

A judge's view on the South African legal system

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The South African judiciary continues to deal with an onerous workload, and diversity, and transformation challenges against a backdrop of continuous evolution in legal practice.



On a well-attended LexisNexis webinar, these issues were discussed at length with Justice Eduard Derek Wille, whose tenure as an Acting Judge of the High Court of South Africa (Cape of Good Hope Provincial Division) has equipped him with invaluable perspectives on the state of justice in the country. His reflections, grounded in years of judicial experience, provided a useful roadmap for understanding the complexities of legal practice in South Africa, as well as the qualities essential for those who don the robe and take on the mantle of judge.

Wille says the judiciary, marked by its diversity and complexity, requires judges to be adept across a broad spectrum of legal disciplines there remains a lack of specialisation within the high courts: “One day might involve delving into matrimonial disputes, the next navigating the intricacies of criminal law,

and yet another adjudicating commercial or patent matters.”

This vast array of responsibilities, Justice Wille says, is often underestimated, with the public unaware of the breadth and depth of issues that high court judges grapple with daily. Navigating the court environment, particularly interactions with advocates, adds another layer of complexity to a judge’s role. Justice Wille spoke about the relationship between the bench and practising advocates suggesting a need for a balance that reduces intimidation while preserving the court’s dignity. He also advocated for a demystification of judicial roles, aiming to bridge the gap between judges and litigants, fostering a more inclusive and understandable legal process.

The workload that currently burdens judges in South Africa is substantial, and he pointed out a dire need for more judicial appointments: “The sheer volume of cases and the intensity of the required legal analysis creates a scenario where judges are stretched thin, potentially impacting the quality and timeliness of justice that is delivered.”

Justice Wille also touched on the art of judgment writing. While experience does bring a certain ease to crafting judgments, he noted that each case’s unique nature ensures that the task remains challenging and demanding. He stressed the importance of immediate action in summarising cases and drafting judgments, underscoring the value of diligence and promptness in maintaining the judicial system’s integrity.

In that respect, he said, technology has become vital in the job. “I am completely computer literate. So, I do all my own typing. Otherwise, I use dictation tools. You can always revise but at least you know exactly what was argued; the finer points, the nuances, and you then have a basis for your judgment at the end of the day.”

Addressing the question of whether the South African judiciary broadly keeping pace with technological advancements, Wille said many judges still take notes with pen and paper in the bench book. “I have an iPad and pencil, and I use various applications to change what I write into words so that I can produce a judgment. But I think we do need to move forward.”

Legal research, says Wille, is also an area that needs to transform: “One cannot do all your research in your chambers, so it must be done online. In that respect, he suggested that it might be a future option to partner with the private sector to embrace technology: “If a major law firm comes to court on a big civil matter, can you imagine the technology it has at its

disposal compared to the technology that a judge has? Private sector companies, after all, are on the cutting edge of technology. Will explained that, while protocols need to be put in place to balance independence and the advantage provided by tech, he is confident that these partnerships could help: "It will really help a lot in streamlining the process. And at the end of the day, we are your servants, we need to provide a service. That's what judges and public servants are here for."

The webinar also touched on artificial intelligence but with this caveat from Justice Wille. "I think artificial intelligence has its place but at the end of the day, there must be that human touch of experience, and knowledge and insight into jurisprudence.

Reflecting on the transformation within the judiciary, Justice Wille expressed support for a more diverse bench and the consideration of candidates from various backgrounds, including academia. He encouraged those aspiring to join the judiciary to approach the role with passion and humility, ready to face the challenges and embrace the opportunities of this noble profession.

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