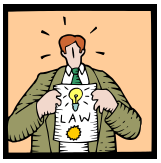
e-MANTSHI

A KZNJETCOM Newsletter

July 2018: Issue 144

Welcome to the hundredth and forty fourth issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Back copies of e-Mantshi are available on http://www.justiceforum.co.za/JET-LTN.ASP. There is a search facility available on the Justice Forum website which can be used to search back issues of the newsletter. At the top right hand of the webpage any word or phrase can be typed in to search all issues.
"e-Mantshi" is the isiZulu equivalent of "electronic Magistrate or e-Magistrate", whereas the correct spelling "iMantshi" is isiZulu for "the Magistrate". The deliberate choice of the expression: "EMantshi", (pronounced E! Mantshi) also has the connotation of respectful acknowledgement of and salute to a person of stature, viz. iMantshi."
Any feedback and contributions in respect of the newsletter can be sent to Gerhard van Rooyen at gvanrooyen@justice.gov.za.



New Legislation

1. The National Forum on the Legal Profession ("the National Forum"), a transitional body established in terms of Chapter 10 of the Legal Practice Act 28 of 2014 ("the Act"), published the Rules required by sections 95(1) 95(3) and 109(2)(a) of the Act. The Rules will be applied by the Legal Practice Council after its establishment in terms of Chapter 2 of the Act and will apply to all legal practitioners (attorneys and advocates) as well as all candidate legal practitioners and juristic entities as defined in the Act. The rules were published in Government Gazette no 41781 dated 20 July 2018.

2. The Court of Laws Amendment Act, Act 7 of 2017 is coming into operation on the 1st of August 2018 except section 14. The notice to this effect was published in Government Gazette no 41801 dated 27 July 2018.The amendments mainly affect

the provisions of the Magistrate's Court Act, Act 32 of 1944 especially sections 36, 45,55,57,58 and 65.

3. The Amended National Policy Framework on Child Justice was tabled in Parliament on 28 May 2018. In terms of section 93(2)(b) and (d) of the Child Justice Act, 2008 (Act 75 of 2008) the Amended National Policy Framework on Child Justice was published for public comment. This was published in Government Gazette no 41796 dated 27 July 2018. Comments should be submitted on or before 7 September 2018 to Ms Tabane-Shai via email at TTabane@justice.gov.za or hand delivered at Momentum Building, Pretorius Street 329, Pretoria or posted to Ms Tabane-Shai, Private Bag x 81, Pretoria, 0001

Recent Court Cases

1. S v Permall 2017 JDR 2001 (WCC)

The Adjustment of Fines Act (101 of 1991) provides a statutory rule of the computation of limits of jurisdiction in matters of punishment. The ratio between the amount of the fine and the term of imprisonment, in the magistrates' courts, is 3333.33, save as specially provided in any other law.

Thulare AJ

[1] The proceedings in this matter were considered on review in terms of section 304 of the Criminal Procedure Act No. 51 of 1977 and I had doubts as to whether the proceedings were in accordance with justice, with particular reference to the sentence imposed. The statement of the judicial officer who presided at the trial was obtained wherein he set forth his reasons for the sentence, and the matter lay for consideration by this court.

[2] The accused appeared in person, pleaded guilty to the charge and after being questioned by the magistrate, he was found guilty of driving a vehicle on a public road in the district of Caledon whilst the concentration of alcohol drawn from his body exceeded the prescribed limit of 0.05g per 100ml, to wit 0.22g per 100ml, in contravention of the provisions of the National Road Traffic Act No. 93 of 1996 (the NRTA). The State had accepted that the accused had consumed an unknown quantity of brandy and ciders the night before, and that on the day of his arrest he had made a u-turn in the road in a manner that drew the attention of the police whereupon he was stopped. The police detected that he smelt of liquor and took him

to a hospital for his blood to be drawn, which led to his arrest and the charges against him.

[3] He was sentenced to a fine of R15 000-00 or 30 months imprisonment wholly suspended for five years on condition that he is not convicted of driving a vehicle on a public road whilst the concentration of alcohol in his blood exceeded the prescribed limit in contravention of section 65(2) of the NRTA. As a first offender who did not hold a driving licence, he was disqualified from obtaining a learner's or driving licence for a period of six months from the date of his sentence.

[4] In obtaining the statement from the magistrate, he was more specifically asked to comment on the sentence he imposed on the accused, with his attention being drawn to the provisions of the Adjustment of Fines Act No. 101 of 1991 (AOFA).

[5] In his comments, rightly so, the magistrate made reference to section 89 of the NRTA. Section 89(2) of the NRTA provides as follows:

"89 Offences and penalties
(2) Any person convicted of an offence in terms of subsection (1) read with section 42(1) or (2), 44(1), 45(2), 46(1) or 65(1), (2), (5) or (9) shall be liable to a fine or to imprisonment for a period not exceeding six years."

[6] The magistrate, rightly so, also referred to section 1(1)(a) of AOFA which provides that:

"1. Calculation of maximum fine
(1) (a) If any law provides that any person on conviction of an offence may be sentenced to pay a fine the maximum amount of which is not prescribed or, in the alternative, to undergo a prescribed maximum period of imprisonment, and there is no indication to the contrary, the amount of the maximum fine which may be imposed shall, subject to section 4, be an amount which in relation to the said period of imprisonment is in the same ratio as the ratio between the amount of the fine which the Minister of Justice may from time to time determine in terms of section 92(1)(b) of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the period of imprisonment as determined in section 92(1)(a) of the said Act, where the court is not a court of a regional division."

[7] The ruling of the magistrate on AOFA is problematic. The magistrate's statement is that the sentence imposed is well within the court's sentence jurisdiction and that section 1 of AOFA does not prescribe a specific ratio between the fine and the alternative imprisonment imposed.

[8] Section 92(1)(b) of the Magistrates' Courts Act No. 32 of 1944 (the MCA) to which AOFA refers, also refers to subsection (1)(a) thereof, and both reads as follows:

"92 Limits of jurisdiction in the matter of punishments
(1) Save as otherwise in this Act or in any other law specially provided, the court, whenever it may punish a person for an offence –
(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding three years, where the court is not the court of a regional division, or not exceeding 15 years, where the court is the court of a regional division;
(b) by fine, may impose a fine not exceeding the amount determined by the Minister from time to time by notice in the Gazette for the respective courts referred to in paragraph (a);"

[9] Government Notice 217 in Government Gazette 37477 of 27 March 2014 provides for the "*Determination of monetary jurisdiction for causes of action in respect of courts for districts*" and specifically under section 92(1)(b) of the MCA determined an amount of R120 000-00 where the court is not the court of a regional division, and R600 000-00 where the court is the court of a regional division.

[10] In terms of AOFA, one has to determine the ratio between the amount which the Minister has determined in terms of section 92(1)(b) of the MCA which is R120 000-00 and the period of imprisonment as determined in terms of section 92(1)(a) which is three years imprisonment or 36 months. A simple mathematical calculation shows that 120 000-00 divide by 36 equals 3333.33, which is the ratio between the fine and the period of imprisonment. The maximum period of imprisonment of 6 years equals 72 months. The ratio, 3333.33 multiplied by 72 months gives a meticulously mathematically correct sum of 239 999-76 which should be a reasonably appropriate amount of R240 000-00. It is worth noting that dividing 240 000-00 by 72, also gives one the ratio of 3333.33. In terms of AOFA, the maximum fine which the magistrate was competent to impose was R240 000-00 on a term of imprisonment of 6 years. The ratio between the maximum fine to be imposed and the maximum period of imprisonment for the offence for which the accused was convicted, is 3333.33.

[11] In my view, section 1(1)(a) of AOFA read with section 92(1)(a) and (b) of the MCA, provides a statutory rule which should guide magistrates, who are both appointed in the districts and the regional divisions, not only to calculate the maximum fine or the term of imprisonment as the case may be, but also in the computation of the fine or term of imprisonment in the sentences that the courts impose. The statutory rule is a technique of mathematical legal science to be applied to the analysis and synthesis for the determination of fines and terms of imprisonment in the magistrates' courts. It follows that, in my view, AOFA provides a statutory rule of the computation of limits of jurisdiction in matters of punishment. Considering both provisions of AOFA and the MCA referred to, the ratio between the amount of the fine and the term of imprisonment, in the magistrates' courts, is 3333.33, save as specially provided in any other law.

[12] Where a magistrate, like in the present case, had determined to impose a fine of

R15 000-00, a simple meticulous mathematical calculation shows that that amount divided by the ratio, 3333.33, determined the maximum period of imprisonment was 4.5 months. A reasonably appropriate term of imprisonment, on the fine determined, was either 4 of 5 months imprisonment. The learned magistrate was misdirected when he imposed an alternative imprisonment of 30 months. It is a ruling which bears no relation to the law, from which he departed without any valid reasons, which guided his computation of punishment. The magistrate quoted the correct law, but simply did not make proper rulings of the law and as a result did not apply the law correctly on his judgment on sentence. A sentence is in the discretion of the magistrate, however, that discretion does not enable courts to impose sentences which are more severe than the sentence which the magistrate was competent to impose, more so where the severity is founded on a drastic and unexplained departure from principles and rules, which includes statutory rules of calculations and computation.

[13] The difference between a maximum of 5 months and 30 months is very huge. It is a full two years and one month's difference. The sentence imposed was wholly suspended for five years. The intervention of this court is not simply academic, as there is a risk to the accused being adversely affected by the magistrate's misdirection, unless the High Court intervenes, in the event of the suspended sentence being put into operation. The risk of the adverse consequences of this misdirection is not only to the accused. Where the magistrate unduly departed from what the Legislature has ordained on how fines and terms of imprisonment are to be calculated, for inexplicable reasons, and the sentence is put into operation because the accused is unable to pay the fine, the prison population run the risk of being increased for almost three years by a man who in accordance with the law, ought not to have been in prison for more than five months. The Department of Justice and Correctional Services is in recent years battling with prison overcrowding.

[14] Consequently, I am satisfied that the alternative sentence of 30 months imprisonment on a fine of R15 000-00, although wholly suspended for five years on condition that the accused is not convicted of driving a vehicle on a public road whilst the concentration of alcohol in his blood exceeded the prescribed limit in contravention of section 65(2) of the NRTA, is unduly disproportionate and not in accordance with the provisions of the Adjustment of Fines Act, 1991. The proceedings, in my view, were not in accordance with justice and it warrants the interference of this court on review. In my view, it is only fair that the accused gets the benefit of the least severe of the period of imprisonment in the determination of what is an appropriate sentence.

[15] In the result, I would make the following order:
The sentence imposed by the trial court is set aside and substituted with the following:
"The accused is sentenced to a fine of R15 000-00 or four months imprisonment

wholly suspended for five years on condition that the accused is not convicted of contravening section 65(2) of the National Road Traffic Act, 1996 (Act No. 93 of 1996) committed during the period of suspension. Accused is disqualified from obtaining a learner's or driving licence for a period of six months."

2. S v Nquma and Another (CA&R187/2018) [2018] ZAECGHC 58 (31 July 2018)

Where two offences are taken together for sentence purposes, care must be exercised to check whether the two offences are not subject to different sentencing regimes, otherwise such sentence may be incompetent.

Jaji J:
[1] Both accused in this case were convicted of two different counts, i.e. housebreaking with intent to steal and theft (common law offence) and contravening the provisions of section 66(2) read with section 89(1) of the National Road Traffic Act, 93 of 1996, using a motor vehicle without consent (statutory offence). I am of the view that the convictions are in order.

[2] The magistrate took both counts as one for purposes of sentence and both accused sentenced to twelve (12) months correctional supervision in terms of section 276(1)(h) and further eighteen (18) months each which the latter term of imprisonment wholly suspended for a period of five (5) years.

[3] The magistrate subsequently submitted the proceedings on special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977, indicating that she was of the view that the sentence imposed was incompetent. This view was premised pursuant to the advices of the senior magistrate which were correctly heeded by the magistrate.

[4] As pointed out by the senior magistrate's advices to the magistrate which I agree:
4.1 The penalty clause in section 89(6) of the Road Traffic Act 93/96 provides for sentence of a fine or imprisonment for a period not exceeding one year. Accordingly, as the senior magistrate advised, the sentence of eighteen (18) months imposed is incompetent. The magistrate correctly referred to section 280 of Act 51 of 1977 which provides that "it is not permissible to impose a sentence which is competent in regard to one offence and incompetent in regard to the other in respect of both offences." Regard was to *S v S* 1981 (3) SA 377 (A), therefore discouraging the practice of taking together different offences for purposes of sentence, especially if they are not the same or not closely related in respect of common law offences.

[5] The practice of taking more than one count together for the purpose of sentence, is neither expressly authorised, nor prohibited in the Criminal Procedure Act (See Du Toit, Commentary on the Criminal Procedure Act, page 28-20J-5 under the sub-

heading “Counts taken together for the purposes of sentence.”). This should, however, be done in exceptional cases only according to the learned authors. See in this regard *inter alia Director of Public Prosecutions, Transvaal v Phillips 2013 (1) SACR 107 (SCA) at para 27* and *S v Ganga 2016 (1) SACR 600(WCC) at [56]*.

[6] This case is a good example of the situation referred to in the *Ganga* judgment, where the two offences which the Magistrate took together for sentence, are subject to different sentencing regimes. Theft, being a common law crime, is not subject to a statutory prescribed maximum sentence (subject to the limits of the Court’s sentencing jurisdiction). Using a motor vehicle without consent, on the other hand, as a statutory offence, carries a prescribed maximum sentence as set out in paragraph 4 above.

[7] The sentence of eighteen months imposed by the Magistrate quite evidently exceeds the maximum of one year imprisonment prescribed in section 89(6) of the Road Traffic Act 93 of 1996, and as such is an incompetent sentence on the count of using a motor vehicle without consent. According to *Du* Toit (Commentary on the Criminal Procedure Act, page 28-20J-6), where charges are taken together for sentence and a court to impose a sentence which is competent on one charge but incompetent on the other, such a sentence is a nullity. See also *S v Hayman 1988 (1) SA 831 (NC)*.

[8] If the learned Magistrate intended to ameliorate the effect of two separate sentences, she ought to have ordered that such sentences be served concurrently, either in whole or in part. Such an order would be competent and is provided for in terms of section 280(2) of the CPA.

[9] In the circumstances, the following order is issued:
The matter should be remitted to the Magistrate to reconsider the imposition of sentence on both counts.

From The Legal Journals

Imiera, P P

"Therapeutic jurisprudence and restorative justice: healing crime victims, restoring the offenders."

2018 De Jure 82

Thaldar, D W

"*Mhlongo v S; Nkosi v S 2015 (2) SACR 323 (CC).* The right to be discharged at the end of the prosecution's case in the context of possible co-accused incrimination."

2018 De Jure 184

Electronic copies of any of the above articles can be requested from gvanrooyen@justice.gov.za)

Contributions from the Law School

Whither the defence of non-pathological incapacity based on provocation or emotional stress?

Once it was held, in the landmark case of *S v Chretien* 1981 (1) SA 1097 (A), that voluntary intoxication could exclude criminal liability on the basis of rendering the accused's conduct involuntary, *or* by negating the accused's criminal capacity, *or* by excluding the accused's intention (although intoxication does not negate negligence, as the reasonable person may drink, but never gets drunk (!)), the expansion of the defence of incapacity was entirely foreseeable. After all, in terms of the prevailing psychological theory of criminal liability, wherever one (or more) of the elements of liability (identified above) was excluded as a result of some *external factor*, the accused perforce must be entitled to a defence (the term 'external factor' is used to distinguish this type of defence from an analogous defence based on mental illness). While this approach certainly agitates those who would prefer that policy considerations should be decisive in determining which factors should be entitled to provide the basis for a defence excluding criminal liability, there are, arguably, strong and principled arguments for supporting the approach adopted in *Chretien*. It is surely a compelling concern that no-one who genuinely lacks one or more of the elements of criminal liability, on whatever basis, should be regarded as blameworthy, and subjected to punishment. How could this not be an egregious infringement of the accused's rights?

On this fertile theoretical soil, the defence of non-pathological incapacity soon expanded beyond the basis of voluntary intoxication. Thus, the Appellate Division in *S v Bailey* 1982 (3) SA 772 (A) at 796C-D noted that fear could exclude capacity. Shortly thereafter the same court in *S v Van Vuuren* 1983 (2) SA 12 (A) at 17G-H held that a *combination* of intoxication and provocation (or severe emotional stress) could be the basis for successful reliance on the defence of non-pathological incapacity. Indeed, a theoretical framework for the defence was carefully formulated by the Appellate Division in *S v Laubscher* 1988 (2) SA 163 (A) at 166G-167A, and this development of the law in the then highest court in the land culminated in a successful reliance on this defence in *S v Wiid* 1990 (2) SACR 561 (A), where, following a humiliating and traumatic assault on the accused by the deceased (her husband), she shot him dead.

After some noteworthy High Court decisions where the defence was successfully relied on (such as *S v Nursingh* 1995 (2) SACR 331 (D); *S v Moses* 1996 (2) SACR

701 (C) and *S v Gesualdo* 1997 (2) SACR 68 (W)), it was raised before the Supreme Court of Appeal in *S v Eadie* 2002 (1) SACR 663 (SCA). Whilst the confirmation of the appellant's conviction was not in doubt, the court (per Navsa JA) saw fit to engage in an analysis of the defence of non-pathological incapacity in the context of provocation. Much has been written about this judgment, and given that the judgment is indeed extraordinary in many respects, all the attention is warranted. Unfortunately, much of the commentary on the judgment has been rather less than complimentary, again, for good reason. Two notable features of the judgment are the scant attention paid to the development of the defence of non-pathological incapacity, and the rather selective (and sometimes inaccurate) citation of previous authority. Nevertheless, it was always going to be less about a careful examination of the law as such from the outset, with the court describing its quest (in para [3]) as investigating whether '…the boundaries of the defence…have been inappropriately extended, particularly in decisions of Provincial or Local Divisions of the High Court, so as to negatively affect public confidence in the administration of justice.' If the court had in fact confined itself to the terms of this analysis, much confusion and academic gnashing of teeth could have been avoided. Instead, it drew (at para [56]) on the writing of Louw ('*S v Eadie*: Road rage, incapacity and legal confusion' 2001 *SACJ* 206 at 210-211) where it is stated that

'logic dictates that we cannot draw a distinction between automatism and lack of self-control…if the two were distinct it would be possible to exercise conscious control over one's actions (the automatism test) while simultaneously lacking self-control (the incapacity test)'.

As Snyman has cogently pointed out (*Criminal Law* 6ed (2014) 162), the law allows for precisely this possibility in the context of children under 14 years of age, who may be able to perform voluntary acts, but may nevertheless be held by the courts not to incur criminal liability as a result of lack of capacity. Nonetheless, the court found this line of reasoning apposite to its critical assessment of the non-pathological incapacity defence, and duly concluded that 'there is no distinction between sane automatism and non-pathological incapacity due to emotional stress and provocation' (at para [57]).

It follows that it would have to be established that an accused was acting involuntarily in order for her defence of lack of conative capacity to prevail. The court did not shy away from this conclusion (ibid):

'It appears logical that when it has been shown that an accused has the ability to appreciate the difference between right and wrong, in order to escape liability, he would have to successfully raise involuntariness as a defence…the two are flip sides of the same coin.'

While the court's patchy treatment of the existing case law makes it difficult to accept that the defence of non-pathological incapacity based on provocation or emotional stress has been summarily jettisoned (can such a drastic step really occur solely by implication?), this seems to be the only conclusion that can be drawn from the unequivocal dicta cited above. Having said this, the court itself provided some contra-indications that this was what it was seeking to achieve. Hence, Navsa JA stated (at

para [57]) that he was 'not persuaded that the second leg of the test expounded in *Laubscher*'s case [the test for conative capacity] should fall away', and then (at para [59]) commented that '[w]hilst it may be difficult to visualize a situation where one retains the ability to distinguish between right and wrong yet lose the ability to control one's actions it appears notionally possible'.

What then *is* the state of the law regarding the defence of non-pathological incapacity based on provocation or emotional stress? Has the defence indeed been entirely negated by the *Eadie* judgment: is it now merely an historical footnote in the annals of criminal liability, a once-subjective spectral apparition now found making occasional ghostly appearances in the solidly objective automatism defence? Or (despite the apparently plain-speaking dicta to the contrary) has the defence indeed been retained in its original form, and all that the judgment amounts to is a less-than-helpfully-worded warning about the perils of poor application of the law?

It is plain that the expressed wisdom since *Eadie* overwhelmingly favours the former interpretation. Snyman (at 163) states that the defence of non-pathological incapacity has been abolished. Burchell *Principles of Criminal Law* 5ed (2016) 329 agrees that the effect of the judgment is that provocation could only amount to a defence if it led to involuntary conduct, as does Kemp et al *Criminal Law in South Africa* 2ed (2015) 199, 201, as does Jordaan in 'The principle of fair labelling and the definition of the crime of murder' 2017 *TSAR* 569. The present writer has also made this point in some detail in 'A peregrination through the law of provocation' Joubert (ed) *Essays in honour of CR Snyman* 110. Not only writers have adopted this interpretation. In High Court judgments in *S v Beukes* 2003 JDR 0788 (T), *S v Ngobe* 2004 JDR 0216 (T), *S v Hughes* 2004 JDR 0263 (T), *S v Scholtz* 2006 (1) SACR 442 (E) and *S v Marx* [2009] 1 All SA 499 (E) the courts have dutifully echoed the refrain from the *Eadie* case that sane automatism and non-pathological incapacity are one and the same thing, and that the latter defence could only succeed if there were evidence of involuntary conduct.

Is the matter not settled then? Well, not entirely. It appears that the concept of non-pathological incapacity still lives on, in its original pre-*Eadie* form, where it is mentioned in the context of cases discussing diminished capacity (see *DPP, Tvl v Venter* 2009 (1) SACR 165 (SCA) at para [21]; *S v Mathe* 2014 (2) SACR 298 (KZD) at para [16]), but the concept is also mentioned without comment, or any indication that it no longer exists (or even exists in a different form) in cases such as *S v Engelbrecht* 2005 (2) SACR 41 (W), *S v Volkman* 2005 (2) SACR 402 (C), and *S v Longano* 2017 (1) SACR 380 (KZP). None of these cases turned on the content of the notion of non-pathological incapacity, unlike in *S v Ramdass* 2017 (1) SACR 30 (KZD) at para [6], where despite citing the statement in *Eadie* (at para [57], cited above) conflating same automatism and conative capacity, the court specifically refused to apply this to cases of intoxication, holding that *S v Chretien* still remains the leading authority. Thus it is notable that the concept is apparently still extant. This perception is further strengthened by recent Supreme Court of Appeal cases such as *S v Van der Westhuizen* 2011 (2) SACR 26 (SCA) and *DPP, Grahamstown v Peli* 2018 (2) SACR 1 (SCA). In the *Van der Westhuizen* case, in the context of

discussing diminished capacity, Cloete JA referred to the defence of 'temporary non-pathological criminal incapacity', citing (at para [39] the classic *Laubscher* test in the case of *S v Ingram* (1995 (1) SACR 1 (A) at 4e-g). There is thus no indication in this judgment that the *Eadie* judgment has changed the legal position regarding either the content or availability of this defence. In the *Peli* case, the court, again discussing diminished capacity, once again (at para [9]) reiterated the standard test for non-pathological incapacity, this time citing, inter alia, a passage from the *Eadie* case (!) where Navsa JA refers to the doctrine on the basis of the standard test in *Laubscher* (at para [26]).

In the light of the differing indications in the case law (the academic conclusion seems reasonably monolithic), what exactly is the status of the defence of non-pathological incapacity, based on provocation or emotional stress, in our law? Perhaps it is fitting to let Navsa JA have the last word in this regard. In the recent bail decision of *S v Oosthuizen* 2018 JDR 0725 (SCA), Navsa JA (in para [30]) briefly referred to the debate around the defence without any unequivocal statement that the *Eadie* decision has changed the law in any way. Instead, he concluded the brief reference to the defence in a supremely enigmatic way: 'Commentators have stated that since this court's decision in *S v Eadie*…provocation leading up to a lack of criminal capacity as a defence has been limited, if not dealt the death knell'. So much for the views of commentators, but the questions around the defence in the light of the *Eadie* decision remain.

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A Last Thought

Ramblings of a grumpy attorney
July 1st, 2018
By Grumpy Attorney

Often as a legal practitioners, we are so enmeshed in our daily grind, that we do not see the bigger picture.
What follows, are some concerns I have about various aspects of our daily lives, which we too often take for granted.

Regional court
I would like to start with the regional court. While waiting at a regional court recently, I started chatting to my opponent. I asked her whether she does her divorces via the regional court or the High Court. Her answer, like mine, was that she prefers to use the High Court.
She and I agreed that the regional court is slower, more cumbersome and that the regional court judges are more inclined to be difficult and obstructive, than High Court judges.
Clearly, therefore, the very purpose for which the regional court was set up, namely, to shift divorces and particularly unopposed divorces, and also of course smaller civil claims away from the High Court to thereby free up the High Court roll. This is not being achieved.
While waiting at the regional court and having these chats with my colleague, we were sitting right underneath a board, which proclaimed who the head of the regional court in the Western Cape was. I tried calling the person a few days after being at court and left a message for them, as I wanted to convey my views. The person has not returned my call.
If more attorneys are to start using the regional court, then they will have to become more user-friendly and people who are involved in the administration and running of the regional courts, will have to carefully consider the concerns, which I am raising, and perhaps engage constructively with the organised legal profession, so as to deal with these issues.
For the moment, and unless and until I hear to the contrary, I avoid the regional court if possible.

Issuing magistrate's court summonses

At the High Court, I can issue a summons over the counter. The officials there do not bother with its contents and it is my problem if the summons turns out to be defective in any way.

At most magistrate's courts, however, summonses are not only not issued over the counter, but are left to be scrutinised by officials who adopt an incredibly pedantic approach. So, after leaving a summons at a magistrate's court, it may come back to one after many weeks – if not months – with a requirement that it be amended because of some defect in the small print. Why can there not be consistency in this regard and why can all magistrate's court summonses not be issued over the counter? If there are defects in the summons, the attorney runs the risk of default judgment not being granted.

For obvious reasons, I would prefer my name not to be published and trust, therefore, that this article will be published under the *nom de plume* of 'Grumpy Attorney'.

I look forward to receiving responses from other grumpy or perhaps not so grumpy or maybe even grumpier attorneys

Grumpy Attorney is based in Cape Town. The identity of this author is known to the editor and editorial committee of *De Rebus*

(The above is an edited version of the above comment which was first published in *De Rebus* in 2018 (July) *DR* 52).