

The killing of a judicial officer

The General Council of the Bar of South Africa expressed its outrage at the killing of Cape Town Regional Court Magistrate PD Theron in September 2000. In a press release the GCB stated: "It is a matter of concern that on a number of occasions since the intensification of the wave of bombings which has taken place in the Western Cape since last year, and to which Mr Theron's assassination may or may not be linked, it has been stated emphatically at high executive level that progress is being made and that arrests are imminent. It is to be hoped that those repeated statements in fact have content, and that in any event, as

the GCB requested in a public statement earlier this year, particular measures will be taken to secure the safety of judicial officers. We are not aware that this has happened; Mr Theron's death now makes this imperative.

"Mr Theron was respected as a conscientious and fairminded judicial officer. He was one of many magistrates who, in the particularly difficult position which prevails in many courts across the country, made a significant contribution to the administration of justice in one of the most heavily populated magisterial districts in the country. The GCB wishes to express its condolences to his family."

In hierdie uitgawe

Die 55ste Algemene Jaarvergadering

In hierdie uitgawe word daar grootliks verslag gedoen oor die verrigtinge van die 55ste Algemene Jaarvergadering van die Algemene Balieraad van Suid-Afrika. In sy verslag bespreek die voorsitter van die ABR die belangrike stappe wat geneem is om toegang tot en transformasie van die professie te bevorder. Daar word ook melding gemaak van die samesprekings met die

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Letters to the editor

Starting at the Bar

Johan Moorcroft
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I read the article in 2000 (3) *Advocate* 18 by Gcina Malindi with interest as we both started at the Bar in the mid-1990s. In general I agree with and support his views but there are two of his comments I wish to take issue with.

The first is that briefing patterns "will always be skewed ... in favour of a white male." In the current political and socio-economic environment many firms will rather be seen briefing a black counsel than a white counsel, all things being equal. The State Attorney prefers to brief "black" juniors. These are facts of life!

The writer also assumes, erroneously, that all whites are rich and have parents who can support them "in the first few years of practice." This is simply not so. Many come to the Bar only at a time when it is financially feasible to do so without any support from parents or anybody else. The possibility of support from parents or from anybody else is not open to everyone!

I support Malindi in his comment that a vibrant legal profession and a legitimate judiciary are essential to democracy.

Perhaps advocates must all realise that they have a lot in common, irrespective of differences in their background.

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Pleading a denial

WRE Duminy SC
Cape Bar

In "Pleading a denial: some ideas for junior practitioners" in 2000 (2) *Advocate* 21 Peter van Blerk SC mentions one of the classic ways of pleading a denial, namely:

"The defendant denies each and every allegation herein contained as if specifically traversed."

Another "classic" (not mentioned in the article) has the further verbiage "*and individually denied*" at the end.

Van Blerk SC rightly warns against the dangers of unintended admissions and advocates' caution in pleading. Mentioning the "classic" formula, however, again gives occasion to consider how turgid the language of law and lawyers can be.

Are any of these denials more emphatic or comprehensive than a simple:

"All the allegations in this paragraph are denied",

"Every allegation in this paragraph is denied", or


"The defendant denies all the allegations (or every allegation) in this paragraph"?

I doubt it. Bearing in mind that the paragraphs in a plea are directed at specific paragraphs of the declaration or particulars of claim, it is probably enough to say –

"All these allegations are denied," or


"The defendant denies all these allegations."

The "classic" "*each and every*" is a pleonasm. "*As if specifically traversed*" adds no meaning. If a pleader must "*traverse*" "*each and every*" allegation, a failure to do so is hardly overcome by pleading a deemed compliance. If a pleader does not need to "*traverse*," why cling to the "classic" formula?

Van Blerk SC later makes the point that the true requirement "is a clear statement of denial". Whilst the "classic" formulations certainly are denials, they are hardly clear. Is it not time for those hackneyed old formulae to be put out to pasture, and to advocate simple, unambiguous language in pleadings? 


as a blunt weapon to wrest power for power's sake stands revealed.' He went as far as to suggest that the advocates' demand was tantamount to advancing Verwoerdian policies.

After my column appeared the GCB resuscitated discussion on negotiations that had stalled. New proposals have been put to Advocates for Transformation. It may be arrogant to assume that the activity was sparked by my comments. Even if it is a coincidence, it is a happy one. Gauntlett seems not to have come out against the principle of equal representation as strongly as he did in 1998 and this in itself is a step forward.

As the GCB moves forward it would be useful to remember that grand statements about commitment to non-racialism amount to nothing more than platitudes when no serious attempts are made to practise it. The advocates' profession needs to embrace the new constitutional order. The process will present difficulties but some contrition and humility will go a long way." 

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Minister van Justisie waarin onderwerpe oor 'n wye terrein te berde gebring is — vanaf taalgebruik in die howe tot die struktuur van die regbank. Dit is opvallend dat die voorsitter in sy gesprekke met die Minister die beskikbaarheid van advokate om as voorsittende beamptes en aanklaers in die howe te dien, beklemtoon het. (Meer hieroor in 'n volgende uitgawe.)

"n Hoogtepunt van die jaarvergadering was die banket ter ere van Sir Sydney en Lady Kentridge QC. Die weldeurdagte toesprake van die voormalige president, mnr Nelson Mandela, Sir Sydney Kentridge QC en Jeremy Gauntlett SC, voorsitter van die ABR, verskyn in hierdie uitgawe. Verder plaas ons verskeie komiteeverslae, waaronder die aktuele verslae oor regshulp (Denis Kuny SC en Halima Saldulker) en menseregte (Anwar Albertus SC). Ons beoog om in die volgende uitgawe verder verslag te doen oor besluite wat op die jaarvergadering geneem is. 

From the publishers ...

Land title in South Africa

by D L Carey Miller
with Anne Pope

Juta & Co (2000)
614 pages
Soft cover R365 (VAT incl)

It was with great expectation that I opened this book with its attractive cover. The contents however reminds one somewhat of that strange animal, the *platypus*. In the preface the author states that the book aims to give an account of the substance and working of the South African land law reforms of the 1990s. In chapter 1 the author states that the book is "primarily a technical work on property law" with emphasis on "substantive legal forms which provide for title in land" (p 2), "primarily about 'right and title to land' rather than 'land tenure'" and also as "primarily a legal textbook". Chapters 2 and 3 of the book fit this description. These two chapters dealing with registration and prescription are taken almost word for word from *The acquisition and protection of ownership*, the author's well-known and respected 1986 textbook. Practitioners will find these two updated chapters as useful and authoritative as ever. None of the other chapters from the 1986 book were taken over and it would not seem as if *Land title in South Africa* was meant to replace the earlier book.

The rest of the book stands in stark contrast with the content and style of the chapters taken over from the 1986 book. Chapter 4 contains a short discussion of sectional titles and share block schemes. The subjects are discussed in such general terms that this chapter serves only as a broad overview of what is already contained in the two Acts and the regulations and practitioners would find this of little or no value.

The remainder of the book is largely an uncritical and somewhat superficial discussion of the land reform policy of the 1990s and the various new legislative measures aimed at giving effect to land and tenure reform in

South Africa. In mitigation it should be pointed out that the author does state in the Preface that only the main aspects of a large subject are covered and he also correctly refers to the "obvious problem in writing about the new land law" namely that it is in an active process of development. The land reform process is however a new area of the law that is in desperate need of serious and critical academic comment and study. The salutary aim of the new legislation is to correct past wrongs, and as stated by the author in the last chapter of the book, although the new order is "concerned with a reallocation of land rights without major departure from the pre-existing model, it has brought significant change". In practice, however, lawyers are often faced with numerous impracticalities, discrepancies, vague and badly drafted sections in some of the new Acts, as can be expected of an area of the law that is still in the developing phase. The practitioner will not find any answers to these problems in this book. In this respect it cannot be compared to the excellent *Juta's new land law* which has in a very short time become the "bible" of practitioners in the new property law.

The real and welcome contribution of this book lies however in the fact that it does provide a useful introduction to and overview of the land reform process. The general introduction in chapter 1 to the development of discriminatory landholding in South Africa provides a useful background to students and practitioners involved in restitution matters.

In part III of the book the author discussed in broad terms the 1991 land law reforms (chapter 5), the constitutional basis for the reform agenda (chapter 6), restitution (chapter 7), redistribution of land (chapter 8) and tenure reform which includes reference to inter alia the Interim Protection of Land Rights Act, communal property associations, extension of security under *ESTA*, prevention of illegal eviction and unlawful occupation, and labour tenants. The book ends with an analysis of reform in