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Magistrate and Judges Association of Namibia

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President's Note:

What a great time to be alive, what a great time to be leaders of thought, what a great time to be captains of judicial transformation, what a great time to be united, what a great time as Magistrates to reaffirm our promise to the Namibian populace to administer justice to all without fear, favour or prejudice, and most of all what a great time to be a judicial officer, as a bright future is on the horizon.

History informs the present and the present informs the future that is why this is a watershed moment, for the Magistrates and Judges Association of Namibia (MJA) for a couple of reasons. In September of this year 2024, we marked exactly 11 years since the last publication of this quarterly newsletter, was published in September 2013. This edition is an extraordinary edition, because it marks the resurrection of the inter se newsletter.

The inter se newsletter is an invaluable forum that gives judicial officers the opportunity to reflect on and interrogate our domestic jurisprudence, our domestic legislation and to advocate for law reform where necessary, as well as to share insights on the developments in law beyond our borders. The inter se newsletter further aims to create and foster a community of knowledge sharing among judicial officers.

Editor's Note: It is with great enthusiasm that we reintroduce the *Inter-Se* publication, the official journal of the Magistrate and Judges Association. This revitalized platform serves as a collective voice for our judiciary, fostering dialogue, sharing insights, and celebrating the milestones that define our profession.

The *Inter-Se* publication has long stood as a beacon of knowledge and connection among our members. In this new chapter, we aim to expand its scope, featuring:

Judicial Insights – articles addressing contemporary legal challenges.

Association Updates – News, announcements, and event highlights.

Resources and Tips – Practical advice to enhance collective effectiveness and resilience.

Our vision is for *Inter-Se* to not only inform but also to unite and empower us as custodians of justice. We encourage all members to participate by submitting articles, case studies, or suggestions for topics you wish to see featured.

Ms. Ounjandere Ndjiharine

That is why it is such an honour and a heart-warming privilege for me, to pen down this piece but most of all, to finally see this newsletter come to life after such a very long hiatus is an epic win for the MJA. In the words of John Maxwell “**Team work makes the dream work**”, this phrase hits the nail on the head in this context, as this publication was made possible through the concerted efforts and tenacity of the current Executive Committee (Exco) and subcommittees of the MJA.

In the same vein I would be remiss not to mention that, on the 25th of September 2024, the MJA held its Annual General Meeting (AGM) in the picturesque town of Swakopmund where the current Exco office bearers were elected. The AGM by all measure and standards was a conspicuously monumental occasion, because it attracted a record number of attendees who participated at the meeting. The AGM’s remarkable success is attributed to the passionate and relentless commitment to serve, undertaken by the erstwhile interim Exco team led by Divisional Magistrate Mr Elvis Mwilima.

Another notable accomplishment worth giving recognition was the compilation of a new draft Constitution by the erstwhile interim Exco. The draft Constitution comes against the backdrop of the realization that the current MJA Constitution adopted in 1995 was no longer responsive to the organisational dynamics of the MJA. The current Exco does not seek to reinvent the wheel, but simply seeks to build on the foundation laid by our forerunners. Hence all things being equal the draft Constitution is earmarked for ratification in the first quarter of next year, which is one of the many exciting things to look out for in the coming year.

The MJA membership is also something worth bragging about, because currently the membership of the MJA stands at an unprecedented healthy figure of 80 members out of approximately 105 Magistrates country wide. In light of that, **I would therefore like to take this opportunity, to make this clarion call to all the Magistrates and Judges who have not joined the MJA to do so, as the MJA is a bona fide legal entity with the core mandate of safe guarding the interests of Magistrates and Judges.**

In conclusion, I take cognizance of the fact that a lot still needs to be done, in order to take the MJA to greater heights and as we forge ahead towards judicial utopia, I urge each and every one of you esteemed colleagues to meditate on these words of wisdom from the book of Galatians:

“Galatians 6:9 Let us not become weary in doing good, for at the proper time we will reap a harvest if we do not give up.”

Mr. Victor Nyazo - President

Section 112(1)(b) and Abuse of Dependence-Producing Substances: High Court Review Study

Discussion

In *S v Romario Bock*¹ Justice Christiaan who wrote the review judgment for the court with Justice Shivate concurring said the following:

“It is evident from the record that the learned magistrate inferred from the accused’s admission that made under s 112(1)(b) that he was aware of the substance’s nature as cannabis and convicted the accused on his admissions. We got the distinct impression that the court did not, upon questioning the accused, establish if there were factual basis for technical admission made by the accused. Consequently, the sufficiency of the evidence to uphold the guilty verdict was...

immediately called into question.”

The judge went on to say that an accused person confirms the identity of the drugs or that he used them as drugs **means nothing if there are no further attributes or indicators** that are sufficient to establish the identity of the substance at issue.

Therefore it cannot thus be assumed that the accused possessed a technical understanding of the substance found on him.

It is important that where one of the elements of the crime can only be proven by scientific means, the court must request the prosecutor to hand up the analysis other...

than relying on accused answers which palpably falls outside his personal knowledge. The court recognizes that **there will be cases where a court may convict a person without the production of such certificate**, in the form of questioning the accused and subsequent admissions made. This position was reaffirmed by the High Court Northern Local Division in *Erickson Shidute v the State*² wherein it was held that;

“It should not be a rule cast in stone that all cases involving cannabis, that the state should present evidence as each case should be considered on its own merits.”...

In this matter the High Court on appeal pointed out that during questioning, the accused admitted that he was “*cultivating cannabis and growing them, and that they were eight small plants and seeds.*” Further that, he knew the seeds he had were that of cannabis and that they are the ones he planted. He was present when they the substance was weighed and he admitted the value. He also knew that the substance was prohibited and that it was to cultivate it. He also knew that he could be punished. The accused also indicated that he wanted to use the substance as *medication and for smoking.* Unquestionably, one may rightly argue...

that there is a difference between mere possession and cultivation of the substance, because one who goes to the extent of cultivating, would, to a larger extent have been satisfied about the true nature of the substance, otherwise it is not always in the nature of human beings to cultivate what they do not know. Therefore, the High Court on appeal **was satisfied that the magistrate covered all the allegations in the charge during questioning of the accused.** The appeal was dismissed.

Central Issue

The issue in *Maniping and Twala*³ matters was the issue of an admission of “a fact which is palpably outside...

the knowledge of the accused.” The guidelines were set out as follows:

“To summarise, where an accused who pleads guilty makes an admission when questioned pursuant to s 112(1)(b) of a fact which is palpably outside his personal knowledge –

- a.** the court has a duty to satisfy itself of the reliability of that admission when the accused is not legally represented;
- b.** if there appears to be any real risk that the exercise of testing the reliability of such an admission will result in the accused having to admit previous criminal conduct the court should refrain from asking further questions;
- c.** instead the court should simply record the admission and invite the prosecutor to present evidence on that...

aspect of the charge and, if the prosecutor declines to do so, the court should record a plea of not guilty and leave it to the prosecutor to prove that particular element;

d. where the charge is one of dealing or possession a prohibited drug that state should be in a position to produce any analyst's certificate and the accused should be given an opportunity of examining such certificate;

e. where the charge is one dealing in or possession of dagga the state should be in a position to prove by any acceptable means that the substance in question is dagga; and

f. where the admission is made by the accused's legal representative more weight can usually be attached to such...

an admission and normally the court would be justified in accepting that the legal representative has satisfied himself that the admission can properly be made.

The **guidelines** above reiterate the purse of s 112(1)(b) of the Criminal Procedure Act which enjoins the court to satisfy itself of the guilty plea of the accused before convicting him. The learned judge in the aforesaid matter, therefore stated that when it concerns a fact which the court knows must be outside of the personal knowledge of the accused, any court cannot properly be satisfied on the basis of a bare admission by the accused without material before it from which it can properly determine the dependability of the admission.

Cases:

1. (cr 119/2024) (2024) NAHCMD 643 (30 October 2024)

2. HC-NLD-CRI-APP-CAL-2020/00053

3. S v Maniping: S v Twala 1994 NR at page 75-76

Mr. Johannes Shuuveni

Fostering Partnerships: Executive Members of the Magistrates and Judges Association Engage with Key Stakeholders.



The Magistrate and Judges Association of Namibia has recently undertaken a series of courtesy visits to key stakeholders in the judiciary and government to discuss critical issues impacting magistrates. These engagements yielded positive outcomes, with commitments made to support MJA's mandate to improve magistrate's salaries, benefits, an overall working conditions.

Executive Director of the Judiciary: Salaries and Resource Advocacy

During the meeting **Mr. Benhardt Kukuri**, the Executive Director of the Judiciary, the MJA highlighted the urgent need for competitive salaries for magistrates. The discussions also explored broader resource allocation to address systemic challenges facing the judiciary.

Mr. Kukuri acknowledged the association's concerns and affirmed his commitment to working collaboratively with the MJA. He emphasized the importance of ensuring magistrates are adequately compensated for their critical role in upholding justice.

Minister of Justice and Executive Director of Justice: Salaries and Holistic Improvements.

In an engaging discussion with the **Hon. Minister of Justice**, the topic of magistrates' salaries took center stage. The Minister herself raised the issue, recognizing the necessity of aligning remuneration with the demands and responsibilities of judicial officers. She also proposed broader improvements, including enhanced benefits and infrastructure development, to support magistrates effectively. The Minister reaffirmed her commitment to collaborating with the MJA and other stakeholders to address these challenges comprehensively. Her proactive approach was a testament to her dedication to ensuring the judiciary is well-supported.

The **Executive Director of Justice**, a former magistrate and a member of the MJA during its formative years, provided invaluable insights into the association's past achievements and challenges. She shared key strategic areas where the association can focus its efforts to reach its full potential. Her historical perspective highlighted the importance of strong collaboration and strategic planning for the association's future success. As a former member, she expressed her keen interest in sharing knowledge and working collaboratively with the MJA on vital areas to improve the administration of justice. She assured the association of her support and emphasized the need for partnership to achieve shared goals.

Chief Justice of Namibia: Support and Guidance for the MJA

The MJA delegation was warmly received by **His Lordship Hon. Mr. Justice Peter Shivute, Chief Justice of Namibia**. In this pivotal meeting, the Chief Justice reaffirmed his unwavering support for the MJA and expressed gratitude for the association's revival. His Lordship **encouraged** all magistrates to join the MJA, emphasizing the importance of **collective advocacy** and **unity** within the judiciary. The Chief Justice shared valuable insights on how to effectively run the association, offering strategic advice that will benefit the MJA's operations. He further expressed appreciation for the renewed vigor of the association, acknowledging its critical role in addressing the challenges faced by magistrates.

Moving Forward

The MJA is deeply encouraged by the positive reception and commitments received during these courtesy visits. These engagements have reinforced the association's resolve to advocate for the welfare and professional development of its members. Key Next Steps include:

1. **Developing** actionable proposal to address the issues of salaries, benefits, and infrastructure.
2. **Collaborating** with stakeholders to implement security measures and other improvements.
3. **Expanding** membership to ensure all magistrates benefit from the collective strength of the association.

The MJA extends its heartfelt gratitude to all stakeholders for their invaluable contributions and unwavering support. These partnerships will enable the association to achieve its mission of advocating for the welfare of magistrates and strengthening the administration of justice in Namibia.

Stay tuned for updates as we build on these engagements to create a stronger judiciary for Namibia!

Jo-Rina Jagger - Treasurer

Magistrate and Judges Association of Namibia still in the race to serve the Judiciary of Excellence.

With glee, the newly elected executive committee, rings the bell on the dawn of a new era.

We have reached the 30-year milestone, boasting of a membership of 79 paid up members for the first time in the history of the MJA - overcoming all odds, this MJA is stronger than ever!

Very recently, on 22 November 2024, the MJA delivered a presentation at the 2024 Summer School of the Namibian Institute of Town and Regional Planners (NITRP), to share its experiences as an association, under the theme “Reimagining the NITRP”.

How profound, that as MJA Namibia we find ourselves at exactly the same pivotal point of reimaging, reconstructing and rewriting the script for this Association.

Let us draw inspiration from this 38-year-old institution established to promote the interests of its profession, the same way we do, and take stock of not only of what we have accomplished, but how we can do better.

In my capacity as the chairperson of the Networking, Social Responsibility and Fundraising committee, I shared with the NITRP Summer School some insights as to how this Association of Magistrates and Judges has overcome its challenges, how it has and plans to maintain relevance and what it has learned from its strengths and weaknesses. Allow me further to thank the NITRP for inviting us to their platform where we could establish ties and express our excitement to collaborate in our mandates for our respective professions.



With great humility and pride, MJA has showcased its accomplishments and survival strategies, leaving a pleasant impression on its audience. **However, we are far from where we ought to be**, requiring the participation of all our members to make this association a success. Yes, the MJA Namibia continues to play a vital role in this society, with one of its key strategies being to network and foster ties, with not only stakeholders in the justice and legal fraternity, but society at large. **Our presence must be felt, our footprints ought to remain wherever we go and our voice must be heard.**

Cheers! To lasting impressions and making strides, and as this year draws to a close, we remain determined to end this year in triumph. Members, you can look forward to a fruitful 2025/2026 as we head into our **30th year of existence celebrations**, nothing that this association was established in March 1995 with a membership of only 36 members. The revival of this Inter-se speaks for itself, therefore, I say to you, watch this space – we are still in the race to serve our judiciary of excellence with excellence!

May the peace and the protection of God be with you this festive season. **Merry Christmas and Happy New Year**

Ms. Olivia Van Der Byl - Vice President





As we close the year, we thank you for your dedication and commitment to justice. Wishing you a peaceful holiday season and a prosperous New Year!





This year, we achieved much together. Thank you for your unwavering support. Here's to a new year filled with growth and success!





Season's greetings to all our members! May the holidays bring you joy and the New Year inspire renewed dedication to our shared mission.



As the year ends, we celebrate our collective accomplishments and look forward to new opportunities. Happy holidays and a prosperous New Year!



Thank you for your resilience and contributions throughout the year. Wishing you a restful holiday and a bright year ahead!





The End