

# NEWSLETTER

OF THE GAUTENG SOCIETY OF ADVOCATES



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Out of the 2024 pupils, four wrote all the subjects. Three of these pupils passed all four subjects. The remaining pupils were unable to write, as they were not registered for six months under PVT contracts at the time of registration. They will be writing in April next year. The pupils also completed their Advanced Advocacy Training in November.

Here are some highlights from the Moot Court attended by the pupils at the end of November 2024. A heartfelt thank you to everyone who assisted the pupils on the day of the Moot Court. Your support was greatly appreciated.





# HIGHLIGHTS OF GAUTENG SOCIETY OF ADVOCATES - YEAR END FUNCTION 30 NOVEMBER 2024

We can all agree that the year-end function was a fantastic event, with Peter Marcato keeping us entertained throughout the night. The food was delicious, and the music was truly beautiful. We would also like to take this opportunity to thank Adv. Scheepers for organizing the GSA year-end function. Your efforts made the event a memorable one!

Here are some memorable moments (photos) from the year-end function.



We would like to take this opportunity to warmly welcome the following members to our Society. We wish you all the success and happiness as you become a part of Society.

Adv Ntsizi Daniel November

Adv Linkie Matamela

Adv Alma King

Adv Stephen Malatji

Adv Hendrik Botes

## RECENT ARTICLES AND RESEARCH

Substantive fairness in dismissal

Nkosi and another / Merchants SA (Pty) Ltd t/a Dimension Data Company - (2024) 33 CCMA 8.11.10 also reported at [2024] 11 BALR 1242 (CCMA)

Subject matter classification:

Dismissal - Substantive fairness - Misconduct - Drug use - Call centre operators dismissed for reporting for duty with traces of marijuana in blood, but not showing signs of intoxication - Dismissals unfair.

Mini Case Summary:

The two applicants, both call centre consultants, were dismissed after traces of marijuana had been found in their blood. The applicants denied that they had smoked marijuana while at work and that they were intoxicated when the tests were administered, but admitted that they had smoked the drug at home, which they claimed they were entitled to do. The respondent contended that its disciplinary code provided for dismissal for a first offence of this nature, as the applicants were aware.

The Commissioner noted that both applicants had desk jobs. There is a difference between being under the influence of a drug and having traces of it in one's system. Unlike alcohol, traces of marijuana can remain in the blood for up to 14 days. In two recent judgments, the Labour Court had found that dismissals of employees who smoked marijuana at **home** and reported for duty without showing signs of intoxication were unfair. The respondent had relied solely on its "zero-tolerance" policy on drug and alcohol use, which did not in itself render the dismissals fair. As the case law made clear, each case had to be treated on its own facts. Strict rules against use of alcohol or drugs may be justified where employees work in dangerous conditions. Neither employee had shown any sign of being negatively affected by the marijuana they had smoked or posed any danger to themselves or colleagues. Although dismissal was inappropriate in these circumstances, the applicants had shown scant regard for their employer's duty to maintain health and safety in its workplace.

The applicants were reinstated without back pay.

### **State your case in your pleadings or suffer the consequences**

The applicant in *PSA obo Jacobus v Minister of Justice and Correctional Services and another*, (Case no: P54/22) approached the Labour Court in terms of Section 10 of the Employment Equity Act 55 of 1998, seeking compensation from the respondents in terms of s60 of the Act for alleged harassment by some of their employees. In argument before the court it was claimed that the harassment was on the listed ground of race. The outcome was not in the applicant's favour, for reasons relating to the pleadings. Amongst others, the court notes that failing to plead a case properly has serious consequences that could hinder the constitutional right to have any dispute that can be resolved by the application of the law decided in a fair hearing before a court.

### Quote of the week

As a case is determined on its pleadings, failure to plead a case properly has serious consequences which may hinder a litigant in exercising the right to access to courts of law.

PSA obo Jacobus v Minister of Justice and Correctional Services and another (Case no: P54/22), at para 7

## SHORT NOTE FROM THE CHAIRPERSON

It has been a year marked by significant challenges, but also remarkable growth. We are excited to announce the upcoming launch of our newly designed website, which will soon be fully functional and serve as an enhanced resource for all.

Wishing all our Members and EXCO management a joyful festive season and a prosperous 2025. Stay safe and take care.



*Maryke Pienaar*

Chairperson of the Gauteng Society of Advocates



Would you like to write an article in the Newsletter?

We welcome article contributions. Members who wish to submit feature articles, can e-mail their articles to Adv Lindi Liebisch - [advlindiliebisch@gmail.com](mailto:advlindiliebisch@gmail.com)