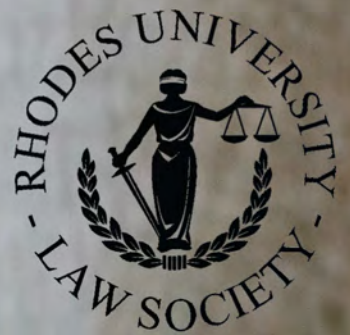


In Camera

2023

The Rhodes University
Law Society Annual
Law Magazine



100 years
of women in law



In Camera

2023

The Rhodes Law Society Annual Law Magazine

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Letter from the editor



By Atlegang Mmesi
***In Camera* editor**
2023

Compiling this year's edition of the *In Camera* Magazine has been an absolute honour. It is a position I did not take lightly, and it is a publication I consider to be a small glimpse into the multifaceted person I am and is some of my best work to date. Compiling this magazine was a difficult yet positive challenge as many unprecedented changes have come our way this year as a committee. However, when I look back on our work this year, it called on us to do things differently but with greater work ethic, communication and passion.

This year's edition centres around celebrating a century of women being allowed into the South African legal profession. This theme came around at the beginning of the year after brainstorming ideas with the Law Society committee. Along with this theme, I thought it would be very interesting to bring back one of the oldest *In Camera* traditions, a profile on one of our lecturers, Dr Luyando Katiyatiya.

My special thanks go to the *In Camera* editors of 2022, Paulina Quartey and Thanyelani Ndlovu, for their advice and guidance. Moreover, I would like to thank the Faculty of Law for their support in keeping this magazine alive, particularly Professor Graham Glover's guidance and support as a supervisor. I hope this student-led magazine continues for decades to come and encourages students to participate and give back to the Rhodes University community.

I hope that this year's edition reflects a prosperous, challenging, rewarding and eventful year 2023 has been to everyone, especially for women. I sincerely hope that it brings a lot of passion for our future legal professionals and practitioners – our outgoing final-years – and reminds them to take up space.

Happy reading!

THE YEAR IN CAMERA

CALS PRESENTATION



DEBATE EXHIBITION



INTERVARSITY MOOT



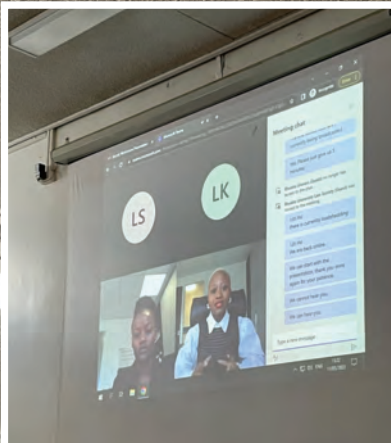
MARKET DAY



MOOT WORKSHOP



WERKMANS SHOWCASE



ANNUAL GENERAL MEETING



In Loving Memory of Sibabalwe Zwakala

*We dedicate this edition to our friend, brother and
fellow classmate Sibabalwe Zwakala.*

"Zakes was always a kind soul. Every time I'd run into him at the Law Library, he'd greet me with a smile and check in. That would always give me a little nudge to push on. May he rest in peace and his memory etched in our hearts."

"Thank you for your kindness and your courageous words whenever things got tough academically and even outside of our degree. Thank you for bringing so much light and peace in every room you walked in and for helping me through so much for the past two years. I will miss you forever Zakes, may you rest in eternal glory my brother."





2023

Law Faculty report

By Professor Laurence Juma
with input from staff and
students

Dean, Faculty of Law
2023

This year will be one of the most memorable in the history of our Faculty. There were notable staff and student achievements, over and above our excellent LLB programme. Our students excelled in local and international moot competitions, while our staff contributed immensely to the production of knowledge in various aspects of legal scholarships. Our law clinic continues to do amazing job in providing legal services to the community as well as spearheading the skills training programmes of the faculty. In addition, the Faculty has set a very clear growth agenda for the next five years in its 2023–2028 Strategic Development Plan. According to the plan, a complete review of the LLB programme is envisaged. This review will build on a strong foundation that currently exists to expand access to law studies and strengthen the support structures for our students. Thus, the Faculty looks forward to the coming months with optimism and calls on staff and students to support this process.

In this report, we provide an account of key achievements by both staff and students during the past year.

STUDENTS, STUDENT NEWS AND ACTIVITIES

Graduation and awards

On 29 March 2023, 52 students graduated with LLB degrees from the Faculty. Two LLM candidates graduated at the ceremony with degree by thesis:

OKEYO, Julian Rebecca Atieno, LLB (UFH), PG Cert (Education) (Rhodes), **with distinction**, in the Faculty of Law. Degree by thesis. Thesis: The prosecution of forced marriage by international tribunals and courts in light of the principle of legality. Supervisor: Professor: EC Lubaale.

THORNE, Aimee Liza, BA, LLB (Rhodes), **with distinction**, in the Faculty of Law. Degree by thesis. Thesis: The proprietary consequences of foreign marriages for the purposes of estate planning

and succession in South Africa. Supervisor: Mrs SEH Driver.

Fourteen final-year students (27% of our 52 LLB graduates) were awarded Dean's list certificates in recognition of academic achievement (attaining an average of at least 65% for all their final-year courses).

The following individual prizes were awarded to the final-year LLB class of 2022:

- **Brian Peckham Memorial Prize:** Best student in Environmental Law: **Cameron Hardy**
- **ENS Africa Prize:** Best student in Labour Law: **Ayla Blair**
- **Lexis Nexis Book Prize:** Internal book prize for Moot winner(s) in the final year: **Thobani Ndebele** and **Sithandwa Khuzwayo**
- **Juta Law Prize:** Best final-year LLB student, based on results over penultimate and final-year LLB: **Ayla Blair**
- **Mbusowemvelo Mtshali Ethics Law Prize:** Best student in Legal Ethics and Professional Responsibility: **Sithandwa Khuzwayo**
- **R G McKerron Memorial Prize:** Best student in Law of Delict: **Thembelani Ncube**
- **Spoor & Fisher Prize:** Best student in Intellectual Property (Patents & Copyright): **Ayla Blair**
- **Phatshoane Henney Incorporated medals:** Awarded to students who obtain their LLB degrees with distinction: **None**
- **Tommy Date Chong Award:** Awarded to student who makes the greatest contribution to the Law Clinic in their penultimate and final years of study at the University: **Caitlin Stoltz**

In the October 2023 graduation, three LLM candidates graduated with degree by thesis:

DEKEDA, Awethu Zethu, LLB (UFH), in the Faculty of Law. Degree by thesis. Thesis: The obligation of South Africa to provide social security during the COVID-19 pandemic. Supervisor: Professor EC Lubaale.

MAHLANGU, Busisiwe Hlophane Maria, BA, LLB (Rhodes), in the Faculty of Law. Degree by thesis. Thesis: The dissipation of marital assets pending a divorce order in South Africa: proposal

for reform. Supervisor: Professor HJ Kruuse.

NGUBANE, Kwanele Nhlanhla, BA, LLB (Rhodes), in the Faculty of Law. Degree by thesis. Thesis: The role of the courts in the interpretation and implementation of the right to basic education in Section 29(1)(a) of the South African Constitution. Supervisor: Ms C Van Schalkwyk. Co-supervisor: Professor LO Juma.

LLB intake 2023

Thirty-seven students accepted offers into first-year LLB and fifty students accepted offers into penultimate-year LLB this year, joining sixteen students in the four-year LLB stream in the penultimate year. As in years before, the preference of our students is clear: 75% of our law students choose the five-year stream, entering the LLB only after completing a first undergraduate degree.

Postgraduate students

The number of postgraduate students in the Faculty is increasing steadily, with a total of nine LLM candidates and three PhD students registered for postgraduate studies for 2023.

Student news and activities

Hearty congratulations to LLM student, **Tafadzwa Mavindidze**, for winning the 2023 SALRC Legal Essay Competition (LLM Category).

On Wednesday 26 July our research elective LLB students presented their research to staff and students for comments and feedback. The presentations were as follows:

- **Tapuwa Chamboko** (Supervisor: Prof Glover) Nondisclosure agreements and enforceability on public policy grounds.
- **Sovash Chetty** (Supervisor: Prof Kruger) Allowing pupils access to the courts to enable their constitutional right of access to education.
- **Franciscus Crouse** (Supervisor: Prof Kruuse) The weight of fairness: A Dworkinian Justification for Barkhuizen's Principles.
- **Vuya Nako** (Supervisor: Prof Kruger) Can the courts keep the taps running? An analysis of the constitutional powers and duties of the

courts to ensure basic water service provision.

- **Taonga Phiri** (Supervisor: Prof Lubaale) The efficacy of the statutory framework on non-consensual sex in Zambia: Lessons from South Africa.
- **Thabang Poshodi** (Supervisor: Prof Glover) Exemption clauses and the doctrine of fundamental breach.

The following LLM students presented papers at this year's Rhodes Postgraduate Conference held from 8 to 9 September 2023.

Thembelani Ncube: A new approach to apparent authority in the Law of Agency: *Makate's* case

Louisa Maitisa: Should South African divorce law contain special provisions dealing with matrimonial homes?

Xolelwa Mkula: The 'cost' of living customary law: A critical analysis of the evidentiary hurdles that women face in customary marriage disputes.

Tafadzwa Mavindidze: The Inadequately Married: Extending the putative marriage doctrine to assist vulnerable parties in invalid customary marriages.

One LLM student, **Hugh Harnett**, presented a paper entitled "Valuing Career Assets" at the Family Law Colloquium, University of Johannesburg, 7–8 September 2023

MOOT COURT AND MOCK TRIAL PROGRAMME

INTERNAL MOOTS

Final-year moot

The final-year moot was another major highlight of this year. The topic was drafted and approved by the Faculty. No major issues arose and the preliminary rounds went well. As per the norm, the four students with the highest marks, Blessings Chinganga, Sovash Chetty, Franciscus Crouse and Tinashe Hlako, proceeded to the final round which was held on Thursday 23 March in the Moot Room. After a rigorous final round presided over by Magistrate San Naidoo, assisted by Alex Kawondera and Luyando Katiyatiya, Blessings Chinganga was announced as the winner.

Penultimate-year moot

The 2023 penultimate-year moots involved the following topic: "The parties approach the court seeking an interpretation of s 10(2) of the Recognition of Customary Marriages Act 120 of 1998. In addition, they want the court to determine the validity and standing of the antenuptial contract, and the ancillary question of which matrimonial property regime governs the customary marriage." The following staff members acted as judges in the internal round of moots; Prof Juma, Prof Kruger, Dr Katiyatiya and Ms Ndamase. Prof Kruuse and Mr Bothma evaluated the heads of arguments that were submitted by the students. Interestingly, this year Miss Nxumalo organised a guest lecture by Justice Bloem of the High Court of Makhanda to come and teach the students how to draft their heads of argument. This was a treat for the students to be able to engage with a sitting judge in this manner and enriched their experience. For the moot finals the judges were sitting High Court Judge Madam Justice B Pakati (PE High Court), Adv Akhona Sidlai (Grahamstown Bar) and attorney Ona Xolo (LRC). In the spirit of women's month, the bench constituted all females. This successful event was co-ordinated by Ms Nicholene Nxumalo of the Faculty of Law. The finalists, Oyama Mzayidume & Bongani Mpande (On behalf of the plaintiff). And Panashe Mudzamiri and Johwani Mutasa (on behalf of the Defendant) went head to head and Ms Oyama Mzayidume emerged as winner of the Best Speaker Award. The plaintiffs took the win after delivering successful oral arguments. Mr Panashe Mudzamiri was awarded the runner-up award. Overall, this was a very festive event which was well attended by staff and students, full of drama and comedy.

EXTERNAL MOOTS

International Trade Law Moot

In 2023, the students in the Faculty of Law participated in various external moots. We mention a few of those moots here just to highlight the fact that we have a strong mooting tradition and are well respected across the continent and the globe. A team of four students,

Tapiwa Madzima (team captain), **Franciscus Crouse**, **Amanda Magodo** and **Sovash Chetty**, represented our Faculty at the John H Jackson Moot Court Competition (JHJMCC). This is a prestigious global competition that challenges students to work together as a team on a complex trade-law fictitious case that is drafted by an external panel, and adjudicated by trade law practitioners, academics, and competition alumni. The team came third in the African rounds held in Ghana in March and represented the continent at the finals in Geneva in July.

The Rhodes University team represented by **Taonga Phiri** and **Tinashe Hlako**, also participated in the African Human Rights Moots Competition held in Kumasi, Ghana in September.

The Faculty also participated in the Child Law Moot Competition held in Pretoria and the Kate O'Regan Moot Competition held in Cape Town. The students who competed in the Child Law Moot were **Christopher Matthews** and **Amohelang Hlalele**. Two teams of **Precious Katamelo**, **Amanda Magodo**, **Kiora Soke** and **Chimwemwe Phiri** represented our Faculty at the Kate O'Regan Moot Competition.

STAFF NEWS

Siphuxolo Somandi joined the Faculty as a lecturer in July. Mr Somandi's area of specialisation is procedural law. In August, **Prof Charlene Emma Lubaale** resigned to join her family in the United Kingdom.

STAFF ACHIEVEMENTS

Research

Publications by staff, including visiting professors, and postgraduate students over the past year in national and international publications:

Book chapter

Kruuse, H and Mwambene L: 'Beyond the legal debates: An African Feminist response to support victims of ukuthwala in South Africa' in Ebenezer Durojaye, Johanna Bond and Satang Nabaneh (eds) *Harmful Practices and Human Rights: An International Perspective*. (2023)

Journal Research Publications

Kruuse H and Harnett H: 'Proper Financial Planning and Divorce: The failure to consider the antenuptial contract LW V CW (12866/2014) 2020 ZAWCHC 86 (26 August 2020)' 2023 *TSAR* 822.

Ndyulo, L: 'Protecting the right to identity against catfishing: what's the catch' (2023) 44 *Obiter* 308–330. (a former LLM student)

Research Papers Presented at Academic/Scientific Conferences

Van Coller EH attended the Tenth Annual Conference on Law and Religion in Africa in Abidjan, Cote d'Ivoire, from 14–17 May 2023.

Lubaale EC delivered a keynote address at the Colloquium on restorative justice hosted by the National Council for Correctional Services. The event took place at OR Tambo Protea Hotel, 20 June 2023.

Lubaale EC 'What does intersectionality have to do with violence against the Black woman in South Africa' A paper presented at conference in Bangkok Thailand.

Lubaale EC 'Intersectionality and the maternal health rights of refugee women in Uganda' A paper presented virtually at the Dullah Omar Institute at the University of the Western Cape, 28 July 2023.

Glover G 'The legality and enforceability of non-disclosure agreements' A paper presented at the Private Law and Social Justice Conference at NMU, 8–9 August 2023.

Kruuse H 'Update on SALRC Project 100E: Review of Aspects of Matrimonial Property Law Discussion Paper 160' Presented at Family Law Colloquium, University of Johannesburg 7–8 September 2023

Kruuse H 'Project 100E Review of Aspects of Matrimonial Property Law: Issue Paper 41: An update' Presented at the Miller Du Toit/UWC Family Law Conference, Cape Town, March 2023 (on invitation).

Other involvement

Besides conference participation, staff also engaged in a number of other research and teaching related activities:

The family and customary law LLM/PhD students attended a writing retreat 1–3 June in Kenton where they spent two days writing up particular chapters of their theses. The retreat was organised by Prof Helen Kruuse.

Nxumalo N presented a seminar on African customary law and decolonial studies on 6 September 2023.

Rahim S participated in two MS Teams International Trade Law Webinars with Webber Wentzel (Johannesburg Office) on 12 April 2023 and 13 April 2023. He also met with the Competition Commission via MS Teams: ‘Strategic Relations: Competition Commission of South Africa’ on 20 April 2023.

The faculty hosted a successful Research Pomodoro on Wednesday, 9 August 2023. Prof Van Coller coordinated the event. Four staff members (**Prof Helena van Coller; Dr Luyando Katiyatiya; Mr Philip Bothma; Ms Yolani Ndamase**) and a visiting Professor from NWU University (**Prof Helene Combrink**) spent some quiet time focussing on research.

FACULTY EVENTS

The faculty hosted several events in the past year.

LLB Orientation

The orientation for incoming penultimate-year LLB students was very successful. Unlike the previous years, we had face-to-face engagements. The incoming LLB students were given an

overview of the LLB curriculum and afforded an opportunity to meet and engage with lecturers of the various courses. They were also briefed on research matters, LOA procedures and general faculty expectations. This year we were privileged to have former LLB students talking to the new students.

Faculty opening

The Rhodes University Law Faculty kicked off its 2023 academic year by celebrating the achievements of academic staff and students alike in a very successful opening event. The guest of honour at the event was Xolani Nyali of Bowmans. Mr Nyali is a former student of the Faculty and a partner at Bowmans. He shared his experience at Rhodes and gave students useful tips for preparing themselves to life after university and careers in the legal profession.

Visiting lecturers

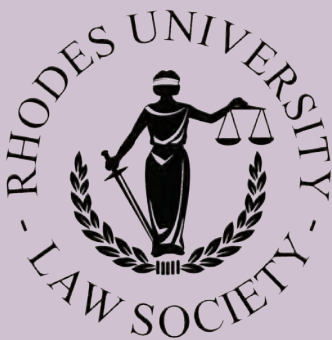
The Faculty bid farewell to one of their longest serving Visiting Professors, Judge of Appeal Clive Plasket, on 3 October. The Faculty hosted a public lecture and special dinner afterward with guests, including the Chancellor of the University, the Honourable Justice Lex Mpati, and retired Judges Froneman, Pickering and Roberson. Plasket was lauded for his enormous contribution to law in South Africa through his varied roles as lawyer, professor and judge.

We wish all the students well in the coming November exams and for the final-years, a successful completion of their LLB studies.



Law Society report

By Kiora Soke
Chairperson
2023



In 2023, the Rhodes University Law Society endeavoured to continue its lineage of student support in collaboration with the Law Faculty, our Sister Societies (Black Lawyers' Association and Ntuthuko Legal Activism) and the student body at large. This goal is all-encompassing, ranging from career assistance, community engagement, various activities and events (both of a social and professional nature) and so forth. This is no small feat, and with the addition of the hurdles that have arisen, we were put to the challenge. However, between a successful Law Market Day, attracting the likes of Class of 1999 alumnus and Webber Wenzel partner, Michael Denenga, hosting the very first Intervarsity Moot, and multiple events catered to the development of legal skills, it is sufficient to say we rose to it.

In addition to our core yearly events mentioned above and duties (including the Meet and Greet, the AGM and organisation of the faculty hoodies), the Law Society ran a collaborative community engagement sanitary product drive with the Black Lawyers' Association and Ntuthuko Legal Activism. This drive aims to be the advent of a community engagement tradition within the Faculty whereby a source of sanitary products can continually be made available at the Faculty to our students and anyone else in need through donations.

Further, we hosted several events as a part of our mooting portfolio, including a student-run workshop, our annual Internal Moot in collaboration with Webber Wentzel, and a Debate Exhibition with the Debate Society, which aimed to marry the art of debating and mooting. The result being an intersocietal partnership, learning new things and having fun. The topic was 'This House Believes that The Adversarial Nature of the South African Legal System Undermines the Pursuit of Justice'.

A core aspect of Law Society is cooperation – lending support when the need arises and, in turn, having that support matched. Through the various Faculty events where we lent a hand and the background work that went into every occasion, a special thank you goes to the committee for embodying that support: Obakeng Botsheleng (*vice-chairperson*), Peter Classen (*secretary*), Chimwemwe Phiri (*treasurer*), Sonti Nelani (*social engagement officer*) and Atlegang Mmesi (*In Camera editor*). Further, our gratitude extends to Ms Mwellie, who exemplified support, without whom our efforts would have surely fallen flat. To Mrs Comley, a foundational part of this Faculty, your good work does not go unnoticed. Lastly, the Faculty, the societies we worked with, the firms we collaborated with, and the students – we thank you. We are well aware that it takes a village, and we hope that this symbiotic relationship that has emerged will continue.

In the Constitutional judgment of *Port Elizabeth Municipality v Various Occupiers*, Sachs J said it best that ‘the spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern’.

Meet and Greet

On 14 July we hosted our Meet and Greet at Steve Biko. This was late in the year for such an occasion, however the difficulties regarding the sign-up processing that all societies experienced did not deter our efforts to make this a memorable night. And it certainly was. It is an occasion where law students can let their hair down, momentarily forget about submissions, and dance the night away. This event provides fertile ground for camaraderie, and we look forward to this evening becoming a fond memory that many students look back on in years to come.

Intersarsity Moot

It is not often that we are afforded the opportunity to spar with our neighbouring universities. A foundational aspect of this society is to build upon these chances to flex our legal skills externally and internally. The question pertained to an international-law crisis regarding a warlord who committed egregious acts. It was interesting to see our participants (Rhodes University, University of Fort Hare, Nelson Mandela University, and Walter Sisulu University) present their arguments. Being a part of the planning of this event was an honour. A special congratulations to the participating Rhodes University teams: Muhammad Munga, Chris Matthews, Daniel Nyanzi and Nondyebo Mnqudaniso. Moreover, our deepest gratitude goes to the adjudicators: Professor Rosaan Krüger and Dr Luyando Katiyatiya from Rhodes University, Mr Wongalethu Simayile from Walter Sisulu University, and Dr Ntandokayise Ndlovu from the University of Fort Hare. Thanks too goes to the Student Litigation Society for their assistance.

Law Market Day

As the flagship event of the year, a lot of planning and effort goes into the Market Day. Further, as the first major event that takes place, a lot of effort goes into ensuring its success. Obviously, there is a formula to follow. However, we have noticed that the shift from COVID to post-COVID has resulted in firms hesitating to engage physically with our Faculty as they once did, instead opting for online events and promotions. Regardless, the event held its own. In addition to the firms known to take part, we had the likes of Stein Corp and the National Prosecuting Authority, offering an opportunity for students to engage in the alternative graduate opportunities that exist.

Market Day is always a lovely experience involving networking, interviews and being a hub for essential information on bursaries, vacation programmes, articles and areas of law in which to specialise. Firms that were unable to attend the event offered subsequent online presentations. We also had one-on-one presentations on the

day with Webber Wentzel and the Centre for Applied Legal Studies, allowing students the opportunity for a more intimate opportunity to gain further information.

We are so grateful to the firms who assisted in actualising our vision, especially the firms who sponsored us and who made the work that needed to be done much easier. To Bowmans, ENS, the NPA and Webber Wenzel—thank you.

To Adv Renaud, we appreciate your assistance, advice and, most importantly, guidance.

Finally, despite the committee's challenges with administrative issues regarding the finance department and the SRC, I am proud of our resilience and what we achieved. It has been far from easy, but I am well aware of the background work put into keeping the ship afloat, and you deserve all your flowers. Let this year be a contribution to the vision set for the Law Society, and may that vision grow in leaps and bounds into the future.



Black Lawyers Association report

By Tapuwa Chamboko
Chairperson
2023



The Black Lawyers Association Student Chapter (BLA) is a society aimed at empowering and uplifting university students who aim to pursue a legal career. The objectives of the society include a commitment to social transformation and the empowerment of women and historically disadvantaged persons. It seeks to actively develop programmes to create a diverse and unified legal education system and society.

The 2023 year has been a challenging one for the society and its esteemed reputation. The year began with the committee losing crucial members with the resignation of the chairperson and the deputy chairperson. The remaining members of the committee had to come together and restructure the leadership for the continuation of the society. In addition to this, there had not been a satisfactory handover from the outgoing committee. There were therefore many aspects regarding how societies work in the institution and the preparation of events that required us to seek guidance from outside the committee. In spite of these challenges, the BLA was able to stay afloat and takes delight in having successfully elected a diverse and promising 2024 committee.

SUBSCRIPTIONS

The number of subscriptions to the society has seen a decline over the recent years and this year, coupled with its challenges, was no exception.

The SRC hosted a Societies Extravaganza at the beginning of the year. A limited number of the BLA committee attended and set up a booth to interact and recruit potential members. This was not as successful as the society would have hoped, however, since about sixteen students signed up from this initiative.

The SRC in the second semester opened up applications for those who were unable to sign up in the first semester.

The BLA committee, through our social media and word of mouth, managed to recruit several more members.

EVENTS HELD IN 2023

Meet & Greet

The BLA held its Meet and Greet on the 10th of August 2023, at the Rat & Parrot. The event was successful, and attendance exceeded what we had anticipated, with roughly 35 people in attendance. The BLA committee, members, and potential members of the society socialised over food, drinks, and good music. The activities for the night included karaoke and a law-related 30 Seconds game. The game received great reviews as those who were in attendance appreciated the innovative and 'fun meets law' theme.

Women's Day event

The planned Women's Day event was to be held in collaboration with Ntuthuko Legal Activism in the first week of the fourth term, which would have been the last week of Women's month. The plans for this event could not be carried out as a result of some administrative challenges faced by the other society. Sadly, due to limited funds and lower subscription numbers, the BLA could not afford to continue with this event on its own.

AGM and 2023 Committee Elections

The BLA AGM was held on the 12th of October, again at the Rat and Parrot. A dynamic incoming committee was elected, and all the portfolios were successfully handed over. The BLA is confident that this new committee will make great strides in restoring the society's stature and we are quite excited for what they have in store for the society.

COMMUNITY ENGAGEMENT

The BLA participated in a joint venture sanitary pad drive with the Law Society and Ntuthuko Legal Activism. It ran from 5 May, and the committees of these societies decided that it be extended until the end of the academic year. A collection point was set up at the Faculty library for members of these societies, as well as the Faculty at large, to donate sanitary pads. The committee members of the BLA all pledged to donate several pads. The sanitary pads that were collected are available at various locations at the Faculty to assist those who may be in need.

CLOSING REMARKS

A special mention and massive thank you to the initial 2023 committee members who were not discouraged by the uncertain and rocky start of the year, remaining optimistic and committed to the society throughout: Orita Ndou (Deputy Chairperson), Nozipho Lukhele (Secretary), Kwanga Nomnga (Treasurer) and Tintswalo Baloyi (Projects Manager).



Moot Club report

By Chimwemwe Phiri
Chairperson 2023

The Law Society Moot Club has had a very successful year. We hosted and participated in various internal and external mooting competitions throughout the year. Our notable achievements are hosting our first-ever Intervarsity Moot Court Competition and our 3rd Annual Internal Moot Court Competition, sponsored by Webber Wentzel, both of which were a great success!

Intervarsity Moot

The Rhodes University Moot Club hosted our first-ever Intervarsity Moot Court Competition in collaboration with the University of Fort Hare, Nelson Mandela University and Walter Sisulu University. In the interest of objectivity, the Student Litigation Society set a moot question. The topic dealt with whether a warlord who has committed crimes such as murder and treason qualifies for asylum in accordance with the Refugees Act of 1998. Participants had to determine whether the crimes in question could be classified as political crimes and whether the crimes constituted extraditable offences.

The Moot took place on 12th August 2023, with two teams from each university competing. We had four adjudicators: Professor Rosaan Krüger, Dr Luyando Katiyatiya from Rhodes University, Mr Wongalethu Simayile from Walter Sisulu University and Dr Ntandokayise Ndlovu from the University of Fort Hare. After all the gruelling court sessions, the team that came out victorious was from Nelson Mandela University, winning both the overall Moot and Best Speaker Award. A huge congratulations to their participants for their impressive performance.

A special thanks goes out to the Student Litigation Society for setting our moot question and to our adjudicators for availing themselves for this amazing experience for our participants. This moot was the first of its kind, and I hope all the Moot Club chairs of each university build on the foundation laid, as this is an exciting opportunity for students to engage in argument about the law actively.

Internal Moot Court Competition, sponsored by Webber Wentzel

The annual Internal Moot Court Competition, which Webber Wentzel sponsors, was held for the 3rd time by the Moot Club. All law students, from those doing Legal Theory 1 to those in their final year of the LLB, were eligible to participate in this moot court competition. It is an amazing way to develop advocacy skills while competing against friends and classmates.

This year's topic was about the use of cannabis and the effect of the legal status of cannabis, particularly in the context of the relationship between the landlord and lessee. The legal position of cannabis has only recently changed, which presented an opportunity to explore further the law surrounding it. Participants had to deal with the interpretation of a tenant's rights to reasonable accommodation, the interpretation of 'private home' in the context of the use of cannabis in a leased dwelling, and the use of cannabis regarding another tenant's right to peaceful use and enjoyment of their rented premises.

The moot took place virtually on 30 September 2023. All participating teams had to present arguments for both applicant and respondent. The moot was adjudicated by Webber Wentzel staff; thank you to Hayley Warring, Snethemba Luhabe, Clio Edwards and Kanyiso Kezile for availing themselves for our participants. Following our judges' consideration of all arguments and intense questioning, the winning team was Team 02 comprising Blessings Chinganga and Sovash Chetty. This team also won Best Heads of Argument, and Ms Chinganga won Best Speaker. A big congratulations to them for these achievements!

Kate O'Regan Intervarsity Moot

The Moot Club also participated in this year's Kate O'Regan Intervarsity Moot Court Competition, facilitated by the University of Cape Town (UCT) Moot Society. This year's topic dealt with the rights of homeowners in a gated residential community regarding racial

discrimination through predictive policing, the limitation of the right to privacy in public areas, and unfair discrimination on the basis of disability in schools.

We registered two teams, and both teams went through gruelling rounds as both applicant and respondent. One team from Rhodes made it to the semifinals of the competition. The participants were Chimwemwe Phiri and Amanda Magodo. The team had the pleasure of appearing before legal heavyweights such as the honourable Justice Sachs and Judge Mohammed. The participants should be extremely proud of their performances because they met the highest standards of excellence and professionalism Rhodes University requires.

Moot Court Training Workshop and Debate Exhibition

The Moot Club also hosted a Moot Court Training Workshop. The workshop aimed to improve participants' legal research, drafting skills and teach them how to present oral arguments in mooting and, one day, practice! The workshop was facilitated by four experienced final-year students who competed in domestic and international competitions: Thabang Poshodi, Blessings Chinganga, Sovash Chetty and Franciscus Crouse.

Additionally, the Debating Society collaborated with the Moot Club to have a Debate Exhibition. The motion of the exhibition was about whether the adversarial nature of the South African legal system undermines the pursuit of justice. The teams comprised both debating and law society members. This was an interesting opportunity for students to develop their public speaking skills further whilst challenging themselves with the art of debating.

Closing Remarks

We wish the incoming Chairperson, Jowani Mutasa, and Vice Chairperson, Amanda Ngidi, a successful and fruitful tenure as they continue to raise Moot Club to new heights in 2024!

Thank you to the Law Faculty, particularly Professor Rosaan Krüger and Dr Luyando Katiyatiya, for adjudicating during our competitions and to Professor Graham Glover and Mrs Sarah Driver for reviewing the internal moot question.

A special thank you goes to Webber Wentzel, particularly Hayley Warring, former Moot Club co-chairperson 2021, for all the support she has given Moot Club this year. We hope to continue

this successful relationship in 2024 and beyond!

And last but not least, in the slightest, a MASSIVE thank you goes to my Moot Club vice-chairperson, Nyiko Shitlhavani. It has been an absolute pleasure working with you throughout the year. Your contributions were crucial in running the Moot Club, and I look forward to working with you in the future. Without your continuous help and support, Moot Club would not have had such a successful year.

Lecturer profile



By Atlegang Mmesi

Dr Luyando Katiyatiya Lecturer, Faculty of Law

Continuing with the theme of celebrating 100 years of women in law and reviving an old *In Camera* tradition, we thought it would be an honour not only to celebrate our female lecturers in the Rhodes Law Faculty, but also to conduct a profile of our new lecturer, Dr Luyando Katiyatiya.

Born in a small town in Zimbabwe, Dr Katiyatiya is an Advocate of the High Court of South Africa and a lecturer teaching Legal Interpretation, Labour Law, Partnerships and Trusts and Commercial Law 2. Dr Katiyatiya obtained her LLB degree at the University of Fort Hare (UFH) in 2006, her LLM at North-West University in 2008, and her LLD at Stellenbosch University in 2013. She went on to a Postdoctoral Fellowship at the University of Fort Hare in 2020. Throughout the course of her legal career, Dr Katiyatiya joined a consulting firm after her PhD for a period of three years. While at the firm, she got introduced to the CCMA, chaired disciplinary hearings, wrote briefs and did extensive research. Dr Katiyatiya proudly affirms that she is a researcher at heart, which she discovered in her second year when she did the Law of Contract, and which enabled her to obtain her postgraduate qualifications.

In 2019, she applied for pupillage in Johannesburg and says that it was an exciting challenge. 'It felt like redoing an LLB within six months!' She says that it was pupillage that taught her that you need to dig deep within yourself to achieve what you want. She indicated that there were few black female practitioners, especially advocates, in her journey as a legal practitioner and her experience of the

legal court system. At most, on a normal court day in Johannesburg, there would be perhaps two female legal practitioners and presiding officers. When asked whether there had been any changes in the legal fraternity, Dr Katiyatiya highlights that there has been an increase in female legal professionals and judicial officers who can juggle their legal careers and personal lives very efficiently. However, she reiterates that there is still more work to be done as there still remains little regard and an underestimation of the professionalism and work ethic of female legal practitioners.

When asked by the editor of *In Camera* what she hopes to bring to the Law Faculty as a lecturer and legal practitioner, Dr Katiyatiya said

that she hopes to bridge legal theory and legal practice in her teachings, promote more research and encourage students to pursue postgraduate studies, teach students how to merge academia and legal practice, and unsilo the legal fraternity. She believes that there is so much more that law students can do as there are more opportunities outside of trying to get articles.

In her last words, Dr Katiyatiya wanted to share her pearls of wisdom with all law students, particularly female students. 'Your why will change, and that is okay. Take up space wherever you can. Participate in your university societies, writing competitions and moot competitions. Do not give up, remain assertive and fight for the things you want.'

The Beauty and Terror of the Caveat Subscriptor Rule



Tashinga Sean Njesera: Second-year LLB

Introduction

It is no secret that South African law is replete with common-law rules that have existed since their inception in the early English law days. Many of these principles have been received into South African law via our colonial sources. Of particular importance to the discussion at hand is the *caveat subscriptor* rule, which has managed to remain prominent in South African contract law today. This article will not only seek to detail the simplicities and complexities of the common-law *caveat subscriptor* rule but will also strive to unravel the beauty (advantages) and terror (disadvantages) that comes along with the implementation of this peculiarly interesting rule in South Africa.

What is the rule?

The *caveat subscriptor* rule requires that any contracting party who signs a contractual document will be bound by all the terms contained in that particular document, regardless of whether or not they have read them or were subjectively willing to consent to them.¹ In other words, the Latin term *caveat subscriptor* means ‘let the signatory to the document beware’, indicating that reading a draft contractual document before signing it is vitally important, or trouble could ensue. The usual outcome is that once the

document is signed, the signatory cannot deny that they are bound by its terms. This assertion was well established in *George (Pty) Ltd v Fairmead*,² where Fagan CJ pointed out that in instances where a person opts not to read the contents of a contract, but signs it, they run the risk of being bound by it and cannot allege that ignorance of the contents was a *justus error* (mistake).

Where is the rule applicable in South African contract law?

The *caveat subscriptor* rule establishes itself in cases where one contracting party alleges that they entered into a contract by mistake or unaware of the obligations they were to fulfil as a result of signing over ‘the dotted line’.³ Although South Africa does not apply the doctrine of *iustus error* in its original Roman form, the courts have loosely adopted the phrase ‘*iustus error*’ and substituted it for a mistake. As such, most judgments referring to *iustus error* mean that a mistake recognised by law has occurred. In modern South African law, the caveat subscriptor rule is premised on the reliance theory, which states that in scenarios where the parties have reached no true subjective agreement, a parties will automatically be bound by a contract if they have created the reasonable impression that they

¹ AJ Kerr *The Principles of the Law of Contract* 6 ed (2002) 102.

² 1958 (2) SA 465 (A) 472–473.

³ D Hutchison and C Pretorius *The Law of Contract in South Africa* 4ed (2022) 107–111.

intended to be bound by it.⁴ In the English case of *Smith v Hughes*,⁵ Blackburn J highlighted that subjective agreement might not be present, but the contract will be recognised if one party, by his outwards acts, creates the reasonable belief in the mind of the other party that an agreement has been reached and the party now wants to rely on the alleged agreement.

A myriad of cases have shed light on the use of the *caveat subscriptor* rule in situations where one party alleges reasonable reliance on a contractual document. One such example was the case of *Slip Knot Investments 777 (Pty) Ltd v Du Toit*,⁶ where Mr Du Toit attempted to escape contractual liability arising from a suretyship agreement he had signed without reading it. The court, in its *ratio decidendi*, postulated that Mr Du Toit was a man who had concluded many financial contracts prior because of the profession he had established himself in. Therefore, simply alleging that he had not read the suretyship agreement – even though it had passed through many stages of witness confirmation – was not a convincing argument. The court applied the *caveat subscriptor* rule in confirming that Mr Du Toit's signature bound him to the obligations of the suretyship agreement. This was a hard lesson for Mr Du Toit, who was ultimately ordered to pay the appellants a sum of R7 950 000. As this case showed, there is “beauty and terror” that arises as a result of the *caveat subscriptor* rule.

The beauty of the *caveat subscriptor* rule

The beauty of the *caveat subscriptor* rule seems to lie in providing certainty about the enforceability of contracts. If one party expresses an intention to sign and enter into a contractual agreement by a signature, that party is surely expected to comply with the bargain – figuratively and literally. Such was the case in *Slip Knot v Du Toit*.⁷ Additionally, because of the certainty that comes with the *caveat*

subscriptor rule, it creates a suitable environment for the enforceability of contracts if disputes arise that need to be resolved by the courts. Hence, reasonable reliance on a contractual document establishes itself through the aid of the *caveat subscriptor* rule.

Additionally, the *caveat subscriptor* rule reinforces the contractual principle of *pacta sunt servanda*, which asserts that the obligations created by the parties at the time the contract was concluded must be adhered to and fulfilled by them.⁸ Therefore, one can begin to acknowledge that the rule works hand in hand with the *pacta sunt servanda* principle in ensuring that contractual obligations are fulfilled. The *caveat subscriptor* rule, therefore, instils confidence in the parties that their rights and interests will be protected and that they can rely on the promises made by the other party. It is also in this light that one understands that the *caveat subscriptor* rule protects against potential fraudulent or desperate claims by parties who may later attempt to evade contractual obligations by alleging their ignorance of the terms in the contract.

The terror inflicted by the *caveat subscriptor* rule

To the contrary, in as much the *caveat subscriptor* rule might be viewed as advantageous in South African contract law, one cannot help but point out the hidden terror that this rule inflicts on contracting parties. For starters, the *caveat subscriptor* rule allows for instances where unequal bargaining power might emerge. For instance, the large contractual power differentiation between a not-so-well-educated natural person and a huge corporate entity such as a bank provides a breeding ground for unequal bargaining power. The natural person might not necessarily possess the know-how and expertise necessary to satisfy contractual obligations, and so these contractual relationships often lead to morally unfair outcomes where

⁴ TA Woker ‘Caveat subscriptor: how careful are we expected to be?’ (2003) 15 *SAMLJ* 109 at 110.

⁵ (1871) LR 6 QB 607.

⁶ 2011 (4) SA 72 SCA.

⁷ 2011 (4) SA 72 SCA.

⁸ N Kubheka ‘Pacta sunt servanda – which approach to follow?’ (2019) 19 *Without Prejudice* 36 at 36.

smaller parties are required to adhere to onerous contractual obligations that they might not have fully understood when they signed these contracts.

Furthermore, the *caveat subscriptor* rule has the potential for abuse because natural or juristic persons may exploit the rule by using severely complex and cryptic jargon in contracts to hide unfavourable terms. If unsuspecting parties enter into such contracts, the *caveat subscriptor* rule would ultimately force them to honour their performances, particularly because of their signatures 'on the dotted line'. Additionally, the *caveat subscriptor* rule does not seem to care about the purely genuine mistakes of people who innocently fail to grasp the implications of certain contract provisions. The *caveat subscriptor* rule is a blunt one: so long as a signature is present on the contractual document, the person will be held to the obligations in the document.

However, despite the fact that the *caveat subscriptor* is strict in its approach and enforcement, it is worth noting that there has been a significant watering down or policy shift in terms of enforcing this rule in South Africa, particularly from the dusk of the 20th century up to now. The courts have begun to consider some of the unfair power dynamics between significantly large corporate entities and individuals who might be at a reasonably lower level of contracting intelligence. Because of this, the courts now tend to reduce the effect of the *caveat subscriptor* in such instances. An example of such an instance in which the court rejected reliance on the *caveat subscriptor* rule can be taken from the case of *Standard Bank of South Africa Ltd v Dlamini*.⁹

The aforementioned case involved Mr Dlamini, who was a functionally illiterate Zulu speaker who had bought a car from a secondhand car dealer acting as Standard Bank's agent in facilitating the bank's financing of the vehicle purchase. Mr Dlamini, however attempted to return the car and claim a refund after just four days, alleging that the car was defective. The bank,

in response, averred that because Mr Dlamini had not notified the bank of the termination of his contract in the manner prescribed by a certain clause in the agreement, his termination was merely a voluntary surrender in which the bank could still claim any payment shortfall due by him under the agreement. In its *ratio decidendi*, the court assessed the bank's reliance on the *caveat subscriptor* and concluded that since Mr Dlamini was illiterate, the terms of the agreement should have been explained to him more clearly and thoroughly. As such, the *caveat subscriptor* failed to apply in this instance, even though Mr Dlamini had signed the purchase agreement.

Conclusion

Considering all of the technicalities entailing the *caveat subscriptor* rule, one ultimately becomes inclined to believe that this rule has its pros and cons in terms of applicability in contractual disputes. It is important to note that the *caveat subscriptor* rule serves as a warning to every individual who attempts to sign a document without properly reading it. Escaping one's signature is a feat that at first glance, might seem nearly impossible because of the binding force of the *caveat subscriptor* rule. But it does provide a salutary warning: careful consideration must always be taken before one takes the decision to enter into a legally binding contractual agreement. However, in as much as this rule is extremely difficult to escape, the South African courts have become more lenient in applying the *caveat subscriptor* in certain cases, influenced by developments in the underlying reliance theory of contract formation. Although the South African courts have been prepared to recognise suitable cases to recognise that there are situations of unreasonable reliance even where a contract was signed, this should not be seen as some sort of an excuse for those signing and entering into written agreements ignorantly. Most signed contracts will usually be enforceable. The warning remains important for, as the *caveat subscriptor* asserts, 'let the signatory to a document beware'.

⁹ 2013 (1) SA 219 (KZD).

Formal or Informal Inquest Proceedings – *Todd v Magistrate, Clanwilliam*. Was the High Court Correct in Dismissing the Applicant’s Review Application?



Thabang Poshodi: Final-year LLB

1. Introduction

The case of *Todd v Magistrate, Clanwilliam*¹ is one of many cases brought on review concerning findings from inquest proceedings. The main focus of this article is whether the High Court in *Clanwilliam* was correct in dismissing the applicant’s review application against the findings of an inquest. This article commences with the *Clanwilliam* judgment, considers legal principles relating to review and inquest proceedings, and assesses the correctness of *Clanwilliam* in the context of inquest proceedings.

2. The *Clanwilliam* Judgment

2.1. Facts

The application culminated from an incident where the applicant’s wife (“the deceased”) died due to a fall from a cliff in a mountainous area.² The applicant was the only witness to this tragic incident.³ Since foul play was suspected, the Magistrate held an inquest in terms of section 16(2)(d) of the Inquests Act (“the Act”),⁴ and it was found that the available circumstantial

evidence strongly indicated foul play in the deceased’s death.⁵ The applicant sought to challenge these findings by way of review – he sought an order declaring that the deceased’s death was not brought about by any act or omission on his part or on the part of any person as he argued that his wife had slipped down from the cliff to the bottom and died accidentally.⁶

2.2. The court’s decision

The court held that it would not review the findings for the following reasons. First, the court held that although the Magistrate had dispensed with oral evidence and decided the matter on the papers, the applicant (duly assisted by legal counsel) had requested the Magistrate to dispense with oral evidence, and therefore he suffered no prejudice.⁷ Importantly, the Magistrate’s decision to hold an informal inquest was supported by the applicant.⁸ Second, the court held that the Magistrate was correct to find that there was a *prima facie* case against the applicant after considering all the affidavits from

¹ 2023 (1) SACR 481 (WCC).

² *Clanwilliam* para 1.

³ *Clanwilliam* para 1.

⁴ Act 58 of 1959.

⁵ *Clanwilliam* para 2.

⁶ *Clanwilliam* para 8.

⁷ *Clanwilliam* para 32.

⁸ *Clanwilliam* para 33.

witnesses and the applicant's conflicting versions of what happened on the fateful day.⁹ The court took into account the conflicting versions by the applicant about what had happened,¹⁰ and took the view that the applicant had provided no plausible explanation of what really caused the death of his wife.¹¹

3. Legal Principles

3.1. Review application

Whereas an appeal is based on the merits of the case and findings of a lower court, a review application is an enquiry as to whether the decision was reached in an appropriate manner.¹² The review process is thus premised on whether there was a failure to comply with the relevant rules and procedures and whether any failure results in injustice and unreasonable order, which is a gross irregularity in the proceedings.¹³ It must be noted that review application is a constitutional right,¹⁴ and the court in *S v Sandla* held that review proceedings ensure the right to a fair trial.¹⁵ The right of review thus offers the accused person an opportunity for an adequate reappraisal of every case, and it is the right of review that has empowered courts to ensure standards of fairness, justice and due process of the law.¹⁶ Any party that seeks to challenge inquest findings must, though, bring a review application.¹⁷

3.2. Inquest proceedings

Where no criminal proceedings are instituted in connection with death arising from unnatural

causes, inquest proceedings are conducted in order to determine the circumstances and the cause of death in question.¹⁸ Unlike criminal proceedings, where proof must be beyond reasonable doubt, findings from inquest proceedings are to be made on a *prima facie* basis.¹⁹ Inquest proceedings are immediately terminated when the prosecutor decides to proceed by way of criminal proceedings instead.²⁰ The standard of proof in inquest proceedings is whether the judicial officer, based on the evidence placed before him/her, believes that the deceased death was not accidental nor suicidal.²¹

The main purpose of inquest proceedings is not necessarily to prove a person's guilt but to ensure that, if possible, where guilt exists, it will not remain hidden.²² It is also worth quoting the Appellate Division in *Marais NO v Tiley*:

*'The underlying purpose of an inquest is to promote public confidence and satisfaction; to reassure the public that all deaths from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences, and so that persons responsible for such deaths may, as far as possible, be brought to justice.'*²³

4. The Correctness of *Clanwilliam*

4.1. Did the Magistrate err?

It is trite that non-compliance with procedural rules of the Act vitiates fairness and justice.²⁴

⁹ *Clanwilliam* para 36.

¹⁰ *Clanwilliam* para 37.

¹¹ *Clanwilliam* para 38.

¹² E Fergus 'The Distinction between appeals and reviews – defining the limits of the Labour Court's powers of Review' (2010) 31 *Industrial Law Journal* 1556.

¹³ J Joubert *Criminal Procedure Handbook* 13 ed (2020) 458.

¹⁴ Section 35(3)(o) of the Constitution of the Republic of South Africa, 1996.

¹⁵ [1996] 2 All SA 202 (Tk) at 206.

¹⁶ *Ibid.*

¹⁷ Section 18 of the Act.

¹⁸ *Clanwilliam* para 19.

¹⁹ *Hirt & Carter (Pty) Ltd v IT Arnsten NO* [2021] ZASCA 85 para 18.

²⁰ C Theophilopoulos and S Tuson 'Dissecting The Dead In Order to Safeguard the Living: Inquest Reform in South Africa' (2016) 27 *Stell LR* 161.

²¹ *Clanwilliam* para 35.

²² *De'Ath (Substituted by Tiley) v Additional Magistrate, Cape Town* 1988 (4) SA 769 (C) at 775G.

²³ 1990 (2) SA 899 (A) at 901F-G

²⁴ *Timol v Magistrate, Johannesburg* 1972 (2) All SA 274 (T) at 282.

Section 13(2), read in conjunction with section 10(1), gives the judicial officer the discretion either to hold a formal public inquest or an informal one.²⁵ For an informal inquest, the Magistrate can admit the evidence of a witness or suspect in the form of an affidavit made under oath, affirmation, or written interrogatories as a substitute for oral testimony.²⁶ It is submitted that the combined effect of sections 10(1) and 13(2) is that although the Magistrate in *Clanwilliam* had the discretion to dispense with oral evidence (and not hold a formal public inquest), such discretion was not absolute nor was it to be exercised arbitrarily or *mala fide*.²⁷ The discretion must be exercised in conformity with the spirit, policy, and objectives of the Act.²⁸

In terms of section 8(1) of the Act, it is imperative or peremptory that the judicial officer holds a formal inquest (i.e., cause persons or any particular person to be subpoenaed to give oral evidence) where the Attorney-General (i.e., the prosecutor) requests a formal inquest. The court in *In Re Mjoli* made it clear that section 8(1) of the Act leaves no discretion upon the judicial officer where the Director of Public Prosecutions makes a request that a formal inquest be held.²⁹ This means that although the judicial officer has the discretion to hold an informal inquest in terms of sections 10(1) and 13(2), such a discretion cannot apply in instances where the Director of Public Prosecutions requests a formal inquest as contemplated in section 8(1) of the Act.³⁰

Reverting to *Clanwilliam*, the DPP made the recommendation to hold a formal inquest, the Magistrate declined to do so.³¹ The High Court

was of the view that even though the Magistrate did not comply with the provisions of section 8(1), that in itself did not vitiate the inquest proceedings before the Magistrate.³² This view is, in my opinion, incorrect because the Magistrate was under an obligation imposed upon him by section 8(1) of the Act to hold a formal public inquest since the DPP made such a request. It is submitted that the decision by the Magistrate to hold an informal inquest was an irregularity. The Magistrate exercised his discretion on the wrong premise since he had to follow the peremptory procedural rules of section 8(1), notwithstanding the request by the applicant to dispense with oral evidence.

4.2. Material evidence?

The general rule is that inquests must be held in public with oral evidence.³³ In *Marais NO*, the court held that the general rule may only be departed from where the affidavits do not raise a dispute of fact or where relevant matters are conclusive, such as where it is certain that the death of the deceased was brought about by suicide or accident and not by the offence of another.³⁴ It is submitted that a public inquest must be held where a material dispute of fact exists that cannot be resolved by way of affidavits but only by calling witness testimony.³⁵ There is no full and fair inquiry on inconclusive or conflicting affidavits regarding relevant facts.³⁶

For instance, in the case of *In re Ohlson*, the deceased and his friends had experienced difficulties with swimming in the sea.³⁷ While the friends managed to get out, the deceased

²⁵ Theophilopoulos and Tuson 2016 *Stell* LR 175.

²⁶ Theophilopoulos and Tuson 2016 *Stell* LR 169.

²⁷ *Marais NO* at 903.

²⁸ Theophilopoulos and Tuson 2016 *Stell* LR 176.

²⁹ [1994] 3 All SA 591 (T) at 595.

³⁰ *Ibid*.

³¹ *Clanwilliam* para 28.

³² *Clanwilliam* para 31.

³³ Section 8 of the Act.

³⁴ *Marais NO* at 903B; Theophilopoulos and Tuson 2016 *Stell* LR 169.

³⁵ Theophilopoulos and Tuson 2016 *Stell* LR 176.

³⁶ *Marais NO* at 902I.

³⁷ 2008 (1) SACR 360 (E) at 362C.

vanished and was not seen again.³⁸ One of the issues the court on review had to consider was whether the Magistrate was correct to hold an informal inquest as opposed to a formal one.³⁹ The court on review agreed with the Magistrate's dispensing with oral evidence since it was not in dispute that the deceased had drowned in the sea because of strong currents.⁴⁰

Similarly, *Marais NO* also dealt with the issue of whether the Magistrate was correct in holding an informal inquest.⁴¹ The deceased died from injuries inflicted upon him by a group of men who had attacked him.⁴² The Magistrate decided to hold an informal inquest since the names of the attackers were not known; thus, making it impossible to identify them.⁴³ The Appellate Division disagreed. The Appellate Division held that there was an eyewitness who would have been able to positively identify the attackers and make a reliable identification.⁴⁴ Thus, a formal public inquest ought to have been conducted as there was a material dispute as to who were the attackers.⁴⁵

In *Clanwilliam*, there was a material dispute. This is because, whereas the applicant argued that he or his actions did not bring about the death of the deceased, the investigating officer and medical scientist held the contrary view.⁴⁶ Thus, the Magistrate's determination as to the deceased died was inconclusive and could not be determined on paper since a full and fair inquiry is only brought about by a formal inquest.⁴⁷ Therefore, although the case of *Clanwilliam* warranted a formal inquest, the Magistrate, however, showed no appreciation for the general rule. This was also a procedural irregularity.

5. CONCLUSION

Based on the reasons above, it is submitted that the decision of the Magistrate was reviewable because of an irregularity in the procedure the Magistrate adopted. The High Court was thus, in my opinion, incorrect in dismissing the applicant's review for two reasons: (i) there was non-compliance with the peremptory provisions of section 8(1) of the Act that placed an obligation on the Magistrate to hold a formal public inquest; and (ii) there was a material dispute of fact which warranted a formal public inquest.

³⁸ *Ibid.*

³⁹ 2008 (1) SACR 360 (E) at 363C-D.

⁴⁰ *Ibid.*

⁴¹ *Marais NO* at 901D.

⁴² *Ibid.*

⁴³ *Marais NO* at 904D.

⁴⁴ *Marais NO* at 903I.

⁴⁵ *Marais NO* at 905D.

⁴⁶ *Clanwilliam* para 10-4.

⁴⁷ *Marais NO* at 902I.

FINAL-YEAR CLASS OF 2023



Tintswalo Baloyi
“Long story short, I survived.”



Siseko Benya
“The people shall govern.”



Umar Butt
“The law is the public conscience.”
– *Hobbes*



Iman Cerfontein
“Do not wait for someone else to come and speak for you. It’s you who can change the world.” – *Malala Yousafzai*



Rukudzo Stacey Chakona
“May the good times never be forgotten, and may good times continue to roll”



Tapuwa Chamboko
“I’m not arguing, I’m just explaining why I’m right.”



Leeroy Nkosilathi Chenga
“Only a medicine man gets rich by sleeping.” – *African Proverb*



Sovash Chetty
“Practitioners are paid to determine what their case is about and to make a value judgment about what is required and what not; and not only to photocopy documents.
– Harms J in *Century City Apartments v Century City Property Owners* para 57.”



Tariro Chikukwa
“I came, I cried and I’m leaving!”



Chiedza Chikwehwa

"You never really learn much from hearing yourself speak."



Blessings Chinganga

"You can't see me." – *John Cena*



Franciscus Crouse

"Practitioners apparently also believe that the more they burden this court with paper the better for them. Perhaps they hope that the court will locate a winning fact that they have missed."



Mbongeni Dakamela

"Hinc orior."



Phumelele Dhlamini

"In the end, we only regret the chances we did not take." – *Unknown*



Chevandre Doyle

"The secret? When you do well, reward yourself and feel a sense of pride. When you don't do so well, cry, sleep it off, and pick yourself right back up and try harder next time."



Clio Glenister

"Everything you lose is a step you take. So make the friendship bracelets, take the moment and taste it." – *Taylor Swift*



Chelsea Hall

"No one knows what the future holds. That's why its potential is infinite."



Tinashe Hlako

"I'm not sure if I'm in law school or the Hunger Games."



Nomhle Jowa

"From the ashes of its destruction rises the mighty phoenix. Embrace the journey, it's one for the books!"



Vincenzia Links

"Your dreams are a poetic reflection of your soul's wishes. Be courageous enough to follow them." – *Dr Steve Maraboli*



Sandile Lubisi

"Time as it grows old, teaches all things."
– *Aeschylus*



Tapiwa Madzima

"Question everything." – *Vuchirai Gappah*



Lisa Mafuvadze

"It is never too late to be what you might have been."



Amanda Magodo

"The only game where the best players get to sit is on the bench."



Precious Maotoane

"Don't build an ark when it has already started raining."



Milca Matariro

"I learnt, I lived, I loved, I prayed, almost got knocked down but still gave my everything! Born to lead, confirmed at RU."



Fundiswa Mbanjwa

"Everyone suffers from anxiety Sisi." –
Professor Juma



Xolisa Mbayothi

“The dream has always been there, it needed to be searched for, fought for and worked for.”



Atlegang Mmesi

“Once you understand your why, you will outstand every how.”



Bridget Molopyane

“Ke na le modisa. Ke tla be ke hlohang.”



Mapula Moshoeu

“I have fought a good fight, I have finished the course and I have kept the faith.” – 2 Timothy 4 v 7 KJV



Bokang Mphuthi

“Ke sailo poppa. warra fela”



Tanyaradzwa Mugwagwa

“What? Like, it’s hard” – Elle Woods



Muhammad Munga

“I go to the club and lift the counter up cause I’m raising the bar.”



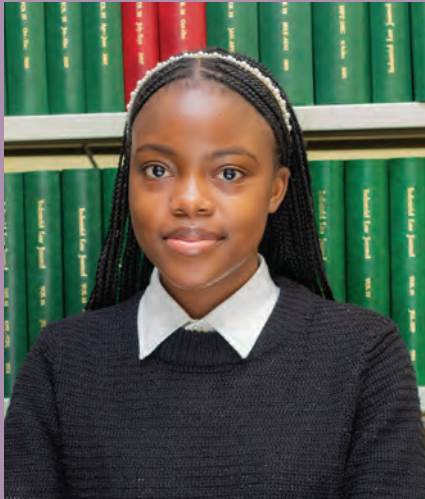
Vuya Nako

“Black lady courtroom!”



Charmaine Ncube

“For I reckon that the sufferings of this present time are not worthy to be compared to the glory which shall be revealed within us” – Romans 8 v 18



Silethemba Ndlovu
"Ad astra per aspera."



Thanyelani Ndlovu
"And still, I rise" – Maya Angelou



Gamuchirai Ndudzo
"Yeah the past was honestly the best but my best is what comes next. I'm not playing nah for sure." Yet to come, BTS



Mudiwa Pfupa
"Ndaabho."



Chimwemwe Phiri
"Success is loving life and daring to live it" Maya Angelou



Taonga Phiri
"She is like a wildflower, beautiful, strong, and resilient, even in the face of adversity."



Thabang Poshodi
"The study of law is a great exercise of the mind."



Siphe Putumani
"Never miss a good chance to shut up." – Will Rogers



Rosemary Ravhuhali
"To whom much is given, much is expected."



Duncan Seoke
 “Can you do it on a cold and rainy night in Stoke.”



Nomvelo Phemelo Shusha
 “Sorrows, sorrows, prayers.”
 – Queen Charlotte



Siphosethu Sikwana
 “Can someone airdrop me the *S v Makwanyane* case.”



Kiora Soke
 “LLB was easy. It was like riding a bike. Except the bike was on fire. And the ground was on fire. And everything was on fire because it was hell... But at least that means I’m hot.”



Stepfan Vaughan
 “The true man is revealed in difficult times.”
 – Epictetus



Luca Williams
 “Immerse yourself in the process.”



Simlindile Xolo
 “If we laughed too hard, offended too many people, we’ve done it right.” – Alexis Bass



Chumisa Yoke
 “Arguing may leave you feeling empty, but as a lawyer, it fills your plate with a stack of bread.”



Sibabalwe Zwakala
 “If you think you are too small to be effective, you have never been in the dark with a mosquito.”