

Dear Client / Geagte Kliënt

Newsletter

Legal Threads and Threats

(Why South Africa needs wise men (at least twelve of them)).

During a recent interview with our Chief Justice, Moegeng Moegeng, as aired by ENCA, it was abundantly clear that the hope and future of this country and its peoples largely hangs by a proverbial thin thread to the independence of the Judiciary as is enshrined in chapter Seven of our Constitution.

A closer look at the constitution and the mechanisms around the appointment of judges shows just how thin this thread really is and how large a threat looms.



Gegewe die omvang van die onthullings in verband met staatskaping, oor die afgelope jaar, is die onafhanklikheid en oppergesag van die reg inderdaad die laaste borswering teen vergrype deur die uitvoerende gesag, veral in 'n tyd waar die parlement, as wetgewende gesag, tandeloos staan weens die posisie van politieke skaakmat binne die regerende party. 'n Desperate president kan dalk poog om die onafhanklikheid van die reg te probeer kniehalter deur seker te maak dat die "regte" kandidate tot die regbank aangestel word – iets wat met die hulp van Saxonworld, dalk nie so vergesog is nie.

The truth of the matter is that we, however, should not only be grateful for the said enshrinement but especially for the integrity and fortitude of our Chief Justice and other judges in taking the positions that they have in the more recent past. In the interview Judge Moegeng was candid that he, as part of the judiciary, would jealously guard our constitution and the values thereof irrespective of who governed the country and who may hold the majority in parliament. But unfortunately, the Chief Justice is but one man and judges are appointed by but one president.

Indien hoofstuk 7 van die grondwet op enige manier gekritiseer kan word, moet dit sekerlik wees dat die fisiese aanstelling van die Hoofregter en alle ander permanente regters, die uitsluitlike prerogatief van die president van die Republiek is, alhoewel die kandidaat te alle tye, ingevolge artikel 104, moet plaasvind op aanbeveling van die Regterlike Dienskommissie.

Political control of South Africa thus seems to be delicately controlled by the relationship between the Judicial Services Commission

that must advise as to who is fit for appointment of judges and the Presidency itself. Since the appointment of the judges absolutely underpins the rights of the people of this country, the appointment of the 23 members of the Judicial Service Commission, seems to be the most crucial cog in the wheels of power.

The Judicial Service Commission (JSC) was established in terms of section 178(1) of the Constitution and it is to consist of 23 members. In terms of section 178 (5), the JSC is entitled to advise the national government on any matters relating to the Judiciary or administration of justice. In addition to such advisory function it performs the following functions:

- interviewing candidates for judicial posts and making recommendations for appointment to the bench; and
- dealing with complaints brought against judges.

Die eerste funksie word deur die kommissie as geheel hanteer en die tweede word deur 'n kleiner groep van 13 kommissarisse hanteer.

Die konstitusie bepaal in artikel 188 (1) dat die 23 lede saamgestel word uit 9 ex officio aanstellings, te wete die Hoofregter, die president van die Appèlhof, een Regter President, aangewys deur die Regters President, die Minister van Justisie en Staatkundige Ontwikkeling, twee praktiserende advokate en twee prokureurs wat uit die onderskeie professies aangewys moet word asook een regsdosent voorgestel deur dosente van regs fakulteite by Suid-Afrikaanse universiteite. Hierdie persone, met die uitsondering van die minister sal almal dus daren regsgeleerders wees.

The biggest challenge is that the remaining 14 members of the commission are appointed to the JSC on the following basis:

- six members from the National Assembly, including three from opposition parties;
- four members from the National Council of Provinces; and
- four more persons designated by the President after consulting the leaders of all the parties in the National Assembly.

A simple arithmetic calculation shows that the presidency, with the assistance of parliament, can quite comfortably ensure that the majority of the members of the Commission is biased towards the presidency or the majority party in parliament.

If at least 12 of the 23 commissioners do not possess the same integrity and steadfastness of our Chief Justice the final chapter in the state capture saga may as yet not have been written.

Geniet vroue maand!

Groete / Greetings

Hennie en / and Eberhard



The Sale Of Immovable Property Without Approved Building Plans

Selling your house after making alterations or additions to the property without approved building plans might have certain legal implications. The National Building Regulations and Building Standards Act specifies the need for building plans and approval from the local authority. The local authority may approve or reject building work and renovations on all properties.

The lack of approved building plans could lead to the local authority refusing to allow any further renovations which a purchaser might have had planned.

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Sexual Offences: No More Time Limit To Prosecute

Victims of sexual crime are often so deeply traumatised and intimidated that they either never report their abusers, or take decades to go to the police.

Until now, a 20 year limit on their right to prosecute certain sexual crimes has had the unfortunate effect of depriving many such victims – often now adults who were abused as children - of their right to seek justice against the perpetrators.

That's all changed with a new High Court decision. We analyse the details and effect of this ground-breaking judgment.



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Verbal Agreements – The Property Perspective



Always seek legal help before you agree to anything, particularly when dealing with property.

The outcome of a recent High Court case illustrates - the occupants of a property which had been sold and transferred to a new owner refused to vacate and then resisted his application for their eviction. They even tried to have the sale and transfer to him set aside, all on the basis of an alleged verbal “agreement to agree” between them and the original seller.

We look at the lessons to be learned ...

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Expired Firearm Licences: High Court to the Rescue

If you for whatever reason fail to renew your firearm licence on time, it will expire and you have (until now) had no alternative but to surrender your firearm to the police at risk of being prosecuted. Nor could you recover any value for the firearm.

The reason is that once the renewal period “90 day guillotine” falls, the Firearms Act as currently framed leaves you with no way to bring yourself “back within the parameters of the law”.

To your rescue comes a new High Court decision – read on for more ...



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