

THE SUPREME COURT OF APPEAL

ADJUDICATING AND SERVING JUSTICE IN UNCHARTERED TERRAIN DURING UNPRECEDENTED TIMES: COVID19



MS. MANDISA M. MAYA
THE PRESIDENT OF THE SCA

The Republic of South Africa like the rest of the world was plunged into a crisis as a result of COVID19. All institutions, governmental and non-governmental had to make means to continue with work under very difficult times and threat to the well-being of all the citizens especially those above sixty years of age, as the medical experts warned.

The Supreme Court of Appeal was no different. Subject to Practice Directives issued by the Chief Justice of the Republic of South Africa, Chief Justice Mogoeng Mogoeng, in a Court Directive issued on 24 April 2020, the President, Justice Mandisa Maya called upon all justices of the SCA to stay home but continue with their work as they would have done in Bloemfontein: Business as usual but under unusual times.

These Practice Directives provided *inter alia* that the court building shall remain open for essential services, and that remote hearings shall be conducted during the May 2020 court term. The subsequent directives of 29 April 2020 elucidated how the proceedings would be conducted via video and or audio hearings, with the presiders managing each sitting as they would have in the normal run of the mill.

In anticipation of the May hearings, Justice Maya facilitated and coordinated the training of all twenty-five justices across the country which took place two weeks before the court term commenced, on 4 May 2020.

The training was conducted in virtual form with several dry runs divided in groups of five justices, a Secretary, researchers and the IT specialist per session. All justices participated. Two days before the term commenced, the President and all justices participated in a virtual meeting of all including the acting justices as they would have done in Bloemfontein, to chart the way for the term and further assess the viability of virtual hearings/proceedings. The meeting was a success and a taste of what would be experienced in the 28 days of the second term.

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The resolve from all to achieve justice was proportional to the courage to pursue it even when this was uncharted terrain in unprecedented times.

The first cases were heard on 4 May 2020. Of these, the one highlighted is *Carel Wynand Roux and others v Theunis Christoffel Botha and others (Case No: 427/2019)* because the President like the captain of the ship on her first maiden journey, sat behind the cameras and observed how the hearing was conducted. She switched on at 9h00 instead of 9h30 like all the panel members.

She literally called each of the panel members that were not yet connected to start to connect. By 9h45 all panel members, both counsel, the instructing attorneys, the litigants who were granted permission to observe the proceedings from the comfort of their homes in the Western Cape as well as the media were all on board when the clerk of the court introduced the matter.

This case was about two neighbours in the Breede River Valley in the Western Cape who had been fighting more than seven years over the location and extent of certain servitudes over a piece of land previously owned by two brothers who had bought it from their late father. 25 years later with this land in the family, the younger brother sold his portion to a purchaser outside the family as a result, dispute after dispute arose between the neighbours. The proceedings were conducted by the Justice Navsa, Mocumie, Makgoka JJA & Govern and Ledwaba AJJ. The matter was introduced by the clerk of the judge and all parties welcomed by the presider, Justice Navsa. The hearing took almost an hour and a half. Judgment was reserved. The order to be handed down electronically.

Of significance is the matter of: *The National Commissioner of Police v & The Minister of Police v Gun Owners of South Africa (Gun Free South Africa as amicus curiae (561/2019))*. This was the first virtual hearing to be live streamed in SA on Facebook and YouTube, at the request of the parties, subject to the court directives regarding avoiding disrupting the proceedings. The media also joined on the platform to observe the proceedings. The presider was the President, Justice Maya with panel members: Zondi, Schippers, Plasket JJA and Eksteen AJ. All South Africans across the country watched the SCA in motion for the very first time. Access to justice: Justice seen! Justice experienced!

Now, a few days before the end of the term, the President, true to her inclusive and collegial leadership style, took a step back to look at the term when it started to take stock. On the 28 May 2020, she wrote to her colleagues proudly,

'Dear Colleagues...

The last matter on the May 2020 term roll was heard yesterday [27 May 2020]. All the matters which the litigants requested to be heard, 47 in all, were adjudicated successfully. So we were able to dispose of our entire roll (except for those matters in respect of which the parties opted for open court hearings in due course). As far as I know, no other court in the country has been able to do that and the courts that have sat dealt only with urgent matters. I know that there was some hesitation from some of us in the beginning. This was understandable considering that no virtual court had been run anywhere in the world before the Covid-19 pandemic and it was uncharted terrain. But once we decided to go ahead with the new method everyone gave it their all. We worked under really difficult circumstances with all the glitches and technological deficiencies but we pulled it off, using our own home facilities to dispense justice, and helped of course by Gareth, Paul (who has manned the front office since Day 1 of the lockdown) and the rest of our support staff. We may fight and scratch one another at times (which family doesn't?) but when it comes to our work and the good of our court we are unbeatable.

Thank you.

I have no doubt that there will be a marked improvement in the coming term and I will ensure that the OCJ IT officials deliver on their promise to improve our connectivity and procure a Zoom license.

Best wishes,

Mandisa'

A follow-up training to improve on and sharpen the skills of the justices on virtual hearings on Microsoft Teams will be conducted during the third term on the 20th August 2020.

- **By: Baratang Constance Mocumie**
Justice of the Supreme Court of Appeal, RSA
28 May 2020