JUDICIAL OFFICERS ALLIANCE OF SOUTH AFRICA
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THE BENCH

A LEGAL NEWSLETTER OF THE JUDICIAL OFFICERS ALLIANCE OF SOUTH AFRICA



Mr Neelan Karikan, Founder and President, with Mr Nivan Hunsraj, Head of the Tactical Division.

Theme · The sitting month: independence, the record, and the officer who still has to decide

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This edition is a members' briefing. It is not a practice directive, not a ruling of any court, and not the view of the Magistrates Commission. Citations follow the public record at 7 October 2026.

In this edition. The October Judicial Service Commission. The Madlanga Commission in closed hearings. Van Schalkwyk on sanction. The elections of 4 November. Small claims at R30 000. Remuneration. Luthuli. Khedama.

From the President's desk

A good October morning to every colleague still carrying a court.

Colleagues,

This sixth edition is offered with respect, while the ordinary roll continues and several questions remain open. The Judicial Service Commission is in session. The Madlanga Commission has paused its public hearings, not its work. The local government elections fall on 4 November. Consultation on the next remuneration determination is under way.

JASA is a room in which magistrates may speak to one another as officers. In the photograph on the cover, the President is with Mr Nivan Hunsraj, Head of the Tactical Division. We try to be accurate, and to stay on the proper side of the line between adjudication and comment. The articles record what has been decided, what has been proposed, and what remains open.

Two practical requests, offered quietly. Court managers are asked to treat the election period as a matter of security and continuity: lists, after-hours contact, service of protection orders, and the safety of staff and witnesses. Colleagues who sit in civil matters will find, in the notes on small claims, interest and the National Credit Act, material that may assist in reasons.

I thank those who continue to sit, often in difficult buildings and with limited support, while these larger questions proceed. The Alliance remains available on questions of security, discipline and conditions of service.

With respect, and with every good wish for the sitting month —

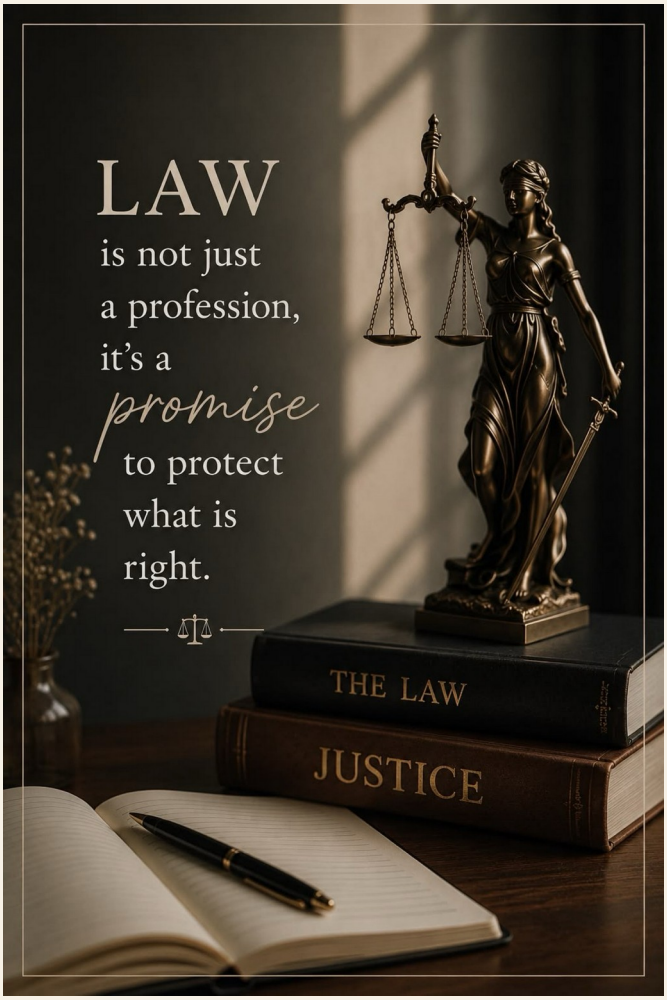
Neelan Karikan

Founder and President, Judicial Officers Alliance of South Africa

> ***A note from Neelan Karikan.*** *A newsletter can only point to the record. The order is written by the officer who heard the case. We offer these notes in that spirit.*

Artificial intelligence, before the rule is settled

What a magistrate may safely do while the judicial policy is still being finished.



Law is not just a profession. It is a promise to protect what is right.

> *"The courts are independent and subject only to the Constitution and the law."*
> Constitution of the Republic of South Africa, section 165(2)

At the Judicial Service Commission interviews on 5 October 2026, Mokgere Masipa J said that a draft policy on artificial intelligence had been placed before this year's Judges' Conference, and that it was being finalised after concerns about governance and data security. The Conference asked the Judiciary Administration and Information Technology Steering Committee to complete the draft, and to distinguish permitted use from prohibited use, with human oversight kept at the centre.

A magistrate remains responsible for the facts found, the law applied, and the order made. Until the draft policy is issued as a judicial instrument, the safe course is the ordinary one. Primary sources should be read. Citations should be checked against the judgment or the statute. Reasons should be written by the officer who will sign them. A party who places an unverified generated citation before the court has placed no citation at all until it is produced.

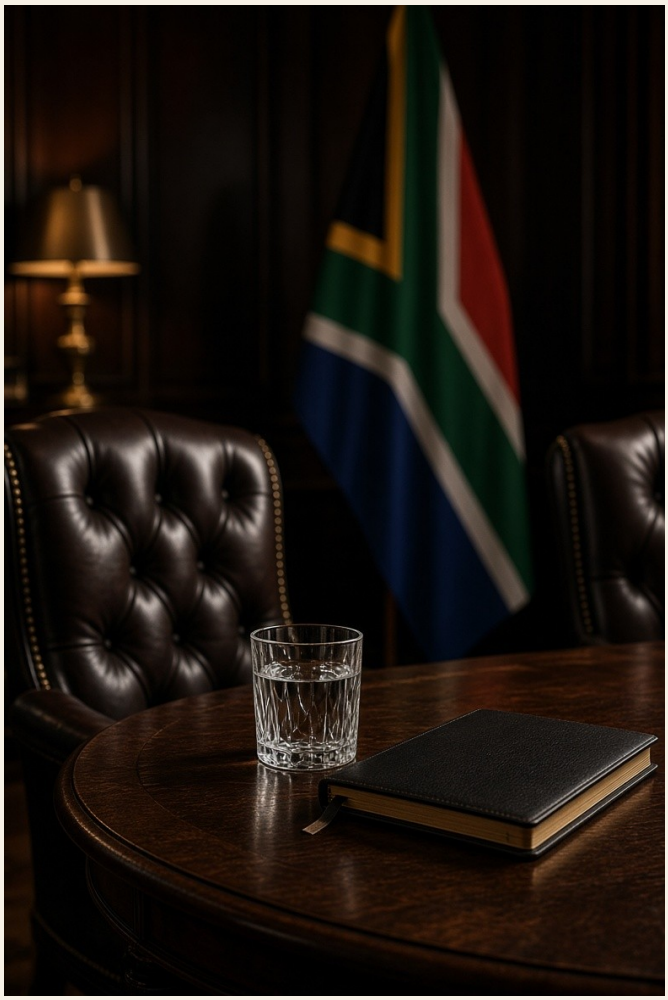
There is a proper place for technology: transcription, listing, secure internal research, and the correction of formal errors. That place does not extend to credibility, sentence, or the grant or refusal of a protection order. In a domestic-violence file, a children's matter, or an in-camera criminal

proceeding, material placed on a public platform may leave the court. The Protection of Personal Information Act 4 of 2013 continues to apply.

A note from Neelan Karikan. *A tool may help to find a section. The reason, and the signature, remain the magistrate's. We say this with respect for colleagues who are already using these tools carefully.*

The October sitting of the Judicial Service Commission

Twenty-two vacancies, a shortened sitting, and what the lower courts should still notice.



The October sitting. The lower courts live with the appointments that follow.

> *"Appointments must be fit and proper, and the judiciary must reflect the country it serves."*
> Constitution, section 174

Chief Justice Mandisa Maya is leading the October 2026 sitting. The Commission is interviewing for 22 posts in the superior courts, including three vacancies at the Supreme Court of Appeal. The candidate list for the Appeal Court has included Gerald Bloem J, Busisiwe Masipa J, Esther Steyn J, Ingrid Opperman J and Deputy Judge President Violet Phatshoane. Delayed judgments at the Appeal Court have been publicly identified as a reason for filling those posts without further loss of time.

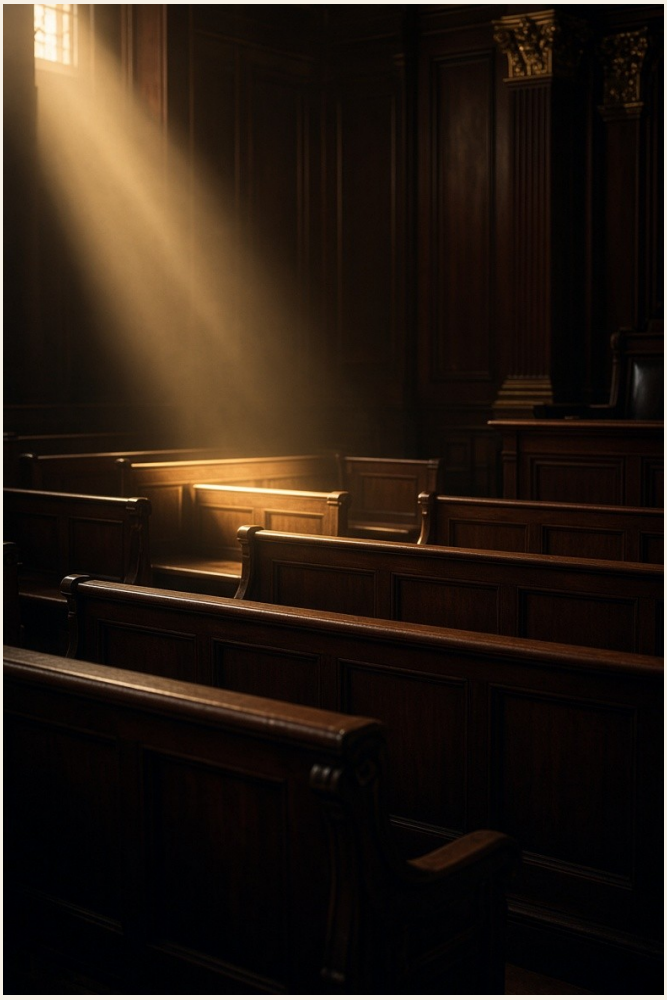
Two features concern the lower courts even though the posts are superior-court posts. The first is the path from acting appointment to permanent appointment, and the standard by which temperament, productivity and integrity are tested in public. The second is the open discussion of sexual harassment. Buyiswa Majiki J is reported to have told the Commission of a reluctance, in the Eastern Cape, to report such conduct. A lower court cannot treat that as a problem of another division. Heads of court should know the reporting line, protect a complainant from informal reprisal, and keep the disciplinary process separate from the roll.

Section 174 of the Constitution requires that the judiciary reflect the racial and gender composition of South Africa, and that appointees be fit and proper. Those two requirements are not alternatives. The Alliance does not, in this edition, comment on any candidate.

A note from Neelan Karikan. *We note, with respect, that an unfilled post and an unsettled procedure both weigh on the courts that must live with the result. The Alliance does not comment on any candidate.*

Van Schalkwyk and the survival of a removal sanction

A removal justified by thirteen findings cannot stand, unchanged, on the four that remain.



The sanction must still match the findings that remain.

> *"A sanction stands only on the findings that remain."*
> From the note on Van Schalkwyk

In Van Schalkwyk v Minister of Justice and Constitutional Development and Others [2026] ZAGPJHC, the High Court, sitting as an appeal court, set aside the removal of Judith van Schalkwyk, formerly Chief Magistrate at Kempton Park. Thirteen findings of misconduct had founded the recommendation of removal. On review, the respondents conceded that nine of those findings should fall away. Four remained.

Nothing in the case licences misconduct that has been proved. Four findings remained. The point is narrower. The President, the Minister and the Commission, when they act on a recommendation, act on a stated foundation. If that foundation is later reduced, the act must be looked at again. A charge that is not proved should not be left in the narrative of sanction "for context". Reasons should separate each finding from the penalty, and should say which findings are essential to the penalty.

Members facing an inquiry are entitled to a charge sheet that can be answered, to a separation of roles, and to a sanction that matches what has been established. The signed judgment is not yet widely carried on a free reporter. This note follows the professional report of the appeal, and will be corrected if a particular in the signed text differs.

A note from Neelan Karikan. *It may assist to list each finding that is upheld, and only those findings. If the foundation of a sanction changes, the sanction itself should be considered again.*

The Madlanga Commission in a month of closed hearings

Public hearings stand adjourned. The lower courts do not.



The hearing stands adjourned. The finding is not yet the report.

> *"Do justly, love mercy, and walk humbly."*
> Micah 6:8

On 30 September 2026 the Madlanga Commission adjourned its public hearings. Mr Vusimuzi Matlala, subpoenaed on 25 September, could not secure representation in time. The Chairperson, Justice Mbuyiseli Madlanga, postponed that testimony to 14 December and recorded the Commission's concern at the loss of sitting days.

The lower courts are not spectators. A statement made under commission regulations is not, without more, evidence in a criminal trial. A finding of a commission is not a conviction. The officer hearing a bail application or a plea applies the ordinary statute and the ordinary onus, and excludes what the rules of that court do not admit.

Parallel process is already visible. Internal discipline arising from the Commission is the subject of Labour Court litigation set down in October, and a related criminal matter has been before the Randburg Magistrate's Court. This edition does not recite the allegations. It records that magistrates in those seats are adjudicating, not commenting, and that they are entitled to a secure courtroom, a complete docket, and freedom from public pressure to anticipate the report.

A request for a record, a subpoena, or an in-camera arrangement should be dealt with through the clerk, on the

papers, and with notice to the parties affected. Informal transmission of a court file is not a courtesy. It is a breach of custody.

A note from Neelan Karikan. *The Commission has been given time to finish its work. The district court continues on its own record. Both duties can be respected at once.*

The courts and the elections of 4 November 2026

A public holiday, an ordinary roll, and a duty of security.



4 November 2026. The roll continues.

> *"The roll continues. A public holiday is not an adjournment of justice."*
> A note for the election week

South Africa votes on 4 November 2026 in elections for 257 municipalities. The Inter-Ministerial Committee was told, in the first week of October, that eight unresolved court cases could still affect ballot papers in parts of the country: five in the Electoral Court, two in the Constitutional Court, and one in the Gauteng High Court. Preparations were described as on track, with security briefed alongside concerns about gender-based violence and a series of mass shootings.

A court that will be closed on 4 November should say so, in advance, on the roll and at the door, and should identify the duty arrangement for urgent domestic-violence applications. An application under the Domestic Violence Act 116 of 1998 carries no court fee. Service and the warrant of arrest authorised by the Act are part of the protection.

Election-related crime, where it reaches a district court, is tried on the charge sheet. Bail is considered under section 60 of the Criminal Procedure Act 51 of 1977. A political label is not an aggravating factor, and it is not a defence. Members who have received a threat should report it in writing to the head of court and to the police. Security is an incident of section 165, not a private arrangement.

A note from Neelan Karikan. *It may help to record the duty officer's name before the public holiday. A protection order that cannot be served does not give the protection the Act intends.*

Small claims jurisdiction at R30 000

The first adjustment since 2019, and the boundary the clerk still has to keep.



The ceiling is R30 000. The Act still draws the line.

> *"The small door is still a door of the court."*
> On the small claims counter

With effect from 1 August 2026, the monetary jurisdiction of the Small Claims Courts rose from R20 000 to R30 000. The determination was made under sections 15 and 16 of the Small Claims Courts Act 61 of 1984 and published in Government Notice 7717, Government Gazette 55038 of 20 July 2026. The Department of Justice described it as a step

to keep the forum level with the cost of living, and said that further increases would be considered.

The Department has recorded 418 Small Claims Courts and 1 563 commissioners. Sittings are commonly after ordinary hours, in the same buildings in which many of our members sit. A ceiling of R30 000 does not mean that every dispute under that sum belongs there.

The Act still excludes specified claims, still requires a natural person as claimant in the ordinary case, and still withholds legal representation. A liquid claim by a natural person, within the new ceiling and not otherwise excluded, should be pointed to the small claims court. A claim above the ceiling, or brought by a juristic person, or seeking relief the commissioner cannot grant, remains with the magistrate. A short written note at civil section will prevent both the refusal of a competent small claim and the acceptance of one the Act does not allow.

A view formed in a small claims sitting is not a finding in a later action on the same facts. The informal procedure is a virtue only inside that court.

A note from Neelan Karikan. *A short note at the counter, setting out the new ceiling and the claims the Act still excludes, may spare both the clerk and the litigant a difficult Monday.*

Remuneration of the lower courts

The figure in force, and the consultation that has not yet become a Gazette.



The Union Buildings, where the remuneration of public office-bearers is considered.

> *"An officer should not have to choose between the roll and a decent living."*
> On the lower courts

The salaries presently in force were determined with effect from 1 April 2025 and published in Government Notice 7203, Government Gazette 54270. On that determination a magistrate's annual package is R1 209 303; a senior magistrate's is R1 308 453; a chief magistrate and a regional magistrate stand at R1 578 535; and a special-grade chief magistrate and a regional court president stand at R1 759 270. The package applies to permanently appointed magistrates, including those on probation.

Consultation on the next adjustment is under way. The Independent Commission for the Remuneration of Public Office-Bearers indicated a preliminary recommendation of 3.5 per cent. The Minister of Finance asked that the adjustment be capped at 3.4 per cent, aligned with the Treasury projection for 2026/2027. The Lower Courts Remuneration Committee rejected the preliminary figure. It complained of inadequate time to consult, of the failure to implement earlier major-review findings, and of a proposed adjustment below that afforded to the public service. It asked for 4.5 to 5 per cent, over and above the major-review recommendations.

Magistrates exercise judicial power under section 165. Their remuneration is dealt with under section 12 of the

Magistrates Act 90 of 1993. Affordability is a relevant consideration. It is not the only one, and it is not an answer to a major review that has been completed and not carried out. This edition does not predict the figure that will be gazetted. Members are asked not to treat rumour of a percentage as authority for a personal financial commitment.

A note from Neelan Karikan. *We will write again when a determination is published. Until then, the 2025 Gazette remains the figure in force. Colleagues are asked not to treat a rumoured percentage as settled.*

Rationalisation: what Phase 1 has, and has not, done

A national statement, and the building in which the roll is still called.



A seat is a building as well as a Gazette.

> *"Justice is done in a building, by a person, on a record."*
> On rationalisation

On 9 June 2026 the Minister of Justice and Constitutional Development, Mmamoloko Kubayi, reported that Cabinet had approved the rationalisation reports and had authorised implementation in two phases. Phase 1, from 1 July 2026, concerns the gazetting and use of local seats where the infrastructure already exists. Guidelines on the appointment of acting judges, signed off by the Chief Justice, were also to take effect on 1 July 2026.

Members are asked to report, through the Alliance's regional structures, any practical change since 1 July: a new local seat in the building, a change in acting arrangements, or a delay in a gazetting that the Ministry has treated as done. A national statement and a local reality are not always the same. The Alliance can raise the difference only if it is accurately described.

A note from Neelan Karikan. *If something has changed at a local seat since 1 July, a short report through the regional structures will help the Alliance to brief accurately.*

Luthuli and the limits of a family inquiry

Participation is not adjudication. Recognition is withdrawn by the authority that holds the power.



The office is constitutional. The power to withdraw recognition is statutory.

> *"Custom lives. The power to decide is the power the law confers."*
> On Luthuli

On 11 September 2026 the Constitutional Court gave judgment in uMndeni weNkosi of iNkosi Luthuli and Another v Executive Council, KwaZulu-Natal and Others [2026] ZACC 35. The applicants had contended that the family council held an exclusive customary right to conduct and decide a misconduct inquiry, and to impose the sanction. The Court rejected that construction.

A magistrate asked to enforce the outcome of such a meeting should ask, first, what power the meeting had; secondly, whether recognition has in law been withdrawn

by the authority that holds that power; and thirdly, whether the relief sought is competent on motion. Customary law is recognised under section 211. It is not a parallel system of removal operating outside the statute and the Constitution. Section 211(3) still requires the court to apply customary law when it is applicable, subject to the Constitution and to legislation that specifically deals with it.

Women succeed. Bhe v Magistrate, Khayelitsha and Shilubana v Nwamitwa already said so. A rule that erases a daughter because it is said to be "how we have always done it" is not customary law the Constitution will enforce. A lekgotla is not a magistrates' court. If a matter has been heard under custom, write what was decided and what remains for this room.

A note from Neelan Karikan. *The office should be addressed with respect. Living custom should be proved. A body that had no power to decide should not be treated as if it had.*

Khedama on interest, and the credit-jurisdiction cases

Two sentences a civil magistrate can use in reasons this month.



The measure of a civil order: the amount, the date, and the instrument.

> *"Interest follows the reason. Jurisdiction follows the statute."*
> On Khedama

In Minister of Police v Khedama [2026] ZACC 27, decided on 29 June 2026, the question was the date from which interest runs on general damages for unlawful arrest and detention. Mathopo J, for a unanimous Court, held that section 2A(5) of the Prescribed Rate of Interest Act 55 of 1975 confers a discretion to depart from the general rule that interest on an unliquidated debt runs from demand or from service of summons. Where general damages are assessed at their value at judgment, and could not reasonably have been known before that assessment, fairness ordinarily requires that interest run from judgment to payment.

In Dreyer NO v Standard Bank and Nedbank v Abrahams [2026] ZASCA 74, delivered on 22 May 2026, the Supreme Court of Appeal held that section 127(8) of the National Credit Act 34 of 2005 gives the magistrates' court jurisdiction. It does not oust the High Court. The word "may" was not to be read as "must". Exclusive jurisdiction is conferred in stated places, including the debt-review provisions. Section 127(8) is not one of them.

A prayer for interest from demand, on general damages, should not be granted by default. A plea that the High Court lacks jurisdiction solely because of section 127(8) should fail. A plea that the magistrates' court lacks jurisdiction, where the amount and the linking facts are within the Act and the Magistrates' Courts Act, should equally fail. Clerks and practitioners who have treated section 127(8) as a compulsory magistrates' court pathway should adjust their advice.

A note from Neelan Karikan. *On the authority of Khedama, interest on those general damages ordinarily runs from judgment. Section 127(8) confers jurisdiction on the magistrates' court. It does not exclude the High Court.*

The fun bench — quiz, crossword and a word hunt

A short exercise for chambers. The answers are at the back, and need not be placed on the record.

Eight questions for the sitting month

1. Which committee was asked to finalise the draft policy on artificial intelligence?

2. How many superior-court vacancies is the October 2026 Judicial Service Commission sitting convened to fill?

3. In Van Schalkwyk, how many of the thirteen misconduct findings remained after the concession on review?

4. On what date do the Madlanga Commission's public hearings resume?

5. By what date is the Commission's final report to be submitted to the President?

6. On what date are the local government elections to be held?

7. To what sum was the Small Claims Court ceiling raised on 1 August 2026?

8. From what date does interest on general damages for unlawful arrest ordinarily run, after Khedama?

Crossword — across

1. The judicial officer of the district and regional court. (10)
3. What this newsletter is named for. (5)
5. The statute whose section 127(8) was read in Dreyer and Nedbank. (3)
7. uMndeni weNkosi of iNkosi _____. (7)
8. The applicant in the interest case against the Minister of Police. (7)

Down

1. The Commission whose public hearings stand adjourned until 9 November. (8)

Word hunt — circle them in chambers

BENCH KARIKAN KHEDAMA LUTHULI MADLANGA SECTION165 ELECTION INTEREST JASA MAGISTRATE

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M A G I S T R A T E Z X W
K H E D A M A L U T H U L I
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M A D L A N G A K H E D A
L U T H U L I M A G I S T

Answers on the last page. Do not put them on the record.

Find us — official card, answers and authorities

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Quiz and crossword

1. The Judiciary Administration and Information Technology Steering Committee. 2. Twenty-two. 3. Four. 4. 9 November 2026. 5. 25 January 2027. 6. 4 November 2026, across 257 municipalities. 7. R30 000, Government Notice 7717 in Government Gazette 55038 of 20 July 2026. 8. From the date of judgment until payment, in the ordinary case.

Across: 1 Magistrate. 3 Bench. 5 NCA. 7 Luthuli. 8 Khedama. Down: 1 Madlanga.

Authorities cited

Minister of Police v Khedama [2026] ZACC 27 (29 June 2026).

uMndeni weNkosi of iNkosi Luthuli and Another v Executive Council, KwaZulu-Natal and Others [2026] ZACC 35 (11 September 2026).

Dreyer NO v Standard Bank; Nedbank v Abrahams [2026] ZASCA 74 (22 May 2026).

Van Schalkwyk v Minister of Justice and Constitutional Development and Others [2026] ZAGPJHC.

Bhe v Magistrate, Khayelitsha 2005 (1) SA 580 (CC); Shilubana v Nwamitwa 2009 (2) SA 66 (CC).

Constitution ss 165, 174 and 211; Magistrates Act 90 of 1993, s 12; Small Claims Courts Act 61 of 1984, ss 15 and 16.

National Credit Act 34 of 2005, s 127(8); Prescribed Rate of Interest Act 55 of 1975, s 2A(5).

Domestic Violence Act 116 of 1998; Protection of Personal Information Act 4 of 2013.

Government Notice 7203, Government Gazette 54270; Government Notice 7717, Government Gazette 55038.

This edition uses the public record and JASA's stated care for the lower courts. It is a members' briefing, not a court order.

With respect to every colleague.

A good October, and a steady sitting month, to every colleague.