



*The Office Of The Principal and Vice - Chancellor*

**PROF MS MAKHANYA, PRINCIPAL AND VICE CHANCELLOR**

**COLLEGE OF LAW SEMINAR**

**05 April 2017**

- Programme Director: Adv. T Skosana: Centre for Indigenous Law
- Justice CN Jafta, Justice in the Constitutional Court of South Africa
- Professor R Songca, Executive Dean College of Law, UNISA
- Dr DT Mailula
- Members of Executive of the College of Law
- Distinguished guests, ladies and gentlemen

Thank you Advocate Skosana for your very warm welcome to what promises to be a most interesting and apposite seminar.

Please allow me to add my very sincere welcome to you Justice Jafta. We are honoured and delighted that you have made yourself available; not only to share your views and insights on matters

attendant to the very high-profile case of *Mayelane v Ngwenyama*, but also to speak to the very complex intersection of customary law, law and gender parity and equity in what is surely one of the most fascinating, vexing and yet affirming societies in the world – our beloved South Africa.

Given the events of these past weeks – and even today, I must say that these seemingly contradictory yet complementary forces have offered an instructive insight into the sensitivities and challenges of a multicultural constitutional democracy. But they have also demonstrated and they are continuing to demonstrate as I speak, the centrality of our Constitution as the glue that holds it all together and the oracle or sage, that paves the way for the accretive process that contributes to the development and maturity of South African law. We are in an ongoing journey of discovery that began in 1994, and which assumed a very clear shape and direction when the Constitution of the Republic of South Africa, 1996, was approved by the Constitutional Court on 4 December 1996, taking effect on 4 February 1997.

As the supreme law of the land, the Constitution, through the courts of this land, has proven both its relevance and its efficacy as the linchpin of ethics and integrity, and a pillar of pronouncement without fear or favour. The Constitution and the judiciary are, Judge

Jafta, perhaps the last bastions of integrity to which our citizens, from the richest to the poorest and from the strongest to the weakest – have resort. The Constitution has been tested repeatedly and found to be robust and resilient. The Constitutional Court has been equally so. Via a number of high profile and complex cases it has subjected itself to public scrutiny and has not been found wanting. That speaks volumes to your belief and confidence in the law and the judiciary. Rightly so. I would in fact go so far as to say that the majority of South Africans are genuinely proud of our Constitution and of our judicial system which is seen to function transparently at the highest level.

It is in fact quite fascinating to consider that this compromise document – our Constitution - crafted and drafted in a time of political instability and uncertainty, yet a time of nascent hope and aspiration, has proven to be one of the most prescient gifts that our forefathers and mothers have bequeathed us. Nowadays we turn to it regularly - for the rectification of wrongs, for clarity and wisdom, and for the reaffirmation of our hopes and aspirations. And while it is true that the current excessive resort to the Constitution and the courts is unhealthy, it is the Constitution and the Courts that repeatedly assure us, through their independence and objectivity, that, ultimately, they will protect our rights and equally importantly – our voice. In so doing, they have vindicated their value and worth.

Judge Jafta, Colleagues, ladies and gentlemen, what we witness on an ongoing basis in our society reveals to us, to an increasing degree, the confusion and conflation that exist amongst the general public, in regard to customary allegiance, political allegiance and allegiance to the Constitution, all of which vie for supremacy in the lives of our citizens at any given time. It is often an uneasy relationship, which renders the work of our courts so much more critical. Current events are demonstrating that we have a long way to go in educating our citizens on the functioning and interrelatedness of each of these, but the most important of these is an appreciation of the supremacy of the Constitution. That is why seminars such as this one are so important.

In pronouncing on the *Mayelane v Ngwenyama and Another*, the judiciary has demonstrated its understanding and interpretation of further marriage in customary law and its relevance to broader society. It is an ongoing process. One thinks here for example, of the very newsworthy legal dynamics around the so called “Muslim Marriage Bill” which has at its foundation religious and gender considerations. No doubt South Africa has many more such examples that will be raised for testing and pronouncement in future.

I commend the College of Law on this initiative and I trust that you will be hosting many more seminars such as this one. As the current teachers and practitioners of law, you are not only honing your own knowledge and skills, but you are also conduits of the same to your students and Unisa's law graduates.

Judge Jafta, you may or may not know that Unisa's vision is to be *the African University shaping futures in the service of humanity*. Upon reflection, one could apply that same vision to our constitution as it is invoked in the shaping of our societies and our humanity.

Thank you once more for gracing us with your presence, insights and wisdom.

I thank you.