

GAUTENG SOCIETY OF ADVOCATES

Newsletter of the Gauteng Society of Advocates - Edition - Vol 2, June 2024



Contents

Latest news of the Editor	1
New EXCO Members of the Gauteng Society of Advocates	2-3
Training Calendar for 2024	3
GSA Pupillage feedback	4-6
Gauteng Society of Advocates - Year end function - 30 November 2024	7
Appreciation letter from our Founding Members to Adv Pierre Louw	8-9
Welcome new Member	10
Recent articles and research	11-14
Letter from the Chair	15

Latest News from the Editor

Adv Maryke Pienaar

Welcome to the second edition of our newsletter! We're thrilled to bring you the latest updates and stories from a diverse range of topics that we believe will inspire, inform, and engage you.

Thank you for joining us on this journey. We look forward to bringing you more stories that matter in our future editions. Enjoy reading!

Warm regards,

Maryke Pienaar

New Exco Members of the Gauteng Society of Advocates

Adv Maryke Pienaar

We are pleased to announce the esteemed new Executive Committee (EXCO) members of our organization. Below is the list of members along with their respective roles and a brief introduction to each:

New EXCO Members:

Adv Neels Killian - Deputy Chairperson

His extensive experience and unwavering willingness to help will make a significant difference in our Society.

Adv Antonie De Viviers - Finance

His expertise will ensure the financial health of our organization.

Adv Ettian Raubenheimer - Professional Development

Advocate Raubenheimer, with his extensive experience in pupillage and dedication to mentoring future advocates, is a tremendous asset to our Society. We are honored to have him as part of our community.

Adv Jazz Vilakazi & Adv Nkwai - Corporate & Professional Liason

Thank you, Counsels, for taking on the responsibilities within the corporate side of our Society. We hope you enjoy the journey with us and find it as rewarding as we do.

New Exco Members of the Gauteng Society of Advocates

Adv Alexia Vosloo-De Witt

Thank you for always being willing to assist our EXCO whenever needed.

Adv Vida Scheepers - Members Affairs & e-media

Thank you, Counsel, for taking the initiative to ensure our members are happy with the arrangements for functions and workshops.

Adv Lindi Liebisch - Secretary

Lindi's organizational skills and attention to detail make her the perfect fit for this role.

Message from the Chairperson

We are excited to welcome our new EXCO members and look forward to the contributions they will bring to our organization. Their combined expertise and dedication will undoubtedly drive our mission forward and help us achieve our goals. Please join us in congratulating them and offering your full support as they embark on their new roles.

Training Calendar for 2024:

MONTH	COURSE/CONFERENCE	SPEAKER
20 July 2024	Criminal Law	Dr Llewelyn Curlewis
24 August 2024	Criminal Law	Dr Christiaan Bezuidenhout
19 October 2024	Criminal Law	Dr Christiaan Bezuidenhout

GSA Pupillage feedback:

Adv Ettian Raubenheimer

In 2023 the GSA had 8 pupils that registered for the GSA Structured Coursework program. Of the pupils that wrote the admission examinations in September 2023 and April 2024 two has passed all the subjects and are awaiting their admission dates. One of our pupils, Danie Neuman, achieved the highest marks in the country in Paper 2 (Civil trials). Only two candidates passed this paper during the April 2024 examinations.

Another pupil, Adriaan Grobler, achieved the third highest marks in Gauteng (fifth highest in the Country) for Paper 5 (legal Writing).

Ten Pupils registered for the 2024 GSA Structured program of which 4 will be eligible to write the admission examination in September. All four will be writing the examination. The structured program is nearing its conclusion at the end of July after which the advanced training, comprising advanced trial advocacy and advanced legal writing. There is also an option for advanced Public speaking focussing on presentation of persuasive oral arguments in court.

As the pupils undergoing the structured program hails from vastly different backgrounds we have requested three from the different sides of the spectrum to relate their experiences of the program and pupillage in general.

The GSA Pupillage Committee extends its heartfelt gratitude to all GSA members for their kind assistance to pupils through formal and informal mentoring, lecturing and guidance.

These pupils are the future not only of our Bar but the entire profession.



Adriaan Grobler



Danie Neuman

Pupillage experience 2024

Elrishia Pillay

Having started the pupillage journey earlier this year, I am astonished by how much I have learnt over the last few months. My decision to end my career in the corporate environment at Absa after 13 years and enter the pupillage program at the age of 38 has been the best decision that I have made. The law field has always had my undivided attention and my heart and experiencing the program has been nothing short of remarkable.

The GSA's approach to the program is invaluable. The theoretical and practical aspects are blended, which gives us pupils exposure to the real world. In addition, working with and learning from the members of the GSA led by Ettian and their willingness to teach us is a great experience. With them selflessly going the extra mile and not just with the aim of completing the program but giving us the tools and experience to navigate this field gives us confidence and belief to actually do it.

In closing, I must add that being an individual with a family and immense responsibility, the GSA has made my transition from corporate into the pupillage program a delightful one and I am extremely grateful, proud and privileged to be part of the Gauteng society of advocates as a pupil. I thoroughly look forward to completing the rest of the program, successfully completing the Bar exams in September, being admitted early next year and being a member of the GSA. This is something I know I will achieve with the continued support of the Gauteng society of advocates.

6

GSA'S structured pupillage program experience

X.Xekiso

Pupil Advocate

My pupillage journey thus far has been a multifaceted experience, marked by both exhilaration and struggle. The initial thrill of being accepted into the program was shortly followed by the challenge of finding a mentor. However, in a very fortunate turn of events, I received an unsolicited call from a seasoned advocate with an offer to mentor me, and there my journey began.

Throughout this journey, I have encountered numerous ups and downs with quite a few moments of self-doubt and uncertainty. The pressure has at times been very overwhelming but fortunately, my mentor has consistently provided motivation and guidance to help me persevere, from the pep talks, court days, to the books he recommends I should read, he has been a great help.

The volume of reading assigned has been considerable, but with time, I have adapted and improved my skills. The program's intensity is indeed demanding but I believe it is designed to prepare us for the hardships of this profession. Our lecturers have demonstrated a commitment of instilling valuable qualities in us, ensuring we are well equip for practice upon completion of the program.

Overall, my experience has been a mixed bag of both enjoyable and stressful moments. Nevertheless, I remain committed to this journey, eager to continue learning and growing as a professional.

Gauteng Society of Advocates year end function:

Our Society's year-end function will be held on 30 November 2024 at **LOFT AT NINE**. As per the feedback from the poll, the dress code for the year-end function will be semi-formal. We look forward to seeing everyone dressed smartly for the occasion on 30 November 2024 at Loftus Nine.

We look forward to celebrating another successful year with all our members. **Save the date** for an evening of reflection, recognition, and celebration.

Please contact Adv Scheepers by 30 July 2024 to confirm if you and your partner can attend the event. Thank you Adv Scheepers, for arranging the year end function. We appreciate it.

8

Founding members appreciation letter to Adv Pierre Louw

On behalf of our founding members, we would like to express our heartfelt thanks and deep appreciation to Adv. Louw our previous Chairperson.

Waaroor Gauteng Vereniging van Advokate kan dankbaar wees is dat advokaat Pierre Louw die leisels op 'n kritieke stadium oor geneem het. Dis so waar: Cometh the Hour, Cometh the Man.

Toe adv. Pierre Louw, die voorsitterskap van die Gauteng Vereniging van Advokate (GSA) in 2019 na die bedanking van adv Hennie van Rensburg oorgeneem het, was die stand van sake in die GSA nie na wense nie en het hy aanvanklik net as waarnemende voorsitter voorgesit en later as voorsitter 'n groot taak gehad om die GSA te stabiliseer en om die statuur van die GSA in ere te herstel en selfs uit te brei. Daarin het Pierre uitsonderlike goeie werk gedoen. Onder sy bekwame leiding is die akkreditasie van die gestruktureerde program vir pupille opleiding in Mei 2020 herstel en kon die GSA voortgaan om pupille op te lei. Die pupille van die 2019 groep is almal weer deur die pupille program gesit en is die laaste een van hulle in 2023 as advokaat toegelaat. Sedertdien was daar nog nuwe pupille ingeneem in 2021, 2022, 2023 en 2024. Die werk wat hy ingesit het om die GSA se status as 'n geloofwaardige, professionele organisasie in die oë van veral die Legal Practice Council te herstel was van groot waarde.

Pierre se leiding in die instel van behoorlike, goed gefundeerde en verantwoordbare korporatiewe bestuursbeginsels staan as 'n monument vir sy bestuursvernuf. Veral ten opsigte van die finansiële bestuur van die GSA. Hier was hy van onskatbare waarde; - hy het konstitusionele veranderinge voorberei en aan die algemene vergadering voorgele wat dit aanvaar het. Die effek van die veranderinge was verreikend en het die bestuur van die GSA op 'n gesonde en legitieme voet geplaas.

Pierre se invloed in die uitvoerende bestuur se vergaderings was positief, produktief en effektief. Die etos van die vergaderings was onmiskenbaar positief en het gesprek van 'n gematigde en toekomsgerigtheid. Hy het ook hard gewerk aan die skep van 'n trots in die GSA maar ook in die professie. Hy het voorwaar voor geloof en het 'n uitstekende en navolgingswaardige voorbeeld gestel.

9

Founding members appreciation letter to Adv Pierre Louw

Die GSA het ook onder sy voorsitterskap begin met voortgesette professionele opleiding aan ons lede. Verder is daar ook in samewerking met Die Pretoria Balie 'n mediasie kursus geskryf wat deur Stadio aangebied en geakkrediteer word. Die GSA het ook onder sy leiding gevorderde litigasie en openbare spraak kursusse vir die pupille aangebied.

Pierre het op die akademiese advies komitee van Stadio gedien en het baie waardevolle insette gelewer oor die samestelling van hulle 4 jaar LLB en BCom (Regte) grade. Onder sy leiding het die GSA ook 'n samewerkingsooreenkoms met Stadio gesluit en bied die GSA 'n prys aan vir die beste finalejaar LLB en BCom (Regte) student.

Die stigterslede - advokate Tilania du Preez, Johann Hattingh SC en D'Vida Wessels wil hiermee ons dank uitspreek teenoor Adv Pierre Louw vir die baie ure se werk en kennis wat hy tot voordeel van ons balie ingesit het.

New member to our Society - Adv Andrew Mametse

A warm welcome to Adv. Mamemetse, a new member of our Society.

We are delighted to have you join us and look forward to the invaluable contributions you will bring. Your expertise and passion will undoubtedly enrich our community and support our ongoing efforts. Welcome aboard!



Adv Andrew Mametse

Adv Marius van Wyngaard

Adv. van Wyngaard has completed his pupillage at our Society. Welcome to our Society! We wish you all the success in your career.



Adv Marius van Wyngaard

Important Case Law:

**Venator Africa Pty(ltd) v Lloyd Watts
Supreme Court of Appeal Case number
053/2023**

In this case, the Supreme Court of Appeal had to decide on the relationship between section 22(1) and section 218(2) of the Companies Act, 2008. In brief, section 22(1) makes provision for the reckless and fraudulent trading of a company, while section 218(2) makes provision for keeping persons liable for violating the Companies Act.

The court had to decide on the relationship between these two sections; that is, whether section 281(2) supports section 22(1). The court subsequently analysed the meaning of a company using the rules for interpretation, holding that a company in section 22(1) refers to legal personality and is only relevant to a company that acts recklessly or for a fraudulent purpose. As a result, section 22(1) was not violated, making the application of section 218(2) irrelevant. This case is a classic example of the importance and relevance of legal personality, that is, that the company exists separately from its members, shareholders and board of directors.



Adv Neels Killian

Thank you Adv Neels Killian

Important Case Law:

Appeal court overturns cyber crime ruling

This is a clear message to verify bank account details before paying

10 June 2024

- A woman paid R5.5-million to what she thought was the conveyancing law firm for a property she bought.
- But she had been scammed; the email soliciting payment from her was not from the law firm, and the money had been paid into the account of the scammers.
- At the High Court the law firm was found liable for the woman's loss and was also ordered to pay punitive costs.
- But the Supreme Court of Appeal has overturned the High Court's decision.

The Supreme Court of Appeal (SCA) has overturned a High Court ruling that had found leading law firm Edward Nathan Sonnenbergs (ENS) liable to pay a woman R5.5-million stolen by fraudsters who manipulated emails sent from the firm.

In an unanimous decision, the appeal court said the liability finding by Gauteng High Court Judge Phanel Mudau in the case brought by Judith Hawarden would have "profound implications", not just for the attorney's profession, but all creditors who send their bank details by email to their debtors.

Acting Judge Fathima Dawood, who penned the judgment, said the High Court's reasoning that all creditors in the position of ENS owed a legal duty to their debtors to protect them from the possibility of their accounts being hacked, was untenable.

Because Hawarden's case rested on pure economic loss, extending liability created a real danger of unpredictable, indeterminate liability.

Important Case Law:

Judge Dawood said Hawarden could have avoided the risk by verifying ENS's account details, because she had previously been made aware of the risks of Business Email Compromise (BEC) fraud by the estate agency handling her property deal. She had also elected to not pay ENS through a bank guarantee but through a cash transfer.

"She must in the circumstances take responsibility to protect herself against a known risk," Judge Dawood said, upholding the appeal by ENS.

The court also set aside a punitive cost order against the law firm and instead ordered Hawarden to pay ENS's costs.

The case centred around an email Hawarden received from what she thought was the law firm. The email contained details of the account into which she then paid R5.5-million. This was the balance of money owed for the purchase of a property in Forest Town, Johannesburg.

ENS had been appointed by the seller as the conveyancer.

But it emerged that the email had been sent by fraudsters, who then stole the money. Hawarden did not notice that the email had come from ensafirca.com, not ensafrica.com.

In her arguments, Hawarden claimed that ENS owed her a duty of care, and that in corresponding with her, it also had a legal duty to warn her of the danger of BEC, that this was on the increase and that it was already prevalent.

ENS denied liability, claiming that Hawarden herself had been negligent in using an electronic transfer without ensuring that the bank details were correct.

In the High Court, Judge Madau said while Hawarden was not a client of ENS, it owed her a general duty of care. He said ENS conveyed its bank account details to her through an unprotected email which was easily manipulated.

Hawarden, he said, could not be faulted for placing her trust in the firm and the risk of Hawarden's loss was "highly foreseeable" by the law firm.

But SCA Judge Dawood said Hawarden's loss was not caused by ENS or a failure of their systems, but by hackers who infiltrated her email account and fraudulently diverted her payment for ENS into their own account.

Hawarden had been warned by the estate agent, Pam Golding Properties, about this very risk.

Important Case Law:

She had previously verified Pam Golding's bank account details and she had not explained why she did not verify ENS's bank account details.

"Moreover, any warning by ENS of the risk of BEC would have been meaningless, in the circumstances of this case, because by that time the cyber criminal was already embedded in her email account."

Judge Dawood said there was no reason to shift responsibility for her loss to ENS, and the appeal must succeed.

In the High Court, Judge Madau awarded punitive costs against ENS for breaching Hawarden's privacy by including irrelevant documents about her divorce and other investments in the court papers.

The SCA has also set this aside, and ordered that Hawarden pay ENS's costs on a normal scale.

Thank you Adv Wim Botha for sharing the above mentioned article with our Members.

Letter from the Chair:

Looking ahead, we anticipate new opportunities and challenges in the year. With your continued support, we are confident in our ability to navigate, these waters and emerge stronger and more resilient in closing.

I want to express my gratitude to each and every member of our organization, our partners and our broader community.

Wishing to a safe and joyous recess!



Adv Maryke Pienaar

Chairperson, Gauteng Society of Advocates