e-MANTSHI

A KZNJETCOM Newsletter

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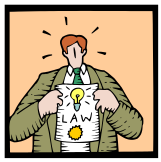
Welcome to the two hundredth and twentieth issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Back copies of e-Mantshi are available on http://www.justiceforum.co.za/JET-LTN.ASP. 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.Presidential proclamations separately published in the Government Gazette announced the 1998 Administrative Adjudication of Road Traffic Offences (AARTO) Act's incremental operationalisation nationwide, along with various provisions in the 2019 AARTO Amendment Act. Various sections of each Act are scheduled to apply to specific municipal areas on 1 December 2025, 1 April 2026 and 1 September 2026. The notices to this effect was published in Government Gazette 53099 dated 1 August 2025.

The notices may be accessed here:

https://www.gov.za/sites/default/files/gcis_document/202508/53099pr272.pdf

https://www.gov.za/sites/default/files/gcis_document/202508/53099pr274.pdf

Recent Court Cases

1. Jomane Eiendomme (Pty) Ltd v Magistrate Van Zyl and Another (067/2024) [2025] ZASCA 109 (18 July 2025)

CIVIL PROCEDURE – Rescission – *Declaration directive* – Authority to order plaintiff to file a declaration and proceed with pleadings – Valid procedural foundation for further pleadings – Order for a declaration was a practical and fair measure to advance dispute to trial – Consistent with audi alteram partem principle and efficient administration of justice – Order did not constitute a gross irregularity or exceed powers – Appeal dismissed – Magistrates' Courts Act 32 of 1944, s 58(1).

This Judgment can be accessed here:
https://www.saflii.org/za/cases/ZASCA/2025/109.html

2. Ntuli v S (128/2023) [2025] ZASCA 114 (30 July 2025)

Criminal Law – Common purpose neither averred in the charge sheet nor proved in evidence – conviction applying the doctrine violates an accused's right to a fair trial guaranteed by s 35(3)*(a)* of the Constitution.

This judgment can be accessed here:
https://www.saflii.org/za/cases/ZASCA/2025/114.html

From The Legal Journals

Petse, I

Legal Challenges Faced by Accused Persons with Speech and/ or Hearing Impairment in South African Courts: An Analysis of *Kruse v S* 2018 (2) SACR 644 (WCC)

(2025) 5 *Turf Law Journal* 1-9

Abstract

This case note identifies and analyses the legal impediments faced by speech and/or hearing-impaired (SHI) accused persons in South African courts. In examining the challenges faced by SHI accused persons in court, the note examines Kruse v S *2018 (2) SACR 644 (WCC). The note examines the barriers the SHI accused faces in understanding court proceedings and how South African law should address some of these obstacles. The note makes recommendations that may improve the position of SHI accused persons in the South African criminal justice system, particularly the courts.*

This article can be accessed here:
https://turflawjournal.org/index.php/tlj/article/view/62/44

Scott,J

A reassuring judgment for “slip and fall” victims with a caveat to restaurateurs to reassess the effectiveness of their disclaimer notices. *Morrison v MSA Devco (Pty) Ltd* (5229/2018) 2025 ZAWCHC 21 (30 January 2025)

2025 TSAR 579

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

Contributions from the Law School

The Domestic Violence Amendment Act 14 of 2021: Strengthening protection for victims

The Domestic Violence 116 of 1998 (hereinafter referred to as DVA) was a landmark piece of legislation that was introduced to deal with both the pernicious and persistent issue of domestic violence that plagued South African society. Recent statistics demonstrate that common assault is the most prevalent form of abuse against women. In the second quarter of 2024, there were at least 1567 attempted murders of women, 232 of which were domestic violence related cases, and 14366 women were assaulted with intention to cause grievous bodily harm. Of 10191 rape cases, 795 of those were victims of domestic partners and 11896 suffered common assault, also in the domestic setting (https://www.da.org.za/2024/11/crime-stats-reveal-shocking-violence-against-women-and-children). This begs the question as to whether the above legislation has been effective in seeking to prevent such instances of abuse.

In response to high crime rates, the government sought to respond through the introduction of the Domestic Violence Act and the Domestic Violence Amendment Act *14 of 2021* (herein after referred to as DVAA) to rectify certain shortcomings present in Domestic Violence Act. The purpose of this note is to briefly examine the changes introduced through the DVVA that were introduced with intention of clarifying the proper nature of domestic violence and the practical measures that can be taken to protect victims. Before we can examine the most notable of these developments, it is important to consider what the DVA defines a domestic relationship as:

'[A] relationship between a complainant and a respondent in any of the following ways:
(a) they are or were married to each other, including marriage according to any law, custom or religion;
(b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
(c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
(d) they are family members related by consanguinity, affinity or

adoption;
(e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
(f) they are persons in a close relationship that share or shared the same residence.'

This definition is important because it extends protection to persons who are concubines and not merely married couples and corresponding harassment in the form of damage to property of persons related to the victim (M Van Rooyen Legislative Developments https://journals.co.za/doi/epdf/10.10520/ejc-ajcj_v8_n1_a3 at 8).

Second, the DVAA is important because it seeks to broaden the types of domestic violence that the victim is protected against. The Act notably includes a definition for 'coercive' and 'controlling' behaviour (K Singo "Coercive and Controlling Behaviour in the Domestic Violence Act" (2023) South African Law Journal 763 at 767). Accordingly, the newly introduced definition as it appears in the DVA (as amended by the DVAA) reads:

'"[C]oercive behaviour" means to compel or force a complainant to abstain from doing anything that they have a lawful right to do, or to do anything that they have a lawful right to abstain from doing.'

The definition for controlling behaviour reads:

'"[C]ontrolling behaviour" means behaviour towards a complainant that has the effect of making the complainant dependent on, or subservient to, the respondent and includes –
(a) isolating them from sources of support;
(b) exploiting their resources or capacities for personal gain;
(c) depriving them of the means needed for independence, resistance or escape; or
(d) regulating their everyday behaviour'.

In addition, 'coercive' and 'controlling' behaviour is encompassed through the different types of violence as demonstrated at 2(i)
(a) physical abuse;
(b) sexual abuse;
(c) emotional, verbal and or psychological abuse;
(d) economic abuse;
(e) intimidation;
(f) harassment;
(g) [stalking] spiritual abuse;
(h) damage to property;
(hA) elder abuse;
(hB) coercive behaviour;

(hC) controlling behaviour;
(hD) exposing or subjecting children to behaviour listed in (a) to (hC); (i) entry into the complainant's or a related person's— (i) permanent or temporary residence without his or her consent, where the parties do not share the same residence; or (ii) workplace or place of study, without his or her consent, where the parties do not share the same workplace or place of study; or (j) any other controlling or abusive behaviour towards a complainant, where such behaviour harms, or may cause imminent inspires the reasonable belief that harm may be caused to the safety, health or wellbeing of the complainant or a related person.

Acknowledgment of 'coercive control' in such relationships, is crucial as it forms an essential component of these relationships (Singo supra). Further, this principle is firmly entrenched in South African case law. For instance, in the leading case of *S v Engelbrecht* 2005 2 SACR 41 (W) in determining whether the abused woman's actions in defending herself were reasonable in light of her circumstances, the court had to take into consideration several factors. These included "gender, socialization and experiences, the nature, duration and development of their relationship; the content of their relationship, including power relations on an economic, sexual, social, familial, employment and socio-religious level, the nature, the extent, the duration, persistence of the abuser, the achievements of the abuser; the impact upon the body, mind, heart, spirit of the victim the effect on others who are aware of or implicated in the abuse" (at para [357]). The implication of this decision is that 'coercive control' does not require physical violence only that the victim perceives that there is no means of escape" (at para [172]). Further, the effects of such abuse are wide ranging, so much so that the court noted that there was a "compelling justification for focusing not only on the specific form which the abuse may have over time and in particular circumstances, but pertinently on the impact of abuse upon the psyche, make-up and entire world view of an abused woman" (at para [343]. The court viewed these factors as being critical in informing the objective test for private defence so that the "that the reasonable woman ought not to be forgotten" in the analysis (at para [358]. In addition, acknowledgment of this principle is an important legislative development and is in line with South Africa's international obligations. According to section 233 of the Constitution of 1996, "when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law in the sense that 'coercive' or 'controlling behaviour' is punished as a stand-alone offence in the United Kingdom (Singo supra at 779). In this respect s 76 of the Serious Crime Act, 2015 states:
'(1) A person (A) commits an offence if –
(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
(b) at the time of the behaviour, A and B are personally connected,
(c) the behaviour has a serious effect on B, and
(d) A knows or ought to know that the behaviour will have a serious effect on B.

…
(4) A's behaviour has a "serious effect" on B if –
(a) it causes B to fear, on at least two occasions, that violence will be used against B, or
(b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities
In addition to acknowledging coercive control, spiritual abuse, elder abuse, are also included in the Acts amendments. According to s 2 (w) spiritual abuse includes:

(a) ridiculing or insulting the complainant's religious or spiritual beliefs;
(b) preventing the complainant from practising his or her religious or spiritual beliefs; or
(c) using the complainant's religious or spiritual beliefs to control, manipulate or shame him or her, including using religious texts or beliefs as a pretext to justify, minimize or rationalize abusive behaviour.
For example, where couples are not from the same cultural or religious background but are now compelled to adopt different cultural practices, especially where the party is emotionally coerced or financially dependent and is coerced into foregoing their practices.

'Elder abuse' is defined as "the abuse of an older person as contemplated in the older persons Act 13 of 2006" and is now a punishable offence.

Further s 2 (m) sets out what non-physical abuse entails:

"Emotional, verbal and or psychological abuse' means [a pattern of] degrading or humiliating conduct towards a complainant or a related person, including (a) repeated insults, ridicule or name calling; (b) [repeated] threats to cause emotional pain; or (c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's or a related person's privacy, liberty, integrity or security; or (d) inducing fear
From a more practical perspective a positive development of the Amendment Act has been the introduction of online protective orders by means of an electronic portal. This was introduced as a result of the lockdown measures imposed during the Covid-19 pandemic, Therefore, applicant will register online and will be able to apply directly for a protection order. This dispenses with the need to go directly to a magistrate's court. The application can now be done through an electronic portal. The court will then be able to assess the application outside of ordinary court hours if it satisfied that the complainant may face harm (Van Rooyen Legislative Developments https://journals.co.za/doi/epdf/10.10520/ejc-ajcj_v8_n1_a3 10)

Conclusion
The introduction of both the definition of 'coercive' and 'controlling' behaviours is a welcome development and essentially recognised that these behaviours are 'intrinsic

elements' in domestic violence itself. Furthermore, the developments clearly indicate that other types of abuse are also acknowledged: elder abuse as well as spiritual abuse.

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Matters of Interest to Magistrates

Bail applications on 'new facts'

In this article I take a look at bail applications on 'new facts' under s 65(2) of the Criminal Procedure Act 51 of 1977 (CPA), as amended.
This section is very important to any defence attorney as it enables the accused to bring an application on 'new facts' when his initial bail was refused by the court. In South Africa bail laws allow an accused, who is in police custody, to bring an application to be released out on bail (s 60(1)(*a*)).
Also, the South African bail law allows every accused person denied bail to make a new bail application if there are new circumstances since his failed initial application. 'However, it is an "abuse of … proceedings" to allow an unsuccessful bail applicant "to repeat the same application for bail based on the same facts' (Juta 'Criminal Justice Review 2 of 2017' (https://juta.co.za, accessed 30-6-2025)) (s 65(2) of the CPA).
In this article I consider under what circumstances 'bail on new facts' can be made. In deciding whether facts are new or not, Presiding Officers are required to have due regard to the evidence adduced at the earlier unsuccessful application (*S v Vermaas* 1996 (1) SACR 528 (T)).
The meaning of 'new facts': General guidelines
Just as there is no definition for 'exceptional circumstances' for schedule 6 bail applications, there is no definition of 'new facts' in the CPA. The courts follow s 65(2) and make use of certain general guidelines to approach bail on new facts (*S v Yanta* 2000 (1) SACR 237 (Tk)). Those guidelines are summarised as follows:

- New facts are facts that came to light after the refusal of bail, and also include circumstances which have changed since the unsuccessful bail application was lodged.

- New facts must be different in character from the facts presented at the earlier unsuccessful bail application (*S v Petersen* 2008 (2) SACR 355 (C)).
- The alleged new fact or facts must be 'relevant for purposes of the new bail application' (*S v Petersen*).
- In determining whether facts are new or not, presiding officers are required to know the evidence presented at the earlier unsuccessful application (*S v Mpofana* 1998 (1) SACR 40 (Tk)).
- In a situation where evidence was known and available to a bail applicant but not adduced as evidence whether orally or in a form of an affidavit, at the time of his earlier application, such evidence cannot – for purposes of bail on a new application – be relied on as new facts (*S v Le Roux en Andere* 1995 (2) SACR 613 (W)).

When should one apply for bail on new facts?

Whenever it appears that the circumstances of the accused person have changed since his unsuccessful bail application, one can advise them to bring an application on new facts. Practitioners are encouraged to carefully study the case of their clients and have an understanding of s 65(2) of the CPA. Hereunder, I attempted to list a number of examples that can be viewed as a 'new fact':

- The accused person's trial has been delayed for a lengthy period.
- The state's inability to investigate the case could be a new fact.
- A key state witness has passed on or is unable to testify against the accused.
- The accused person's health is deteriorating in custody pending trial.

Legal practitioners are urged to do research based on the facts of the case they are dealing with. It is also important to note that each case must be judged according to its own merits.

A recent case law on 'bail on new facts'

In *Saule v S* (ECM) (unreported case no CA&R93/2023, 2-5-2024) (Pitt AJ), the court dealt with bail on new facts.

In this case the applicant, Mr Saule, was charged with murder among other offences. It was alleged by the prosecution that he used a Tractor-Loader-Backhoe to destroy the home of the complainant and then hired three hitmen to kill the complainant.

A first bail application was made on behalf of Mr Saule on 22 September 2022 in court, where his initial bail application was refused. A further bail application on new facts was brought, which the prosecution opposed, and the court dismissed it on the grounds that the facts relied on were not new.

In her judgment on the bail application on new facts, the magistrate held that the only fact which could be considered as new was that the investigation was completed and as such there was no likelihood that he would interfere with investigations. The magistrate went further to say that while the applicant was in custody, his girlfriend was expecting his seventh child and the fact that the child had since been born was raised in the initial bail application.

She further reasoned that the fact that the appellant was diagnosed with glaucoma and a cataract, and that he had a subsequent operation on 24 October 2021 are not new facts. The bullet wounds, the applicant's injuries and his diabetic condition were all

facts already known to the court from the initial bail application. The condition of the applicant's grandchild who has a biological father for primary care, was also known during the initial bail hearing.

It was submitted that the applicant's financial position had deteriorated substantially because three of his head of cattle were reported missing but were recovered. The magistrate found that this was not a loss as the cattle were recovered. It was also alleged that 150 of the applicant's sheep had died, that his shop had since been broken into, vandalised and closed, and that his family was unable to protect his assets. The court found that all of these factors were present at the initial bail application and were not new facts to the court.

The applicant, Mr Saule, then appealed to the Eastern Cape High Court, contending that the magistrate erred in refusing to admit him to bail on the basis of new facts.

He presented the following as 'new facts' –

- that his business and farming operation require his personal attention and that he would suffer irreparable harm and loss if he is not able to attend thereto;
- that his grandchild was disabled and required his financial support and care and assistance;
- that as a disabled person of advanced age and deteriorating eyesight and physical condition he posed no flight risk whatsoever;
- that his continued incarceration was not in the interests of justice or required in any way in this matter; and
- that investigations were complete and that he would not interfere with state witnesses.

Mr Saule was successful in his appeal to Eastern Cape High Court. The Pitt AJ admitted Mr Saule to bail and it was fixed at an amount of R 20 000 with certain conditions. The court held that the investigation was now complete and that it can be said that the fact that Mr Saule cannot interfere with the investigation constitutes a new fact.

Conclusion

This article attempted to explain the basic principles applicable to a bail on new facts under s 65(2) of the CPA. It also provided a list of guidelines that are important and generally used to adjudicate such applications.

What is of significance is that every accused person who was denied bail and is in police custody can bring a renewed application in a form of 'new facts'. Attorneys are encouraged to consult thoroughly with their clients even after the initial bail application was refused. This is very vital as it puts one in a position to determine whether one's client has new facts or not.

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A Last Thought

Criminal Law Committee meeting summary

By Kevin O'Reilly

The Law Society of South Africa's (LSSA) Criminal Law Committee (the Committee) met on 16 April 2025 to discuss several issues within its area of expertise. The following were among some of the issues discussed.

Access to court transcripts

The LSSA continues to raise the issue of high costs and poor accessibility of court transcript services, which hinders access to justice, particularly in appeal matters. The LSSA recognises this as a national crisis affecting not only practitioners but also the clients they serve. Despite persistent efforts and regular engagement on various platforms, including the Provincial Efficiency Enhancement Committee (PEEC) and National Efficiency Enhancement Committee (NEEC), no practical or immediate solutions have been forthcoming. The LSSA will raise the matter again at upcoming NEEC meetings, with the aim of securing a more positive response.

After-hour police station bail and detective availability

The LSSA remains concerned about the persistent lack of after-hours detective availability at police stations, which continues to delay bail applications for minor offences. A recent letter from the South Africa Police Service (SAPS) in the Free State confirmed that no national directive currently exists on the issue of after-hour bail at police stations. The LSSA will raise the issue at both provincial and national levels, including upcoming NEEC meetings, and will engage provincial commissioners who attend those meetings to push for clear directives and a list of detectives on standby at police stations. Legal practitioners who do not attend these meetings are encouraged to communicate with the LSSA Provincial Associations to have these issues raised at the PEEC and Regional Efficiency Enhancement Committee (REEC) meetings.

Safety and security concerns at courts

The LSSA has noted the growing concern about safety of legal practitioners at court, especially after the recent shooting at the Wynberg Magistrate's Court. The incident at Wynberg, where a shooting occurred on the fourth floor, highlights serious security issues, including non-functioning screening equipment and broken cameras. It was noted that the Director General of Justice attended the Wynberg Magistrate's Court following the incident, however, no legal practitioners were present at the meeting. The LSSA also acknowledges the broader issues of parking and security at various courts. The general state of court facilities is also of concern. The LSSA will address these issues at the national and provincial meetings. It will also push for improved communication and action from the Department of Justice, Department of Public Works, and the Chief Justice, to fix the situation and ensure the safety of both legal practitioners and members of the public.

High Court backlog of trails

The High Court backlog of trials is a problem throughout South Africa. The LSSA has followed up with the Department of Justice and Constitutional Development to request a meeting with the new Minister to discuss this issue. The Legal Practice Council (LPC) had a meeting with the Minister where the backlogs were discussed. The Minister is aware of the issues, but the LSSA believes it is important to continue to raise this issue.

The LSSA acknowledges that potential solutions – such as building additional courts or appointing more acting judges and magistrates – are not immediately clear and require further consideration.

The LSSA recognises the severity of the situation, with some individuals having been in custody for extended periods while still awaiting trial. The LSSA will look to put forward practical solutions.

Engagement with NPA and police

The LSSA is facilitating a meeting with the National Prosecuting Authority (NPA) to discuss the concerning crime statistics. The Committee, in previous meetings, has invited the NPA and the police to discuss issues relating to them. The LSSA believes it would be beneficial to identify specific items for discussion with both the NPA and the police, such as the availability of detectives after-hours at police stations, and proposed legislative changes. The LSSA requested Committee members to submit any issues they wish to discuss with these organisations. The LSSA will then arrange for a representative to attend the Committee meetings to discuss these specific issues. This approach has been successful in the past, as it allows for direct engagement with representatives from the police and the NPA.

SALRC Discussion Papers – Review of the Criminal Justice System

The LSSA considered the South African Law Reform Commission's (SALRC) discussion papers regarding a review of the criminal justice system, which included the following documents:

- Discussion Paper 167, Project 151: Review of the Criminal Justice System: Review of South Africa's Bail System.
- Discussion Paper 166, Project 151: Review of the Criminal Justice System Reform of the Arrest Dispensation.
- Discussion Paper 165, Project 151: Review of the Criminal Justice System: Non-Trial Resolutions: Deferred Prosecution, Alternative Dispute Resolution and Non-Prosecution (Pre-Trial Processes, Part A).
- Discussion Paper 164, Project 151: Review of the Criminal Justice System: Alternative Dispute Resolution in Criminal Matters (Pre- Trial Processes, Part B).

The LSSA acknowledged several issues highlighted in the SALRC documents such as the practicality of implementing mediation and alternative dispute resolution (ADR) in criminal cases, as well as the proposal to require consent and input from victims and their families before bail is considered, with concerns noted about the potential for further delays in the bail process. The Committee expressed the view that the Criminal Procedure Act 51 of 1977 in its current form remains sound and that the issues lie with its implementation by the police and the courts. Specifically, the Committee noted problems such as the police not fully understanding their powers to grant bail, the slow pace of bail hearings, and courts being overburdened.

The LSSA agreed it would submit comments on the SALRC documents, with Committee members providing individual input to be collated into a single document.

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