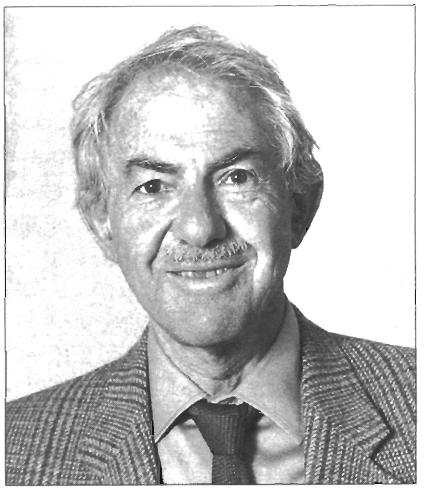
Complaint about HH Morris KC

Ronnie Selvan SC
Johannesburg Bar



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THE following correspondence from the records of the Johannesburg Society of Advocates is thought to be of interest.

In a letter dated 16 August 1924 Teuns Tom, a solicitor practising at Potchefstroom, complained to the Johamesburg Society of Advocates about a fee of £36.15.0 charged by the well-known HH Morris KC in a certain civil matter. After further correspondence between Tom and the society, Tom, in a letter dated 5 September 1924, elucidated his complaint in greater detail as follows:

"I acted as Attorney for the Defendant in the action *Van der Merwe versus White* heard before the Circuit Court, Potchefstroom.

I was advised that Mr Adv Morris was retained by Messrs van der Hoff & du Toit, a local firm, to appear in the matter *Shellard versus Woolridge* and considered that it would be advisable for the Defendant also to engage Mr Adv Morris.

The Summons and the Plea was sent by me from Potchefstroom to Mr Morris with the request that he should peruse the same and let me know on the phone whether he considered that objection to the jurisdiction of the Court should be taken. This Mr Morris did.

Mr Morris duly came to Potchefstroom and conducted the case *Shellard versus Woolridge* which was completed about 3 p.m. on the 19th June 1924.

The case *Van der Merwe versus White* was then called and the Judge suggested a settlement to which the parties would not agree and thereafter the Court proceeded to an inspection *in loco* at the request of Counsel on both sides. At the inspection *in loco* (a dam had to be inspected and the surrounding soil and washaways), the Judge, the Plaintiff and myself walked together for nearly the whole of the inspection and examined the dam wall and Mr Adv Morris accompanied by the Attorney for the Plaintiff, Mr Louw, kept more or less together and apparently took little interest as to the examination made by the Judge. I later on heard from Mr Louw that Mr Morris had made the following remark to him 'I don't understand anything about the matter, I don't want to understand anything about it, come on, let's go', meaning by the concluding remark, let us go to the motor car which was waiting. The inspection *in loco* was held for the benefit of the Judge and Counsel – the Solicitors and parties had on several occasions inspected the place and I submit that it was the duty of Counsel to have carefully inspected everything. Had I been aware that Counsel had made this remark I certainly would have made other arrangements rather than proceed with the action but it was only conveyed to me after the case had been completed.

The Court did not resume the hearing that day and that evening we arranged that one of the witnesses, Mr Kan, should be examined privately and whatever his statement was, it should be put in the next day. Mr Adv Morris duly attended at the examination of Mr Kan and it was then agreed between Counsel and myself that he would call at my office early the next morning at 8:30 so as to enable us to go into the matter, the Court having decided to commence the hearing again at 9 a.m. on the 20th June 1924. Mr Morris did not come to my office and as it was getting on to 9 o'clock I had to take the papers to Court in order to be present at the hearing. I found Mr Morris in Court and presumed that he knew, at all events, the statements contained in the Summons and Plea. Mr Morris did not inquire from me what witnesses had to be called and I presumed then that he would leave the decision as to what witnesses had to be called in my hands. To my surprise, however, after certain witnesses had been called on certain issues by the Plaintiff *and* rebutting the evidence on certain issues given by the Defendant, Counsel jumped up and made this statement to the Bench: 'After I put in the statement of Mr Kan (above referred to) I close my case'. I then drew Counsel's attention to the fact that there were several witnesses still to be called who were waiting in Court and that as no evidence had been called by us on some of the issues these witnesses should be called. Counsel did not know what witnesses were available as he never endeavoured to ascertain from me or asked me for their statements. My contention is that if he was doing his duty he should certainly have made inquiries from or left the management of the case in my hands. After I pointed out to Counsel the absurdity of his action, he endeavoured to call one of the witnesses, Mr Curlewis, whose evidence was disabled on objection taken by the other side on the ground that Adv Morris had intimated that he had closed his case.

The case was lost on a point on which available evidence should have been called and if the witnesses had been called, Defendant would have easily succeeded.

During the argument it did not take me long to grasp that Counsel knew nothing about the facts stated in the Summons and Plea and though during the argument I en-

deavoured to put him right it was impossible for me to do so under the circumstances with Counsel conducting his argument. If Counsel even at that stage had known the facts stated in the Summons and Plea he might perhaps still have remedied his prior omission to call evidence, but as he knew nothing about the whole case, the result was a foregone conclusion.

The adverse decision therefore could easily have been avoided had Counsel shown an intelligent interest when the inspection *in loco* took place, had taken the trouble to ascertain what witnesses were available or had taken the trouble to ascertain the facts contained in the Summons and Plea.

My client blames Counsel for the loss of the case and refuses to pay.

Before leaving Court Mr. Morris made the remark to me 'I suppose we will now have a bust up outside' apparently meaning that I will put the blame on him and he on me.

Counsel did not have a brief nor was the fee ever marked thereon and with the exception of the Summons and the Plea which I sent to him and which were returned to me, all the papers remained in my possession except that Counsel was handed the Summons and Plea in Court.

Under the circumstances I shall be pleased to hear whether Mr. Morris is entitled to any fees."

At the end of the above letter there is a notation by DD Hope who was then Bar Secretary as follows:

"Reply sent to T Tom on 17th Nov appointing Friday 21st Nov for investigation of whole matter in terms of minute of Bar Council Meeting of 8th November 1924."

However, by a letter dated 20 November 1924 Mr Tom wrote that he wished to withdraw his complaint.

At the foot of the letter there is the following note by Hope:

"I telephoned HH Morris KC who said that he was quite satisfied and did not desire matters to go any further."

Illustrious reputation

At the time of the complaint, Mr HH Morris KC had not achieved the illustrious reputation which his subsequent conduct of criminal cases earned him.

He took silk in 1924 as did also FAW Lucas, RF MacWilliam, B Duncan, L Greenberg and in Pretoria, O Pirow.

Yet, it is ironical that a complaint of this nature should have been made of an advocate of whom Benjamin Bennett in his biography – *Genius for the Defence* – wrote: "Morris, on the other hand, was abstemious, always dependable and fanatically punctual. He was an unremitting worker on behalf of his clients." (Quoted by Ellison Kahn, sub-nom, in *(Harry) Morris – Law, Life and Laughter* 176 at 179.)

Why the complaint was withdrawn is a matter for speculation. However, according to the minutes of the meeting of 8 November 1924 where it was decided that the complaint should be investigated, Blackwell (later Blackwell J) is reported to have stated that the case of *Van der Merwe v White* about which the dispute had arisen had been "won on appeal". This might have had something to do with the decision of attorney Tom not to proceed with the complaint.

The fact that the appeal succeeded would appear to vindicate Morris's conduct of the case. But, that attorney Tom thought otherwise when he lodged the complaint cannot be doubted. Possibly his views were coloured by resentment of Morris. The two clearly did not hit it off. For this Morris must bear some responsibility, if he seemed to prefer the company of his opponent's attorney to his own at the inspection *in loco*. That would not be calculated to ingratiate himself with his own attorney.

On the other hand, one may speculate that attorney Tom may have upset Morris by presuming too much to dictate how the case should be run. Judging by his expressed views, it is probable that he was not prepared to take a back seat. I have tried to find out more about him, so far without success.

Harry Morris is now remembered as an advocate who specialised in criminal cases. It is interesting to note that in 1924 he was quite willing to take on civil work. Reference to the law reports in the early years of the century confirms that Harry Morris's subsequent claims to know no law and to rely solely on his juniors for what was needed should perhaps not to be accepted at face value.

In 1924, having recently taken silk, he was doubtless prepared to take on whatever cases he was offered. His fee of 35 guineas was not inconsiderable, even taking into account that the case went into a second day. In 1946, as I recall, the ruling salary for a professional assistant to an attorney was of the order of £30 per month.

It is a matter for satisfaction that Harry Morris got his fee and that his client won the appeal.

Hulle sê...

Processen duister en lank, zijn der advocaten spijs en drank
– Nederlandse spreekwoord

Injustice is relatively easy to bear; what stings is justice
– HL Mencken

The certitude of laws is an obscurity of judgment backed only by authority
– Giambattista Vico

Let the people think they govern and they will be governed
– William Penn