



Acting Deputy Judge President XM Petse, Mthatha

SZ Peko - acting Judge President; and XM Petse - the current acting Deputy Judge President.


Though a small division in comparison with the other divisions in South Africa, several

members of the Eastern Cape Mthatha Bench had been elevated to higher courts: Judge Madala - to the Constitutional Court; Judge Somyalo - as Judge President of the greater Eastern Cape Division; Judge Jafta - to the Supreme Court of Appeal and later to the Constitutional Court; and (Ms) Justice Maya - to the Supreme Court of Appeal.

### Jurisprudential impact of our court

The division has delivered and still continues to deliver decisions that are reported in the South African Law Reports. These judgments have had an impact in the greater jurisprudence of South Africa.<sup>4</sup> Given its geographical location the court deals mainly with general civil matters, criminal law and customary law. Despite its size<sup>5</sup>, the division is arguably the busiest of all the Eastern Cape divisions. Its legal practitioners are often appointed as acting judges throughout the High Courts and Labour Court of South Africa.

### Endnotes

- <sup>1</sup> The then Republic of Transkei is one of the four apartheid South Africa's independent Bantustan states known as TBVC states. Though declared independent by South Africa, the TBVC states did not obtain international recognition. (The states were a component of the apartheid's 'Divide and Rule' policy.) As early as 1973, a Transkei High Court was established; it had the status of a provincial division and was led by a Judge President.
- <sup>2</sup> The Appellate Division of the Supreme Court of Transkei enjoyed an equal status in the then Republic of Transkei as that of the pre-1994 Republic of South African Appellate Division sitting in Bloemfontein.
- <sup>3</sup> There was no JSC then. In the pre-1994 South Africa judges were appointed by the State President. Blacks were not appointed to the Bench, and invariably all the seconded judges were white. An exception was in the late 1980s when Judge Dumbutshena, previously a judge in Zimbabwe, was seconded to the Appellate Division of the Supreme Court of Transkei.
- <sup>4</sup> The following are but a few of the latest influential decisions to have emanated from the division: *Sithonga vs Minister of Safety and Security & Others* 2008 (1) SACR 376 (Tk), *Magobodi vs Minister of Safety and Security & Another* 2009 (1) SACR 339 (CC); *Qaukeni Municipality vs FV Trading* 2010 (1) (SA) 356 (SCA)
- <sup>5</sup> The number of judges permanently appointed to the division are less than ten. 

## A brief history of the Eastern Cape High Court, Bhisho

By CTS Cossie and TM Ntsaluba, Bhisho Bar

The Eastern Cape High Court, Bhisho, formerly known as the Supreme Court of Ciskei, was established in September 1981 under the leadership of the late DS de Wet as Chief Justice.

The seat of the court at that time was in Zwelitsha, a township just outside King William's Town in the Eastern Cape. Zwelitsha was the administrative capital of the erstwhile Ciskei homeland which was soon to be granted 'independence.' The court was housed in the homeland administration's Department of Justice. Judges L van den Heever and B de V Pickard served on the Bench during that era with the latter serving as Deputy Chief Justice.

The court moved from those humble beginnings to the present court building situated in Bhisho on 27 of January 1984. By then Judge Pickard was the Chief Justice. The court then had an Appellate Division on which Rabie, Galgut, Van Winsen and Diemont JJA served.

Other judges of this division who have over the years contributed immensely to the jurisprudence and growth of this court - mainly after the reincorporation of the homeland into South Africa on 27 April 1994 - were M Claasen, WH Heath, VEM Tshabalala, CS White, AEB Dhlodhlo, Y Ebrahim, ZS Peko (deceased), D Van Zyl and CT Sangoni.

Some of the judges of this division were

appointed to head commissions of inquiry during their tenure, namely Judges Heath, White and Pickard. Other judges of the division went on to head other courts, namely Judge Tshabalala (as Judge President of the KwaZulu-Natal Division, now known as the KwaZulu-Natal High Court, Pietermaritzburg, and KwaZulu-Natal High Court, Durban, respectively) and Judge Peko (as acting Deputy Judge President of the Transkei Division, now called the Eastern Cape High Court, Mthatha).

The court is now known as the Eastern Cape High Court, Bhisho, and Judge Dhlodhlo is its acting Deputy Judge President. The current dispensation is that the Eastern Cape Province has four High Courts all of which fall under one Judge President, Judge CM Somyalo. They are the Eastern Cape High Court, Bhisho, the Eastern Cape High Court, Grahamstown, the Eastern Cape High Court, Port Elizabeth, and the Eastern Cape High Court, Mthatha.

The court boasts the unrivalled history of having hosted the trial of a sitting 'Head of State' in the matter of *S v Gqozo and Another* 1994 (2) SA 756 (CK) in which a claim to immunity from prosecution by the incumbent was dismissed.

Some of the other important decisions of the court or decisions of other (appeal) courts in matters that originated from the

court are the following:

- *Zantsi v Council of State, Ciskei, and Others* 1995 (4) SA 615 (CC);
- *Mati v Minister of Justice, Police and Prisons, Ciskei* 1988 (3) SA 750 (CK);
- *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2006 (3) SA 151 (SCA);
- *Poswa v Member of the Executive Council for Economic Affairs, Environment and Tourism, Eastern Cape* 2001 (3) SA 582 (SCA);
- *Eastern Cape Provincial Government and Others v Contractprops 25 (Pty) Ltd* 2001 (4) SA 142 (SCA);
- *Guzana v Council of State, Republic of Ciskei* 1993 (2) SA 445 (CKA);
- *S v Ncanywa* 1993 (2) SA 567 (CKA);
- *Bongopi v Chairman, Ciskei Council of State and Others* 1993 (3) SA 494 (CKA). 

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