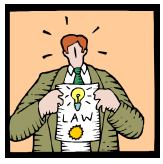
e-MANTSHI

A KZNJETCOM Newsletter

October 2010: **Issue 57**

Welcome to the Fifty Seventh issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Back copies of e-Mantshi are available on http://www.justiceforum.co.za/JET-LTN.ASP. There is now a search facility available on the Justice Forum website which can be used to search all the issues of the newsletter. At the top right hand of the webpage any word or phrase can be typed in to search all issues.
Your feedback and input is key to making this newsletter a valuable resource and we hope to receive a variety of comments, contributions and suggestions – these can be sent to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or faxed to 031-368 1366.



New Legislation

1. Under section 9 of the *Reform of Customary Law of Succession and Regulation of Related Matters Act*, 2009 (Act No 11 of 2009), the date on which the *Reform of Customary Law of Succession and Regulation of Related Matters Act*, 2009 (Act No 11 of 2009), shall come into operation has been fixed as 20 September 2010. The notice to this effect has been published in *Government Gazette* no 33576 dated 17 September 2010.The following section is of relevance to Magistrates:

5. Dispute or uncertainty in consequence of nature of customary law.—(1) If any dispute or uncertainty arises in connection with—

(a) the status of or any claim by any person in relation to a person whose estate or part thereof must, in terms of this Act, devolve in terms of the Intestate Succession Act;

(b) the nature or content of any asset in such estate; or

(c) the devolution of family property involved in such estate,

the Master of the High Court having jurisdiction under the Administration of Estates Act, 1965 (Act No. 66 of 1965), may, subject to subsection (2), make such a determination as may be just and equitable in order to resolve the dispute or remove the uncertainty.

(2) Before making a determination under subsection (1), the Master may direct that an inquiry into the matter be held by a magistrate or a traditional leader in the area in which the Master has jurisdiction.

(3) After the inquiry referred to in subsection (2), the magistrate or a traditional leader, as the case may be, must make a recommendation to the Master who directed that an inquiry be held.

(4) The Master, in making a determination, or the magistrate or a traditional leader, as the case may be, in making a recommendation referred to in this section, must have due regard to the best interests of the deceased's family members and the equality of spouses in customary and civil marriages.

(5) The Cabinet member responsible for the administration of justice may make regulations regarding any aspect of the inquiry referred to in this section.

2**.** Section 1 of the *Criminal Procedure Amendment Act, 2008* (Act No. 65 of 2008) (Postponement of cases through audiovisual link) has been put into operation from 1 October 2010 in respect of the magisterial districts of Bellville, Bloemfontein, Cape, Durban, Khayelitsha, Kroonstad, Kimberley, Klip River, Kuils River, Mitchells Plain, Nelspruit, Paarl, Pinetown, Port Elizabeth, Pretoria, Thohoyandou and Wynberg. The notice in this regard was published in *Government Gazette* no 33605 of 1 October 2010 which also included the designation of correctional facilities in terms of the Act.

3. The Minister of Justice and Constitutional Development intends introducing the *Criminal Law Amendment Bill, 2007*, in the National Assembly shortly. The explanatory summary of the Bill was published in accordance with Rule 241(c) of the Rules of the National Assembly in *Government Gazette* no 33526 dated 5 October 2010.

The *Criminal Law Amendment Bill, 2010***,** aims to bring the provisions relating to the use of force when effecting an arrest into line with a judgment of the Constitutional Court; and to provide for matters connected thereto.

A copy of the above Bill can be found on the website of the Parliamentary Monitoring Group at http://www.pmg.org.za

4. A *Criminal Law (Forensic Procedures) Amendment Act, 2010* was published in *Government Gazette* no 33607 of 5 October 2010.The purpose of the Bill is as follows: To amend the *Criminal Procedure Act, 1977*, so as to provide for the compulsory taking of fingerprints of certain categories of persons; to provide for the taking of fingerprints and body-prints for investigative purposes; to further provide for the retention of fingerprints and body-prints taken under the Act; to further regulate the destruction of fingerprints taken under the Act; to further regulate proof of certain facts by affidavit or certificate; to amend the *South African Police Service Act, 1995*, so as to regulate the storing and use of fingerprints, body-prints and photographic

images of certain categories of persons; to provide for the keeping of databases and to allow for comparative searches against those databases; to provide for security measures relating to the integrity of information stored on these databases; to make provision for the development of standing operating procedures regarding access to the databases of other state departments; to amend the *Firearms Control Act, 2000*, so as to further regulate the powers in respect of fingerprints and body-prints for investigation purposes; to amend the *Explosives Act, 2003*, so as to further regulate the powers in respect of fingerprints and body-prints for investigation purposes; and to provide for matters connected therewith.

5. The commencement date for the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa, published under GNR.740 in *Government Gazette* 33487 of 23 August 2010, has been fixed as 15 October 2010. This date of commencement was fixed under Government Notice 888 in *Government Gazette* 33620 of 8 October 2010.

Recent Court Cases

1. **Minister for Justice and Constitutional Development v Nyathi and another 2010 (4) SA 567 (CC)**

Execution against State assets can only be done if the correct procedure is followed.

In *Nyathi v MEC for Department of Health, Gauteng and Another* 2008 (5) SA 94 (CC) (2008 (9) BCLR 865) the court declared s 3 of the State Liability Act 20 of 1957 constitutionally invalid. That section prevented the execution against or attachment of State assets. The declaration of invalidity was suspended for one year, until 2 June 2009, to allow Parliament to enact legislation for the effective enforcement of judgment debts against the State. The suspension was then extended to 31 August 2009 and again for a further 24 months, until 31 August 2011. After considering argument the court provided the following interim order to regulate the satisfaction of judgment debts against the State (until 31 August 2011, unless remedial legislation was enacted first):
(a) If a final order against a national or provincial department for the payment of money is not satisfied within thirty (30) days of the date of judgment, the judgment creditor may serve the court order in terms of rule 4 of the Uniform Rules of Court or rule 9 of the Magistrates' Court F Rules of Court, on the relevant national or provincial treasury, the State Attorney, the accounting officer of the relevant national or provincial department, as well as the Executive Authority of the Department concerned;

(b) The court order served on the officials referred to in para (a) of this order must be accompanied by a certificate by the registrar or clerk of the relevant court, certifying that no appeal, review or rescission proceedings are pending in respect thereof;
(e) The relevant treasury shall within fourteen (14) days of service of the order, cause the judgment debt to be settled, or itself settle the judgment debt, or make acceptable arrangements with the judgment creditor, for the settlement of the judgment debt;
(d) Should the relevant treasury fail to cause the judgment debt to be satisfied, itself settle the debt or make acceptable arrangements with the judgment creditor for the settlement of the judgment debt within the time period specified in para (e) of this order, the judgment creditor may apply for a writ of execution in terms of rule 45 of the Uniform Rules of Court or a warrant of execution in terms of rule 36 of the Magistrates' Courts Rules, against movable property owned by the State and used by the relevant department, whichever is applicable;
(e) The sheriff of the relevant court shall, pursuant to the writ of execution or warrant of execution, attach but not remove the identified movable property;
(f) In the absence of any application contemplated in para (g) of this order, the sheriff of the relevant court may after the expiration of thirty (30) days from the date of attachment, remove and sell the attached movable property in execution of the judgment debt; and
(g) A party having a direct and material interest may, during the periods referred to in para (f) of this order, apply to the court which granted the order, for a stay on grounds that the execution of the attached assets is not in the interests of justice.
(Paragraph [57] at 584G-585H.)

2. Standard Bank of SA v Pretorius; Standard Bank v Kruger 2010 (4) SA 635 (GSJ)

Once a debt review was referred to a magistrates' court the debt review process in terms of section 86 of the NCA ended.

The applicant, a credit provider; invoked s 86(10) of the NCA to terminate debt review proceedings in respect of credit agreements between itself and the respondents, and then proceeded to apply for summary judgment against them. In two separate applications, heard together for the sake of convenience, the court was called upon to determine whether s 86(10) of the NCA empowered a credit provider to terminate a debt review process where a debt counsellor had already referred the review, with recommendations, to a magistrates' court for consideration.

Held, that s 86(10) of the NCA had to be interpreted in the context of the purpose and objectives of s 86 itself, and in such a way as to give effect to the NCA's core purpose of promoting and protecting consumer rights. (Paragraphs [10]—[11] at 638F—G and 639A.)

Held, further, that a credit provider's right to terminate a debt review process, as set out in s 8600) of the NCA, was expressly qualified in the subsection itself to those 'being reviewed in terms of this section'. Once a debt counselor referred a debt

review to a magistrates' court with recommendations for consideration in terms of s 86(8)'b) of the NCA, it fell within the ambit of s 87, and not s 86. (Paragraphs [13] and [14] at 640H and 641C.)

Held, further, that once a debt review was referred to a magistrates' court for consideration, the debt review process as conducted in terms of s 86 of the NCA ended, and it became a review before the magistrates' court under s 87. (Paragraph [15] at 641D.)

Held, further, that an unqualified entitlement to terminate review proceedings where a court was already seized with the matter, without reference to such court, was inconsistent with the NCA's core values of protection and promotion of consumer rights. An interpretation of s 86(10) of the NCA that would allow a creditor to terminate a debt review process, once it was already referred to a magistrates' court for consideration, would, given the magistrates' courts' inability to process applications within 60 business days from the referral date, circumvent the entire purpose of the NCA. (Paragraphs [17] and [21] at 6411 and 642H—J.)

Held, further, that the provisions of s 129(2) of the NCA, which excluded the application of s 129(1) to credit agreements that were subject to debt restructuring orders or proceedings in a court that could result in such an order, supported an interpretation that, once a debt review process was referred to a magistrates' court, termination in terms of s 86(10) thereof would be incompetent because such referral could result in a restructuring or rearranging order in terms of s 129(1)(b)(i) and (ii). (Paragraph [26] at 644D—F.)

Held, further, that it was the debt counselor, not the magistrate, who had to make a determination at least 60 days from the date on which the consumer applied for debt review. Section 86 had to be read to say that, should the debt counselor fail to conclude the debt review process within 60 days from the date on which the consumer applied for debt review in terms of S 86(1), then a credit provider would be entitled, in terms of s 86(10), to give notice to terminate the review. (Paragraph [23] at 643E—F.) Leave to defend respective actions granted.

3. S v Magadla 2010 (2) SACR 316 (ECM)

The main requirement for the granting of leave to appeal was the existence of a reasonable prospect of success on appeal.

The applicant was convicted of rape and sentenced to ten years' imprisonment. His appeal to the High Court against conviction having failed, he filed a notice of intention to apply for leave to appeal to the Supreme Court of Appeal. The applicant based his application on the grounds that the court had not rejected his alibi defence as false; that it had not paid sufficient regard to the reliability of the State's evidence; that it had erred in finding that the complainant had had adequate opportunity to

identify the perpetrator; and that it had erred in accepting the credibility of the State's witnesses.

Held, that the chief requirement for the granting of leave to appeal was the existence of a reasonable prospect of success on appeal. The mere possibility that another court might come to a different conclusion was not sufficient; nor was it enough that the case was arguable, nor that it would offer solace to the applicant to know that the final decision would be given by a higher court. (Paragraphs [5]-[8] at 318i-319f.)

Held, further, that virtually all the grounds set out in the application for leave to appeal invited the court to focus too intently on individual parts of the evidence, whereas the correct method was to adopt a holistic approach, having regard to the mosaic of proof as a whole. It might well be that there were certain aspects of the State's case that had not been adequately probed, but these did not individually or cumulatively detract from the fact that the evidence, when considered in its totality, was of sufficient weight to sustain a conviction. (Paragraphs [10]-[13] at 319h-320h.)

Held, further, concerning the identification of the applicant, that the court had been alive to the dangers of unequivocal acceptance of the complainant's evidence, especially as she was a single witness. The risk of mistaken identification had been substantially reduced, if not eliminated, by the various factors: the complainant had travelled for some time in the applicant's vehicle; the room in which she had been raped was lit by electric light; she had witnessed him putting on a condom on two occasions, before each episode of sexual intercourse; the following morning she had again travelled in his car to a point where he had dropped her off; and she had reacted in a specific way when, the following day, and in the company of a friend, she had seen the applicant's car. She had, accordingly, had ample opportunity to see who she was with. (Paragraphs [16]-[19] at 32li-323a.)

Held, further, regarding the applicant's alibi defence, that some play had been made of the fact that the court had not explicitly held that the alibi evidence was false. However, it was clear from the thrust and context of the judgment that this defence had indeed been rejected. In any event, at the risk of stating the obvious, no judgment could ever be all-embracing. (Paragraph [20] at 323c—e.) Application dismissed.

4. S v Theko 2010 (2) SACR 339 (GNP)

If an accused, released on bail, fails to appear at the trial it is incorrect to hold an enquiry i.t.o. section 170 of the Criminal Procedure Act, 51 of 1977.

During the course of his trial for theft the accused, who was released on bail, failed to appear and his bail money was declared provisionally forfeit to the State. He appeared four days later, whereupon the court proceeded to conduct an enquiry in terms of s 170 of the Criminal Procedure Act 51 of 1977. He was convicted of contravening s 170(2) and sentenced to a fine of R500 or 30 days' imprisonment. Shortly afterwards, the matter was referred to the High Court on special review,

since, in the magistrate's opinion, the enquiry had been conducted erroneously; an enquiry in terms of s 67(2) (a) ought instead to have been held.

Held, that s 170 was applicable only when an accused who was not in custody, and who had not been released on bail, failed to appear in court or to remain in attendance. The section did not apply in the present matter. Had the trial court acted under s 67(2)(a), the accused's bail could have been cancelled and the money forfeited to the State. However, although the insertion of s 67A into the Act had criminalised the failure of an accused on bail to appear or to comply with a bail condition, a court was not empowered to enquire in a summary manner whether an accused had contravened the section. A charge-sheet must be drawn and a formal trial must be held, with the accused's guilt proved beyond reasonable doubt. Under the circumstances, the 'conviction' that had flowed from the abortive 170 enquiry fell to be set aside; and, since a proper trial had not been held, it could not be substituted with a conviction for contravening s 67A. (Paragraphs [7]—[15J at 340h—341h.) Conviction and sentence imposed under s170 of Act 51 of 1977 set aside. Fine of R500 ordered to be repaid to accused.

5. S v Gedezi and another 2010(2) SACR 363 (WCC)

The refusal of a postponement may compromise an accused's constitutionally entrenched rights to a fair trial.

The appellants had been convicted in a regional magistrates' court of murder and sentenced to 15 years' imprisonment, with three years of the sentence of the second appellant being ordered to run concurrently with a four-year sentence he was serving for an unrelated offence. In an appeal against the convictions and sentences, it was contended that an irregularity had occurred in the trial court, relating to the first appellant's lack of legal representation, and that this irregularity was of such a fundamental nature that it vitiated the proceedings before the regional magistrate in respect of the first appellant. It appeared that after numerous postponements at the request of the State, and a further postponement as a result of the second appellant not being in court for the commencement of the trial, the first appellant's counsel asked for an adjournment in order to enable him to prepare for the trial. Counsel had informed the court that his instructing attorney had, for personal reasons, been unable to interview the first appellant, with the result that counsel was not prepared for the trial. In view of the number of postponements that had already occurred and the inconvenience to various people involved in the trial, the regional magistrate refused the request for the postponement and directed that the trial should proceed. Counsel for the first appellant withdrew. The first appellant then refused throughout the trial to take any part in the proceedings. He refused to cross-examine any State witnesses; he refused to testify; he did not cross-examine the second appellant when he gave evidence; he did not address the court in argument on the merits; he refused to admit his previous convictions (which necessitated a host of police witnesses being called to verify these), and he did not address the court in mitigation of sentence. On a number of occasions he simply refused to reply when addressed by the regional magistrate.

Held, that, by refusing the first appellant's counsel a reasonable opportunity to take instructions from the first appellant, the regional magistrate had effectively closed the door for the first appellant on any meaningful participation in the proceedings. (Paragraph [24] at 373b.)

Held, further, that the inconvenience to the court and the witnesses of a short postponement was far outweighed by the prejudice to the first appellant who was then effectively deprived of the right to legal representation. (Paragraph [27] at 373g-h.)

Held, further, that the first appellant had not been charged with a petty crime: he had been charged with murder and faced a minimum sentence of 15 years' imprisonment. The conduct of the regional magistrate in those circumstances had the effect of compromising the constitutionally entrenched rights of the first appellant. (Paragraph [28] at 373h-j.)

Held, further that, in incorrectly ascribing the first appellant's inability to proceed with the trial to his negligence, the regional magistrate had clearly misdirected herself. The regional magistrate did not exercise her discretion to grant or refuse a postponement properly, and her decision to refuse a postponement in the circumstances amounted to an irregularity in the proceedings, which was of sufficient magnitude that it could readily be said that the first appellant did not have a fair trial. In the light of the severe prejudice to the first appellant, the court was entitled to intervene. (Paragraph [31] at 374g—375a.).

First appellant's appeal upheld and his conviction and sentence set aside. The matter was remitted to the regional court for retrial before another regional magistrate.

From The Legal Journals

Stadler, S

"The National Credit Act and consent to judgment in terms of the Magistrates' Courts Act"

De Rebus October 2010

De Villiers, D S

Old "documents", "videotapes" and new "data messages" – a functional approach to the law of evidence (part 1)

TSAR 2010 558

(Electronic copies of any of the above articles can be requested from gvanrooyen@justice.gov.za)

Contributions from the Law School

The Supreme Court of Appeal on paternity testing *YM v LB* (465/09) [2010] ZASCA 106 (17 September 2010)

What a missed opportunity! In the February 2009 edition of *eMantshi*, under the heading “Paternity: compelled testing and the best interest of the child” the court *a quo* decision of *Botha v Dreyer (now Möller)* [2008] JOL 22809 (T) were discussed.

The article concluded with an appeal for judicial or legislative clarity on the law relating to court-ordered blood testing of potential parents refusing to voluntary submit themselves (and/or the minor child) to such testing.

The Supreme Court of Appeal had been given an opportunity to provide this clarity, but elected to side-step the issue based on the facts of the matter. It is not suggested that the court was necessarily wrong in its final decision, but it was hoped that it would provide the lower courts with some guidelines as to this issue of compelling adults and children to undergo blood tests to determine paternity. After all, the issue had only been unclear for about 30 years and certainty regarding the obligation and power of the court to order such tests against the wishes of one of the parties would have been valuable. The *obiter* guidance of the Supreme Court of Appeal is not unknown as the same court in May 2010 gave guidelines to the lower courts regarding the future reconsideration of the action based on breach of promise that would seemingly change the law considerably (*Bridges v Van Jaarsveld* 2010 (4) SA 558 (SCA)). It was the same pro-active approach that was expected, yet was not forthcoming.

The true biological paternity of a child is of the utmost importance in South Africa as it determines the parental responsibilities and rights of parties, including contact, care and the duty to maintain the child until the child becomes self-supporting. The South African law remains rooted in biology. Unfortunately, it is not unknown for a wife to lie about whom they have had intercourse with, resulting in two legal consequences: one, the husband is legally regarded as the father of the child with the accompanying rights and obligations (see the discussion of the presumptions in the February 2009 *eMantshi*); and two, the biological father is denied his parental rights (and obligations) that he may have had or have obtained vis-à-vis his biological child. The first principle has it roots in Roman law. It is submitted that it was never the aim of the Roman law principles to force the husband of a wife to support another man’s child without his knowledge. The common law principle of *stuprum* after all made provision for the annulment of a marriage where a husband discovers that his wife was pregnant with the child of another man at the time of the marriage.

With DNA testing becoming more common and now being done for a variety of reasons, including medical testing for potential illnesses, this has resulted in a spate of paternity fraud cases making headline news worldwide. In these cases the husband and the child discover years later that the paternity was based on a lie and that the husband had supported the child for years as a result of this fraud (see *inter alia* the facts of *Johncom Media Investments v M* 2009 4 SA 7 (CC) (South Africa); *Magill v Magill* [2005] VSCA 51 (17 March 2005) (Australia) and the allegations of the horror film director Andrew Douglas against his ex-wife Ameena Meer (USA). This trend is unlikely to end.

Back to the judgment: In *YM v LB* the SCA found that where the paternity of the child has been shown on a balance of probabilities, as was the case *in casu*, scientific tests on a child should not be ordered. In this matter paternity was not really in dispute as both parties (at various times before the attorneys joined the show) believed that the man in question was the father of the child. The mother's maternity was obviously never in doubt.

The court made the following observations: one, that as paternity is determined on a balance of probabilities, the man is not entitled to demand scientific proof; two, that in relevant instances, the court has the inherent power as upper guardian of all minor children to order such tests if it is in the best interests of the child; three, the SCA referred to the observations of the court *a quo* regarding truth as a primary value in the administration of justice, but by implication disagree with the statement. The SCA did note that the rights of privacy and bodily integrity may be infringed if it is in the best interests of the child. However, it approved the statement of Didcott J in an earlier case that it may not be in an individual's interest to know the truth. The court noted that in some cases it may be justified to order tests, but that the discovery of the truth should not be generalized. With these comments, the appeal was upheld.

The crux of a paternity matter is that the applicant will have to show that such a test would be in the best interest of the child. This would be difficult as there has been no research as to the impact on a child that learns, at a later stage, that his/her presumed father was not the biological father. Yes, paternity testing may have a negative short-term impact on the family as it may reveal relationships that were previously unknown. After all, it has been acknowledged that from a broader family perspective, family genes are considered to be an heirloom. I am yet to be convinced by the courts that it would be better not to know the truth or to keep the truth from a child at any age. In disputed paternity matters the emotional trauma of uncertainty always taints the relationships between the parents and sometimes also the relationships between the maybe father and the child. This trauma can be easily resolved through testing. For the SCA to note that the man is not entitled to scientific proof when the reality is that it can readily be done seems to unnecessarily muddle an important issue with legalities.

It is submitted that s37 of the Children's Act that provides that where a party to any paternity proceedings refuses to submit himself or the child to the taking of a blood sample in order to carry out scientific tests relating to paternity, the court must warn

the person of the effect which such refusal might have on the credibility of the party, does not go far enough as it does not resolve the main issue, namely the truth about the paternity of the child.

Although the SCA overturned the *a quo* decision, it is submitted that certain statements in the *a quo* decision remains valid. The court confirmed that judicial notice may be taken of the existence of these tests and that it is unnecessary for medical evidence to be adduced regarding their nature and accuracy of these tests before – with the *caveat* that this does not exclude any challenge to the reliability of any particular test in litigation once the test had been performed. There is however no guidance as to the most important question: whether or not it will be in the best interests of the minor child to determine paternity with certainty. What weight will the courts in future place on the argument that concealing the truth from a child might have the supposed advantage of not 'bastardising' the child or cutting it off from an established source of maintenance? Does this not create an inherent and inescapable injustice in compelling a person to assume obligations not rightfully his? The husband did agree to a marriage, but not to raise another man's child.

Lastly, a child at the age of 18 has the right to the medical information of his genetic parents in instances of artificial fertilisation and surrogacy is recognised by s 41(1) of the Children's Act. It is submitted that by refusing the compelling of blood tests for paternity disputes in instances of natural conception seems to deny these children of their right to information of their genetic parents.

It is submitted that the court *a quo* was correct when it concluded that it will be in the best interests of the child that paternity be scientifically determined and resolved at this early stage. It is unfortunate that the SCA did not have the vision to provide the legal fraternity with their wisdom.

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Matters of Interest to Magistrates

Courting problems

A senior Sandton attorney describes the administrative chaos prevailing at the South Gauteng High Court, Johannesburg, in the Letter of the Month of De Rebus, October

2010. There are many reports of similar problems at other High Courts and, by all accounts, there are even worse problems in many magistrate's courts around the country.

The continuing nature of this state of affairs is not a good omen for the Department of Justice and Constitutional Development's (DoJ&CD) latest – and very commendable – attempt to bring easier access to justice for all by means of the roll-out of the Civil Regional Courts (CRCs).

Sadly, there has already been an inauspicious start to the roll-out process, with the initial notice establishing the CRCs, purporting to determine their provincial seats and dealing with their jurisdiction, having been published before the commencement of the empowering Jurisdiction of Regional Courts Amendment Act 31 of 2008.

While that error can be corrected fairly easily by the republication of the notice (which had not yet been done at the time of writing), there is a further problem in that the Amendment Act appears not to confer on the Minister all the powers he has purported to exercise. There are other problems too, mainly the result of the same poor drafting that has spoiled many other recent pieces of legislation such as the *Companies Act 71 of 2008* and is becoming endemic. Some of the problems are of a more technical nature, and others more substantial, such as the question of costs in the CRCs, divorces, matters falling under the *National Credit Act 34 of 2005* and the transfer of CRC judgments to the district courts for execution purposes. As a result we have withheld the discussion of the relevant notice from this month's New legislation column (see 43).

However, we hope that the DoJ&CD can use the pause that has been forced on the rollout process to good effect in overcoming not only these problems, but also addressing the broader issues which the organised profession has identified as a result of attending departmental information sessions around the country. These include a lack of sufficient human resources (both judicial and administrative), the need for further training of magistrates (in which the Law Society of South Africa has offered its assistance), and a lack of infrastructural support and of accommodation in some areas.

It would indeed be a great pity to see such an important access to justice initiative fail or do no more than limp along. As the former chairperson of the General Council of the Bar, Patric Mtshaulana SC, has written in the August issue of *Advocate*, what South Africa requires are changes that are directed at ensuring that the poorest of the poor are provided with better chances of having their matters decided finally in the lower courts without the need to appeal. We agree and we believe that the CRCs can play an important part in that.

We urge the DoJ&CD to concentrate its capacity, constrained though it may be, on the magistrate's courts and High Courts rather than high-level issues such as giving the Constitutional Court the final say in non-constitutional matters.

(The above article appeared as the editorial in the *October 2010 De Rebus*)

A Last Thought

"The object of sentencing is not to satisfy public opinion but to serve the public interest……A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It remains the court's duty to impose fearlessly an appropriate and fair sentence even if the sentence does not satisfy the public"

From *S v Mhlakaza and Another* 1997 (1) SACR 515 (SCA) at 518e-g