e-MANTSHI

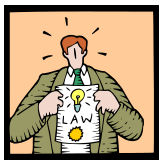
A KZNJETCOM Newsletter

June 2022: Issue 186

Welcome to the hundredth and eighty sixth 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. Back copies of e-Mantshi are available on http://www.justiceforum.co.za/JET-LTN.ASP. There is a search facility available on the Justice Forum website which can be used to search back issues of the newsletter. At the top right hand of the webpage any word or phrase can be typed in to search all issues.

"e-Mantshi" is the isiZulu equivalent of "electronic Magistrate or e-Magistrate", whereas the correct spelling "iMantshi" is isiZulu for "the Magistrate". The deliberate choice of the expression: "EMantshi", (pronounced E! Mantshi) also has the connotation of respectful acknowledgement of and salute to a person of stature, viz. iMantshi."

Any feedback and contributions in respect of the newsletter can be sent to Gerhard van Rooyen at gvanrooyen@justice.gov.za.



New Legislation

1. The Rules Board for Courts of Law has under section 6 of the Rules Board for Courts of Law Act 107 of 1985 and with the approval of the Minister for Justice and Correctional Services amended the Rules regulating the proceedings of The Magistrates' Courts. The notice to this effect was published in Government Gazette no 46475 dated 3 June 2022. The amendments are to Rules 5,43 and 67 as well as to Annexure 2 which deals with costs. The rules come into operation on the 8th of July 2022. They may be accessed here:

https://www.justice.gov.za/legislation/notices/2022/20220603-gg46475rg11441-gon2134-RulesBoard-MC.pdf

2. The Department of Justice and Constitutional Department invites the public to submit comments on the draft Regulations, Directives and Tariffs under the Domestic

Violence Act, 1998 (Act No.116 of 1998). The comments must be submitted to Mr Makhubela Mokulubete by not later than Friday, 8 July 2022 on Mmokulubete@justice.gov.za.
The Directives are aimed at assisting the Clerks of the Courts as contemplated in section 18A, and the Tariffs of compensation payable to the electronic communications service providers as contemplated in section 5B(9) of the Act. They are intended to repeal and replace the regulations published under Government Notice No. R. 1311 of 5 November 1999.

The draft regulations can be obtained on the link: https://www.justice.gov.za/legislation/invitations/invites.htm.

.

Recent Court Cases

1. Diljan v Minister of Police (746/2021) [2022] ZASCA 103 (24 June 2022)

Once the required jurisdictional facts are present when deciding to arrest an accused the discretion whether or not to arrest arises. A police officer, it should be emphasised, is not obliged to effect an arrest.

Makaula AJA (Petse DP and Gorven and Mabindla-Boqwana JJA and Phatshoane AJA concurring):

Introduction
[1] This is an appeal against a decision of the Gauteng Division of the High Court, Pretoria (the high court). The appellant, Ms Avril Edith Diljan, instituted an action in the Magistrate's Court for the District of Tshwane, (the magistrate's court), pertaining to a claim of unlawful arrest and detention, which was dismissed with costs. She appealed to the high court, which dismissed the claim on 30 March 2021. The present appeal is with the special leave of this Court granted on 17 June 2021. The issue for determination is whether the peace officers who effected the arrest of the appellant, properly exercised the discretion vested in them.

Background facts
[2] The facts giving rise to the claim are fairly straightforward. On 18 September

2015, Constables Ntombela and Tsile (peace officers) were on patrol duty when they received a telephone call from the Community Service Centre (CSC) about a complaint lodged telephonically by a Ms Goliath in Eldorado Park. They proceeded to the address provided to them by the CSC. Upon their arrival at the scene, Ms Goliath informed them that the appellant had damaged her carport by throwing stones and rubbish through the appellant's first floor window onto the top of her (Ms Goliath's) carport. The officers inspected the carport and observed that it was damaged. The officers were unanimous in their view that an offence of malicious damage to property had been committed by the appellant. As a result, they immediately arrested and subsequently detained her in the holding cells at the Eldorado Police station.

[3] Both officers testified that they detained the appellant because they were satisfied that she had committed an offence listed in Schedule 1[1] of the Criminal Procedure Act 51 of 1977 (the CPA). They further testified that they had no power to release her either on warning or on bail. They asserted that only members of the detective branch and, in particular, the assigned investigating officer were vested with such powers.

[4] For her part, the appellant testified that she was arrested on Friday, 18 September 2015, between 15h30 and 16h00. The officers asked her to accompany them to the police station under the pretext that they were to discuss the complaint lodged against her by Ms Goliath. Upon arrival at the CSC, she was arrested and detained. She was never advised of the reason for her arrest and detention. She was released from custody on Monday, 21 September 2015, without appearing in court. She testified that the conditions under which she was detained were appalling.

[5] At the conclusion of the trial, the magistrate found that:
'the arresting officer exercised reasonable suspicion as required in section 40 (1)*(b)* of the CPA on reasonable grounds. There is no basis for concluding that the discretion to arrest was wrongly exercised. Consequently, I find that the arrest and detention of the plaintiff was lawful.'

[6] On appeal to it, the high court confirmed the decision of the magistrate and held that 'having given a proper and due consideration to all circumstances, this Court cannot find that the court *a quo*, misdirected itself, nor can it be said that the arrest and detention of the appellant was unlawful.'

[7] Section 40(1)*(b)*of the CPA allows a peace officer to arrest a suspect without a warrant when the said peace officer reasonably suspects that the suspect has committed an offence listed in Schedule 1, other than the offence of escaping from lawful custody.[2] The jurisdictional facts required to sustain a s 40(1)*(b)* defence are:

1 Schedule 1 lists various offences, one of which is malicious injury to property.
2 Section 40(1)*(b)* provides that:

(a) the arrestor must be a peace officer; (b) he or she must entertain a suspicion; (c) the suspicion must be that the suspect committed an offence listed in Schedule 1; and (d) the suspicion must be based on reasonable grounds.[3] If these factors are established, the arrestor becomes vested with a discretion as to how best to secure the attendance of the suspect to face the charge. The peace officer may warn the suspect to appear in court, may summon the suspect or may arrest the suspect.

[8] In the present matter, counsel who appeared for the appellant, correctly conceded that, in so far as the appellant's arrest is concerned, the jurisdictional requirements in s 40(1)*(b)* were present. He, however, contended that the issue remains whether the arresting officers properly, if at all, exercised the discretion vested in them as required by law.

[9] Once the jurisdictional facts are established, the peace officer has the discretion of whether or not to arrest the suspect. However, if the suspect is arrested, a peace officer is vested with a further discretion whether to detain the arrestee or warn him or her to attend court. The arrest and detention of the suspect is but one of the means of securing the suspect's appearance in court.[4]

[10] In *Minister of Safety and Security v Sekhoto and Another*,[5] the principle was explained by Harms DP in the following terms:
'Once the jurisdictional facts for an arrest, whether in terms of any paragraph of s 40(1) or in terms of s 43 are present, a discretion arises . . . In other words, once the required jurisdictional facts are present the discretion whether or not to arrest arises. The officer, it should be emphasised, is not obliged to effect an arrest.'

[11] In applying the principle restated in *Sekhoto,* the magistrate committed a material misdirection in finding that:
'. . . it is trite that a person arrested has to be brought to court as soon as reasonably possible and at least within 48 hours, depending on the court hours. Once that is done the authority to detain, that is in the power to arrest is exhausted.'
The issue of whether the arrestee has to appear in court within 48 hours of arrest has no bearing on the exercise of a discretion as to whether or not to arrest and detain the suspect. Furthermore, the question of appearing within 48 hours was not an issue before the magistrate, and neither litigant had pleaded it. In fact, as previously

---

'(1) A peace officer may without warrant arrest any person –
(a)…
(*b*) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody'. See also *Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 8; 2016 (5) BCLR 577 (CC); 2016 (3) SA 487 (CC) para 77.

3 *Duncan* v *Minister of Law and Order* 1986 (2) SA 805 (A) at 818 G-H.
4 *Minister of Safety and Security* v *Sekhoto and Another* 2011 (1) SACR 315 (SCA); [2011] 2 All SA 157 (SCA); 2011 (5) SA 367 (SCA)) [2010] ZASCA 141; para 44 (*Sekhoto*).
5 Ibid para 28.

indicated, the appellant never even appeared in court.

[12] Likewise, the high court erred when it reasoned as follows:
'I am alive to the fact that constable Ntombela indicated during his evidence that he could not warn the appellant or decide on the issue of whether to grant bail or not, as a means of securing her attendance in court. Having said that once the decision has been made to effect an arrest and not consider issuing a warning, it cannot be said that there was no exercise of a discretion. Having a discretion simply means having the freedom to decide what should be done in a particular situation.'
This statement manifests a misconception on the part of the high court as to the nature of the appellant's case. What emerges from the record is that both officers who effected the arrest did not know that they had a discretion. They laboured under the mistaken belief that their obligation was to arrest the appellant once it was reasonably suspected that she had committed a Schedule 1 offence. Thus, they could not have exercised a discretion they were unaware of. Constable Ntombela testified that he could not have warned the appellant because he 'did not have powers' to do so. In the same vein, Constable Tsile stated the following: '[u]nfortunately we do not have those powers because it is a different department'. Accordingly, that they did not exercise a discretion that they unquestionably enjoyed is beyond dispute. It must therefore follow axiomatically that both the arrest and subsequent detention of the appellant were unlawful. Indeed, counsel for the respondent was ultimately constrained to concede as much.

Quantum
[13] In consequence of the decision reached by the trial court and the high court on the issue of liability, the issue of quantum of damages was not dealt with. Nevertheless, the facts relevant to the assessment of quantum were sufficiently ventilated in the trial court. There was some debate before us as to whether the issue of quantum should be remitted to the trial court for determination. Although this option appeared attractive at first blush, it soon became clear that to remit the matter to the trial court for this purpose would result in a wastage of scarce judicial resources. This was so because, at the end of the day, it seemed that this Court was in as good a position as the trial court to consider the issue of quantum.

[14] Though denied in the plea, the damages sustained by the appellant have not been seriously contested before us. What remains to be decided therefore is the quantum thereof. On this score, Counsel for the appellant, inter alia, urged this Court to have regard to past awards in assessing the appropriate amount to be awarded. Counsel referred us to several previous judgments, including the judgment of Lopes J in *Khedama v The Minister of Police*.[6] The plaintiff in that matter had issued summons for unlawful arrest and detention against the defendant, claiming an amount of R1 million. She was arrested and detained for a period of 9 days from 3

6 *Khedama v The Minister of Police* 2022 JDR 0128 (KZD) (Unreported case) (*Khedama*).

December 2011 and released on 12 December 2011.

[15] In *Khedama*, the court, in large measure, had regard to the appalling conditions in the country's detention facilities, such as lack of water, blocked toilets, dirty and smelling blankets, sleeping on the cement floor, bad quality of food, and lack of sleep. Having considered various heads of damages, Lopes J awarded damages for wrongful arrest and detention of R100 000, deprivation of liberty and loss of amenities of life of R960 000 (R80 000.00 per day for 12 days);[7] defamation of character including embarrassment and humiliation of R500 000 and general damages in an amount of R200 000. In total, he assessed the total damages suffered at R1, 760 000. However, because the amount claimed was limited to R1 000 000 he was awarded the latter amount.

[16] The primary purpose of compensation for damages of the kind claimed in this case was succinctly stated by Bosielo AJA in *Minister of Safety and Security* v *Tyulu*[8] as follows:
'In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much–needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. I readily concede that it is impossible to determine an award of damages . . . with . . . mathematical accuracy.'

[17] Thus, a balance should be struck between the award and the injury inflicted. Much as the aggrieved party needs to get the required solatium, the defendant (the Minister in this instance) should not be treated as a 'cash-cow' with infinite resources. The compensation must be fair to both parties, and a fine balance must be carefully struck, cognisant of the fact that the purpose is not to enrich the aggrieved party.

[18] The acceptable method of assessing damages includes the evaluation of the plaintiff's personal circumstances; the manner of the arrest; the duration of the detention; the degree of humiliation which encompasses the aggrieved party's reputation and standing in the community; deprivation of liberty; and other relevant factors peculiar to the case under consideration.

[19] Whilst, as a general rule, regard may be had to previous awards, sight should, however, not be lost of the fact that previous awards only serve as a guide and nothing more. As Potgieter JA cautioned in *Protea Assurance Co. Ltd v Lamb:*[9]

---

7 The period is actually 9 days as reflected in paragraph 14 hereof.
8 *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85; 2009 (2) SACR 282 (SCA); [2009] 4 All SA 38 (SCA) para 26.
9 See *Protea Assurance Co. Ltd v Lamb* 1971 (1) SA 530 (A) at 535H-536A-B. See also *Minister of Safety and Security v Seymour* [2006] ZASCA 71; [2006] SCA 67 (RSA); [2007] 1 All SA 558 (SCA) at para 17. See also the case of *Rudolph and Others v Minister of Safety and Security and Others* [2009] ZASCA 39; 2009 (5) SA 94 (SCA); 2009 (2) SACR 271 (SCA); [2009] 3 All SA 323 (SCA) para 26

'It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their *sequelae* may have been either more serious or less than those in the case under consideration.'

[20] A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and excessive amounts in the particulars of claim. Amounts in monetary claims in the particulars of claim should not be 'thumb-sucked' without due regard to the facts and circumstances of a particular case. Practitioners ought to know the reasonable measure of previous awards, which serve as a barometer in quantifying their clients' claims even at the stage of the issue of summons. They are aware, or ought to be, of what can reasonably be claimed based on the principles enunciated above.

[21] The facts relating to the damages sustained by the plaintiff in *Khedama* are largely similar to those in this matter. However, the excessive amount awarded in *Khedama* cannot serve as a guide in a matter like the present. Even the length of the period during which Ms Khedama was incarcerated, was overstated and, as a result, she was awarded an amount which was, in my view, significantly more than what she deserved.

[22] I now revert to the facts of the present case. For purposes of determining quantum, the relevant factors in this matter are the appalling circumstances under which the appellant was detained being; the condition of the police cell in which she was detained which was filthy with no hot water; the blankets were dirty and smelling; the toilet was blocked; she was not provided with toilet paper, and she was not allowed visitors. She could not eat the bread and peanut butter that was the only food provided to her. She was deprived of visitation rights by her family, and that resulted in her not receiving medication for her heart condition. Furthermore, the humiliation she endured at the time of her arrest, which was exacerbated by the presence of the

---

where this Court held that '[t]he facts of a particular case need to be looked at as a whole and few cases are directly comparable'.

occupants of the neighbouring apartments (including her children and grandchildren); she was also deprived of her liberty for 3 days; her standing in the community as a community caregiver was impaired. As previously indicated, her compensation should be commensurate with the damages she suffered and also be a reasonable amount. Taking into account all relevant factors, I am satisfied that a fair and reasonable amount in the circumstances is R120 000.

Costs

[23] It remains to say something about the fact that the appellant was represented by two counsel, the lead counsel being senior counsel. This matter is manifestly not complicated. The issues for determination were crisp, and therefore the employment of two counsel was, in my view, not warranted. Counsel fairly conceded this much on behalf of the appellant. Therefore, costs of only one counsel will be allowed.

[24] In the result, I make the following order:

1 The appeal is upheld with costs.

2 The order of the high court is set aside and substituted with the following order:

‘1 The appeal is upheld with costs.

2 The order of the trial court is set aside and replaced with the following order:

1 The arrest and detention of the plaintiff are declared unlawful.

2 The plaintiff is awarded a sum of R120 000 for general damages together with interest thereon at the legal rate calculated from 12 February 2020 to the date of final payment.

3 The defendant shall pay the costs of suit.’

2. Tuta v The State (CCT 308/20) [2022] ZACC 19 (31 May 2022)

Putative self-defence, relates to the accused’s state of mind and the test is subjective, in respect of whether the accused genuinely, albeit mistakenly, believed that he was acting in lawful self-defense.

Media Summary

On Tuesday, 31 May 2022, the Constitutional Court handed down reasons for the order it issued on Friday, 13 May 2022. The order and reasons for the order were handed down in an application for leave to appeal against the conviction and sentence of the applicant handed down by the High Court, Gauteng Division Pretoria (High Court) and upheld by the Supreme Court of Appeal. The High Court found the applicant guilty of one count of murder and one count of attempted murder. The applicant was sentenced to life imprisonment on the count of murder and fifteen years imprisonment on the count of attempted murder. The primary issue for

determination was how the Court ought to treat an ambiguity in a judgment rendered at the conclusion of a criminal trial. In particular, where there are differences between an *extempore* judgment (a judgment handed down immediately after the proceedings) that is not signed by the trial Judge and a revised judgment that has been signed by the trial Judge in criminal proceedings, how must the Court reconcile the ambiguities arising from these different judgments?

On 2 March 2018, at approximately 23h00, the applicant accompanied his friend to his residence in Sunnyside, Pretoria when they noticed they were being followed by an unmarked red polo motor vehicle. The applicant and his friend then started running in different directions. The two occupants of the unmarked motor vehicle were in fact two police officers, Constables Makgafela and Sithole, who were on duty, patrolling in Sunnyside, Pretoria.

Before the High Court, Constable Makgafela, testified that he and Constable Sithole were wearing South African Police Service (SAPS) bullet proof vests over their civilian clothing, bearing the SAPS insignia, on the night of the incident. They suspected the applicant of being in possession of a stolen laptop. When the applicant and his friend started running, Constable Makgafela gave chase on foot and removed his bullet proof vest so that he could run faster. According to the evidence of Constable Makgafela, he shouted at the applicant, alerting him to the fact that he was being chased by the police. The applicant was apprehended.

The applicant testified that he did not know that his assailants were police officers. Fearing for his safety, he stabbed the police officer who held him down. When the second police officer came to the aid of his colleague, the applicant stabbed him as well and fled the scene. As a result, Constable Makgafela was seriously wounded, and Constable Sithole was killed. The applicant testified that the next day reported the incident to a police station, but the police declined to open a case because the applicant could not identify his attackers. He left his contact details and residential address at the police station and was arrested later that day at his residence.

The applicant alleged that he was acting in putative private defence in that he subjectively thought that he was in danger and that the two “assailants” intended to cause him harm.

The High Court, in the *extempore* judgment, formulated the test for putative private defence as a defence which relates to the accused’s state of mind and where the test is *objective*. It held that “[t]he test to be applied in respect of the accused, he generally . . . mistakenly believed that he was acting in lawful self-defence, *or whether his belief was also held on reasonable doubt*.” This judgment was not signed by the trial Judge. The revised judgment formulated the test for putative private defence as a *subjective* test, namely what the accused had in mind, *objectively considered*. This judgment was signed by the trial Judge.

The High Court rejected the applicant's submission that he was acting in putative private defence and held that the State had proven its case beyond reasonable doubt and that the applicant's version should be rejected. It found the applicant's version to be improbable to the extent that it could not be found to be reasonably, possibly true. Additionally, although this evidence was not disputed by the respondent, the Court rejected the applicant's testimony that the next day he and his sister went to the police station to report the matter. This evidence was rejected despite the applicant being arrested at his residence and Constable Makgafela testifying that he did not know the identity of the applicant.

The applicant made an application to the High Court for leave to appeal against his conviction. On 13 December 2019, that application was refused. On 30 April 2020, the Supreme Court of Appeal dismissed the applicant's application for leave to appeal on the basis that it had no reasonable prospects of success. On 25 November 2020, the President of the Supreme Court of Appeal dismissed the applicant's application for reconsideration.

Before the Constitutional Court, the applicant advanced the following grounds in his written submissions on which he alleged the Court's jurisdiction was engaged. The first ground complained of an infringement of the applicant's right to a fair trial in terms of section 35(3) of the Constitution. The applicant submitted that during his cross-examination by the prosecutor, as a result of the trial Judge's intervention, the prosecutor did not put the State's case to the applicant regarding his intention on the night in question. The second ground was that the matter raised an arguable point of law of general public importance which ought to be considered by the Court, namely that the trial court misapplied the test for putative private defence.

In response to the directions issued by this Court, the applicant also made the submission that the High Court erred in its legal approach to the minimum sentencing legislation. The applicant argued that a trial court's determination of a sentence, flowing from the application of the minimum sentencing statute is a value judgment and not a matter of sentencing discretion. Accordingly, an appellate court is entitled to substitute its own evaluation of substantial and compelling circumstances if it finds that the trial court erred in its exercise of this value judgment. This, the applicant contended, raised a constitutional issue as to the nature of the sentencing court's powers.

During oral submissions, the applicant did not argue that the trial court misapplied the test for the putative private defence. Instead, the applicant argued that the trial Judge misunderstood the test. The applicant contended that the trial court failed to articulate the test for putative private defence correctly.

The respondent submitted that it was not in the interests of justice that leave to

appeal be granted. In response to the directions issued by this Court, the respondent submitted that the Court's discretion in imposing the prescribed minimum sentence is limited. Thus, the sentence imposed by the High Court was justified.

The first judgment, penned by Unterhalter AJ (Madlanga J, Majiedt J, Mathopo J, Mhlantla J, Theron J and Tshiqi J concurring), found that the alleged irregularity suffered by the applicant as a result of the trial Judge's intervention was not an irregularity of sufficient seriousness to undermine the applicant's right to a fair trial. It dismissed the applicant's appeal on this ground. In respect of the applicant's submission that the High Court applied the test for putative private defence incorrectly, the first judgment held that the incorrect application by the trial court of a well-established legal defence raises neither a constitutional issue, nor an arguable point of law. Therefore, on these two grounds it found that this Court's jurisdiction was not engaged and refused leave to appeal.

In respect of the applicant's submission made during oral submissions, that the trial court had failed to formulate the correct test for putative private defence, the first judgment held that that was an error of law that carried the risk of an unsound conviction and an unfair trial. This ground engaged the Court's jurisdiction. Relying on this Court's decision in *AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services and Others; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC*, the first judgment held that if an error of law raises a constitutional issue or an arguable point of law of general public importance and the interests of justice require the Court's intervention because of the risk of an unsound conviction, then if the issue can be determined on the papers and no prejudice arises, the Court should not be precluded from considering the matter. Leave to appeal was consequently granted on this ground.

The first judgment then determined whether the trial Judge did indeed make an error of law in his formulation of the test for putative private defence. It considered the test as formulated in both the *extempore* judgment and the revised judgment.

It found that the *extempore* judgment contained a clear error of law. It formulated the test for putative private defence as objective. This was not in line with the test as formulated in *S v De Oliveira*. There, the Appellate Division held that in putative private defence, the test is whether the State has proved beyond reasonable doubt that the accused *subjectively* had the intent to commit murder. It was not clear whether the reference to an objective test in the *extempore* judgment was simply a transcription error. However, the revised judgment reflected a correction. There, the test for putative private defence was formulated on the basis that the test is *subjective*, "in other words, what the accused had in mind, *objectively considered*."

In resolving this ambiguity, the first judgment noted that in busy criminal courts, the *extempore* judgment is often a necessary part of judicial practice. It held that a patent

error or omission may be corrected. However, the substantive reasons for the judgment, handed down in court, must stand. This is because if an *extempore* judgment is given, its reasons are authoritative, and they may not be altered or embellished to give further expression to what the court meant to convey.

The first judgment held that the issue in this matter was how to treat an ambiguity in a judgment, rendered at the conclusion of a criminal trial. Therefore, the normal principles of interpretation, namely text, context and purpose could not find application. According to the first judgment, the question is not simply what did the trial court mean by the ambiguous text. Rather, if the ambiguity is not resolved because it reflects a patent error, the ambiguity must be acknowledged and, if it is material, the ambiguity must redound to the benefit of the accused. That is so because the presumption of innocence requires that the Court may not permit an accused to suffer a conviction which may have resulted from a legal error.

The first judgment found that there was an appreciable risk that the trial Judge, in formulating the test for putative private defence in the revised judgment, imported objective considerations of reasonableness into the test. Given the gravity of the charges with which the applicant was charged, any ambiguity as regards to whether or not the trial court applied the correct legal test, had to be resolved in favour of the applicant. It found that the trial Judge made an error of law going to the heart of the applicant's defence. On 13 May 2022, the Court issued an order upholding the applicant's appeal, setting aside the order of the High Court, acquitting the applicant and ordering his immediate release. Having set aside the applicant's conviction, the first judgment did not consider the submissions made by the parties regarding the High Court's judgment on sentence.
The second judgment (minority), penned by Kollapen J (Mlambo AJ concurring) disagreed with the first judgment that this matter engaged this Court's jurisdiction. In particular, the second judgment differed with the conclusion reached by the first judgment that the High Court incorrectly formulated the test for putative private defence. In respect of sentence, the second judgment found that no constitutional matter or arguable point of law of general public importance was raised, nor could it be said that any alleged error by the High Court in applying the test for substantial and compelling circumstances engaged the jurisdiction of this Court.

Regarding the challenge to the conviction, the second judgment agreed with the position taken in the first judgment that the intervention of the trial Judge in the cross-examination of the applicant did not result in any serious irregularity that impacted on the fairness of the trial. It agreed that this part of the challenge was not sustainable.

The second challenge to the conviction was based on how the High Court dealt with the defence of putative private defence and noted that it was only during oral argument that the applicant argued that the High Court incorrectly formulated the test. Notwithstanding its late introduction and that the error of law contended for was not

pleaded, the second judgment agreed with the conclusion reached by the first judgment that this issue was fully ventilated before this Court and that the interests of justice, coupled with the risk of an unsound conviction must mean that this Court should consider the argument, notwithstanding its lateness.

Regarding the test for putative private defence and given the centrality of whether the test was correctly formulated by the High Court, the first judgment referred to *S v De Oliveira* where it found that the test for private defence is objective, while that for putative private defence is subjective. It explained that the latter was concerned with culpability and being an enquiry into the state of mind of the accused. It found that the High Court correctly characterised the defence of the applicant as putative private defence – one where the applicant says that he genuinely but mistakenly believed that his life was in danger. It further explained that given that private putative defence is concerned with the culpability of the accused person, and is characterised as subjective, its application, depending on the charge an accused faces, may require considerations of reasonableness.

The second judgment agreed with the conclusion of the first judgment with regard to the symbolic and legal importance of an *extempore* judgment in an open public court.

While the first judgment suggested a departure from the approach taken in *S v Wells*, and for the adoption of a less permissive holding the second judgment found it difficult to see how the changes or amendments to an *extempore* judgment that do not change its substance imperil the fair trial guarantees of an accused, in particular, when the substance of the judgment remained constant. It explained that the decision of *S v Wells* was clear that the substance of the judgment may not be changed and on that basis, the adoption of a less permissive approach as advocated in the first judgment was neither necessary nor justified.

The second judgment concluded that based on the *extempore* judgment, it could not be said that the High Court erred in formulating the test for putative private defence. It held that the full exposition of the test accords in every respect with the current established test for putative private defence which is subjective.

It explained that the labelling of the test as being “objective”, could only have been a patent error if it was a term used at all by the trial Judge. It cautioned that the proper approach was to examine how the test was formulated as opposed to how it was labelled and concluded that it was formulated as a subjective test. It found that this, coupled with the recognition in the first judgment that the words “objectively considered” may have been benignly intended, must reduce the scope for any ambiguity. It reiterated that the phrase “objectively considered” cannot be viewed in isolation.

While the second judgment agreed with the stance taken in the first judgment,

this Court's task was to ascertain what the trial Judge conveyed, as opposed to what he meant to convey. It explained that it was clear from the transcription that the Court could not be sure that the trial Judge did use the term "objective", however even if he did, the error was so obvious that it must be capable of revision on the basis of it being a patent error.

In sum, the second judgment found that neither the *extempore* judgment nor the revised judgment provided evidence of an error of law being committed by the trial Judge in how the test for putative private defence was formulated. It found that that there was also no constitutional matter or arguable point of law of general public importance that required determination in order to deal with the appeal. It held that the Court's jurisdiction was not engaged and leave to appeal against conviction must accordingly be refused.

Regarding the sentence imposed by the trial court, and the directions issued by this Court on 28 January 2022, directing the parties to file written submissions, it concluded that the finding of substantial and compelling circumstances constituted a value judgment which would entitle an appellate court to interfere if the judgment was incorrectly exercised. It said that no uncertainty on the issue existed requiring the determination of this Court. The second judgment found that this issue was not a novel one and has come before the courts on numerous occasions and that it was necessary to distinguish between what is regarded as the general sentencing discretion of a court as opposed to the determination of substantial and compelling circumstances. The latter involved a value judgment.

The second judgment then concluded on this basis that the appeal against sentence did not raise a constitutional issue.

Finally, on the issue advanced by the applicant that the High Court erred in finding that there were no substantial and compelling circumstances, the second judgment found that this argument did not engage the jurisdiction of the Court and could not support a basis for the interference with the sentence. For these reasons, the second judgment held that the application for leave to appeal against sentence must fail. In the result, the second judgment would have refused leave to appeal against conviction and sentence.

The Judgment can be accessed here:
http://www.saflii.org/za/cases/ZACC/2022/19.html

From The Legal Journals

Mufamadi, K B & Koen, L J

Promoting Access to Justice through the Broadcasting of Legal Proceedings

PER / PELJ 2022(25)

Abstract

This article considers a lack of legal literacy as a barrier to access to justice. The article then considers the potential effectiveness of introducing media-based teaching tools to South African society in an attempt to increase the rights awareness of South Africans. In so doing, the article proposes ways in which this improved rights awareness can assist South Africans to engage with the law, their rights, and the judicial system as a whole in a manner which promotes improved access to justice. It considers television-based teaching tools already implemented in the country as well as possible future interventions. It draws on past television-based education initiatives in South Africa in an effort to consider how South Africans engage with television-based teaching tools. It further draws on the open justice principle to argue for the increased broadcasting of legal proceedings. The article then considers television in three other jurisdictions and undertakes an assessment of the effect of television on our cognitive and subliminal engagement with the law. The discussion on other jurisdictions includes how fictional legal programming, syndicated court programmes as well as other forms of "Court TV" have contributed both positively and negatively to the legal consciousness of those societies.

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

Contributions from the Law School

The impossibility defence in criminal law and the Constitutional Court

There seems to be unanimity in respect of the need to recognize that where it is impossible to obey the law, this should be formally recognized by the tenets of the criminal law. This is indeed reflected in the existence of the defence of impossibility, applied for more than a century (see *R v Mostert* 1915 CPD 266 for an early example), which is generally regarded as a justification ground, excluding the unlawfulness of the accused's conduct (Burchell *Principles of Criminal Law* 5ed (2016) 187; Kemp (ed) *Criminal Law in South Africa* 3ed (2018) 117; Hoctor *Snyman's Criminal Law* 7ed (2020) 116; for a different view see Snyman *Criminal Law* 6ed (2014) 60, who regards the defence as being associated with involuntary conduct). The requirements for the defence are typically rendered as follows (Burchell 187-189; Hoctor 116-7; Kemp 117-118):

(i) The defence is only available if the legal duty infringed places a positive duty on the accused;
(ii) It must be objectively impossible for the accused to comply with the relevant legal provision;
(iii) The accused cannot rely on impossibility if the accused is responsible for the circumstances in which she finds herself.

While this defence has been a part of South African law for an extended period of time, it has seldom been raised in court, and has even more seldom been successful. As a result, the parameters of the defence are not very clear. Some doubts have been raised as to whether there is justification for an independent existence for this defence in criminal law (Van Oosten "Die aard en rol van die stelreël *lex non cogit ad impossibilia* in die strafreg" (1986) 49(4) *THRHR* 375). However, the theoretical underpinnings of the criminal law defence, and the basis for such a defence, have been strengthened by case law pertaining to the operation of the doctrine of impossibility in other areas of the law, as will be briefly set out below.

First, some clarification on terminology relating to impossibility. The notion of impossibility is reflected in a number of (Latin) legal maxims: *nemo tenetur ad impossibilia* ("nobody is bound to do the impossible" - see, eg, *R v Kallel (Pty) Ltd* 1939 AD 432); *impossibilium nulla obligatio est* ("an impossibility is not a legal obligation" - as stated in D 50.17.185; see *Montsisi v Minister van Polisie* 1984 (1) SA

619 (A)); *impossibilium nemo tenetur*; *impotentia excusat legem* ("inability excuses compliance with the law" - first mentioned in South African case law in *Hay v Divisional Council of King William's Town* (1880-1881) 1 EDC 97); and most commonly, and most often in the criminal law context, *lex non cogit ad impossibilia* ("the law does not compel one to do the impossible").

The idea that a person should not be held liable in law for an obligation which is impossible to perform – which shall be referred to as the "impossibility principle" - is deeply entrenched and is indeed ancient in origin (as noted above, it is found in the Digest at D 50.17.185). This accords with the understanding that the impossibility principle is "a compelling principle of humanity and justice" (Williams *Criminal Law – General Part* 2ed (1961) 746, particularly "where punitive sanctions are in question"). In the criminal law context, Ferguson and McDiarmid correctly point out that "[i]f performance is impossible, yet the law requires it, this would make a mockery of the principles of autonomy and free will on which the criminal law is based" (*Scots Criminal Law: A Critical Analysis* (2013) 21.14.2). As stated in the delict case of *Gassner NO v Minister of Law and Order* (*supra* 326A-C):

"[L]ogic dictates that no one should be compelled to perform or comply with that which is impossible, in the sense of physical, objective impossibility. This must needs emanate from the underlying principles of justice, equity and reasonableness which are suffused throughout our legal system."

The significance of the impossibility principle is reflected in its application in a number of areas of law, including law of contract (see *Peter, Flamman and Co v Kokstad Municipality* 1919 AD 427 435; *Gassner NO v Minister of Law and Order supra* 326C-327H), law of succession (*Montsisi v Minister van Polisie supra* 635B-C; *Gassner NO v Minister of Law and Order supra* 327H), and law of delict (*Hay v Divisional Council of King William's Town supra*; *Montsisi v Minister van Polisie supra* 635C-D). It has however been noted that South African courts draw a distinction between types of impossibility (*Van Zyl v Road Accident Fund* 2022 (3) SA 45 (CC) par 123-124, per Jafta J):

"Where an impossibility arises from conditions in a will, those conditions are regarded as *pro non scripto* (as not written). If the impossibility arises from a contract, the maxim that applies is *impossibilium nulla obligatio est* (there is no obligation to perform impossible things) and if it flows from a statute the *lex non cogit ad impossibilia* maxim applies…a statutory condition that renders performance impossible [entails that] *lex non cogit impossibilia* would apply. The *pro non scripto* and the *impossibilium nulla obligatio est* maxims cannot apply to an impossible performance required by a statutory provision."

Moreover, the Constitutional Court has had cause to consider the impossibility principle in two recent cases. In the 2021 case of *Electoral Commission of South*

Africa v Minister of Cooperative Governance and Traditional Affairs (Council for the Advancement of the South African Constitution, Freedom Under Law (RF) NPC, South African Institute of Race Relations and Afriforum NPC Amicus Curiae) 2021 JDR 2101 (CC), it was the contention of the Electoral Commission that due to the restrictions related to the Covid-19 pandemic, along with the failure to hold a voter registration weekend prior to the proclamation of the election, it was impossible for the Commission simultaneously to comply with its obligation to hold timeous elections and its obligation to hold elections which are free, fair and safe (*Electoral Commission v Minister of Cooperative Governance and Traditional Affairs* par 167-168). However, in neither the majority judgment (par 177 (per Rogers AJ (as he then was)) nor the minority judgment (par 55 (per Zondi ACJ (as he then was)) of the court was the impossibility defence deemed to assist the applicant's case. Nevertheless, the possible applicability of the impossibility principle was emphasized in both judgments, which referred to previous Constitutional Court jurisprudence dealing with the issue of impossibility (the case of *Barkhuizen v Napier* 2007 (5) SA 323 (CC) (which dealt with contract law) was cited at par 54 of the minority judgment, while the case of *Mtokonya v Minister of Police* 2018 (5) SA 22(CC) (which dealt with extinctive prescription) was cited at par 173 of the majority judgment).

The impossibility principle also arose for consideration in the 2022 case of *Van Zyl NO v Road Accident Fund* 2022 (3) SA 45 (CC), on this occasion in the context of prescription, and specifically related to the question whether due to applicant's disability he could rely on impossibility (*lex non cogit ad impossibilia*) to avoid the dismissal of his claim against the Road Accident Fund on the basis of prescription (par 16, *Van Zyl NO v Road Accident Fund supra*). Two of the judgments of the court are pertinent to the present inquiry (the third judgment of Theron J is consistent with an acceptance of the impossibility principle (see par 144-147), but not on the facts of the case). In the first judgment, written by Pillay AJ, the impossibility principle is characterized as follows. It originates in the principles of natural justice, which form part of the common law (Pillay AJ notes at par 50 that in *Barkhuizen v Napier supra* par 75 the court describes this principle as deriving from the principles of justice and equity which underlie the common law, and further refers to *Masetlha v President of the Republic of South Africa* 2008 (1) SA 566 (CC) par 74-75, 187-190 in this regard), and is in itself a rule of natural law and justice (par 52, *Van Zyl NO v Road Accident Fund supra*). Moreover, the impossibility principle "is an extension of logic", being "[g]rounded in nature, science and reality" (par 53):

"Fundamental to the impossibility principle is an awareness of the human condition, our capacities and, indeed, possibilities. The impossibility principle flourishes because it distinguishes rationality, logic and reasonableness from the opposite. It extricates what is always reasonable from what is reasonable in certain circumstances."

Thus, the impossibility principle is not based on justice and equity, but also values of science, reality, reasonableness and fairness (par 59).

The second judgment in *Van Zyl NO v Road Accident Fund*, written by Jafta J, which agreed with the order proposed in the first judgment (which was to allow application for leave to appeal, which appeal was duly upheld, and to dismiss the special plea of prescription raised by the Road Accident Fund, thus applying the impossibility principle in favour of the applicant (par 90, see par 91)), took the view that the impossibility principle is part of the Constitution, since it is part of the rule of law, "one of the foundational values of our Constitution", as was stated in the English case of *Nichols v Marsland* ((1876) 2 Ex D 1 4, which was cited in *Hay v Divisional Council of King William's Town supra* 101 – see *Van Zyl NO v Road Accident Fund supra* par 125, which further cites *Affordable Medicines Trust v Minister of Health* 2006 (3) SA 547 (CC) par 48 to the effect that (as stated in s 1(*c*) of the Constitution) our constitutional democracy is founded on the supremacy of the Constitution and the rule of law.).

There may still be doubts, at least in the criminal law context, whether the defence has been properly demarcated (Ellis "Vonnisbespreking: *S v Mxhosa* 1986 1 SA 346 K)" (1986) *De Jure* 393 397). Nevertheless, it is clear that the impossibility defence is a fundamental part of South African law, even part of the fabric of the Constitution, not only in respect of, *inter alia*, the law of contract, succession and delict, but also in respect of the criminal law.

Shannon Hoctor
Stellenbosch University

Matters of Interest to Magistrates

Senzo Meyiwa trial casts spotlight on language use in South African courts

The murder of football player Senzo Meyiwa in 2014 and its protracted and controversial police investigation involving high profile figures in the South African music industry continues to make headlines in South Africa. Five men are on trial for allegedly murdering the national team captain and goalkeeper.

Recent events in the criminal trial have shone the spotlight on the use of language from a perspective of legal practitioners, judicial officers, police officers and courtroom interpretation.

Both the advocate for the accused as well as a state witness experienced linguistic challenges – they were seen to be struggling with the language in court. This was no fault of their own but due to a restrictive language policy that favours English as the main language in court. In one instance the judge halted proceedings and urged a state witness – forensic detective Sergeant Thabo Mosia – to ask for a Sesotho language interpreter, which he agreed to. The only interpretation in court had been in the isiZulu language. The country has 11 official languages.

Language is the most important component of courtroom proceedings, yet it is assumed that English is the only language through which communication can take place. This is inconsistent with the ideals and rights contained in the South African constitution and the fact that the country is multilingual – an aspect that should be celebrated.

As forensic and legal linguists we focus on the language issues plaguing our legal system, especially when evidence is being imparted. The Meyiwa case is not unique in shedding light on the country's courtroom language challenges. But through it we see the need for mindful legal practitioners and judicial officers who are sensitive to the language complexities that exist.

Language prejudice in courtrooms

It is a human condition that we judge each other based on the use of language vocabulary, accent, tone and language sensitivity. When you open your mouth people naturally make valued judgements and attach psychological labels, these being either positive or negative and thereby influencing their response.

In another example from the trial, Advocate Malesela Teffo, the advocate for the accused, was at a loss for English vocabulary which resulted in various types of language prejudice coming into play. It also resulted in Judge Tshifhiwa Maumela laughing when the advocate ran out of words. This relates to subjective and strictly linguistic inequality: how we judge people based on their lack of words and on the basis of how they speak and their level of speech. Such judgements can often be unreliable.

The country's Legal Practice Act and Legal Practice Council fail to address the language question for courtroom communication. They don't address the language qualifications and competencies of South African legal practitioners and future judicial officers. The legislative and policy frameworks reinforce the English only status quo. Legal practitioners and judicial officers who do not speak English as their mother tongue are often required to first think of vocabulary before even posing a question to the witness. This was clearly the case with Advocate Teffo.

We notice the ease with which Advocate Teffo was able to formulate and pose the question in his mother tongue and this should be embraced within courtroom discourse. Instead, policies and legislation dictate otherwise and impose a language

on the practitioner without thinking of the consequences. Specifically during examination in chief and cross-examination is the phrasing and use of language important for a witness and could result in an alternative answer being provided.
Cultural and linguistic concepts within the South African context are often not explainable and are often not even translatable in English. An example would be the psychological state of amafufunyana, a state of being inexplicable in western psychology. Or the word adoption, for which there is no equivalence in the isiNguni languages. There is sexual terminology also considered taboo in African culture and creating linguistic challenges in court. You think best and speak best in your mother tongue, where there is a clear link between language and culture.
This should be the point of departure in any legal context, where language is law and law is language.

Problematic language of record policy

Policy dictates the use of English as the official language for record purposes. Where an interpreter is used the English interpretation is recorded. The direct words and sentiments of the witness are not recorded. The English only language of record policy was said to have been practical according to the Heads of Courts in 2017.

However, in the Meyiwa case we see that when implemented the policy is questionable. A one size fits all language policy in a multilingual country such as South Africa may not necessarily be practical and definitely not transformative.
The policy also hinders legal practitioners, judicial officers and witnesses from proceeding in a language other than English where it is practical to do so. This places sole reliance on interpretation services in our courts.

The importance of the court interpreter

The Meyiwa case also highlights the needs for interpreters where indigenous languages are to be used. Unfortunately, we have a shortage of skilled, qualified and competent court interpreters in South Africa.
Interpreters are not merely translating words between people for the record of the court, but rather are tasked with finding equivalence between two languages and two cultures in the case of English and an African language. The legal terminology that court interpreters require suggests the need for appropriate academic qualifications and training which are presently lacking.

Police as transpreters (translators + interpreters)

The English language of record policy and the South African Police service language policy dictate that police officers need no language qualifications, competencies or training. Yet they are required to record statements in English where complainants are more than often not English mother tongue speakers.

Police officer are therefore interpreting between themselves and complainants and then translating into English for the written statement – acting as a transpreter without the requisite knowledge or qualifications. There are instances where police officers suffer linguistic prejudice, where English vocabulary fails them – as in the case of the state witness and the interpreter in the Meyiwa trial.

A way forward

The first aspect that needs urgent attention and revision is the monolingual language of record policy for courts. It needs to include all official languages on the basis of provincial language demographics to ensure practicality.
Secondly, to empower legal practitioners, judicial officers, and police officers through training programmes and other language qualifications. Legislation and policies need to be are more inclusive, fostering a multilingual rather than a monolingual approach.
These require the facilitation of forensic and legal linguists to assist government and the judiciary with the aid of new technologies formulated by forensic linguists.
Furthermore, forensic linguists can assist in the re-training of legal practitioners, judicial officers and interpreters to be more mindful of the language complexities in courtroom discourse. The research has been conducted by forensic and legal linguists, with the next step being the implementation of these strategies.

Zakeera Docrat Postdoctoral research fellow (Forensic Linguistics/ Language and Law), University of the Western Cape & **Russell H. Kaschula** Professor of African Language Studies, University of the Western Cape.

(The above article was published on *The Conversation* website on 8 June 2022)

A Last Thought

The Supreme Court of Appeal's order of constitutional invalidity is confirmed:
1.1. The Marriage Act 25 of 1961 (Marriage Act) and the Divorce Act 70 of 1979 (Divorce Act) are declared to be inconsistent with sections 9, 10, 28 and 34 of the Constitution in that they fail to recognise marriages solemnised in accordance

with *Sharia* law (Muslim marriages) which have not been registered as civil marriages, as valid marriages for all purposes in South Africa, and to regulate the consequences of such recognition.

1.2. It is declared that section 6 of the Divorce Act is inconsistent with sections 9, 10, 28(2) and 34 of the Constitution, insofar as it fails to provide for mechanisms to safeguard the welfare of minor or dependent children born of Muslim marriages, at the time of dissolution of the Muslim marriage in the same or similar manner as it provides for mechanisms to safeguard the welfare of minor or dependent children born of other marriages that are dissolved.

1.3. It is declared that section 7(3) of the Divorce Act is inconsistent with sections 9, 10, and 34 of the Constitution, insofar as it fails to provide for the redistribution of assets, on the dissolution of a Muslim marriage, when such redistribution would be just.

1.4. It is declared that section 9(1) of the Divorce Act is inconsistent with sections 9, 10 and 34 of the Constitution, insofar as it fails to make provision for the forfeiture of the patrimonial benefits of a Muslim marriage at the time of its dissolution in the same or similar terms as it does in respect of other marriages that are dissolved.

1.5. The common law definition of marriage is declared to be inconsistent with the Constitution and invalid to the extent that it excludes Muslim marriages.

1.6. The declarations of invalidity in paragraphs 1.1 to 1.5 above are suspended for a period of 24 months to enable the President and Cabinet, together with Parliament, to remedy the foregoing defects by either amending existing legislation, or initiating and passing new legislation within 24 months, in order to ensure the recognition of Muslim marriages as valid marriages for all purposes in South Africa and to regulate the consequences arising from such recognition.

1.7. Pending the coming into force of legislation or amendments to existing legislation referred to in paragraph 1.6, it is declared that Muslim marriages subsisting at 15 December 2014, being the date when this action was instituted in the High Court, or which had been terminated in terms of *Sharia* law as at 15 December 2014, but in respect of which legal proceedings have been instituted and which proceedings have not been finally determined as at the date of this order, may be dissolved in accordance with the Divorce Act as follows:

(a) all the provisions of the Divorce Act shall be applicable, save that all Muslim marriages shall be treated as if they are out of community of property, except where there are agreements to the contrary, and

(b) the provisions of section 7(3) of Divorce Act shall apply to such a union regardless of when it was concluded.

(c) In the case of a husband who is a spouse in more than one Muslim marriage, the court:

(i) shall take into consideration all relevant factors, including any contract or agreement between the relevant spouses, and must make any equitable order that it deems just; and

(ii) may order that any person who in the court's opinion has a sufficient interest

in the matter be joined in the proceedings.

1.8. Pending the coming into force of legislation or amendments to existing legislation referred to in paragraph 1.6, it is declared that, from the date of this order, section 12(2) of the Children's Act 38 of 2005 applies to a prospective spouse in a Muslim marriage concluded after the date of this order.

1.9. Pending the coming into force of legislation or amendments to existing legislation referred to in paragraph 1.6, for the purpose of paragraph 1.8 above, the provisions of sections 3(1)(a), 3(3)(a) and 3(3)(b), 3(4)(a) and 3(4)(b), and 3(5) of the Recognition of Customary Marriages Act 120 of 1998 shall apply, mutatis mutandis, to Muslim marriages.

1.10. If administrative or practical problems arise in the implementation of this order, any interested person may approach this Court for a variation of this order.

1.11. The Department of Home Affairs and the Department of Justice and Constitutional Development shall publish a summary of the orders in paragraphs 1.1 to 1.10 above widely in newspapers and on radio stations, whichever is feasible, without delay.

Women's Legal Centre Trust v President of the Republic of South Africa and Others (CCT 24/21) [2022] ZACC 23 (28 June 2022)