

Towards a Small Claims Court blueprint

By Mohammed Paleker

Lecturer, Department of Private Law at UCT; member of the Small Claims Court Task Team

The Department of Justice together with the Law Society of the Cape of Good Hope recently embarked on an exciting project to revamp the Small Claims Courts. The Deputy Minister of Justice, Ms Cheryl Gillwald, launched the project with an address to Parliament on 17 June 2003 in which she noted that the time has come for us 'to move beyond merely bringing justice facilities to women and children; we need to address issues relating to the cost of litigation and undue delays and excessive formalities within the legal process'.

On 7 and 8 November 2003 approximately 160 delegates from all over the country consisting of magistrates, judges, commissioners of Small Claims Courts and members of the legal profession met at a conference in Cape Town to discuss a Small Claims Court blueprint. Several discussion papers were tabled at the conference:

- The status and jurisdiction of the Small Claims Court and amendments to legislation governing Small Claims Courts.
- The publication of an up-to-date manual for commissioners and court officials.
- Training for commissioners and court officials.
- A public education strategy for the Small Claims Court and the creation of a website.
- A student internship programme for the Small Claims Court.
- The decentralisation of Small Claims Courts in rural areas.

Delegates overwhelmingly endorsed the project and confirmed that the discussion topics identified the key issues in the creation of a Small Claims Court blueprint. Everyone agreed that the Small Claims Courts had an enormous

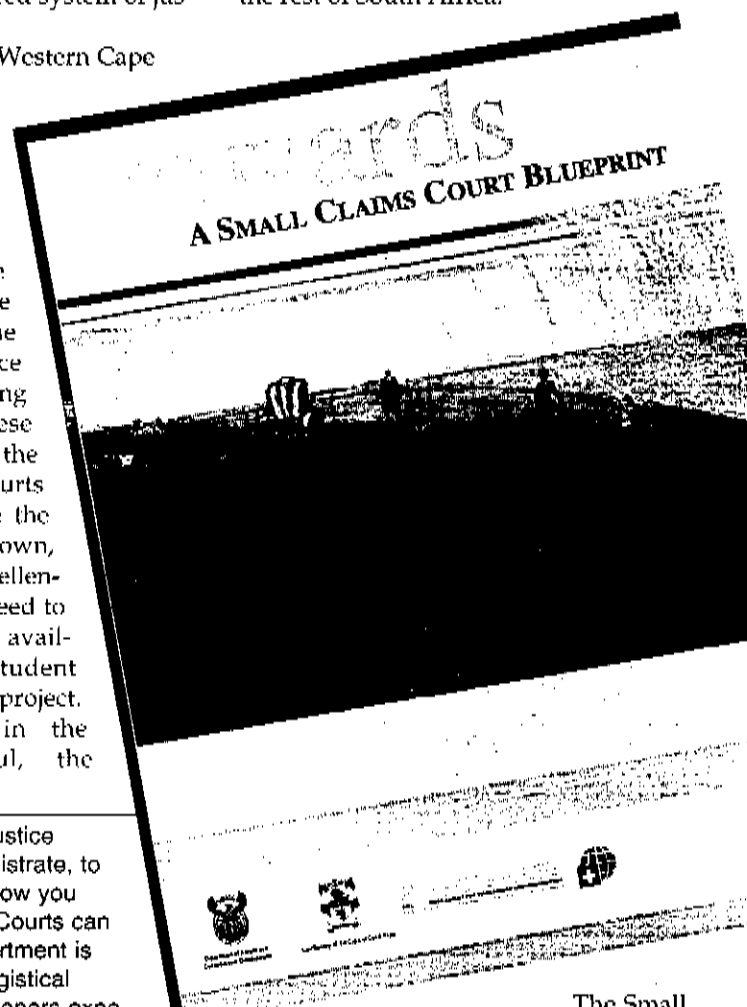
contribution to make toward realizing the goal of an efficient, cost-effective, and community-centered system of justice.

Three courts in the Western Cape (the pilots) were singled out to get the project off the ground. The Wynberg, Bellville and Stellenbosch magistrates' courts will be the first to take the project forward. The Department of Justice will rely on the existing infrastructure of these courts to jump-start the project. The pilot courts are also located close to the Universities of Cape Town, Western Cape, and Stellenbosch which have agreed to make their students available to test the student internship leg of the project. If implementation in the pilots is successful, the

The Department of Justice invites you, the magistrate, to make submissions on how you think the Small Claims Courts can be improved. The Department is interested to know of logistical problems that commissioners experience; where existing legislation falls short; everyday problems (such as issues of safety at courts etc.) that commissioners and court officials encounter; problems germane to rural communities; and most importantly, your vision for the ideal Small Claims Court. Submissions from commissioners would also be welcomed.

Fax your suggestions to Mr Hishaam Mohamed: (021) 4623135, or e-mail him at HMohamed@justice.gov.za

Department will incrementally roll out the revamped Small Claims Court to the rest of South Africa.



The Small Claims Court project marks an important milestone. As a joint venture of the Department of Justice and the Cape Law Society, it heralds a new strategic approach to tackling some of the problems with administration of justice in this country. In a way, the entire legal profession can take ownership of the project. Needless to say, magistrates, as the judicial arm of the legal profession, must participate to make the project successful.

Domestic violence under

indigenous law – any remedies?

By Monsami Mshunqane
Magistrate, Lady Frere

There is a perception that indigenous law perpetrates abuse of African women by their husbands. This article examines whether there are any remedies for abused women in Xhosa law.

In former times the power of the man over his wife was absolute but there were checks to this.¹ His friends could interfere to prevent his indulging in any great degree of brutality towards her. If he abused her or inflicted any permanent injury, the chief would demand *isizi* or blood atonement.²

A wife is not the property of her husband... her husband can not injure or kill her, for if he does he is liable to pay a fine to the chief.³ Violence against women has long been identified and disapproved in Xhosa law. This shows that the husband cannot do as he pleases with his wife and that it has never been the principle of Xhosa law that women should be abused. This perception therefore has corrupted our law into something it never was. Xhosa law teaches about positive relationship, respect and dignity to everybody.

When the family of the bridegroom welcomed the bride, they would clearly state that the bride ought not to be abused or assaulted. To substantiate this principle, there is an old Xhosa maxim which says "*induku ayi namzi*" which means there can be no peace or harmony where brute force (stick) rules home.⁴

Mqoke⁵ explains the object of Xhosa law: "The primary object of Xhosa law and presumably Bantu law in general, is to preserve tribal equilibrium. The law therefore, guides the individual towards keeping the tribe from disintegration. Any punishment administered for disturbing the balance of tribal life is of a constructive or corrective character; to restore what has been lost in stability by the action of an individual or individuals."

If the husband ill-treated the wife, she could complain to her in-laws who would try to resolve the matter by counselling the couple. The elders would

also speak to the couple. The Xhosas believe that they can sort out their own things amongst themselves without recourse to an organ of the state. If the wife is not happy with the way the matter has been handled, she may leave for her maiden home. At home the husband will be fined beast and further the wife may be *telekwaed*.⁶

While in the former times, the man was not entitled to abuse the wife. But in the event of the abuse occurring, the latter had no personal action against the man. In *Bembesile Mbuta D/D vs Ntente Mbata*⁷ however, the court did not approve this old African custom that the injured party has no right of action for damages for assault. The court held that the injured party has a right of personal action in assault cases.

If the husband is ill-treating the wife and she flees to her maiden home, she can refuse to go back to him and it can also lead to divorce. In *Xakata vs Kupuka*, Kupuka sued for the return of his wife or nine head of cattle, lobola paid for her. The wife refused to return on account of his ill treatment of her. On one occasion, Mr Kupuka was sentenced to six months imprisonment for assaulting her. The magistrate was of the view that ill treatment was not sufficient to warrant dissolution of the marriage.

He gave judgement for the return of lobola. Defendant noted an appeal. On appeal, plaintiff did not deny the assault, that assault was a serious nature and that the woman was permanently disfigured by it. Considering the evidence of the woman it would mean that the ill treatment by the plaintiff has been persistent and in the opinion of the court plaintiff ought not to recover all of the cattle. The appeal was upheld.

It is clear that in Xhosa law there is a remedy which is offered to abused women. In living Xhosa law there is nothing which debars the abused woman from proceeding straight away to the police to lay criminal charges against the abuser. By the same token there is nothing which debars the family from resolving the matter between the parties at that level. The in-laws could even encourage the wife to lay charges against the husband especially where the woman is severely injured.

If violence against the woman was handled by the traditional court, the Court of Appeal is the magistrate court. Looking at these decided cases and authorities referred to, it is clear that Xhosa law has long been developed in this regard. The perception that Xhosa law perpetrates violence against women is misplaced. Violence against women was never sanctioned by Xhosa law.

NOTES

1. CB Maclean *Compendium of Kafir Law & Customs* (1906) at 72.
2. *Ibid*.
3. JU Tromp *Xhosa Law of Persons: A Treatise on the Legal Principles of Family Relations* (1947) at 8.
4. *Ibid*.
5. RB Mqke *Customary Law and the New Millennium* (2003) at 21.
6. In *Mlungisis v Ngqotso* 1949 NAC(s) 141 at 142. It was held that the custom of *ukuthelaka* is involved for two separate and distinct purposes. Primarily it is the only procedure available to enforce a balance of dowry, but it is also presented to punish a husband for ill-treatment or abuse of his wife.
7. 1910 NAC 62.

COURT BY SURPRISE

The Equality Court comes to Mokerong

By Mathews Pila

Magistrate, Mokerong

The office of the Magistrate Mokerong is situated about four kilometres west of the "platteland" town of Potgietersrus, now renamed Mokopane. The courts at Mokopane and Mokerong fall into two separate districts. The former serves the previously white area of Potgietersrus and the latter serves the mostly rural areas under the former "Bantustan" of Lebowa. After the re-demarcation process, efforts are being made by the Department of Justice to merge the two courts into one jurisdictional district.

The town of Mokopane (Potgietersrus) is surrounded by large farms which are almost all owned by white private individuals. They employ large numbers of blacks from the neighbouring rural areas. This immediately makes one suspect, reasonably, that racial tensions, inequality and ESTA related disputes would be rampant in this area.

The town of Potgietersrus was prominently in the news all over the world a few years ago when Laerskool Potgietersrus, which previously served whites only, refused to admit black pupils. Blacks were admitted after much wrangling and intervention by the Provincial Government. At present the town is arguably the seat of the Boeremag Party whose members are currently being accused of treason in the Pretoria High Court. Some of the accused, if not most, are resident of Potgietersrus. The case is still being heard.

The launching of the Equality Court

On the 9th July 2003 the MEC of Safety and Security Ms Dikeledi Magazi established the Equality Court at the offices of the Magistrate Mokerong. She stood in for the Minister of Justice Dr P Maduna who had to cancel the trip to Mokerong on short notice, to attend a meeting between President Mbeki and President Bush.

The function was well attended by

the local communities including the Magoshi (Chiefs) from various villages. The absence of the white community from the nearby Potgietersrus was evident. Apparently the Equality Court by virtue of its nature, as the enforcer of rights, is viewed negatively by the white community.

Magistrates from Gauteng, Mpumalanga, North-West and Limpopo Provinces attended this important occasion. Their attendance gave the required seriousness which this occasion deserved. The Deputy Director General of the Department of Justice, Advocate S Jiyane, as well as Advocate Sonti, the Director General of the Limpopo Province, were among the high profile delegation that attended the occasion. Various other delegates for other Departments also attended.

MEC Magazi told the community that the Equality Court was brought to them to be used and she urged them to take full advantage of this court. She said the court will hear cases from the six magisterial districts of Ellisrus, Phalala, Mokerong, Mokopane and Naboomspruit. Advocate Jiyane dis-

pelled the fears that the Equality Courts were bringing in a new form of law other than that which is contained in the Constitution. He explained that the purpose of the courts was to deepen the knowledge of the rights that are contained in the Constitution, for the benefit of the community. He said the victims of the segregatory crimes would be in a better position to enforce their rights through the Equality Courts. Jiyane explained that the establishment of the courts was delayed because of the logistical problems relating to personnel, funding and the identification of suitable places.

The Chief Magistrate of Polokwane, who is also Head of Cluster, Joe Raulinga gave a very impressive address. He mapped out the inequalities of the past regime and appreciated the effort by the Department of Justice to address these imbalances.



Addressing delegates at the launch of the Equality Court at Mokerong: left, the Director General of the Limpopo Province, Advocate Sonti; above, the Deputy Director General of the Department of Justice, Advocate S Jiyane

Tshepong Centre - centre of renewed hope



By Beatri Kruger

*Department of Criminal Law,
University of the Free State*

Sexual offences ... domestic violence ... gruesome crimes, often aimed at the most vulnerable with devastating effects. Is there really relief and protection? The response of the criminal justice system is to provide numerous legal remedies. Sexual abuse and domestic violence are criminalised. The Domestic Violence Act 1998 was passed with the aim to afford victims the maximum protection that the law can provide.

However, what happens in reality? Feedback from victims emphasizes numerous problems. Victims of domestic violence are often scared and ashamed of reporting domestic violence and sexual offences. Some are not aware of the legal remedies available. Even if they are informed, a lack of trust in the legal system frequently exists. Reporting the incident may result in exposure to further violence inflicted by the perpetrator, hours of travel, travelling costs, problems due to staying away from work to report the matter, waiting for attention or insensitive treatment from some police officials, medical personnel or court personnel.¹ Limited co-operation and networking exists between service providers. The criminal justice system is often experienced as inaccessible and levels of secondary traumatisation are high.² In short, victims often experience that formal protection does not follow through in real protection and in justice being achieved.

To address these problems a process started in 1984 to establish services for victims of crime in Bloemfontein. Later the idea of a one-stop, 24-hour centre was born. From humble beginnings the Tshepong Victim Support Centre was launched in 1998. It was the brainchild of a combination of role players namely NICRO, the Department of Health, SAPS and later the senior prosecutor of the Bloemfontein Magistrate Court. In 2000 the Domestic Violence Court moved from the magistrates court to the Tshepong Centre.

The mission of the Centre is to offer victim-sensitive and supportive services to victims in a victim-friendly environment. The main objectives of the Centre are:

- To provide a holistic and integrated one-stop service to victims of domestic violence and sexual offences from the initial reporting until finalization of court cases.
- To provide a victim centre and victim-sensitive services in a supportive environment to avoid secondary traumatisation.
- To improve the quality of service delivery by all sectors involved and to strengthen the collaboration between sectors to the benefit of the victim.
- To contribute to the victim's ability to heal and to minimize the development of post-traumatic stress symptoms by providing physical, emotional, psychological and practical assistance.
- To ensure the effective collection of medico-legal and other evidence to ensure successful prosecution of criminal cases.

Since official funding was not available, the inter-sectoral management committee raised funds. Various committed role players took the initiative to involve the community and private donors to paint, furnish and equip the centre. Each role-player contributed staff and infrastructure as required. The Department of Social Development provided limited subsidy to NICRO and later to Child Welfare to render services at Tshepong.

Today the Tshepong Centre is a one-stop victim support centre for victims of domestic violence and sexual offences. The centre is managed by an inter-sec-

toral management committee, consisting of NICRO, SAPS, Child Welfare and the Departments of Social Development, Health and Justice (including both Domestic Violence and Sexual Offences Courts). Monthly meetings are conducted to deal with the day to day management of the centre.

What makes the Centre unique? It provides multi-disciplinary services under one roof on a 24-hour basis. These services include:

- screening on arrival to ascertain whether the problem falls within the ambit of the centre and referral if necessary;
- emotional support and information on the available protection;
- victim-friendly waiting rooms and rest rooms;
- assistance by clerks of the court or volunteers to apply for a protection order;
- issuing of a protection order by the magistrates;
- legal information and follow-up on case status when required;
- medical services by a doctor or forensic nurse;



Magistrates Venter (left) and Rampai at Tshepong Centre

Beyond the call of duty

Andre Dippenaar, Vredenburg magistrate and seasoned LRG facilitator has been training the Divisional Officers attending the officer training at the MTR3 Saldanha Naval Training School for a number of years. On 27th October 2003, at Mr Dippenaar's request, Tony Sardien visited his court in Vredenburg.

That day, Andre Dippenaar presented a lecture to the Saldanha Naval Training School Divisional Officers. The focus of the presentation was the role of the Divisional Officers in supporting their subordinates should they be required to appear in court. He explained the following issues:

- The structure of the courts in S A and their functions and jurisdictions.
- The rights of accused persons, especially the rights to have a fair trial and to be represented.
- The duties of effective liaison on the part of Divisional Officers.
- Testifying in mitigation of sentence, where appropriate – and the information that needs to be collected.
- The relationship between the military courts and the 'civilian' courts.

Questions covered a wide range of issues including:

- Domestic violence and maintenance cases.
- The frequent postponements in district courts and the powers available to magistrates to expedite cases.
- Bail.

The session was skilfully handled and participants were keenly engaged throughout.

In 2003 Andre Dippenaar also initiated a public education programme on domestic violence for members of the public in the residential areas served by his court on International Women's Day.

- HIV/AIDS counselling, testing and medicine free of charge;
- professional counselling by a social worker;
- referral to relevant service agencies;
- a 24-hour help line;
- referral to Serobe crises centre (shelter) for safe short-term residential care.

To run a centre of this nature is very demanding. Numerous challenges are experienced such as shortage of staff, the need for a centre manager, on-going training, documentation, research, more funding and facilities to accommodate the increasing demand of services and so forth.

Despite the challenges, Tshepong is an innovative centre which enables victims to indeed become survivors. The centre also contributes to the legal system by facilitating a more effective implementation of the Domestic Violence Act as well as successful prosecutions.

I am a lecturer in Criminal Law at the University of the Free State and am privileged to have a working relationship with Tshepong. Law students on an undergraduate and post graduate level are engaged in practical training at the centre. The networking is hoped to inspire in future-lawyers the zest not only to identify problems, but to follow Tshepong's example to make a difference.

Tshepong means "hope" – and to numerous victims without hope, the Tshepong centre has indeed brought renewed hope.

Notes

1. H Schoeman 'n *Ecologiese Perspektief op geweld tenoor vroue in saamwoon- en huweliksverhoudings* (1999) Unpublished Ph.D. dissertation, University of the Free State at 4; J Le Roux "Die Wet op die Voorkoming van Gesinsgeweld" (1997) 30(2) *De Jure* 301 at 305 and 311; D Singh "The fundamental rights to equality, religion and custom" (2002) 27(2) *Journal of Juridical Science* 159 at 167.
2. L Opperman *Sexual Offences Courts*, Bloemfontein (2003) Conference Presentation: University of the Free State.



Gender, history and the transformation of the magistracy

This is a research project being run by LRG together with the Department of Historical Studies at UCT. Students at both undergraduate and postgraduate level will conduct the research. The project aims to map the history of the magistracy in South Africa from its inception to the present. It is based on the understanding that the law and the magistracy are profoundly gendered in conceptualisation, execution and practice. The project seeks to explore the gendered ways in which the magistracy has developed and changed over time. Individual studies within the broader project may focus on the magistracy in the colonial era, under apartheid or after 1994 as students choose.

Key research themes include:

- the establishment of the magistracy in the context of colonial rule;
- the conceptualisation of gender in Roman-Dutch law and the administration of gender relations through Roman-Dutch law by magistrates;
- the conceptualisation of gender in Customary law and the administration of gender relations through Customary law by magistrates;
- black magistrates in the administration of justice in the homelands under apartheid;
- the significance of the magistracy (including prosecutors and interpreters) in apartheid political trials;
- the experience of women as magistrates, their impact on the magistracy and the administration of justice;
- the history of the Sexual Offences Court;
- the implementation of child maintenance through the courts;
- the administration of the Domestic Violence Act through the magistrates courts;
- the making of ideas about men and masculinities through the magistrates' courts.

If anyone is interested in any of these topics and would like to contribute in any way to the project please contact Vanja Karth at (021) 650 3080 or email vkarth@law.uct.ac.za.

Restorative justice: a viable option in the regional court?



By Adriaan Bekker

President: ARMSA

From 13 - 15 November 2003, 202 regional magistrates gathered for a conference in Port Elizabeth on the abovementioned topic.

All regional magistrates, regardless of their affiliation were invited. The conference was initiated by the Association of Regional Magistrates of South Africa (ARMSA) and partnered by the Restorative Justice Centre and the Department of Justice and Constitutional Development: Directorate Child and Youth Affairs. The event was sponsored by the Swiss Agency for Development and Cooperation.

For many attending the conference the concept of restorative justice was unknown. The aim of the conference was therefore primarily to explain and explore the true essence of restorative justice.

Restorative justice and its aims can be defined in many ways; but it consists essentially of the following:

- A victim-centred response to crime that provides opportunities for those most directly affected by crime - the victim, the offender, their families, and representatives of the community - to be directly involved in responding to the harm caused by the crime.
- A process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.
- Having the core values of healing, moral learning, community participation and caring, dialogue, forgiveness, responsibility and making amends.

It is clear that restorative justice can be applied only if the accused accepts responsibility for his/her actions and if the victim is prepared to participate in the process.

Once the concept was explained to them, many of the participants felt that

in principle it was sound, but that it was surely not meant for serious criminal cases heard by regional magistrates.

The next challenge was therefore to explore the various well-known aims of punishment, namely deterrence, prevention, retribution and rehabilitation, and to ask ourselves as judicial officers whether these aims are absolute and indeed whether they are really achieved. In fact should they be the only aims, or should there perhaps be other aims such as restoration, even in serious cases?

We realised again that as judicial officers we should never fall into the trap of "standard-sentences", it is our duty to individualize each sentence, to be sensitive to the needs of the offender and the victim, and to be aware that under appropriate circumstances restorative justice principles can be applied even when imposing sentence in serious cases. In appropriate circumstances the restorative option will just make more sense than any other option. It was clear that for a judicial officer to apply restorative justice principles is a challenge and we need a paradigm shift to enable us to be part of the healing process, if at all possible.

Many participants felt attracted to the concept of restorative justice because the victim seems to be properly involved, and acknowledged that without the victim's participation restorative justice can never succeed. It was stressed that the victim has the right not to get involved in any process at all; and that he or she must not be pressurized into doing so. In many instances victims will not be willing to participate, and it will also not be appropriate in certain cases, for example those involving child victims.

The participants also realised that the

victim's rights and needs are currently not being properly addressed by the criminal justice system, and that this is a major cause for concern.

At the end of the conference we discussed practical case studies, and found that in some cases we already apply restorative justice principles to a certain extent, for example in correctional supervision conditions, suspended sentence conditions etc.

We also realized that one should focus on the suitability of the offender and the victim for the possible application of restorative justice principles and not so much on the crime itself. We came to the conclusion that under certain circumstances restorative justice principles can be applied regardless of the seriousness of the crime.

Restorative justice is still in its infancy in South Africa. The conference took us on an unknown but exciting journey. Its main purpose was to educate and to inform Regional Magistrates about restorative justice and the possibility of applying it in their daily task in court. The conference succeeded thoroughly in achieving this. It left us excited about another possible option with regard to sentencing although the infrastructure necessary to the proper application of restorative justice principles country-wide is not yet in place.

The conference ended with certain resolutions being taken. All the participants undertook to be mindful of and to further the concept of Restorative Justice in all its dimensions and to apply its principles and options when appropriate under the circumstances.

As judicial officers who claim to be serving the interests of justice, it is important that we should contribute, where possible, to the healing of relationships within the wider community and the healing of the community as a whole.

Only then will justice be done in its fullest sense.

The best interests of the child and speedy determination of Children's Court matters

Excerpts from a paper by Nkhangweni Elizabeth Denge, Senior Magistrate, Brakpan (recently appointed Acting Regional Magistrate for Pretoria-North)



The main concern of this article is how some magistrates react to these challenges. I am aware of cases in which courts have ordered social workers to file a short report indicating why matters were protracted and others where social workers have been ordered to finalise cases within given periods after which the magistrate would refuse to issue further detention orders. Other magistrates subpoena social workers to

appear before them to explain delays. I am told this spurs them into action. My personal experience has been that once ordered to file a short report, social workers either do so or they simply finalise the case without filing the said report.

Often magistrates decline applications to postpone cases or to extend detention orders without also granting orders of variation or release. The effect of this is that the child's continued detention is illegal and privately owned places-of-safety will no longer be entitled to grants to assist them.

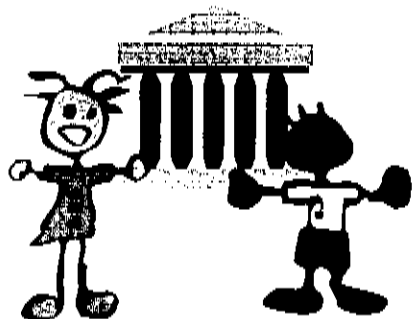
My argument is that the magistrates put themselves in a dilemma. The prima facie case made to the court is that the child is in need of care. If the magistrate issues a release order, this suggests that the child is no longer in need of care, contrary to evidence. The challenge occurs because the magistrate can neither continue to postpone the case, especially without good cause, nor release the child.

Magistrates should expect social workers to provide reasons. Magistrates must consider the best interests of the child in determining their placement or interim custody. Refusing to issue further detention orders is a drastic step. It precludes the proper administration of justice especially where children rely on the courts because they cannot take care of themselves.

Due to heavy workloads, and perhaps coupled with lack of organisational skills on the part of the social worker concerned, it is not unusual for a magistrate to be asked to postpone a children's court case (other than adoption) which has been on the roll for two years or more. These postponements are supposed to be done every 14 days after opening of the children's court enquiry and pending finalisation of the inquiry i.t.o. Sec 15(1) of the Act. They are coupled with an order (addressed to the place-of-safety) to detain the child further. The form used in this respect inter alia makes provision for information regarding reasons of further detention to be filled in.

Reasons can include things such as difficulty in tracing parents and delayed background report from other social workers. In many cases that the Brakpan's Children's Court has handled, social workers have been ordered to file reports explaining the reasons for applications to postpone.

Neither the Act nor the Regulations provide for a specific time within which the matter the inquiry must be finalised. Nevertheless, it is vital that the inquiry be finalised within a reasonable time period, so that the child can get the necessary care provided for by the relevant placement.



A case I dealt with is an example of social workers not considering the best interests of a child and allowing a case to roll on. A nine-year-old child was removed in May 1997 on grounds of neglect. The document accompanying the authorisation to detain, shows that at the time of detention, the child's mother was alive and her address known to the social worker. Four years later on 27 June 2001 the place-of-safety parent informed the Children's Court of the death of the child's mother. The matter was still pending in March 2003. Thus the child lived apart from his mother while no progress was made on his matter and they were denied the opportunity to be reunited, even for a short while.

What would you do? by Anashri Pillay

In a case before the regional court in Durban, the accused was convicted of rape and assault. He was then sentenced to 10 years' imprisonment. The case went on appeal to the Natal Provincial Division where it was held that there was an irregularity in the proceedings. The irregularity in question was that the magistrate had not asked 'the complainant whether she understood the nature and import of the oath' as required by s 162 of the Criminal Procedure Act 51 of 1977. Other, admissible evidence did not establish the guilt of the accused and the conviction and sentence had to be set aside.

There are circumstances under which a witness need not take the oath. The one relevant in this case was contained in s 164(1) of the Act:

'Any person who, from ignorance arising from youth, defective education or other cause, is found not to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation: Provided that such person shall, in lieu of the oath or affirmation, be admonished by the presiding Judge or judicial officer to speak the truth, the whole truth and nothing but the truth.'

The complainant was nine years old and the magistrate, in her reasons for judgment, stated that the enquiry into whether the complainant understood the oath was not made because the court was of the view that the complainant's youth clearly indicated that she would not understand the oath. Thus, she was simply admonished to tell the truth after the magistrate found her to be a 'competent witness who knew the difference between truth and falsehood'.

**What would you do? Should the evidence have been found to be inadmissible?
Answer on page 8.**

bits & PIECES

LRG staff changes

There have been some staff changes at LRG since our last edition of *News and Views*. Nolusindiso (Sindy) Gejengane joined the Admin team in November.

From magistrate in Mount Frere, to international jet-setting Masters graduate in Washington DC, Tandazwa Ndita has settled down in Cape Town to join LRG as a senior trainer/researcher. We look forward to her insights from "the inside" in making sure our work is always relevant to magistrates' needs!

And lastly, we bid farewell to Pritima Osman who left LRG in January this year. We wish her luck with her future and know her warmth will be missed by all.

Magistrates on the move

Judy van Schalkwyk, former head of the Khayelitsha court, has recently moved and is now the Chief Magistrate in Kempton Park as well as the sub cluster head of the Benoni, Nigel, Springs, Brakpan, and Boksberg area. Congratulations Judy! Antoinette Vermooten has moved from KZN and now joins us in the Western Cape at Atlantis Court.

Magistrates in action

Magistrate William Letsoalo of Mankweng, might soon be our next Oscar winner (best scriptwriter). William writes radio dramas on domestic violence issues for a local radio station which are aired the first Sunday of every month.



ARTICLES

To those of you who sent in articles to be published – don't despair if you don't see it yet! We had too many submissions for this edition but will be publishing them in the next edition. We really appreciate the efforts made by many of you to send us topical and interesting items for publication. Keep them coming!

BOOK REVIEW

The No. 1 Ladies' Detective Agency,

by Alexander McCall Smith (David Philip)

Alexander McCall Smith, professor of medical law at Edinburgh University and vice-chairperson of Britain's Human Genetics Commission, has written over fifty books, including specialist titles such as *Forensic Aspects of Sleep*, and most recently, a series of books based on the investigative efforts of Precious Ramotswe. *The No. 1 Ladies' Detective Agency*, the first in the series, follows the detective work of Mma Ramotswe, founder and sole proprietor of the agency, as she solves cases of missing persons, wayward daughters and con artists.

Mma Ramotswe, described rather euphemistically as a 'traditionally built' woman, tackles the problems of individuals with sensitivity and intuition, applying her particular brand of African wisdom to everyday life – with the aid of copious amounts of tea-drinking. Her character gently dominates the novel and, more often than not, the cases she is called upon to solve are a vehicle through which she guides her clients into an awareness of the limitations and flaws in their relationships with others.

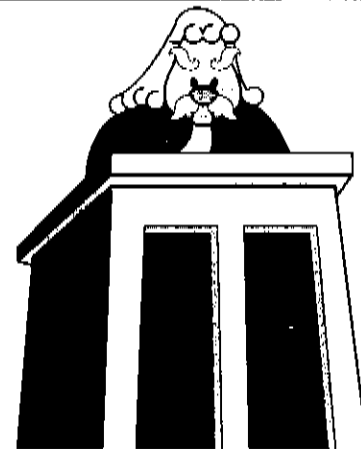
It is also a novel about Africa. Topical issues such as corruption and muti incidents are lightly touched on and yet done in a way that is devoid of judgement. On the whole a peaceful (some may say naïve) view of Africa is presented.

Following in the series are *Tears of the Giraffe*, *Morality for Beautiful Girls*, *The Kalahari Typing School for Men* and *The Full Cupboard of Life*. The writing is simple and enchanting, humorous and deft. These are books one can pick up on a whim and take up where one left off. They make for enjoyable reading and I cannot recommend them highly enough. Available at all major bookshops.

What would you do? (from page 7)

The answer!

The court held that, since the recent decision in *S v B* 2003 (1) SA 552 (SCA), "an enquiry is not always necessary in order to make the finding required by s 164 and that the mere youthfulness of a witness may indeed justify such a finding". The court was asked to depart from that decision. It declined to do so, in part because of the rules of precedent but also because of the fact that the magistrate had enquired whether the complainant understood the difference between lies and the truth. This fact was a clear indication that she was of the view that the youthfulness of the complainant meant she was not unable to understand the "nature and import of the oath". The magistrate then admonished her to tell the truth, after finding her to be a competent witness as required by the Act. The evidence was, as a result, admissible. The court reinstated the conviction and sentence imposed by the regional court.



"Mr. Clark, I have reviewed this case very carefully," the divorce court judge said, "and I've decided to give your wife R775 a week."

"That's very fair, your honour," the husband said. "And every now and then I'll try to send her a few bucks myself."

A young boy asked his father, "Dad, do lawyers ever tell the truth?" The father thought for a moment, "Yes son, sometimes a lawyer will do anything to win a case!"

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The views expressed in this magazine are not necessarily those of the editor or the Law, Race and Gender Research Unit.