

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.<sup>5</sup>

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

<sup>1</sup> Proclamation 14 of 1902 of the Transvaal.

<sup>2</sup> 1902 (XIX) South African Law Journal 221.

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

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

<sup>5</sup> 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.'<sup>1</sup>

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 divisions<sup>2</sup>;
- 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.<sup>3</sup>

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;



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Acting Deputy Judge President XM Petse, Mthatha

SZ Peko - acting Judge President; and XM Petse - the current acting Deputy Judge President.

Though a small division in comparison with the other divisions in South Africa, several

members of the Eastern Cape Mthatha Bench had been elevated to higher courts: Judge Madala - to the Constitutional Court; Judge Somyalo - as Judge President of the greater Eastern Cape Division; Judge Jafta - to the Supreme Court of Appeal and later to the Constitutional Court; and (Ms) Justice Maya - to the Supreme Court of Appeal.

### Jurisprudential impact of our court

The division has delivered and still continues to deliver decisions that are reported in the South African Law Reports. These judgments have had an impact in the greater jurisprudence of South Africa.<sup>4</sup> Given its geographical location the court deals mainly with general civil matters, criminal law and customary law. Despite its size<sup>5</sup>, the division is arguably the busiest of all the Eastern Cape divisions. Its legal practitioners are often appointed as acting judges throughout the High Courts and Labour Court of South Africa.

### Endnotes

- <sup>1</sup> The then Republic of Transkei is one of the four apartheid South Africa's independent Bantustan states known as TBVC states. Though declared independent by South Africa, the TBVC states did not obtain international recognition. (The states were a component of the apartheid's 'Divide and Rule' policy.) As early as 1973, a Transkei High Court was established; it had the status of a provincial division and was led by a Judge President.
- <sup>2</sup> The Appellate Division of the Supreme Court of Transkei enjoyed an equal status in the then Republic of Transkei as that of the pre-1994 Republic of South African Appellate Division sitting in Bloemfontein.
- <sup>3</sup> There was no JSC then. In the pre-1994 South Africa judges were appointed by the State President. Blacks were not appointed to the Bench, and invariably all the seconded judges were white. An exception was in the late 1980s when Judge Dumbutshena, previously a judge in Zimbabwe, was seconded to the Appellate Division of the Supreme Court of Transkei.
- <sup>4</sup> The following are but a few of the latest influential decisions to have emanated from the division: *Sithonga vs Minister of Safety and Security & Others* 2008 (1) SACR 376 (Tk), *Magobodi vs Minister of Safety and Security & Another* 2009 (1) SACR 339 (CC); *Qaukeni Municipality vs FV Trading* 2010 (1) (SA) 356 (SCA)
- <sup>5</sup> The number of judges permanently appointed to the division are less than ten. 

## A brief history of the Eastern Cape High Court, Bhisho

By CTS Cossie and TM Ntsaluba, Bhisho Bar

The Eastern Cape High Court, Bhisho, formerly known as the Supreme Court of Ciskei, was established in September 1981 under the leadership of the late DS de Wet as Chief Justice.

The seat of the court at that time was in Zwelitsha, a township just outside King William's Town in the Eastern Cape. Zwelitsha was the administrative capital of the erstwhile Ciskei homeland which was soon to be granted 'independence.' The court was housed in the homeland administration's Department of Justice. Judges L van den Heever and B de V Pickard served on the Bench during that era with the latter serving as Deputy Chief Justice.

The court moved from those humble beginnings to the present court building situated in Bhisho on 27 of January 1984. By then Judge Pickard was the Chief Justice. The court then had an Appellate Division on which Rabie, Galgut, Van Winsen and Diemont JJA served.

Other judges of this division who have over the years contributed immensely to the jurisprudence and growth of this court - mainly after the reincorporation of the homeland into South Africa on 27 April 1994 - were M Claasen, WH Heath, VEM Tshabalala, CS White, AEB Dhlodhlo, Y Ebrahim, ZS Peko (deceased), D Van Zyl and CT Sangoni.

Some of the judges of this division were


appointed to head commissions of inquiry during their tenure, namely Judges Heath, White and Pickard. Other judges of the division went on to head other courts, namely Judge Tshabalala (as Judge President of the KwaZulu-Natal Division, now known as the KwaZulu-Natal High Court, Pietermaritzburg, and KwaZulu-Natal High Court, Durban, respectively) and Judge Peko (as acting Deputy Judge President of the Transkei Division, now called the Eastern Cape High Court, Mthatha).

The court is now known as the Eastern Cape High Court, Bhisho, and Judge Dhlodhlo is its acting Deputy Judge President. The current dispensation is that the Eastern Cape Province has four High Courts all of which fall under one Judge President, Judge CM Somyalo. They are the Eastern Cape High Court, Bhisho, the Eastern Cape High Court, Grahamstown, the Eastern Cape High Court, Port Elizabeth, and the Eastern Cape High Court, Mthatha.

The court boasts the unrivalled history of having hosted the trial of a sitting 'Head of State' in the matter of *S v Gqozo and Another* 1994 (2) SA 756 (CK) in which a claim to immunity from prosecution by the incumbent was dismissed.

Some of the other important decisions of the court or decisions of other (appeal) courts in matters that originated from the

court are the following:

- *Zantsi v Council of State, Ciskei, and Others* 1995 (4) SA 615 (CC);
- *Mati v Minister of Justice, Police and Prisons, Ciskei* 1988 (3) SA 750 (CK);
- *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2006 (3) SA 151 (SCA);
- *Poswa v Member of the Executive Council for Economic Affairs, Environment and Tourism, Eastern Cape* 2001 (3) SA 582 (SCA);
- *Eastern Cape Provincial Government and Others v Contractprops 25 (Pty) Ltd* 2001 (4) SA 142 (SCA);
- *Guzana v Council of State, Republic of Ciskei* 1993 (2) SA 445 (CKA);
- *S v Ncanywa* 1993 (2) SA 567 (CKA);
- *Bongopi v Chairman, Ciskei Council of State and Others* 1993 (3) SA 494 (CKA). 

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