



JUDICIAL OFFICERS ALLIANCE OF SOUTH AFRICA
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THE BENCH

A LEGAL NEWSLETTER OF THE JUDICIAL OFFICERS ALLIANCE OF SOUTH AFRICA



Missy with her Fairy Garden — the full picture, dog and all.

A spring greeting to every colleague on the roll

September in South Africa is not only a new month. It is the first honest light after winter. May this month be kind to the person who sits on your bench, and to the people who wait on the wooden ones outside.

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From the President's desk

Dear colleagues, and hello to everyone who walks with us — attorneys, advocates, prosecutors, traditional leaders, court staff, and the families who still wait on hard wooden benches when September opens the door.

I write as Mr Neelan Karikan, Founder and President of the Judicial Officers Alliance of South Africa. If you have opened this newsletter with a cup of tea after a long roll, that is exactly who it is for.

September in this country is a spring month. The light changes before the law does. There is a lesson in that for a bench that is asked to hold other people's worst days. Indigenous succulents do not ask the climate to be fair. They store what they can, they keep their shape, and they flower when the season finally remembers them. A judicial officer is not a plant. But a judicial officer who is never watered — in pay, in pension, in a working building, in a moment of quiet — will not flower either.



Mr Neelan Karikan • Founder & President of JASA
Senior Magistrate and District Court Judge

JASA is not a trade union in the ordinary sense. We are a covenant. We exist so that the people who sit in Magistrates' Courts are not left to argue, alone, for the dignity the Constitution already promised them.

Section 165 is written in plain language. The courts are independent. They apply the law without fear, favour or prejudice. Organs of state must assist and protect those courts. It does not say "except the court down the road that hears the maintenance enquiry, the protection order and the dog that was left in a bakkie in January heat."

This issue keeps the arguments you already know and adds the dockets that arrive in September with the light. Animal welfare is not a soft subject for a lower court. A protection order is not a form. Wellness is not a poster in a passage. Indigenous plants are not decoration — they are a constitutional environment, and they are being stolen from the Karoo while we write reserved judgments. And because a bench that never laughs is a bench that breaks, there is a cartoon, a quiz, and a page you can write on.

Wish one another a great spring month. Walk before the roll if you can. Put a small living thing on the windowsill of chambers. Telephone a colleague who has gone quiet. The Constitution did not appoint a machine. It appointed you.

With respect, and with the usual cup of tea —

Neelan Karikan

Founder & President, Judicial Officers Alliance of South Africa

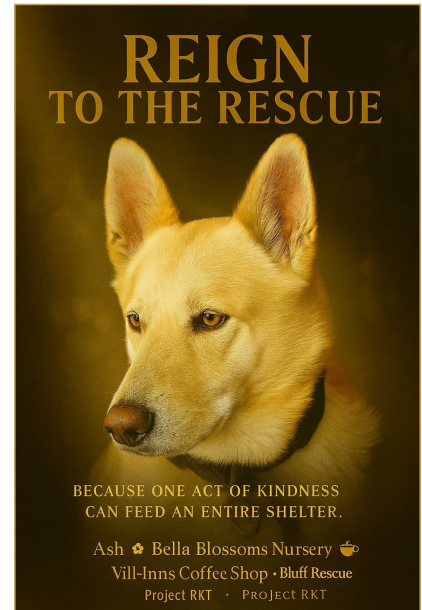


The animal on the blotter

Every magistrate in this country has met an animal that could not speak, and a human being who spoke too easily. A neglected dog. A backyard breeder. A cockfight behind a tavern. A donkey on a road. The Animals Protection Act 71 of 1962 is old. It is also still the workhorse of the district court. Section 2 still makes it an offence to ill-treat, neglect, or confine an animal in a way that causes unnecessary suffering. The SPCA Act 169 of 1993 did something the 1962 Act could not do alone: it built a statutory society with inspectors, and it gave that society a job the State does not always finish.

The case that belongs in the top drawer

In *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* [2016] ZACC 46 the Constitutional Court, in a unanimous judgment of Khampepe J, held that the NSPCA has the statutory power of private prosecution under s 6(2)(e) of the SPCA Act read with s 8 of the Criminal Procedure Act.



*Kindness is not a side project.
One act can still feed a shelter.*

The NPA's decision not to prosecute is not the last word when a statutory guardian of animals is left holding the file. The Court did more than settle a procedural quarrel. It said, in language a magistrate can use on a Monday morning, that animals are not mere things. They have an intrinsic value. Guardianship of that value is part of our moral and legal community. Three years earlier, in *NSPCA v Minister of Agriculture, Forestry and Fisheries* [2013] ZACC 26, the same Court had already refused to treat animal-welfare regulation as a minor administrative courtesy. The 2019 Pretoria judgment in *National Council of the SPCA v Minister of Environmental Affairs* [2019] ZAGPPHC 337 (the lion-bone quota review) then joined animal welfare to environmental decision-making under s 24 of the Constitution. The quota could not be set as if suffering were an externality.

What this means on the district roll

- Charge properly under the Animals Protection Act. Photograph. Weigh. Record the water bowl. A conviction that rests on a vague "the dog looked thin" will not survive appeal.
- Do not treat an SPCA inspector as a nuisance visitor. They are a statutory actor. Their evidence is often the only evidence.
- Where the NPA declines to proceed and the NSPCA is the complainant, remember ZACC 46. Private prosecution is not a curiosity. It is the Court's answer to institutional fatigue.
- Sentencing is not only a fine that a backyard breeder budgets for. Consider forfeiture, a prohibition on keeping animals, and — where the facts allow — a period of imprisonment that tells the gallery the living thing in the photograph was not a footnote.

Spring is a good month to remember that the Constitution's dignity clause did not close the courtroom door on the creature that cannot sign an affidavit. Ubuntu is not only a human word. A bench that can see a child, and cannot see a dog left in the sun, has narrowed its eyes.



Protection orders — domestic violence and harassment

The protection-order court is the busiest room many of us will sit in this spring. It is also the room in which a hurried rubber stamp does the most damage. The Domestic Violence Act 116 of 1998, as amended, and the Protection from Harassment Act 17 of 2011 are not cousins who can be used interchangeably. One is built on a domestic relationship. The other is built on a pattern of harm that does not need a shared address. Get the Act wrong and the order is a gift to the appeal.

What the amendments actually changed

The 2021 amendments to the Domestic Violence Act widened the definition of domestic violence. Emotional, verbal, psychological and economic abuse are not consolation prizes. They are listed harms. Coercive and controlling behaviour, elder abuse, spiritual abuse and exposing a child to violence in the home sit inside the statute. An interim order may be granted in the absence of the respondent where the court is satisfied that the applicant will suffer harm if the application is not dealt with immediately. The return date is not a formality. It is the day on which the respondent is heard, the record is completed, and a final order is either confirmed, varied or discharged.

The Harassment Act does different work. It protects a complainant from a pattern of unwanted conduct that causes harm or inspires a reasonable belief that harm may be caused — including electronic harassment, watching, loitering and the modern speciality of the anonymous account. A former colleague, a neighbour, a litigant who has decided that the magistrate's private number is part of the record: those files belong here, not under a strained reading of "domestic relationship."

The judgment from this winter that belongs on the blotter

On 17 July 2026 the Johannesburg High Court delivered *G.J v C.J* [2026] ZAGPJHC 785. It was an appeal against a final protection order granted by the Randburg Magistrates' Court. The appellant said the communications were ordinary post-divorce conflict — hostile, yes, but not "abuse." Mia J dismissed the appeal. The Court held that the cumulative communications — repeated insults, threats and hostile messages in a high-conflict co-parenting dispute — constituted emotional and psychological abuse and harassment under the Act. A medical condition did not wipe out responsibility. The magistrate had correctly found that the statutory threshold was met. The final order was proportionate and was confirmed.

That is the sentence to keep. One WhatsApp is an argument. A hundred WhatsApps are a climate. The Act asks whether the climate is abusive, not whether each drop of rain would, on its own, wet a coat.

A working method for the Monday list

- Name the relationship. If there is none that the Act recognises, move the file to the Harassment Act rather than bending the definition until it snaps.
- Read the messages in a run, not as isolated exhibits. *G.J v C.J* is authority for the cumulative approach.
- Children in the house are not scenery. Exposure to violence is itself a listed harm. Say so on the record.
- Weapons, keys, school gates and bank cards belong in the operative part of the order, not in a paragraph of sympathy.
- A protection order that cannot be enforced is a letter. Link it to a police station, a case number and a clear prohibition the SAPS can understand at 01:00.

JASA's position is the same as it was in August. The person who sits in this court is doing constitutional work under s 12 and s 9. The person who applies is often exhausted before the stamp pad is opened. Give the application the time the statute already promised. A ten-minute hearing that produces a twenty-page problem is not efficiency. It is deferred injustice.



The mind of the magistrate

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

A court that is independent on paper can still grind the person who sits in it. Vicarious trauma is not a soft subject. It is what happens when you hear a children's-court enquiry before tea, a sexual-offence trial after tea, and a protection order at four o'clock, and then drive home as if the day were ordinary. Add a heavy roll, a broken recording machine, a security scare at the entrance, and a salary that does not match the responsibility, and the cost stops being "resilience." It becomes sleeplessness, irritability on the bench, isolation from family, and, for some colleagues, debt and quiet despair. That is not weakness. It is the predictable result of asking one human being to hold other people's worst days, every day, without a structure that holds them back.

Working conditions are a section 165 question

JASA's position has not changed with the season. Looking after judicial mental health is part of s 165(4) — the duty of organs of state to assist and protect the courts. A reserved judgment that never comes, or a hearing that is sharp because the officer is exhausted, is not only a private sorrow. It is a public-confidence problem. *Van Rooyen v The State* 2002 (5) SA 246 (CC) remains the case that says magistrates are judicial officers, not a junior administrative class. Conditions of service, security of tenure and the way the institution treats the person on the bench are part of independence, not a human-resources afterthought.

Pay is still the unfinished sentence from August. A magistrate who is in debt review is not a gossip item. It is what happens when remuneration lags responsibility for years and the Independent Commission's work is treated as optional reading. Pension, long-service recognition, a functioning vehicle scheme and a building that does not leak onto the charge sheet are not luxuries. They are how a State shows that it means s 165 when the television cameras have gone home.

What we can do for one another this spring

The law will not be rewritten before the October recess. The person next to you can be. JASA's preferred first intervention is still the least glamorous: a walk, a cup of tea, a telephone call before 09:00. Arts and crafts are not a retreat from seriousness. A colleague who pots a succulent on a Saturday, who draws, who sews, who stands in a nursery and thinks about soil instead of a sentence, is not wasting a judicial weekend. They are putting something living between themselves and the files.

- Do not hear a children's-court enquiry and a sexual-offence trial back-to-back without a break that is an actual break.
- Keep SADAG on the chambers board: 0800 567 567, SMS 31393. Emergency 10111. These numbers are not an admission. They are infrastructure.
- If a colleague's judgments have slowed, or their humour has gone, do not wait for a formal wellness circular. Walk across the passage.
- Put a plant in chambers. It is a small constitutional act. It reminds the room that living things need light.

A bench that never laughs is a bench that breaks. A bench that never rests is a bench that starts to sound like the worst file on it. Spring is a good month to refuse both.



Succulents, nurseries and the environmental docket



Left: a living bowl of colour on a South African table. Right: a fairy garden — craft, plants, and a reminder that chambers can hold more than files.

Section 24 of the Constitution is not a nature-reserve clause. Everyone has the right to an environment that is not harmful to health or well-being, and to have the environment protected for the benefit of present and future generations. The National Environmental Management Act 107 of 1998 and the Biodiversity Act 10 of 2004 (NEMBA) are the statutes that turn that sentence into a docket. Indigenous succulents sit at the junction of those statutes, the Customs and Excise list, and a global appetite that has turned the Succulent Karoo into a crime scene with a Latin name.

The plants that are also a case

South Africa is one of the world's succulent capitals. Haworthia, Gasteria, Lithops, many Aloe and Conophytum species, and the humble spekboom (*Portulacaria afra*) are not garden-centre curiosities. They are indigenous genetic material. Poaching of rare succulents — often for export through apparently ordinary nurseries and postal parcels — has become a specialised environmental offence. Permits under NEMBA are not paperwork for enthusiasts. They are the difference between a lawful collection and a scheduled species leaving the country in a padded envelope.

A magistrate who sits in the Northern, Western or Eastern Cape will see these files. A magistrate in Durban or Johannesburg will see them too, because the parcel does not respect provincial borders. Ask for the species list. Ask whether the nursery is registered. Ask whether the “garden variety” on the invoice is in fact a listed *Conophytum*. Environmental law is not only rhinos. It is also a plant the size of a thimble that took forty years to grow on a quartz patch outside Steinkopf.

Nurseries, craft, and why a plant belongs in chambers

A lawful South African nursery is part of the answer. Spekboom hedges, locally grown aloes, a bowl of mixed succulents on white stone — these are not a retreat from the law. They are how a household, a school and a court building participate in the s 24 duty without waiting for a policy paper. Creative arts belong in the same paragraph. A fairy garden in a basket, a Saturday spent potting, a colleague who paints or sews or arranges flowers for a shelter fundraiser, is doing wellness work that no circular has yet managed to invent. Plants make a room human. Craft gives the hands something to do after the hands have signed too many orders.

JASA's spring suggestion is modest and slightly stubborn. Buy from a nursery that can tell you the Latin name. Do not take a plant from the veld. Put one living thing where you write reserved judgments. If a local rescue or a small nursery is raising funds this month, take a colleague with you. The Constitution will still be there when you get back. It may even read more clearly.



Colleague on the page — Adv Yolynn Denness

Every edition of The Bench should have a face that is not only the President's. This month that face belongs to Advocate Yolynn Denness — an Advocate in South Africa, an active member of the Judicial Officers Alliance of South Africa, and, before the robe, a professional who worked inside the forensic units of the South African Police Service.

That combination is not a curiosity. It is a working education. Colleagues who have come through the forensic services arrive at the Bar, and at JASA, knowing what a chain of custody actually feels like in a laboratory that is tired. They know the difference between a DNA entry and a completed case. They know why a sexual-offence trial waits, and why a magistrate who is asked to postpone “for the lab” is not being difficult. They have seen the exhibit bag before it became a paragraph in an affidavit.



Adv Yolynn Denness
Advocate • JASA member • formerly SAPS forensic units

She is JASA's official Master of Ceremonies. At serious meetings and at the Alliance's functions she convenes the room with composure and elegance, and she brings life to gatherings that would otherwise stay only on the agenda. She helps at every level of the work — from the platform to the quiet labour that makes a function hold together.

She advocates for the rights of victims and is firmly victim-oriented. That orientation is how she reads a file and how she speaks about a complainant. She comes from a strong forensic background in the South African Police Service.

JASA is honoured to count her among its members. We admire her professionalism, and we honour her service to this covenant.

What JASA is — a short card for new readers

The Judicial Officers Alliance of South Africa is a national association of judicial officers and of the people who walk with them. It grew out of the long argument that magistrates are not a junior administrative class. Under the founding presidency of Mr Neelan Karikan it has said, in public and on the record, that it is a covenant rather than an ordinary trade union: a pact that binds judicial officers to attorneys, advocates, prosecutors, traditional leaders, court staff and the families who wait on wooden benches.

The programme is not mysterious. A single judiciary in which Magistrates' Courts are treated as courts under s 166. Conditions of service that match the work. Accountability that does not end at a farewell tea. Mental health treated as part of s 165(4). And a public voice that can go on television without forgetting the colleague who will never be asked onto television. Membership is not a badge. It is a decision to stop arguing alone.

If you read this page and you are not yet in the room, the addresses are on page 10. Bring a colleague. Bring a plant if you must. Leave the cynicism with the security officer at the door.



What the courts did • the spring cartoon

Fun facts from the law reports — useful, and slightly cheering

- *G.J v C.J* [2026] ZAGPJHC 785 (17 July 2026) — a Randburg protection order survived appeal because the High Court read the messages as a climate, not as single weather events. Cumulative emotional abuse is still abuse.
- *Van Rooyen v The State* 2002 (5) SA 246 (CC) is twenty-four years old this season and still the case to cite when someone in a meeting says “but magistrates are not judges.” They are judicial officers. The Constitution did not stutter.
- *NSPCA v Minister of Justice* [2016] ZACC 46 turns ten in December. Private prosecution by the NSPCA is no longer a theory. It is a tenth-birthday present the animals already unwrapped.
- *President of the RSA v SARFU* 1999 (4) SA 147 (CC) remains the recusal test: would a reasonable, objective and informed person reasonably apprehend bias? Keep it on the blotter for any matter that has already been on television.
- *S v Makwanyane* 1995 (3) SA 391 (CC) is not a magistrates-conditions case. It is the dignity case. Ubuntu, the value of each person, the refusal to treat a human being — or, after ZACC 46, a sentient creature — as a means.
- A quiet statistical mercy: most protection-order files that are properly particularised do not come back on the same facts. Particularity is kindness to your future self.

“A bench that never laughs is a bench that breaks.”

— standing instruction from the President’s desk, spring 2026



“Order in the court... after the spring blossoms.” A bench that never laughs is a bench that breaks.

The official spring position of JASA: a walk, a cup of tea, and a succulent on the tray remain the most constitutional intervention available before 09:00.



The fun bench — quiz, write-in and a word hunt

A bench that never laughs is a bench that breaks. Circle the answers in chambers, not on the record. Prize: the respect of the colleague who makes the tea.

Six questions for the tea room

1. Which section of the Constitution places judicial authority in the courts and requires organs of state to assist and protect them?
2. Which Constitutional Court case is the first port of call when someone suggests that magistrates are not judicial officers?
3. Which 2016 Constitutional Court judgment confirmed the NSPCA's power of private prosecution?
4. A neighbour who loiters and sends anonymous messages, with no domestic relationship, is a file under which Act?
5. Section 24 of the Constitution protects what, for present and future generations?
6. True or false: retirement closes the book on a judicial officer's accountability.

What would you do? It is 07:45. The roll is heavy. A colleague's hands are shaking around a polystyrene cup. Do you: (A) pretend not to see; (B) send a wellness circular from 2019; or (C) walk, make tea, and sit with them until the first case is called?

Word hunt — circle eight

SPRING KARIKAN BENCH SUCCULENT
UBUNTU SECTION VANROOYEN COVENANT

**SPRINGQBENCH
KARIKANXCOVE
SUCCULENTUBU
COVENANTQNTU
VANROOYENSEC
UBUNTUSECTIO
BENCHYZABCNN**

Write-in — a spring note

One colleague you will telephone.

A line for the blotter

The plant on my windowsill is called _____ and it is still alive, which is more than can be said for some arguments.

Answers live on page 10, where they cannot interfere with the pleasure of being wrong in good company.

Wish somebody a great spring month before you leave the building today.

That is an official JASA direction. It is not binding. It is better than binding.



Find us — official card details

Organisation	JASA • Judicial Officers Alliance of South Africa
Founder & President	Mr Karikan (Neelan Karikan)
Office telephone	031 209 1555
Mobile	082 866 7036
Email	president@judicialalliance.org
Website	www.judicialalliance.org
Head Office	201 Beacon Rock, 21 Lighthouse Road, Umhlanga Rocks, KZN, 4320
Local Branch	163 Percy Osborn Road, Morningside, Durban, 4001

Quiz answers

1. Section 165. 2. Van Rooyen v The State 2002 (5) SA 246 (CC). 3. NSPCA v Minister of Justice [2016] ZACC 46. 4. The Protection from Harassment Act 17 of 2011. 5. The environment. 6. False — retirement does not close the book. What would you do? JASA's preferred circle is still C. A walk and a cup of tea remains the most constitutional intervention available before 09:00.

Notes and table of authorities

Authority	Use in this edition
Constitution s 165, s 166, s 24, s 12, s 9	Independence; courts; environment; security of the person; equality
Animals Protection Act 71 of 1962	Ill-treatment and neglect in the district court
SPCA Act 169 of 1993	Statutory society; inspectors; private prosecution hook
Domestic Violence Act 116 of 1998	Protection orders; expanded definition of abuse
Protection from Harassment Act 17 of 2011	Non-domestic patterns of harm
NEMA 107 of 1998 • NEMBA 10 of 2004	Environment; indigenous plants; permits
Van Rooyen 2002 (5) SA 246 (CC)	Magistrates are judicial officers
SARFU 1999 (4) SA 147 (CC)	Recusal — reasonable apprehension of bias
S v Makwanyane 1995 (3) SA 391 (CC)	Dignity; ubuntu
NSPCA v Min. of Agriculture [2013] ZACC 26	Animal-welfare regulation; separation of powers
NSPCA v Min. of Justice [2016] ZACC 46	Private prosecution; intrinsic value of animals
NCSPCA v Min. of Env. Affairs [2019] ZAGPPHC 337	Lion-bone quota; s 24 and welfare
G.J v C.J [2026] ZAGPJHC 785	Cumulative emotional abuse meets the DVA threshold
Magistrates Act 90 of 1993	Remuneration and conditions of service

SADAG 24-hour line 0800 567 567 • SMS 31393 • Emergency 10111

This note uses public interviews, JASA's stated positions and the presidential card. It is a friendly briefing, not a court order.

A great spring month to every colleague — from the President's desk, and from the rest of the covenant.



REFERRAL OF MATTERS FROM THE REGIONAL COURT TO THE DISTRICT COURT FOR BAIL

Durban Magistrates' Court · KwaZulu-Natal



Magistrate Scelo Zuma on the bench. Photograph used with thanks.

I. The colleague

The Judicial Officers Alliance of South Africa is proud — and fortunate — to count Magistrate Scelo Zuma among its members. He is one of the officers who give the Alliance its standing in KwaZulu-Natal: a magistrate of the Durban Magistrates' Court who has carried the work of that court with distinction, and who has been prepared to think and write about the law of the lower courts as if it mattered. He completed the LLB in 2010, served articles and was admitted as an attorney in 2013¹. He joined the National Prosecuting Authority in 2014 and acted as control prosecutor from 2016 to 2019². At the NPA he was ranked first in KwaZulu-Natal from 2016 to 2018. He left the NPA in 2019 for private practice and, in the same year, was appointed as an acting magistrate. He now sits permanently in Durban³.

That is the ordinary, demanding path of a lower-court officer in this country. What is not ordinary is three consecutive years at the top of a provincial NPA ranking, and the consistency with which he has since used the Durban court not only as a place of work but as a place from which the institution itself may be spoken about without embarrassment. JASA is honoured by his membership. He is the kind of colleague an alliance is built for: intellectually serious, loyal to the district bench, and unwilling to treat the Magistrates' Court as a waiting room for somewhere else. KwaZulu-Natal is the better for him. So is the Alliance⁴.

¹Attorneys Act 53 of 1979 (then in force). Admission in 2013 preceded commencement of the Legal Practice Act 28 of 2014 on 1 November 2018. See now LPA 28 of 2014, ss 24–25, read with s 114.

²National Prosecuting Authority Act 32 of 1998, ss 20 and 24. A control prosecutor exercises directed authority within a cluster or court under the Director of Public Prosecutions.

³Magistrates Act 90 of 1993, ss 9–10; Magistrates' Courts Act 32 of 1944, s 9.

⁴Criminal Procedure Act 51 of 1977, s 50(6)(c). Schedule 6 lists the most serious offences for purposes of the reverse-onus bail regime in s 60(11)(a).



By Magistrate Scelo Zuma · Durban Magistrates' Court

Applicable law

Section 50(6)(c) of the Criminal Procedure Act 51 of 1977 provides:⁵

“The bail application of a person who is charged with an offence referred to in Schedule 6 must be considered by a magistrate’s court: Provided that the Director of Public Prosecutions concerned, or a prosecutor authorised thereto in writing by him or her, if he or she deems it expedient or necessary for the administration of justice in a particular case, may direct in writing that the application must be heard by a regional court.”

Section 60(1)(b) provides:⁶

“Subject to the provisions of section 50(6)(c), the court referring an accused to any other court for trial or sentence retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.”

Read together, these sections have produced a live dispute about which court must hear a bail application — especially where an accused has chosen not to apply for bail in the magistrates’ court, and applies only after the matter has been transferred to the regional court.

Section 50(6)(c) creates the impression that the magistrates’ court enjoys exclusive jurisdiction over Schedule 6 bail, unless the DPP or a prosecutor authorised in writing directs that the application be heard in the regional court. Section 60(1)(b) appears to cut the other way. It provides that the transferring court retains its powers, functions and duties in respect of bail until the accused appears in the receiving court for the first time.

The cases

In *S v Makinana 2004 (2) SACR 46 (E)* the Eastern Cape High Court, in the course of granting a declaratory order, held that the magistrates’ court has exclusive jurisdiction to hear a bail application where the accused is charged with a Schedule 6 offence, subject to a direction under section 50(6)(c), from first appearance until the accused appears in the higher court to which the matter may be transferred. Upon that first appearance, the receiving court enjoys jurisdiction to deal with bail⁷.

At paragraph 8 the Court held that section 50(6)(c) and the “subject to” clause of section 60(1)(b) must be interpreted restrictively. They mean no more than that Schedule 6 bail must be heard initially in the magistrates’ court, unless the DPP directs otherwise; but once the matter is transferred to a regional court or a High Court, that court — as the court before which the matter is pending — acquires jurisdiction to entertain any bail application that may then be brought⁸.

In *S v Mzatho and Others 2007 (2) SACR 309 (T)*, a decision that has become the most frequently cited authority on this circuit, the Court approved a concurrent-jurisdiction approach. It held that, in appropriate circumstances, a regional court may refer a matter back to the district court for a bail hearing even after the accused has appeared in the regional court⁹.

The “appropriate circumstances” in that case were specific. The courthouse had a solitary regional-court seat. It would have been appropriate, and in the interests of justice, to revert to the district court for bail and thereafter to return to the regional court for trial. The same magistrate could not justly hear the bail application and then remain seized of the trial¹⁰.

⁵Criminal Procedure Act 51 of 1977, s 60(1)(b). The transferring court retains bail jurisdiction until the accused’s first appearance in the receiving court.

⁶*S v Makinana 2004 (2) SACR 46 (E)*. Declaratory order: the magistrates’ court has exclusive initial jurisdiction in Schedule 6 bail, subject to a written direction under s 50(6)(c), until first appearance in the higher court.

⁷*S v Makinana 2004 (2) SACR 46 (E)* at para 8: ss 50(6)(c) and 60(1)(b) are to be read restrictively. Once transferred, the court before which the matter is pending acquires jurisdiction.

⁸*S v Mzatho and Others 2007 (2) SACR 309 (T)*. In appropriate circumstances a regional court may refer a bail application back to the district court even after the accused has appeared in the regional court.

⁹The ratio in *Mzatho* was driven by a solitary regional-court seat: the same regional magistrate could not justly hear the bail application and then remain seized of the trial. That factual predicate is part of the decision.



Those sentiments were echoed in *S v Hlongwane and Others* (AR507/13) [2015] ZAKZPHC 1 (28 January 2015). The High Court issued a declaratory order that a regional court, confronted with a bail application which in the opinion of the presiding magistrate it could not entertain, had the power to refer the bail application to a lower court if such referral would be in the interests of justice and would serve to protect the fundamental rights of the applicant for bail as entrenched in the Constitution¹¹².

What the cases do not permit

S v Mzatho and Others 2007 (2) SACR 309 (T) and *S v Hlongwane and Others* (AR507/13) [2015] ZAKZPHC 1, like the other decisions on this subject, share a particular trait: there was a single regional magistrate, and it was impractical and undesirable that the same officer hear the bail application and thereafter be seized of the trial. For that predicament the High Court warranted a deviation from the ordinary reading of section 60(1) (b). What is equally evident is that such a deviation must be exercised only where cogent reasons exist. It can never be a deviation of personal convenience.

Sadly, listening to many explanations as to why matters are referred back to the district court for bail, colleagues will cite *S v Mzatho and Others* 2007 (2) SACR 309 (T) — seemingly the most popular authority — but all the other parts of the principle are left behind, save for the ruling that a regional court may refer a matter to the district court for bail. To this end the “appropriate circumstances” part of the ratio decidendi is ignored. One cannot avoid the question whether that reading is adopted deliberately, as an interpretation of convenience.

The concept of the “interests of justice” is not a bare phrase. It is preceded by many considerations, some of them in conflict, some of them in contrast with one another. A decision is then reached as to what best serves the imperatives of justice in those circumstances¹³. Evident in the High Court decisions is that the judges understood and acknowledged that the legislation does not, in ordinary terms, permit the regional court to refer matters to the district court for a bail hearing. For the solitary regional-court seat they exercised the High Court’s inherent power to cause a deviation from the Act. What informed those deviations were cogent reasons.

Conclusion

From the above it is clear that once a matter has been placed before a higher forum, the magistrates’ court loses its powers, functions and duties relating to bail, unless there exist good reasons for the matter to be referred back for a bail application¹⁴. Convenience is not a good reason. A solitary regional seat, or some other circumstance that would make it unjust for the regional court itself to hear the application, may be. The statute is the starting point. *S v Mzatho and Others* 2007 (2) SACR 309 (T) is not a standing permission to empty the regional roll onto the district court.

Authorities

S v Dlamini; *S v Dladla*; *S v Joubert*; *S v Schietekat* 1999 (4) SA 623 (CC); 1999 (2) SACR 51 (CC).

S v Hlongwane and Others (AR507/13) [2015] ZAKZPHC 1 (28 January 2015).

S v Makinana 2004 (2) SACR 46 (E).

S v Mzatho and Others 2007 (2) SACR 309 (T).

Van Rooyen and Others v The State and Others 2002 (5) SA 246 (CC).

Legislation

¹⁰*S v Hlongwane and Others* (AR507/13) [2015] ZAKZPHC 1 (28 January 2015) (Van Zyl J). Cited on this circuit together with *Mzatho* for the power of a regional court, in the interests of justice, to protect the applicant’s constitutional rights in respect of bail. The classic referral-order language is that formulated in *Mzatho*.

¹¹Constitution of the Republic of South Africa, 1996, s 35(1)(f): every arrested person has the right to be released from detention if the interests of justice permit, subject to reasonable conditions. See also s 12(1) and s 34.

¹²Constitution, s 165(2)–(4). A referral made for the convenience of the roll, and not because the regional court cannot justly hear the application, is not an exercise of that duty.

¹³*S v Dlamini*; *S v Dladla*; *S v Joubert*; *S v Schietekat* 1999 (4) SA 623 (CC); 1999 (2) SACR 51 (CC) (Kriegler J). The “interests of justice” in bail is a structured enquiry, not a slogan.

¹⁴*Van Rooyen and Others v The State and Others* 2002 (5) SA 246 (CC). Magistrates are judicial officers. The proper allocation of work between district and regional courts is part of the institutional independence of the lower courts.



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Constitution of the Republic of South Africa, 1996, ss 12, 34, 35(1)(f) and 165.
Criminal Procedure Act 51 of 1977, ss 50(6)(c), 60(1)(b) and 60(11)(a), and Schedule 6.
Magistrates Act 90 of 1993; Magistrates' Courts Act 32 of 1944.

— *Magistrate Scelo Zuma*
Durban Magistrates' Court

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