

# Overview of critically important Rules of Court and Compelling issues in Criminal Law Litigation

A REPORT BACK ON THE  
GSA's CONTINUED 2018 SKILLS DEVELOPMENT PROGRAMME



VERENIGING VAN ADVOKATE

SOCIETY OF ADVOCATES

MOKHGATLO WA BAEMEDI

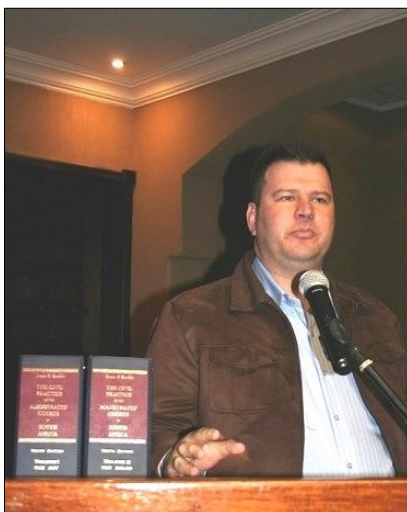
Where an in-depth and profound knowledge of the complexities the substance and interpretation of the law and the Rules of our Superior and Lower Courts is lacking the net result can be none other than the destruction of litigator's self-confidence which in turn inadvertently becomes the bed-fellow of incompetence.

In context - and mindful of Socrates' methodology to encourage fundamental insight into philosophy and jurisprudence of his time, having encouraged his attendants to a life of questioning the methods, validity, scope, and distinction between justified belief and baseless opinion, we cannot fail to heed Socrates' astute words to his attendants, when he said: "I know one thing, and that is that I know nothing".

Accordingly the true litigator is obligated to remain at the top of his or her game. To think that you 'know it all' is a fatal deception of the self and critical disservice to clients who place their trust in us.

We are blessed to have brilliant scholars of the law in our Society, prepared to share their knowledge and vast experience with us. The value of our lecturers, and of experienced senior members merely present and participating in these sessions, cannot be over-estimated! For this - we collectively stand indebted to them...

On June 2<sup>nd</sup> 2018 the GSA hosted lectures at the Royal Elephant Conference Centre in Centurion. Adv Sean Kelly lectured on the topic of Magistrates' Court Rules & Procedures, whilst Adv Hennie van Rensburg SC lectured on the Rules of the Superior Courts and aspects of Criminal Law and Evidence with specific reference important sections of the Criminal Procedure Act 51 of 1977 and related legislation.



**Adv Sean Kelly**

Speaking on the Rules of  
the Magistrates Court.

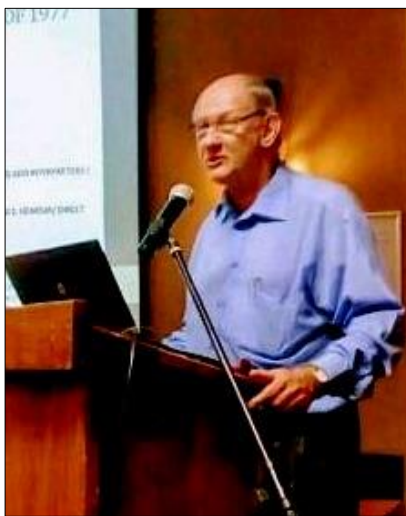
Referring to Jones & Buckle's - Civil Practice of the Magistrates' Courts and Erasmus' - Superior Court Practice, the Rules of the Magistrates Court and relevant legislation, Adv. Kelly emphasised that these reference works are indispensable to the arsenal of a competent and knowledgeable litigator. "Without these works, proper practice in our profession is virtually impossible" he said.

Adv. Kelly succinctly set out the steps and requirements for civil proceedings in Magistrates Courts and again highlighted the importance of following the rules, procedures, and practice directives - relevant to specific courts. Complimenting his discourse on the rules with an array of practical & often humorous examples Adv. Kelly

focused on the interpretation, application, and pitfalls of the following selected Rules of the Magistrates' Court to wit:

Rule 6: Pleadings generally;	Rule 9: Service of Process & documents;
Rule 14: Summary judgment;	Rule 19: Exceptions & appl. to strike out;
Rule 23: Discovery;	Rule 27: Withdraw, dismiss & settlement;
Rule 28: Intervene - join - consolidate;	Rule 32: Non-appearance of a party;
Rule 55: Applications;	Rule 58: Maintenance etc. <i>pendente lite</i> ;
Rule 60: Non-compliance with rules;	Rule 60A: Irregular proceedings.

Adv. Kelly also briefly touched on elements of the Magistrates Court Act 32 of 1944 highlighting the importance of the determination of jurisdiction i.t.o Section 28 as well as sections 26 to 88 dealing with Civil Matters and sections 89 to 105 dealing with Criminal Matters in the Magistrates Court. He further highlighted the importance of reading Section 73 of the MCA with Section 86(7) & (9) of the National Credit Act 34 of 2005 i.r.o payment of instalments due to over-indebtedness.



**Adv Hennie van Rensburg.**  
Speaking on the CPA,  
Criminal Law & HC-Rules

The first part of Adv. Hennie van Rensburg's lecture dealt with specific important sections of the Criminal Procedure Act 51 of 1977, the Amendment Act 105 of 1997 and the Criminal Law (Sexual Offences & Related Matters) Amendment Act 32 of 2007 - relevant to the defence of the accused, detained and the imprisoned person in the post Constitution 1996 era.

Salient features of Adv van Rensburg's lecture included: the importance of an in-depth consultation with the arrested and accused person; the processes regarding arrest, detention, 1<sup>st</sup> appearance, discovery of the police docket, discharge, and the right to freedom & security of person; contradictions in- or reliability of witness, expert and other statements; testing section 220 admissions i.r.o Constitutionality; careful scrutiny indictments & exhibits;

careful preparation for trial; substantial, exceptional and/or circumstances required in Bail Applications; challenging the admissibility of evidence in a trial-within-a-trial; the trial process - evidence in chief - cross examination; verdict, sentencing and petitioning for appeals and the appeal process - plus much-much more!

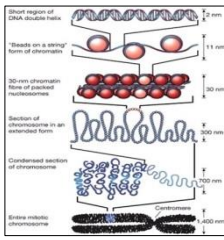
The second part of Adv. Hennie van Rensburg's lecture dealt with the ever evolving field of "Specialised Evidence" in a criminal trial, with specific reference to: the determination of the reliability of chain-of-evidence and admissibility. Dealing with expert evidence i.e. including crime-scene experts i.r.o fingerprints, DNA and the new fields of expertise, such as facial & iris identification - featured prominently.

Adv van Rensburg repetitively emphasised the importance of the litigator, venturing onto the diverse field of "Specialised Evidence" to be informed of current and new developments and to be knowledgeable and capable to challenge possibly damaging evidence which may hold the key to the incarceration of freedom of his or her client.

The important protocol of the litigator would be: not to accept specialised evidence on the mere face-value thereof, but to carefully analyse the chain-of-events pertaining to the integrity of bodily samples i.r.o the collection, safe-keeping, forwarding, scientific analysis thereof as well as careful scrutiny of the affidavit of the analyst and his or her analysis report. Knowledge will determine the outcome...

# The challenging and ever-evolving field of Specialised Forensic Evidence

## DNA - Analysis:



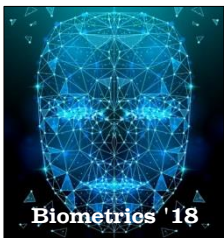
The DNA Helix

Adv. Hennie van Rensburg's lecture dealing with DNA evidence in a criminal trial included an explanation of the basic composition of DNA including the gathering of samples e.g. sexual offences, J88 and taking of samples, multiplication of the DNA sample and its analysis producing a bio-analytic electro-gram for analysis, interpretation and final finding and report by an expert. Knowledge will empower the litigator prior to venturing a challenge thereof in court.

## Facial Identification:



Exploring the development of crime-scene forensics locally and internationally - Adv. van Rensburg commented that: whilst forensic pathologists have reconstructed facial features of deceased victims in South Africa in the past, Facial & Iris Identification was- and still is a relatively new and rarely utilised discipline locally. The growth of its relevance in law and litigation... is a mere matter of time & course...



Biometrics '18

The exponential development of Biometrics over the past decade has established its rightful scientific foothold in crime-scene, medical forensics, and pathology. The astute litigator has no option but to rise to the challenge and stand equipped to understand, debate and if necessary to challenge this new and exciting development in the world of criminal investigation and litigation.

## Iris Identification:



Iris biometrics

Concurrently - Iris biometrics measure the unique patterns an eye and has developed into a fast, contactless, and accurate biometric science which not only finds application in person identification in crime & commerce, but also in the prevention, investigation and solving of crime generally and international terrorism specifically.

## Fingerprints:



Even manual fingerprint lifting and analysis - first used in commercial contracts in ancient Rome *et al* - has not withstood the 'take-over' of evolving biometric science. Whilst being *au fait* with old systems & practices, we stand compelled to measure our competence in challenging the reliability of biometric fingerprinting as well...

## ATTENTIVE SCHOLARS OF LAW....

