



The North Cape High Court building, Kimberley.

# Northern Cape High Court

## Kimberley

By Lizanne van Niekerk, Northern Cape Bar

The court was associated with diamonds from its very inception. When the first *'blink klippie'* came to light at De Kalk early in 1866, it triggered a chain of events that changed the Northern Cape forever. When it was laid on the table of the legislative assembly in Cape Town, Richard Southey, then Colonial Secretary, said: 'Gentlemen, this is the rock on which the future of South Africa will be built.' How true, because Kimberley gave rise to Rhodesia, the gold mining industry of the Witwatersrand and the industrial development of South Africa.

When diamonds were discovered at Canteen Koppie near Klipdrift (now Barkly West) early in 1870, the pace of development in the Northern Cape changed from a leisurely walk to a fast gallop. On 17 October 1871 the territory that subsequently became known as Griqualand West was proclaimed a British protectorate.

The Supreme Court of the Northern Cape was established by Proclamation 70 dated 27 October 1871. It was officially known as the Supreme Court of Griqualand West. The law to be applied by this court was the law of the Cape Colony, adapted to suit local conditions.

Klipdrift was designated as the seat of the court and the first

session was scheduled for 27 November 1871. This session was held in a small corrugated iron building obliquely across the street from the present Queen's Hotel in Barkly West. It no longer exists. Jacob Dirk Barry, a barrister from Grahamstown, was sworn in as recorder, that was, the sole judge of the court. Advocate JC Thompson took the oath of office as prosecutor. Arthur Tweed was the registrar. Barristers and attorneys were admitted.

The members of the Griqualand West Bar were Halkett, Hodges, Shippard and Maasdorp. The members of the attorneys' profession were Arbouin, Ford and Haarhoff.

Illicit diamond dealing was an evil from the very beginning. Diamond-related cases continue to fill the court roll.

When the principle of land ownership was introduced in Griqualand, land disputes arose throughout the area. This problem assumed such proportions that Sir Henry Barkly moved the local legislative council to adopt an ordinance for the establishment of a special court in September 1875, to deal with such claims. This court also had its seat at Barkly West. Advocate Andries Stockenström was appointed Land Court judge. Appeals from the Land Court were heard by the Supreme Court.

On March 16, 1876 the Land Court delivered an important judgment to the effect that Waterboer had no claim to land between the Vaal and Riet Rivers and thereby conclusively approved the Free State's claim to the diamond fields. There were numerous appeals from the decisions of the Land Court and when the Land Court concluded



North Cape Judge President Frans Kgomo.

its work, 220 appeals to the Supreme Court awaited decision. The capacity of the Supreme Court could not handle such numbers, given that it possessed only one judge. This resulted in Charles Warren's being appointed as chairperson of a commission tasked to settle most of these disputes. In a landmark decision of the Supreme Court, *Carter v Van Niekerk and the Union Government* 1917 GWLD 445, the court ruled that the Government had no right to the minerals under the clause in the title deed. The Government appealed against the decision, but in 1917 the Appeal Court upheld the High Court's decision.

In 1876 the Cape Legislature passed Act 39 of 1877, providing for the annexation of Griqualand West. Annexation took place only on 15 October 1880. This had a major effect on the Supreme Court of Griqualand West. After annexation the Cape Supreme Court obtained concurrent jurisdiction with the Supreme Court in Griqualand West and the local attorney-general became subject to the authority of the attorney-general of the Cape Court. This state of affairs continued until 1 May 1969 when the Northern Cape Division became a provincial division of the Supreme Court of South Africa.

Initially the area of jurisdiction of the Supreme Court of Griqualand West covered 4 605 000 hectares. In 1885, British Bechuanaland became an independent territory. The attachment of this area to the Cape Colony in 1895 resulted in the jurisdiction of the Supreme Court of Griqualand West being increased by another 13 860 000 hectares. At that stage the court consisted of three judges and a judge president. Notwithstanding this vast increase in territorial jurisdiction of the Supreme Court, the work load declined as a result of the

decrease in diamond production. In 1904 the Supreme Court reverted to a court presided over by a single judge, namely Judge Lange. He was succeeded by Judges Hutton, Bok, Hall, Beyers and Diemont.

In 1910 the Supreme Court of Griqualand West became the Griqualand West Local Division. This local division had the distinct power to hear appeals from lower courts and was the only division which had a circuit court.

Over the years the farming community in the Northern Cape prospered. Given the vast mineral resources in this area, indications were that the Northern Cape needed more judges to handle the workload. In 1953 retired Chief Justice EF Watermeyer was appointed as a one-man commission to investigate the affairs of the Griqualand West Local Division. In 1955 there was another extension of the jurisdictional area of the court and the commission recommended that the districts of Kenhardt, Prieska, Britstown, Hopetown, De Aar and Philipstown should be included in the court's area of jurisdiction. These recommendations were implemented and the total area of jurisdiction then covered 7 785 000 hectares. At the end of 1958, Advocate P J Wessels of the Cape Bar joined Judge Diemont on the Bench.

The Minister of Justice appointed Judge FHL Rumpff of the Appellate Division to investigate the appointment of a third judge and the independence of the Griqualand West Local Division. The Minister accepted his recommendations that the status of the division should be raised to that of a provincial division, that a third judge be appointed and that the area of jurisdiction be increased. The districts of Carnarvon, Victoria West and Richmond were included, comprising a further 3 469 000 hectares. The total area of jurisdiction of the court was a startling 29 719 000 hectares, resulting in its becoming the provincial division with the largest geographical area of jurisdiction in South Africa. A Master's office and an independent office of the Attorney-General for the division were established. Legislation to implement the recommendations was finally passed at the beginning of 1969 and the new Northern Cape Provincial Division came into existence on 1 May 1969.

With the appointment of Judge Leonora van den Heever as the fourth judge on 1 July 1969, history was made. She was first female judge to be appointed in South Africa.

From the humble beginning of a small galvanised iron building in Barkly West, in which the Supreme Court held its first session in November 1871, it progressed to Mutual Hall, an all-purpose hall situated near Stead Street, facing Market Square in Kimberley. Later sessions were held in a wooden structure at the eastern side of the old Supreme Court site in Kimberley. The old Supreme Court building was erected between this wooden structure and the magistrate's court near Market Square in Kimberley in January 1876. In 1959 plans were underway for a new Supreme Court building. In 1962, Joubert, Owens & Van Niekerk Architects were appointed to draw up the plans for the New High Court building. The New High Court building was officially opened on 15 November 1968 by Mr PC Pelser, the then Minister of Justice. It was the most modern supreme court building in South Africa and the first new court building to be erected after the Supreme Court of Appeal's building in Bloemfontein.

On 27 October 1971, the Supreme Court in the Northern Cape and the Kimberley Deeds Registry celebrated its 100 years of existence.

In 2008 the court building was renovated by upgrading the old building, changing the face of the entrance of the court and the building of a new library. The renovations were finished in 2009.

Today the Bench of the Northern Cape High Court consists of a Judge President, Judge FD Kgomo, and five judges, being Judges Majiedt, Lacock, Williams, Tlaetsi and Olivier. Judge Kgomo was appointed as a judge in this division on 1 November 1998 and appointed as Judge President in November 2001. 