



THE BENCH



A legal newsletter of the Judicial Officers Alliance of South Africa

Second Edition · September 2026



Mr Neelan Karikan, President of the Judicial Officers Alliance of South Africa, at his desk.

JASA exists for magistrates in every district and at every level. This edition carries that pledge, the SABC record, the court in Gqeberha, a member article from Tshitale on Twai and Molefe, and the law that keeps a Monday roll honest.

We represent the rights of magistrates across South Africa.

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A note from the President



Mr Neelan Karikan, President of the Judicial Officers Alliance of South Africa.

Mr Neelan Karikan · Founder & President of the Judicial Officers Alliance of South Africa · Senior Magistrate and District Court Judge

Dear colleagues, and hello again to the attorneys, advocates, prosecutors, traditional leaders, court staff and families who share the wooden benches with us.

August's first edition travelled further than we expected. Magistrates wrote from rooms with dead recording machines. Attorneys wrote from passages where a spoliation had been argued as if it were an eviction. A prosecutor wrote to say the tea-break cartoon had been pinned to a notice board. That is the point of a newsletter that is allowed to be human.

This second edition keeps the furniture you already know — a President's note, a case-law drawer, a page you can write on, footnotes that can be checked — and changes the subject-matter. We deal with the Independent Commission for the Remuneration of Public Office-Bearers, with the mental cost of the roll, with the mandament van spolie as it actually arrives on a Monday, with the Magistrates' Commission, and with the Madlanga Commission that the country cannot stop watching. We also print a finished member article: Magistrate Tebogo Mokgatle of Tshitale on *S v Twai* and *S v Molefe*,

and the first-appearance bench that has already seen a section 60(11B) form. We make room for the animals who never get a paragraph on a charge sheet unless a magistrate insists. We do not try anyone on these pages. We do tell our members how to sit while the country does.

Most of all we ask you to write back. This edition already prints one member. Magistrate Mokgatle sent the article. Send the next one. Send the feeling you cannot put in a judgment. Send a published piece and we will say where it first appeared. Issue 03 is still a drawer waiting for your envelope.

“Whether you resign or retire, we are still accountable as judicial officers. High Court judges are judges for life. It is the same cloth.”

— Mr Karikan, Newzroom Afrika, 1 June 2026

We are there for magistrates — every district, every level



Mr Neelan Karikan, President of the Judicial Officers Alliance of South Africa.

This page is the one JASA wants pinned next to the tea-break cartoon. The Judicial Officers Alliance of South Africa exists for magistrates. Not as a slogan. As a duty. District magistrates, senior magistrates, regional magistrates, acting magistrates, additional magistrates, and the colleagues who keep a periodical court alive on a Thursday in a town the Gazette still misspells — they are why this alliance was formed, and they are why it will not go quiet.

Section 165 of the Constitution vests judicial authority in the courts and requires every organ of state to assist and protect those courts. Section 166 lists the Magistrates’ Courts in the same sentence as the Constitutional Court. *Van Rooyen v The State* 2002 (5) SA 246 (CC) already held that magistrates are judicial officers, and that the arrangements under which they are appointed, paid, housed, transferred and disciplined form part of their independence. JASA’s work is to make those sentences true in a building that still has a dead recording machine.

We will represent the rights of magistrates across South Africa at every level that the Constitution and the Magistrates Act 90 of 1993 give us. That means the Independent Commission for the Remuneration of Public Office-Bearers and the Presidency on pay. It means Parliament, which must still approve the magistrates’ remuneration notice under section 12 of the Magistrates Act. It means the Magistrates’ Commission on appointments, transfers, leave and discipline. It means the Department of Justice and the Office of the Chief Justice on Phase 2, security, infrastructure and the definition of “court”. It means a colleague who has gone quiet, and a family that is carrying a reserved-judgment list home.

The pledge, in one block

JASA will speak for magistrates in every province and at every rank. We will not trade a district court for a headline. We will not accept that a magistrate is a departmental grade. We will take the structural pay gap, the workload, the security scare, the dead machine and the mental cost of the roll to every forum that will hear us — and to a court if a forum will not. We will do it without trying a colleague in a newsletter, and without leaving a junior officer alone with a week of GBV trials.

If you sit in Gqeberha or in Giyani, in Booyens or in Butterworth, in a regional court or in a periodical court that sits twice a month, this alliance is yours. Write to president@judicialalliance.org. Bring the vacancy list, the broken lift, the security scare, the judgment that has sat too long. We will put it on a page that has footnotes, and we will take it to the desk that can move.

On the air — SABC, Case in Point, Newzroom Afrika

The President of JASA has not been whispering. He has been live. The clips below are the public record of what this alliance has said to South Africa on SABC News, on SABC's Case in Point, on Morning Live, and on Newzroom Afrika. Watch them with the volume up. They are the same cloth as this newsletter: magistrates are judicial officers; retirement is not a shield; the pay gap is a structural fact; a prosecutor who is unprotected is a court that cannot sit; open justice and a fair trial have to live in the same room.



SABC News Case in Point — the studio from which the Alliance has spoken on open justice, fair-trial rights and the live broadcast of high-profile criminal trials.

Broadcast	What Mr Karikan put on the record	Watch
SABC News — 29 Apr 2024	Pay gap and workload. The lowest-paid magistrate should be pegged at least at 50% of a judge, as the Commission's own research once accepted.	youtube.com/watch?v=_NRzarMTWzo
Newzroom Afrika — 3 Jul 2025	The gap has not moved. A letter of demand went to the President. A special general meeting was called on litigation.	youtube.com/watch?v=RE35H3pc9Lg
Newzroom Afrika — 5 Aug 2025	Accountability for judicial officers is welcome. The JSC is the file for judges; the Magistrates' Commission is the file for magistrates. JASA will not try the merits on television.	youtube.com/watch?v=CIEy39lcA0w
CapeTalk / Lester Kiewit — 26 Nov 2025	Why criminal courts miss the 75% finalisation target: investigation, witnesses, Legal Aid, s 342A. Weinberg and Athlone as security warnings.	youtube.com/watch?v=nOiahAa8y6E
SABC News — 18 May 2026	Sibanyoni matter struck off the roll. A warrant for a no-show prosecutor is not ordinary. The court still has to sit.	youtube.com/watch?v=ObXvrtNrmpY

SABC Case in Point — 28 May 2026	Personal security for prosecutors on high-profile matters is not a perk. It is how a roll keeps a witness alive.	x.com/SABCNews/status/2060069185082839136
Newzroom Afrika — 1 Jun 2026	Retirement is not a get-out-of-jail-free card. High Court judges are judges for life. Lower-court judicial officers are the same cloth.	youtube.com/watch?v=on4m-v1ULhM
SABC Morning Live — 17 Apr 2026	Judicial independence is not a slogan. Politicising a magistrate from a podium is how a court loses the room.	x.com/MorningLiveSABC/status/2044985658150719672
SABC Case in Point — 20 Aug 2026	After a three-week restriction, live broadcast of a high-profile corruption trial. Open justice and fair-trial rights have to share a courtroom.	x.com/SABCNews/status/2090502781392060667

These appearances are not a substitute for a structural review. They are how a country hears that the officer who finalises most of its criminal work is still arguing for a machine that records, a package that matches the oath, and a Commission that can finish a complaint before the colleague retires. If a station invites JASA again this spring, the answer will be yes.

“That must change. It cannot be. We have disgruntled magistrates.”

— Mr Karikan, Newzroom Afrika, on junior prosecutors earning more than senior magistrates

A court with two names — Gqeberha



Gqeberha Magistrates' Court, 584 Govan Mbeki Street, North End — the 1934 Law Courts that still do the work Port Elizabeth used to send them.

The city is Gqeberha. The Gazette said so on 23 February 2021. The name is isiXhosa — originally the name of the Baakens River and of old Walmer Township — and it begins with a click that still trips a visiting attorney on the first Monday. Say it slowly: the click, then qe-be-rha. The Windy City. The Friendly City. Nelson Mandela Bay. The building at 584 Govan Mbeki Street, North End, is the Gqeberha Magistrates' Court. The lintel, on a stubborn afternoon, still argues for Port Elizabeth.

That argument is the fun of this page and the seriousness of it. A magistrate in the Eastern Cape hears Gqeberha on the roll, writes Gqeberha on the order, and walks out under a stone that has not yet caught up. The Department of Justice was, years ago, going to tidy the magisterial-district names when the districts themselves were rationalised. Some lintels are patient. JASA's point is not the spelling. It is that the officer inside that building is a judicial officer of the Republic, whether the signwriter has arrived or not.

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Today's name	Gqeberha Magistrates' Court
The name the stone remembers	Port Elizabeth Magistrates' Court, North End
Street	584 Govan Mbeki Street, North End, Gqeberha, 6001
Switchboard	041 502 5111 · Court manager 041 502 5133
The building	The 1934 Law Courts — Public Works Department — still sitting, still serving as the magistrates' court.
Fun fact for the tea room	Gqeberha is a click. Practise it before you call the roll. The Baakens still flows. The wind still arrives on time.

JASA's Eastern Cape members sit in this building and in the branch and periodical courts that feed it. Gelvandale, KwaNobuhle, Kariega, Humansdorp, Hankey — the map is longer than a Johannesburg attorney thinks. When we say we represent magistrates across South Africa, we mean the officer who calls the Gqeberha roll on a Monday when the wind is coming off Algoa Bay and the recording machine has a mood. Send us the photograph of that notice board. We will print it.

A small kindness to visiting counsel

If your papers still say Port Elizabeth High Court, the Judge President already asked you to stop. If your notice of motion still says Port Elizabeth Magistrates' Court, the clerk will know what you mean, and so will the magistrate. Write Gqeberha anyway. The click is part of the dignity of the place.

The bench that wags — Rocky, Rani and the law



Rocky and Rani — the German Shepherds who have taken TikTok by the collar and still sit like junior counsel.

JASA is, it must be said out loud, insanely fond of dogs. And of cats, horses, donkeys, the backyard rooster who has a better sense of time than a recording machine, and every other animal that cannot brief an attorney. This Alliance exists for magistrates. It also exists for the living things that arrive in a Magistrates' Court only when someone has been cruel. A newsletter that is allowed to be human is allowed to wag.

Two of those living things have gone properly viral. Rocky and Rani, German Shepherds trained and loved in the Naidoo household, have become TikTok familiars — ties on, ears up, the sort of composure a Monday roll can only envy. Look them up under Rocky and Rani (the account rockyjusty — rocky & rani). They have been posting for years. They have the

followers. More usefully for this page, they have been sending magistrates the one thing a heavy week sometimes needs: a clip that reminds you the Republic still has a sense of humour, and that loyalty is not only a human virtue.

A special thank you — Mr J Naidoo

This page belongs, with thanks, to Mr J Naidoo — the voice of the voiceless in his own house and on a platform that most judicial officers still pretend they do not watch at lunch. He has trained, filmed and advocated with Rocky and Rani until the country knows their names. He has used that reach for animals who will never trend. JASA thanks him. The dogs may keep the ties.

What a magistrate actually sits with

Fun is not a substitute for the statute. Cruelty to animals is a criminal offence under the Animals Protection Act 71 of 1962. Section 2 is the charge sheet: beating, kicking, torturing, overloading, starving, denying water, leaving an animal in a filthy or parasite-ridden state, failing to get veterinary help when you can. A conviction carries a fine, or imprisonment of up to twelve months, or both. A court may also declare a person unfit to own an animal. Those sentences are not a cartoon. They are how a district court tells a community that a dog is not a thing.

Section 8 is why this page is in a magistrates' newsletter at all. An SPCA officer authorised in writing by a magistrate may enter, arrest and seize. Warrants in animal cases come off the same blotter as search warrants in any other matter. The NSPCA is a statutory body under the Societies for the Prevention of Cruelty to Animals Act 169 of 1993. In *NSPCA v Minister of Justice* 2016 (4) BCLR 517 (CC) the Constitutional Court confirmed that the NSPCA may institute a private prosecution where the State will not. A magistrate who treats an animal docket as "only a dog" has left the Act on the floor.

How to sit with an animal on the roll

Read section 2 before you read the mood of the gallery. Ask for the veterinary report. Ask whether a seizure warrant was properly authorised. Consider a declaration that the accused is unfit to own an animal. Costs and conditions of ownership are not softness. They are the remedy the statute already wrote. If the NSPCA is in your court, they are not a nuisance. They are a prosecutor the Constitution has already recognised.

JASA's position is simple enough to pin next to the tea-break cartoon. We advocate against cruelty to animals. We expect our members to apply the Animals Protection Act with the same care they apply to a protection order. We are for magistrates, and we are for the animals who cannot stand up when their names are called. Watch Rocky and Rani. Then go back to the roll. The two things are not a contradiction.

The fight that is still ours



Constitution Hill from above. The Magistrates' Courts are listed in section 166 next to this building.

JASA is not a wage lobby with a newsletter. It is the public argument that the officer who hears a protection order at four o'clock is a judicial officer of the Republic, not a departmental grade. Section 165 of the Constitution vests judicial authority in the courts and requires organs of state to assist and protect them. Section 166 lists the Magistrates' Courts in the same breath as the Constitutional Court. *Van Rooyen v The State* 2002 (5) SA 246 (CC) already held that magistrates are judicial officers, and that the arrangements under which they are appointed, paid, housed and disciplined form part of their independence.

The fight this spring has three files. First, a structural review of remuneration — not another 4.1 percent sticker on an old gap of almost a million rand between a magistrate and a High Court judge. Second, the Phase 2 transfer of court administration toward the Office of the Chief Justice: if the definition of “court” in that Bill forgets the district, we will say so the same day. Third, the quiet work of keeping colleagues on the bench — mentally, financially, and in the face of a criminal-justice inquiry that has put the whole system on television.

In one sentence

The fight for magistrates is the fight for the court that serves most South Africans. Pay is part of it. So is a working recording machine. So is a colleague who still sleeps.

A Monday that still never makes the news

Call her Magistrate M again. She is still a composite. The recording machine in Court 3 has been replaced, and now the replacement has a mood. A spoliation is on the roll at 09:00, brought ex parte at 08:25 with an affidavit that does not mention the occupier’s children. At 11:00 a regional-court trial part-heard since February. At 14:00 a colleague has gone quiet and the reserved-judgment list has grown a new name. At 16:15 she drives home and tries not to take the children’s-court voice with her. That Monday is why JASA exists.

The Independent Commission, and what it counted



Union Buildings, Pretoria — where the Independent Commission’s recommendations land on a presidential desk.

People say “IRC”. The statute says Independent Commission for the Remuneration of Public Office-Bearers, established under section 219 of the Constitution and the Independent Commission for the Remuneration of Public Office-Bearers Act 92 of 1997. It recommends. The President determines. For magistrates, Parliament must still approve the notice under section 12 of the Magistrates Act 90 of 1993. That chain is why a 4.1 percent cost-of-living adjustment can travel from a Commission memorandum to a Gazette and still leave the structure untouched.

For 2025/26 the Commission recommended a 4.1 percent COLA for judges, magistrates and members of independent constitutional institutions. The President accepted that figure. The Portfolio Committee on Justice and Constitutional Development recommended that the National Assembly approve the magistrates’ schedule. Public servants on levels 1 to 12 had received 5.5 percent. The packages below took effect on 1 April 2025. They are the ones a magistrate still takes home as this edition goes to print.

Office	Package from 1 April 2025
Chief Justice	R 3,376,765
Judge of the High Court	R 2,194,917
Regional Magistrate / Chief Magistrate	R 1,578,535
Senior Magistrate	R 1,308,453
Magistrate	R 1,209,303

Section 8(6) of the Commission Act tells the Commission what to weigh: the role and status of the office, affordability, inflation, available state resources, and public-service remuneration. JASA’s submission is that “role and status” cannot mean a permanent nearly-million-rand gap between two judicial officers who take the same oath. Van Rooyen is the case.

Section 165(4) is the duty. A COLA that matches judges and magistrates, percentage for percentage, on unequal bases, is not a structural review. It is a sticker.

What JASA is asking the Commission to do next

A dedicated chapter on magistrates in the next annual recommendations: pension alignment with the Judges' Remuneration and Conditions of Employment Act 47 of 2001, long-service recognition, and a published comparison of residual take-home after medical aid and housing. Write to president@judicialalliance.org if your district has figures the Commission has not seen.

Looking after the person on the bench



Dusk at Constitution Hill. The roll will still be there tomorrow. You do not have to carry every file home in your chest.

Issue 01 opened this file. Issue 02 keeps it open on purpose. Vicarious trauma is not a wellness poster. It is what happens when a children's-court enquiry sits before tea, a sexual-offence trial sits after tea, and a protection order sits at four o'clock, and the officer is then expected to drive home as if the day were ordinary. Add a salary that does not match the responsibility, a security scare at the entrance, and a country watching a commission into the criminal-justice system on live television, and "resilience" becomes sleeplessness, irritability on the bench, isolation from family, debt, and, for some colleagues, quiet despair.

JASA's position has not softened. Judicial mental health is part of section 165(4) — the duty to protect the effectiveness and the dignity of the courts. A reserved judgment that never comes is a public-confidence problem. A hearing that is sharp because the officer has not slept is a public-confidence problem. Section 10 of the Constitution (dignity) and *S v Makwanyane* 1995 (3) SA 391 (CC) are not only for the person in the dock. They are for the person on the bench.

Please keep these numbers in your drawer

SADAG 24-hour line 0800 567 567 or SMS 31393. If you are in immediate danger, call 10111. A conversation with a trusted colleague or a registered counsellor is not a disciplinary event. It is how a bench stays human. The Magistrates' Commission is not SADAG. Do not confuse a cry for help with a complaint.

Practical things we can still do without a circular from head office: do not leave a junior colleague alone with a week of GBV trials; take a real lunch; send the reserved-judgment list home at a decent hour; if a colleague's tone on the bench has changed, ask once, kindly, off the record. The preferred circle remains C — tea and a walk — not a WhatsApp diagnosis.

The case-law drawer — spoliation

These are the sentences you can put on a page when a Monday roll tries to turn a spoliation into a trial on title. Do not cite all of them. Pick the one that does the work.

Nino Bonino v De Lange 1906 TS 120

The old root. Spoliation is a possessory remedy. The court restores possession first and asks about rights afterwards. A magistrate who starts with the lease is already in the wrong enquiry.

Yeko v Qana 1973 (4) SA 735 (A)

The Appellate Division’s clean statement of the two requirements: peaceful and undisturbed possession, and unlawful deprivation. Ownership is irrelevant. Even a thief may be protected against self-help. That last sentence still startles attorneys. It is still the law.

Ivanov v North West Gambling Board 2012 (6) SA 67 (SCA)

Mhlantla JA: the aim is to prevent self-help. Upon proof of the two requirements the applicant is entitled to a mandament van spolie restoring the status quo ante. The cause of possession does not matter.

Ngqukumba v Minister of Safety and Security 2014 (5) SA 112 (CC)

Madlanga J, for a unanimous Court: “The essence of the mandament van spolie is the restoration before all else of unlawfully deprived possession to the possessor.” It applies even against the police. It matters not that a state organ purported to act under colour of a statute. If the seizure was unlawful, possession is restored ante omnia. Keep this case on the blotter whenever SAPS is the respondent.

Swart v Gariep Systems [2026] ZANCHC 51 (5 June 2026)

A Northern Cape reminder this winter: where a respondent locks a person out unless an “exit agreement” is signed, that is self-help. The merits of a management contract are irrelevant to the spoliation enquiry. Possession is restored first. The case cites Ngqukumba in the proper place.

How to use this page

Yeko for the two-part test. Ngqukumba when the respondent is the State. Ivanov when counsel starts a speech about title. Swart when someone has been locked out “pending negotiations”.

How a magistrate should hear a spoliation — including ex parte

A spoliation on a district roll is not a small eviction. It is a rule-of-law application. The maxim is spoliatus ante omnia restituendus est. The despoiled person must be restored before all else. That is the whole of the merits.

The two questions, and only two

Was the applicant in peaceful and undisturbed possession? Was the applicant deprived of that possession unlawfully — that is, without consent and otherwise than by due process? If both answers are yes, the order goes. If either answer is no, it does not. Title, a cancelled lease, arrears, a family fight, a “they were only looking after the place” story — all of that waits for the action or the application that is not this one.

Ex parte, and why most of them should not be

Rule 55 of the Magistrates’ Courts Rules and the ordinary duty of utmost good faith apply. An ex parte spoliation is for the lock-out that happened at dawn and will be irreversible by the afternoon, or for the goods that will leave the jurisdiction before a notice of motion can be served. It is not for the landlord who has been negotiating since Tuesday. Full disclosure is not a courtesy. If the occupier has children, say so. If there is a pending eviction, say so. If you have not said so, the interim order is vulnerable and the attorney’s next conversation is with the Legal Practice Council.

Interim, return day, final order

A spoliation granted ex parte is an interim restoration pending a return day. On the return day the court hears both sides on the same two questions and then grants or refuses a final spoliation order. That final order is final on the possessory issue. It is not a declaration of ownership. It is not an ejectment. Write the order so that a sheriff can execute it without phoning chambers: identify the property, identify the possession to be restored, and say by when. Do not add a paragraph about the lease “for completeness”. Completeness is how spoliation orders get taken on review.

A kindly reminder on costs and tone

Self-help is expensive. A respondent who changed the locks on Friday should not be surprised by an attorney-and-client costs order on Monday. A magistrate who lectures the applicant about “both sides of the family” has left the remedy. Stay on the two questions.

Critical analysis of the Twai and Molefe decisions



Magistrate Tebogo Mokgatle, Tshitale Magistrate's Court, Limpopo.

Prior Disclosure of Previous Convictions and the Fair Trial Imperative

Tebogo Mokgatle

Magistrate, Tshitale Magistrate's Court, Limpopo

The views expressed are those of the author and do not necessarily represent the views of the Department of Justice and Constitutional Development.

The decisions in *S v Twai*¹ and *S v Molefe*² reaffirm the North West Division's increasingly strict approach to the disclosure of an accused person's prior criminal history before conviction. In both matters, the High Court held that where a magistrate becomes aware of an accused's previous convictions or criminal antecedents during pre-trial proceedings and thereafter presides over the trial, conviction and sentence, the resulting proceedings are vitiated by a fatal irregularity. The conviction and sentence were accordingly set aside.

While the decisions are firmly rooted in the constitutional imperatives of judicial impartiality and the right to a fair trial under section 35(3) of the Constitution,³ they invite legitimate scrutiny regarding whether the courts have elevated a procedural irregularity into an automatic nullity without sufficient examination of actual prejudice. The judgments emphasise that justice must not only be done but must be seen to be done, relying on authorities such as *Nkuna v S*⁴, *S v Booysen*⁵, and *S v S M N*⁶, which recognise that prior judicial knowledge of an accused's criminal history may create an objective apprehension of bias.

The principal difficulty, however, lies in the treatment of information disclosed pursuant to section 60(11B) of the Criminal Procedure Act 51 of 1977.⁷ Parliament expressly authorises the disclosure of previous convictions, pending cases, parole status and related factors for bail purposes. A magistrate who acquires such information during first appearance proceedings does so lawfully and in the execution of a statutory duty. In *Molefe*, the disclosed information consisted merely of an unproved notation of "2022 Trespassing", which never formed part of the SAP 69, was never admitted as a previous conviction, and was not relied upon during sentencing.⁸ The judgment nevertheless regarded the mere disclosure itself as sufficient to vitiate the proceedings.

Respectfully, this approach may be criticised for insufficiently distinguishing between actual bias, a reasonable apprehension of bias and a procedural irregularity causing a failure of justice. The Constitutional Court in *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC)⁹ held that the test is whether a reasonable, objective and informed person would apprehend that the judicial officer would not bring an impartial mind to bear on the matter. The enquiry is contextual and fact-specific rather than mechanical. Applying that standard, it is arguable that the courts in *Twai* and *Molefe* should have interrogated whether the circumstances objectively demonstrated a realistic risk to impartial adjudication rather than presuming prejudice from prior knowledge alone.

This criticism is strengthened by the facts in *Molefe*, where the accused pleaded guilty under section 112(1)(b),¹⁰ was questioned on the essential elements of the offence, and there was no finding that the magistrate's conduct reflected reliance on the earlier disclosure. Although a guilty plea cannot cure constitutional unfairness, the absence of any demonstrated nexus between the disclosure and the ultimate conviction may have warranted a more nuanced enquiry into whether a failure of justice had in fact occurred.

Moreover, the judgments appear to extend the principle beyond the circumstances considered in *Nkuna v S*, where there were additional indications that the magistrate's awareness of previous convictions had influenced the conduct of the proceedings.¹¹ By contrast, in *Molefe* the magistrate candidly acknowledged the disclosure and deferred to the reviewing court, yet there was no suggestion of actual partiality or misconduct.¹²

Nonetheless, the decisions remain defensible on constitutional grounds. South African criminal procedure has historically sought to shield judicial officers from prior conviction evidence until after a verdict has been reached, as reflected in sections 89, 197, 211 and 271 of the CPA.¹³ The rationale is to preserve both actual impartiality and public confidence in the administration of justice. From that perspective, *Twai* and *Molefe* reinforce an important institutional safeguard by prioritising the appearance of fairness over questions of factual guilt.

In conclusion, while *Twai* and *Molefe* are consistent with the current jurisprudential trend in the North West Division, a compelling legal critique is that they transform a contextual constitutional enquiry into a near-automatic rule of disqualification. A preferable approach may have been to conduct a careful objective assessment of whether the particular facts created a reasonable apprehension of bias or resulted in a failure of justice. Such an approach would better reconcile the constitutional right to an impartial tribunal with the practical realities of criminal courts operating within the framework of section 60(11B) of the Criminal Procedure Act.

References

Case law

Booyesen v S (CA&R 39/2015) [2015] ZAECGHC 135; 2016 (1) SACR 521 (ECG) (25 November 2015).

Nkuna v S (A62/2012) [2013] ZAGPPHC 111; 2013 (2) SACR 541 (GNP).

President of the Republic of South Africa and Others v South African Rugby Football Union and Others 1999 (4) SA 147 (CC); [1999] ZACC 9; 1999 (7) BCLR 725 (CC).

S v Molefe (Review) (HC23/2026) [2026] ZANWHC 204 (11 August 2026).

S v S M N (HC28/2025) [2025] ZANWHC 178 (28 August 2025).

S v Twai (Review) (HC22/2026) [2026] ZANWHC 199 (3 August 2026).

Legislation

Constitution of the Republic of South Africa, 1996, section 35(3).

Criminal Procedure Act 51 of 1977, sections 60(11B), 89, 112(1)(b), 197, 211 and 271.

1 S v Twai (Review) (HC22/2026) [2026] ZANWHC 199 (3 August 2026) (North West Division, Mahikeng) (Petersen J and Reddy J).

2 S v Molefe (Review) (HC23/2026) [2026] ZANWHC 204 (11 August 2026) (North West Division, Mahikeng) (Petersen J and Reddy J).

3 Constitution of the Republic of South Africa, 1996, s 35(3).

4 Nkuna v S (A62/2012) [2013] ZAGPPHC 111; 2013 (2) SACR 541 (GNP) paras 3 and 10.

5 S v Booyesen 2016 (1) SACR 521 (ECG); Booyesen v S (CA&R 39/2015) [2015] ZAECGHC 135 (25 November 2015).

6 S v S M N (HC28/2025) [2025] ZANWHC 178 (28 August 2025) (North West Division, Mahikeng) paras 8–9.

7 Criminal Procedure Act 51 of 1977, s 60(11B).

8 S v Molefe (Review) (HC23/2026) [2026] ZANWHC 204 (11 August 2026) paras 2 and 10–11.

9 President of the Republic of South Africa and Others v South African Rugby Football Union and Others 1999 (4) SA 147 (CC); [1999] ZACC 9; 1999 (7) BCLR 725 (CC) para 48.

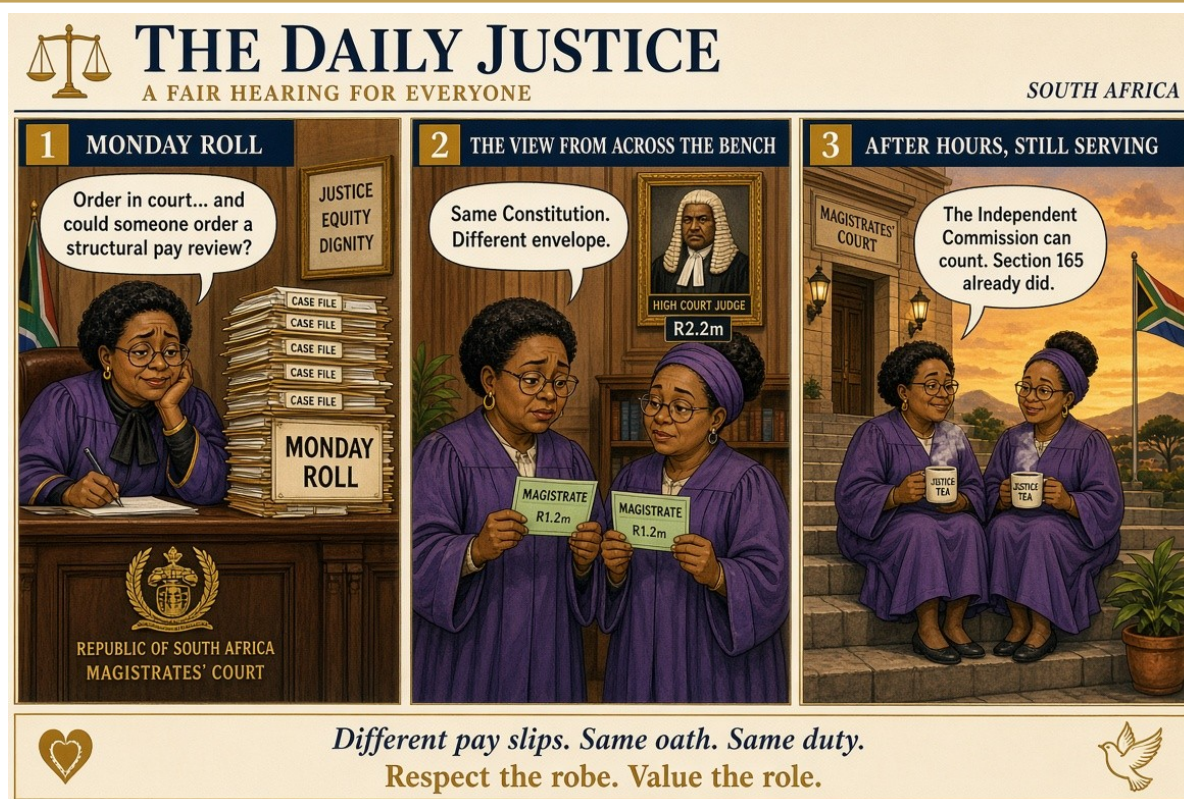
10 Criminal Procedure Act 51 of 1977, s 112(1)(b).

11 Nkuna v S 2013 (2) SACR 541 (GNP) at 544b: the magistrate's prior remarks on the accused's previous convictions and subsequent conduct of the trial demonstrated that the earlier knowledge had influenced the proceedings.

12 S v Molefe (Review) (HC23/2026) [2026] ZANWHC 204 (11 August 2026) para 9.

13 Criminal Procedure Act 51 of 1977, ss 89, 197, 211 and 271.

The fun bench cartoon — same oath, different envelope



“Order a structural review.” · “Same Constitution. Different envelope.” · “The Independent Commission can count. Section 165 already did.”

A bench that never laughs is a bench that breaks. This strip is not a finding against the Independent Commission. It is a picture of the gap the Gazette still prints: a magistrate's package of R1,209,303 against a High Court judge's package of R2,194,917, after the same 4.1 percent. Pin it next to the tea-break cartoon from Issue 01 if you like. Send a photograph of the notice board to president@judicialalliance.org.

Two commissions: the Magistrates' Commission and Madlanga



Justice Mbuyiseli Madlanga, then Acting Deputy Chief Justice, at the Constitutional Court's 30th anniversary — 20 June 2025. He now chairs the Commission of Inquiry into the criminal-justice system.

The Magistrates' Commission

The Magistrates' Commission is the statutory body under the Magistrates Act 90 of 1993. It is consulted on appointments. It receives complaints. It is the proper file for discipline. It is not a WhatsApp group and it is not the evening news. Issue 01 said retirement does not close the book. That remains JASA policy. We do not try colleagues in this newsletter. We also do not accept that walking off the roll ends the Commission's reach. Accountability is a file, a hearing and a right to be heard.

The Madlanga Commission

The Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System — the Madlanga Commission — was announced in July 2025 after allegations made by Lieutenant-General Nhlanhla Mkhwanazi. It is chaired by retired Constitutional Court Justice Mbuyiseli Madlanga. Hearings began on 17 September 2025. A first interim report went to the President on 17 December 2025; a second on 29 May 2026. The President publicly noted the second interim report on 6 August 2026. The final report is now due on 16 November 2026. Day 167 and Day 168 of the hearings sat in the last week of August.

The mandate includes alleged infiltration of the police, the prosecuting authority, intelligence services and elements of the judiciary. That last phrase is why this newsletter mentions the Commission at all. It is not why this newsletter comments on any witness. Every person named before the Commission is presumed innocent. Findings belong to the Commission and then to the President. They do not belong on a magistrates' group chat.

What a magistrate does while a commission sits

Keep the SARFU recusal test on the blotter: would a reasonable, objective and informed person reasonably apprehend bias? If a matter on your roll has been on the live feed, consider the test before you consider the merits. Leave live witnesses and live colleagues off the group chat. The criminal-justice system still has to sit on Monday.

What the courts did · the election season



Houses of Parliament, Cape Town — where the magistrates' remuneration notice still has to be approved.

Spoilation at the High Court this winter

Swart v Gariep Systems [2026] ZANCHC 51 (5 June 2026) restored possession where access to a farm had been conditioned on an exit agreement. The court refused to try the management contract inside the spoilation. That is the discipline a district court can copy without waiting for a reported case from its own division.

The Madlanga calendar

The President's 6 August note on the second interim report, and the extension of the final report to 16 November 2026, are public facts. Magistrates will keep seeing the downstream work: bail, search-and-seizure, protection orders, inquests, and the family that arrives because a police docket has become a national story. None of that is a licence to prejudge the Commission.

Municipal-election season

Local government elections follow the 2021 cycle. The months ahead will fill district rolls with Electoral Act work, IEC objections, and the ordinary rise in public-order matters that travels with a campaign. Magistrates are not electoral officers. They are the court that keeps the peace while other people count. Recusal, again, is the tool: a magistrate who has been a candidate, a party official or a loud voice on a ward WhatsApp should not be the magistrate who hears the objection.

Five small things you can do this quarter

1. Send JASA a calm note about vacancies, broken machines, security scares and judgments sitting too long.
2. Leave a colleague's reserved case, a live Commission complaint and a live Madlanga witness off the group chat.
3. Keep Van Rooyen (2002), Ngqukumba (2014) and section 165 in the top drawer.
4. If a spoilation lands *ex parte* at 08:25, ask what was not disclosed before you ask who owns the keys.
5. Write the article, the feeling or the published piece this newsletter is asking for. Addresses on the last pages.

"This alliance is not merely an organisation. It is a covenant — a pact binding judicial officers with everyone who needs a court that still has a human face."

— Mr Karikan, February 2026

Write to us · the little law quiz · the crossword

Issue 02 already prints a member. Magistrate Tebogo Mokgatle's analysis of Twai and Molefe sits with the case-law drawer. Issue 03 will print more. That is a promise. Attorneys, advocates, prosecutors, magistrates, traditional leaders, academics and court staff are invited to send: a short article (1,000–1,800 words); a published piece with the original citation; a letter of 400 words or less; a quiet note about the mental cost of a particular roll, which we will anonymise

unless you ask us not to. Email president@judicialalliance.org with the subject line BENCH 03. We edit for length and for the rule that we do not try a colleague in these pages. We do not edit out feeling.

You know you sit in a Magistrates' Court when...

- ☐ The spoliation affidavit arrived at 08:25 and forgot to mention the children.
- ☐ You have explained ante omnia to three different practitioners before tea.
- ☐ A live commission is on the television in the common room and a live docket is on your roll.
- ☐ Your pay slip and a High Court pay slip have been compared on a notice board, kindly.
- ☐ The recording machine has a personality, and today it is in a mood.
- ☐ Rocky and Rani have more composure than the 09:00 roll.

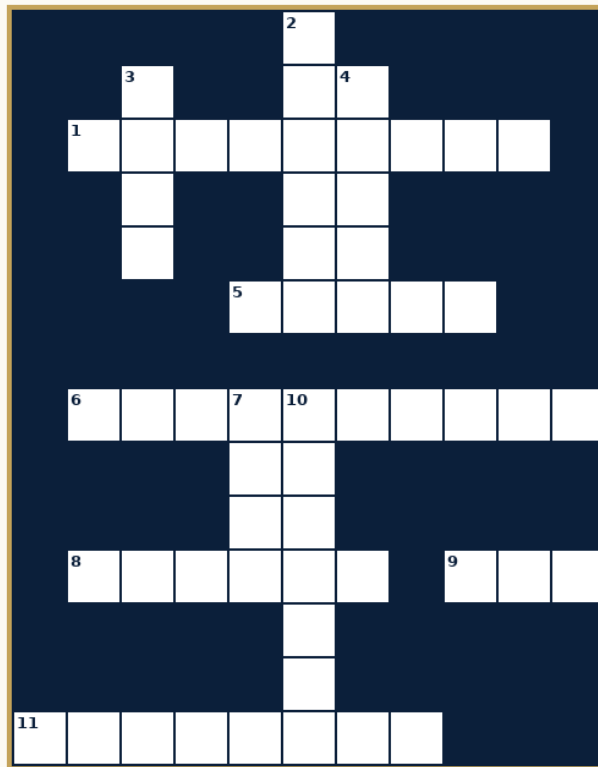
Write your own: _____

The little law quiz — answers on the last page

1. The Independent Commission for the Remuneration of Public Office-Bearers is created under ☐ s219 of the Constitution ☐ s174 ☐ s33
2. Magistrates' remuneration notices are approved by Parliament under ☐ s12 of the Magistrates Act 90 of 1993 ☐ the Judges' Remuneration Act only ☐ a Treasury instruction
3. The two requirements of the mandament van spolie are stated in ☐ Yeko v Qana ☐ Makwanyane ☐ Certification
4. Ngqukumba holds that spoliation ☐ never lies against the police ☐ lies even against the police where the seizure was unlawful ☐ depends on title
5. A magistrate's gazetted 2025 package is ☐ R1,209,303 ☐ R2,194,917 ☐ R3,376,765
6. The Madlanga Commission's final report is presently due on ☐ 16 November 2026 ☐ 31 August 2026 ☐ 6 July 2025
7. True or false: an ex parte spoliation is a final order on ownership. ☐ True ☐ False
8. The recusal test of the reasonable apprehension of bias comes from ☐ SARFU ☐ Dodo ☐ Glenister II

Crossword

Fill it in ink. Photograph the page. Send it to president@judicialalliance.org. We will print the neatest grid in Issue 03, anonymously unless you ask us to name you.



Across

1. Leading case that magistrates are judicial officers (3,6) — ___ v The State
5. Where a magistrate sits (5)
6. The judicial officer this newsletter is for (10)
8. A constitutional ethic of shared humanity (6)
9. JASA's preferred interlocutory relief before 09:00 (3)
11. Chair of the criminal-justice commission (8)

Down

2. Short name of the possessory remedy (6)
3. This alliance (4)
4. Monday's list (4)
7. Informal initials for the Remuneration Commission (3)
10. Constitution chapter-8 provision on judicial authority (7)

What would you do?

A spoliation is brought ex parte at 08:25. The affidavit says the respondent changed the locks. It does not say that an eviction application was issued last month, or that two children sleep in the back room. You are not the head of office. Circle one, then write two lines.

- A. Grant, and sort it out on the return day.
- B. Refuse to hear it ex parte. Set it down on notice for the afternoon.
- C. Call the attorney in and ask, on the record, what was left out.
- D. Something else: _____

Your two lines:

Find us — from the official card

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Issue 03 deadline	Letters and articles: Friday 3 October 2026, subject line BENCH 03
Invitation, in plain language	
If you sit, prosecute, defend, interpret, clean the court, or wait on a wooden bench, this newsletter is for you. Send the piece. Send the feeling. We will make Issue 03 out of what arrives.	

Quiz answers · crossword solution · preferred circles

1. s219 of the Constitution (read with Act 92 of 1997).
2. Section 12 of the Magistrates Act 90 of 1993.
3. Yeko v Qana 1973 (4) SA 735 (A).
4. Lies even against the police where the seizure was unlawful — Ngqukumba.
5. R1,209,303.
6. 16 November 2026 (extended from the original August date).
7. False — it is a possessory order, and an ex parte grant is interim pending a return day.
8. President of the RSA v SARFU 1999 (4) SA 147 (CC).

Crossword — Across: 1 VAN ROOYEN · 5 BENCH · 6 MAGISTRATE · 8 UBUNTU · 9 TEA · 11 MADLANGA.
Down: 2 SPOLIE · 3 JASA · 4 ROLL · 7 IRC · 10 SECTION.

On the quiet colleague, Issue 01 still prefers C: ask once, off the record, whether they want tea and a walk. On the 08:25 ex parte spoliation, this issue prefers C first and B if C is not enough: call the attorney in and ask, on the record, what was left out; if the disclosure is still thin, refuse to hear it ex parte and set it down on notice for the afternoon. A is how children get locked out before lunch.

Notes, footnotes and table of authorities

1. Constitution of the Republic of South Africa, 1996, s 165 (judicial authority; independence; duty of organs of state to assist and protect the courts).
2. Constitution, s 166 (the courts include the Magistrates' Courts).
3. Constitution, s 174 and s 178 (appointment of judicial officers; Judicial Service Commission).
4. Constitution, s 219 (remuneration of public office-bearers) read with the Independent Commission for the Remuneration of Public Office-Bearers Act 92 of 1997, especially s 8(4)–8(6).
5. Constitution, s 10 (dignity).

6. Magistrates Act 90 of 1993, including s 12 (remuneration of magistrates, determined by the President and approved by Parliament).
7. Judges' Remuneration and Conditions of Employment Act 47 of 2001.
8. Magistrates' Courts Rules, rule 55 (applications), and the common-law duty of utmost good faith on ex parte process.
9. Independent Commission, Annual Remuneration Recommendations for Public Office-Bearers 2025/26 (4.1 percent COLA); Presidency determination with effect from 1 April 2025; Portfolio Committee on Justice report ATC260225.
10. Presidency packages from 1 April 2025: Chief Justice R3,376,765; Judge of the High Court R2,194,917; Regional Magistrate / Chief Magistrate R1,578,535; Senior Magistrate R1,308,453; Magistrate R1,209,303.
11. President Cyril Ramaphosa, media statement, 6 August 2026, noting the Second Interim Report of the Madlanga Commission (submitted 29 May 2026; first interim report 17 December 2025; final report due 16 November 2026).
12. Proclamation of the Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System, July 2025, following allegations by Lt-Gen Nhlanhla Mkhwanazi on 6 July 2025. Chair: Justice Mbuyiseli Madlanga. Hearings commenced 17 September 2025.
13. Mr Karikan, interview, Newzroom Afrika / SABC, June 2026 (retirement and accountability).
14. Mr Karikan, statement on the evolution of JASA, February 2026 (the covenant).
15. SADAG 24-hour line 0800 567 567; SMS 31393. Emergency 10111.
16. Electoral Act 73 of 1998, for context on the municipal-election season that follows the 2021 cycle. This newsletter does not announce a polling day.
17. Broadcasts cited: SABC News 29 April 2024 (youtube.com/watch?v=_NRzarMTWzo); Newzroom Afrika 3 July 2025 (youtube.com/watch?v=RE35H3pc9Lg); Newzroom Afrika 5 August 2025 (youtube.com/watch?v=CIEy39lcA0w); CapeTalk 26 November 2025 (youtube.com/watch?v=nOiahAa8y6E); SABC News 18 May 2026 (youtube.com/watch?v=ObXvrtNrmpY); SABC Case in Point 28 May 2026 (x.com/SABCNews/status/2060069185082839136); Newzroom Afrika 1 June 2026 (youtube.com/watch?v=on4m-v1ULhM); SABC Morning Live 17 April 2026; SABC Case in Point 20 August 2026 (x.com/SABCNews/status/2090502781392060667). Stills are from those broadcasts.
18. Renaming of Port Elizabeth to Gqeberha gazetted 23 February 2021. Gqeberha Magistrates' Court, 584 Govan Mbeki Street, North End. The 1934 Law Courts (Public Works Department) remain the sitting magistrates' court. Department of Justice contacts list the court as Gqeberha (Port Elizabeth).
19. Animals Protection Act 71 of 1962, especially s 2 (offences) and s 8 (powers of officers, including magistrate-authorised entry, arrest and seizure). Societies for the Prevention of Cruelty to Animals Act 169 of 1993. NSPCA v Minister of Justice and Constitutional Development 2016 (4) BCLR 517 (CC) (NSPCA's power of private prosecution). Rocky and Rani appear on TikTok as rockyjusty — rocky & rani; public reporting of the Naidoo household's account is used with thanks to Mr J Naidoo.

Table of authorities

Authority	Use in this edition
Nino Bonino v De Lange 1906 TS 120	Root of the possessory remedy
Yeko v Qana 1973 (4) SA 735 (A)	Two requirements of spoliation
S v Makwanyane 1995 (3) SA 391 (CC)	Dignity; ubuntu
Certification of the Constitution 1996 (4) SA 744 (CC)	Independence in the public interest
President of the RSA v SARFU 1999 (4) SA 147 (CC)	Recusal — reasonable apprehension of bias
Van Rooyen v The State 2002 (5) SA 246 (CC)	Magistrates are judicial officers
Justice Alliance of SA v President 2011 (5) SA 388 (CC)	Tenure of judicial office
Ivanov v North West Gambling Board 2012 (6) SA 67 (SCA)	Spoliation prevents self-help
Ngqokumba v Minister of Safety 2014 (5) SA 112 (CC)	Spoliation even against the police
Swart v Gariep Systems [2026] ZANCHC 51	Lock-out pending an exit agreement
Animals Protection Act 71 of 1962	Cruelty offences; magistrate warrants
NSPCA v Minister of Justice 2016 (4) BCLR 517 (CC)	NSPCA may prosecute privately
S v Twai [2026] ZANWHC 199	Prior convictions disclosed at bail — review

THE BENCH

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S v Molefe [2026] ZANWHC 204	Unproved notation treated as fatal irregularity
Nkuna v S 2013 (2) SACR 541 (GNP)	Prior knowledge that influenced the trial
Booyesen v S 2016 (1) SACR 521 (ECG)	Justice must be seen to be done
S v S M N [2025] ZANWHC 178	Criminal history and the sitting magistrate

Citations follow the ordinary South African mode. This table is a reading list for members, not a list of cases decided in this newsletter. Nothing in this edition is a finding on any matter still before a court, a commission or a colleague.

JASA · Judicial Officers Alliance of South Africa · president@judicialalliance.org · www.judicialalliance.org · 031 209 1555 · 082 866 7036. This note uses public interviews, JASA's stated positions, the official card, the Independent Commission's 2025/26 recommendations, the President's 6 August 2026 note on the Madlanga Commission's second interim report, and the reported cases listed above. It is a friendly briefing, not a court order, and it does not comment on the merits of any matter still before a colleague or a commission.