapen, who chaired the seminar, said "we should be sending petty offenders to (work at) hospitals and other organisations where there is a lack of staff and resources."

"These organisations can benefit from people who are doing volunteer work, while the taxpayers do not have to pay their board and lodging," he said.

"It is in our best interests as a society that people are rehabilitated."

Kollapen acknowledged the need for prisons, but said they should be reserved for those who were dangerous, those who raped and murdered, and who should spend the rest of their lives behind bars.

"Let's send people to prison who deserve to be in prison."

Dr Jeremy Sarkin, head of the UN Working Group on Enforced or Involuntary Disappearances in Cape Town, said one in every 700 people in the world was behind bars.

The world's prison population was more than nine million people.

Never before had there been so many problems in penal systems, or such large numbers of people behind bars.

Sarkin emphasised that African prisons were not the worst in the world. Conditions in Latin America, central and eastern Europe, and central Asia were far worse.

Although prisons in Africa were often considered the worst in the world, many other prison systems were more violent and overcrowded. But this did not mean that African prisons were human rights-friendly, Sarkin said.

"Many prisons are in a dilapidated condition and their practices are at odds with human rights standards," he said.

"Africa is home to 53 countries, roughly 3 000 prisons and approximately one million prisoners."

"Most prisons suffer from massive overcrowding, decaying infrastructure, a lack of medical care and hygiene, corruption and violence."

Gideon Morris, who is the director for the Judicial Inspectorate of Prisons, said South Africa should also reconsider legislation on minimum sentences.

He said 68 percent of the prison population in South Africa was serving more than five years.

"If you have more people coming into prison than those leaving, your prisons will continue to fill up until at the end of the day they overflow and there is total breakdown of the system."

"In the next few years we are going to have a serious overcrowding crisis."

- **This article was originally published on page 10 of Cape Argus on October 09, 2009**

A Last Thought

When Things go wrong!
Counsel was addressing the court with his nose in the air and his foot on the chair. The accused watched in silent admiration. The magistrate was taking notes. Counsel leaned forward to pick up another law report but his foot slipped and he landed in a heap on the floor, dragging exhibits and law reports with him.
The prosecutor leaped up and declared: *Your worship, the defence has collapsed!*
And so it turned out, when the verdict was announced.

From *Litigation Skills for South African Lawyers by C G Marnewick (2nd Edition p 284)*