



Bust of Gauteng High Court Judge President Bernard Ngoepe.

Over the years, the face of these courts remained remarkably constant. Judges were (with one or two notable exceptions) appointed from the ranks of practising advocates, who were all white, male members of the Bars of Pretoria and Johannesburg. It was only with the advent of the new Constitutional dispensation, that the first black judge, Ismail Mahomed (later CJ), and the first female judge, Lucy Mailula, were appointed in 1991 and 1995 respectively. Since then, the racial and gender composition of the courts has been changed dramatically: of the 63 judges

in this division, 32 are black, and nine are female.

The Transvaal Bench has also produced a formidable array of Appellate Division and later Supreme Court of Appeal judges. Eleven of eighteen current Supreme Court of Appeal and three of 11 current Constitutional Court judges previously served on the Bench of this division. Of the 21 chief justices appointed since 1910, 11 previously served in this division.

The jurisdiction of these courts has remained virtually unchanged since 1910, despite the geographical rearrangement that the country experienced in 1994. Most notably, part of the North West Province was excised from its jurisdiction and added to that of the North West High Court. A refurbished court building to house the (future) Limpopo Division, was recently officially opened in Polokwane by Ngoepe JP. At present it houses a circuit court. Also, within the area of jurisdiction of this division is another anomalous constitutional remnant from the past, the Limpopo High Court, Thohoyandou. Despite 16 years of democracy, it still exists as a solitary island, serving only the people of the erstwhile Republic of Venda whilst people living in neighbouring Polokwane have to travel to Pretoria to obtain judicial audience. It is hoped that the legislature will soon decide the fate of these areas' jurisdiction, so that practitioners may settle down to serious practice, serving the people at their closest High Court seat.

Any assessment of history of the Bench of this division, as is the case with all other divisions of the High Court, will be controversial. Whilst it undoubtedly correct that some

judges in this division can be criticised for their uncritical application of racially-biased laws in the past, sight must not be lost of the excellent work done in the development of our common law. Even the most vociferous critics of the Bench were driven to concede that judgments of the erstwhile Supreme Court bear eloquent testimony to the adaptability of the Roman-Dutch legal heritage that infuses the system. This is especially evident from the remarkably smooth transformation that the division has experienced since 1994, and its judgments upholding the Constitution.

Examples of decisions arising from the division that changed the law and the way we look at things include: *Modderklip Boerdery (Edms) Bpk v President van die Republiek van Suid Afrika en Andere* [2003] 1 All SA 465 (T), by De Villiers J; *National Coalition for Gay and Lesbian Equality and Others v Minister of Justice and Others* 1998 (6) BCLR 726 (W) by Heher J as he then was; *High School Ermelo and Others v Head of Department of Education, Mpumalanga and Others* (unreported, case no 3062/2007), by Prinsloo J; and *Nyathi v MEC for the Department of Health, Gauteng and Another* (unreported, case no 26014/2005) by Davis AJ. There are many others, too many to include in this short article.

Probably the biggest challenge facing the division today is the work-load and the fact that practitioners sometimes have to wait inordinately long for reserved judgments to be given. Numerous vacancies on the Bench are not filled, which places undue pressure on senior members of the Pretoria and Johannesburg Bars to take up acting appointments for short periods of time. It is to be hoped that this issue will receive prompt attention. 

More on the South Gauteng High Court

By Dirk R van Zyl, Johannesburg Bar

The South Gauteng High Court, or as it is often referred to, the Johannesburg High Court, may be described as a court of some irony. Irony in the sense that despite its new name and being located in the heart of South Africa's busiest cbd, despite being one of the busiest courts in the country and despite having its largest Bar, the South Gauteng High Court remains to this day a local division which shares its jurisdiction with the North Gauteng High Court.

It was created by the same proclamation that created the North Gauteng High Court¹ and thereafter called 'The Witwatersrand District Court', its area of jurisdiction practically comprising what was known as the Witwatersrand Gold Fields.² Although the opening of the court was anticipated for 20 May 1902, the High Court building was only inaugurated in 1910.

The High Court building was designed by Gordon Leith at a time when Lord Milner wished to impose the idea of the supremacy of the British Empire and the order and rationale of Victorian 'enlightenment' upon all aspects of post-Anglo-Boer War Johannesburg.

For avid conspiracy theorists a closer inspection of the exterior of the building provided interesting examples of freemasonry symbols, including the square and compasses and other hidden clues.

The entrance to the High Court was supposed to be directly opposite Kruis Street. However, the story goes that when the outlay for the streets were measured out, it was done from Von Wielligh Street (in the west) using raw hide thongs (*rieme*). The *rieme* were left out in the open on a typical Highveld evening and became soaked with dew. The next morning the opposite side of the street was measured and the *rieme*, which had stretched overnight, gave a different measurement from the previous day. This went unnoticed at the time and it may be observed that Kruis Street does not sit opposite the entrance of the High Court. The streets only align again at Rissik Street.

The statue of Carl von Brandis stands on the south-western corner of the court precinct as the High Court building was built on Von Brandis Plain. Von Brandis Street, which runs on the western side of the court building, was so named because Von Brandis dispersed justice from his tent somewhere on that street. Ironically, Von Brandis himself was never a judge. A Prussian officer of the old school, he was a special landdrost of the Witwatersrand, who had endeared himself to everyone and was regarded more as a father than a law-giver.³ The legendary Harry Morris KC, he of Daisy de Melcker fame, said of Von Brandis that 'he knew no law, but was strong on equity'.⁴

Visitors to the South Gauteng High Court are generally oblivious

to further two interesting facts about the court building. Firstly, the gauge mark used when measuring out that portion of Johannesburg, is to be found on the north-westerly corner of the High Court building.⁵

The second interesting fact is the stained glass window at the top of the entrance to the High Court. The coat of arms is that of the Transvaal Colony (1902-1910). When the High Court building was designed few knew how long the Transvaal Colony would last and, as students of history will attest, the idea of the Union of South Africa (1910) was but a distant hope in 1902. The only other place in Johannesburg to sport the same coat of arms was the post office in Rissik Street. However, the Rissik Street Post Office burned down 2009, making the coat of arms above the entrance to the High Court the last of its type.

The High Court building is currently in the process of major renovations whereby 12 additional courts, 32 new chambers, a robing room, ablution facilities, underground parking, new lifts and a judges' conference room are to be added. These renovations started in September 2009 and are expected to be completed around March 2012. Lucky then that all advocates are required to advance their client's case without fear because the underground parking is being excavated and built during session right under the court!

A new practice manual has been implemented in this division from 1 February 2010 and advocates are well advised to pay close attention

to the new practice rules now being implemented.

As much as the renovations of the court building and the new practice manual looks to the future of our High Court, the past of our division remains ever present for those who step across its threshold. That this may be the case as much during the night as during the day is another of the quaint anecdotes that may be found 'floating' around in this division. Many a junior clerk (the sobriety of judges prevent any such admissions) and night security guard will attest to the sights (or is that sighs) and sounds that roam the hallways of the court building after hours. And although one school of thought might see it as 'the restless souls' of bad judgments, the Bar has been assured by the Deputy Judge President that all outstanding judgments are being dealt with.

Endnotes

¹ Proclamation 14 of 1902 of the Transvaal.

² 1902 (XIX) South African Law Journal 221.

³ Addington Symonds *The Johannesburg Story* (1953) at 104-106, quoted in Ellison Kahn *Law, Life and Laughter: Legal Anecdotes and Portraits* (Juta 1991) 288.

⁴ HH Morris KC *The First 40 years* (1948) at 62-63, quoted in Kahn *supra* at 287.

⁵ For those that are interested, immediately turn left upon entering the High Court Building, proceed past Court GC and follow the hall way right to the back. The 'yk' is to be found on the floor at the end of the hall way. 

Eastern Cape High Court: Mthatha

By Mathobela Sishuba, Mthatha Bar



Eastern Cape Mthatha High Court

Historical background

The Eastern Cape High Court Mthatha's area of jurisdiction comprises that part of the Eastern Cape formerly known as 'The Republic of Transkei'.¹

Prior to the reincorporation of the former Republic of Transkei into the new South Africa of 1994, the Supreme Court of Transkei enjoyed fully independent country High Court status in that:-

- it had its own general and appellate divisions²;
- it had its own Chief Justice, judges of appeal and judges of its general division; and
- its general divisions sat as a circuit court in various districts of the then Republic of Transkei.

Though the Transkei Supreme Court enjoyed a full status as set out above, its judges were not appointed from the ranks of legal practitioners practising in the then Republic of Transkei, nor were they appointed by the President of the Republic of Transkei. As was the case in the pre-1994 South Africa, all the Supreme Court judges were seconded from South Africa.³

At all times, notwithstanding its independent status, the Transkei Supreme Court was a component of the greater South African legal jurisprudence in that, for example, its decisions were reported in the South African Law Reports and were referred to with approval in all South African courts. The South African decisions were also recognised and referred to as authority in the Transkei Supreme Court. In the post-1994 South Africa, the Transkei

Supreme Court became known as the Transkei Division of the High Court of South Africa, and it has since transformed in line with the needs of our Constitution.

The following judges had been at the helm of the division at various times:-

- G Munnick – Chief Justice;
- J Hefer – Chief Justice;
- TH Van Reenen – Chief Justice;
- T Beck – Chief Justice;
- CM Somyalo - Judge President; (Judge Somyalo was in the late 1990s elevated to the position of Judge President of the Eastern Cape Province, and after his appointment, the division was led by various acting Deputy Judge Presidents);
- MR Madlanga - acting Deputy Judge President;
- N Jafta - acting Deputy Judge President;