



The Free State High Court, Bloemfontein.

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## A brief history\*

By Henriette Murray, Free State Bar

**T**he Constitution of the newly established Republic of the Orange Free State on 23 February 1854 made no provision for any court with judges. It provided only for various magistrates' courts (ie for courts of landdrosts and of landdrosts and heemraden who were mostly laymen without legal training) and for a supreme court of appeal consisting of the state president and the executive council of the Republic.

The subsequent judicial reform in the Republic of the Orange Free State and the institution of a supreme court with a circuit division is

\* *Compiled from various clippings, speeches and sources contained in Bekombare Deeltjies uit die Geskiedenis van die Hooggeregshof by M van der Wath and (former Judge President) EKW Lichtenberg and further clip-books kindly provided to me by the Free State High Court Library; also from 1920 (37) SALJ.*

largely attributed to President Brand, a trained lawyer. It is only fitting therefore that President Brand Street in Bloemfontein houses not only the historic sandstone buildings of the Old Presidency, the Raadsaal and the Town Hall, but also the Magistrate's Court, the High Court and the Supreme Court of Appeal.

In 1872 the Orange Free State's first independent supreme court of appeal was established, and in 1875 a supreme court

with three judges which only in 1876 attained jurisdiction equal to that of the Cape and Natal. The establishment of the supreme court was vehemently opposed by some members of parliament who questioned the government's ability to afford the chief justice's annual salary of £2 400 and the two puisne judges' salaries of £2 000 each.

FW Reitz was the first Chief Justice, with J Buchanan and Melius de Villiers the two

puisne judges, all three of them reputedly between 26 and 34 years of age. At that time the requirements for judges were a doctorate in law or seven years' practice as an advocate. Their activities were not restricted to dispensing justice: in their free time they had to draft legislation.

When Chief Justice FW Reitz (later President of the ZAR) in 1889 became President of the Republic of the Orange Free State, he was replaced as Chief Justice by MT Steyn, the first born Free Stater to become a judge. Steyn also subsequently became President of the Republic of the Orange Free State. He was in turn replaced as Chief Justice by JBM Hertzog who in 1924 became the Prime Minister of the Union of South Africa.

Judge Buchanan conducted the first circuit court in April 1896, undoubtedly by ox-wagon. As Judge de Villiers later wrote: circuit court in the OFS in the pre-railway days 'were on the whole very enjoyable – a sort of pleasant picnic while on the road, though not infrequently marred by heavy rains and thunderstorms' and the concomitant difficulties of having to cross swollen rivers by ox-wagon, on a raft or on horseback.

The Supreme Court heard numerous boundary disputes on farm allotments by the Land Commission which, not surprisingly, invariably necessitated inspections in loco either by the Circuit Court or by the Supreme Court, or both. According to Judge De Villiers, due to the lack of qualified land-surveyors the extent of a farm could be described as follows: 'North beacon an anthill with a wildebeest head on the same; South beacon a solitary karree-tree (sic); East beacon an anthill with a bee-nest in it; West beacon a white stone on the slope of a hill. The distance along the boundary line between two corner beacons: a half-an-hour's ride on horseback at a stepping pace.'

An interesting case arose from the British annexation of a portion of the OFS on which diamonds had been discovered. President Brand travelled to England to attempt to negotiate the return of the land but had to be satisfied with £80 000 in restitution. The Baumann Brothers then sued the OFS government for a large amount in damages for the dispossession of their farmland through the annexation. The government pleaded *force majeure*. The Circuit Court held that since the government had accepted the compensation the plea could not be sustained and the Brothers had to be compensated. The Supreme Court upheld the decision on appeal.

In 1899 the government of the South African Republic (ZAR) went to war against the British government. Martial Law was declared and the Orange Free State courts of law were closed to ordinary judicial business. Two of the judges were called to arms and only Chief Justice Melius de Villiers was ordered to remain 'to do such judicial work as may be required.' When Lord Roberts arrived in Bloemfontein the military locked the court rooms, the registrar's office and the judges' chambers, and the High Court of Justice of the independent Orange Free State 'ceased to exercise its functions.'

After the Anglo-Boer War a new supreme court, once again with three judges, was constituted for the Orange River Colony. In 1910

this court became known as the Orange Free State Provincial Division of the Supreme Court of South Africa and the chief Justice as the Judge President.

In 1911 at Buckingham Palace the British King and Privy Council signed rules to regulate the newly acquired right of South African citizens to lodge a special appeal against a decision of the South African Appellate Division. A slight impediment was Rule 6 which specified that if the record was printed in South Africa, 40 copies of such record had to be transmitted to the registrar of the Privy Council at the expense of the appellant.

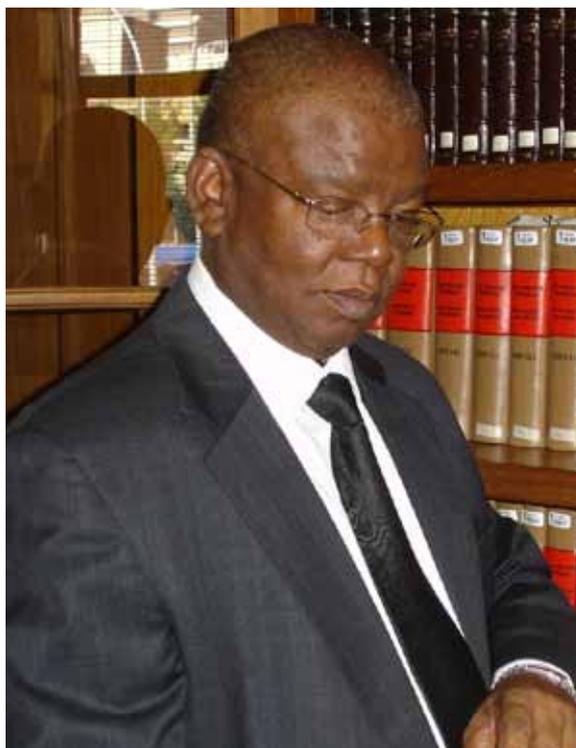
From its first sitting in the Bloemfontein Town Hall on 17 August 1874, the Supreme Court for 30 years had to take turns with Parliament to sit in the Raadsaal and had to return to the Town Hall when Parliament was in session. It was only on 6 December 1909 that the first case could be heard in one of the two courtrooms of the newly built High Court on the corner of President Brand and Elizabeth Streets designed by the architects Hawke & McKinley. (It is in one of these courtrooms, too, that General Christiaan de Wet was tried.)

Forty-six years later, in 1956, the economic recovery, mainly due to the discovery of gold in the Orange Free State, necessitated an expansion of the Bench. A new three storey building was built behind the existing court building, housing two new court rooms as well as judges' chambers and administrative offices to accommodate the new judges. When the Free State High Court on 17 August 1974 celebrated its centenary in the old Raadsaal in President Brand Street, there were seven judges on the Bench. A further three court rooms were added.

At the official opening of the new court complex on 13 June 1981, Judge President Klopper indicated that these were the first court rooms in South Africa to make provision for witnesses to sit during testimony and for chairs instead of the traditional long benches to enable counsel to reach the various microphones more freely.

On 9 May 1997 yet another new addition, the new North Wing with six new court rooms was opened. The FS High Court now occupies the entire block between President Brand and Aliwal Streets. Roodt Architects, within budgetary restrictions, succeeded in creating as uniform an appearance as possible, using some sandstone cladding and sandstone pillars to make the two new buildings blend in with the 100 year old original sandstone court.

In keeping with the court's brand new appearance, the Free State High Court duly started the process of transforming into one more representative of the South African population when on 21 June 1999 it welcomed to the Bench Judge Hendrick M Musi, the present Judge President of this division. Four years later Judge Sharmin Ebrahim was the first female to receive a fulltime appointment to this Bench. Presently the Free State High Court has 14 permanent judges: Judge President HM Musi and Judges (in no particular order of seniority) SPB Hancke, CB Cillié, G Wright, H Rampai, A Kruger, S Ebrahim, CJ Musi, I van der Merwe, C van Zyl, C Mocumie, B Molemela, F Jordaan and J Moloi. 



Free State High Court Judge President Hendrick Musi.