

Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development.

KOFI ANNAN
Former Secretary-General of the United Nations



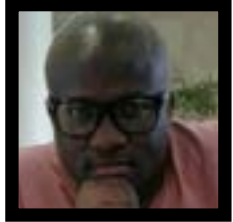
ICYMI | IOL.CO.ZA

GROUND BREAKING JUDGMENT OFFERS RELIEF
Pretoria - The court has delivered a groundbreaking judgment which opens the door for foreigners working in South Africa who have children born on local soil. Previously, they had to leave the country after breaking up with their spouses. | IOL



CORRUPTION

Is the Free State government on the brink of collapse or dominance?



MOLIFI TSHABALALA

PRESIDENT Cyril Ramaphosa and his deputy, David Mabuza, as well as a few among his ministers have been frequenting the Free State province. This raises the if-not-then question: Is the Free State government on the brink of collapse? If not, then: Is the Free State a fierce battleground for party dominance?

As in nearly every ANC-governed province, many, if not all, municipalities in the Free State are unable to deliver basic services.

Qwa Qwa falls under Maluti-a-Phofung local municipality, which has been crippled by financial mismanagement, poor governance, and rampant corruption for a very long time. Many of these surmountable problems emanate from intra-ANC factionalism that thrives on clientelism, one of the three main indicators of neo-patrimonialism.

In a nutshell, a patron secures electoral support from and loyalty of clients to ascend and remain in a position of power by dispensing benefits of state patronage.

Maluti-a-Phofung owes Eskom and other essential service providers, billions of rands. Following Mabuza's concerted intervention efforts, the municipality has committed itself to service its debts.

Not long after the municipality had been extricated from a provincial administration, the national government placed the ANC-governed Mangaung metropolitan municipality under its administration.

In particular, an intra-party factional conflict over access to and control of the benefits of state patronage impinges on the municipal service delivery.

Just after the Mangaung's placement under national administration, ANC members were recorded live on Facebook fighting over office payoffs within its administration ahead of



A TRUCK supplies water from tanks for residents in Snake Park in Qwaqwa, Maluti-A-Phofung. | BHEKIKHAYA MABASO African News Agency (ANA)

Minister of Co-operative Governance and Traditional Affairs Nkosazana Dlamini Zuma's visit to the only metropolitan municipality in the province, headquartered in Bloemfontein.

Prior to her visit, the now-suspended public protector, advocate Busisiwe Mkhwebane, and her deputy, advocate Kholeka Gcaleka, had engaged the mayors and speakers among the key stakeholders in a two-day roadshow to ameliorate service delivery in the Free State.

The governance issues are not confined to the local government; they cut across the three spheres of government. Therefore, the poor service delivery in Maluti-a-Phofung, Mangaung, and other municipalities across the province should serve as an early warning that the Free State government is teetering towards a state of complete governance collapse.

Taking into account her experience as both a former Tweeling mayor and a former member of the executive council for co-operative governance and traditional affairs, one would

have expected Free State premier Sefora "Sisi" Ntombela to intervene at Maluti-a-Phofung, Mangaung, and other municipalities and address their issues without national leadership bail-outs. However, it appears that, akin to her neo-patrimonial predecessor, Elias "Ace" Magashule, she myopically believes in a charity-begins-at-home mantra.

Magashule, who the ANC has suspended as its secretary-general in line with a vote-maximising party position that criminally charged members should step aside until their matters have been concluded, known as the "step-aside rule", was the premier of his birthplace, Parys, first and the premier of Free State second. During his largely clientelism-driven premiership, Parys had become a site of major infrastructural developments and economic opportunities in the province while other towns, such as Heilbron and Koppiet, within the same Ngwathwe municipality, were ignored.

The same is happening in Tweeling, his successor's birthplace, followed by Frankfort, where she resides, if not

conversely.

Although the "if-not question" has been answered, it is equally important to answer the "then" one. Before they are the South African president, the South African deputy president, and a minister, Ramaphosa, Mabuza, and Dlamini-Zuma, respectively, are ANC members with personal and factional interests.

Undoubtedly, they grabbed every opportunity that presented itself during their visits in the Free State to solidify their factional power-bases, especially as the 55th ANC national conference draws closer.

Factionalism is, after all, a numbers game. At the 54th national conference, Ramaphosa marginally defeated Dlamini Zuma by 179 votes for the ANC presidency, largely thanks to Mabuza.

Mabuza defected from the Zuma faction and implored his comrades in Mpumalanga to vote for "unity", namely leadership that would forge party unity.

This, in addition to other intra-party factional activities and dynam-

ics, further tilted the balance of power towards the Ramaphosa faction and produced a 3:2:1 leadership ratio within the party's upper echelons, with Mabuza as kingmaker, Ramaphosa, chairperson Gwede Mantashe, and treasurer-general Paul Mashatile as a majority faction on the one hand, and Magashule and his deputy, Jessie Duarte, as a minority faction on the other hand.

As Magashule and Duarte are on suspension and months-long sick leave, respectively, the leadership ratio has changed to 3:0:1. Incidentally, Duarte had defected to the Ramaphosa faction before her sickness.

As an ANC Women's League deputy president, a position she relinquished after the ANC disbanded the league, Ntombela had thrown her weight behind Dlamini Zuma on the Zuma factional slate that included Magashule as secretary-general. She is unlikely to rally the Free State behind Ramaphosa for a second term.

While her loyalty still lies with the Zuma faction, she worships her predecessor.

In what could be described as a reversed patron-client arrangement, Magashule allegedly pushed for her appointment as the sixth Free State premier to keep his provincial capture intact, as his presence is still overwhelmingly palpable in the corridors of power throughout the province, thanks to a huge clientele that is his eyes and ears.

From an intra-party factional perspective, Ramaphosa and some among his ministers might be frequenting Free State to decapitate the de facto premier by "micro-managing" Ntombela, who wields enormous influence over access to and control of the benefits of state patronage as the premier.

Although the Free State sends a small number of delegates to a national conference, it is one of the most important battlegrounds.

With Mxolisi Dukuwana as an ANC Free State interim provincial committee convenor, the Ramaphosa faction is unlikely to extricate the province from Magashule's capture. He is too much of a political lightweight to take on the longest-serving ANC provincial chairperson who still commands a great deal of support at a branch level.

Tshabalala is a political writer

LAW AND ORDER

Transformative justice without causing wider social degradation

S SITHOLE and MADODA SITSHANGE

EVEN as transformative service initiatives promote greater well-being, they may also create unintentionally negative consequences and inadvertent harm.

The case of Ngomane & others v City of Johannesburg Metropolitan Municipality & another (734/2017) [2018] ZASCA 57 (03 April 2019) highlights the boomerang effects that wash out or reverse the intended effects of a Supreme Court of Appeal (SCA) of South Africa judgment.

The applicants are a group of destitute, homeless people who made a home for themselves on a traffic island under the R31 highway bridge on End Street, between Durban and Meikle Streets, in the business district of the City of Johannesburg Metropolitan Municipality.

They sought leave to appeal and condonation for the late filing thereof, against the judgment of the Gauteng Local Division of the High Court, Johannesburg heard by R Sutherland.

The court dismissed their application for the return of their personal belongings and materials, alternatively to be provided with similar material and possessions, confiscated by officials of the Johannesburg Metropolitan Police Department (JMPD) from the traffic island, and ancillary relief.

The court refused their subsequent application for leave to appeal against that decision and, upon further application to this court, their application was referred for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013. The City of Joburg,

as respondents, opposed the application. In an answering affidavit filed by the City, it explained that it had an ongoing challenge of displaced people, who resided on its streets, many of them evicted from their communities as a result of criminal activity or drug addiction. To counter the problem, it established a sub-unit of the Department of Social Development. The sub-unit conducted shelter management, skills development and drug rehabilitation programmes, aimed at providing the displaced people with shelter, assisting those with drug addictions and in trouble with the law, reuniting them with their families and ultimately getting them off the streets.

The sub-unit ran bi-weekly outreach programmes for the displaced people in and around the traffic island to inform and educate them about the availability of municipal homeless shelters, centres with ablution facilities and social workers and opportunities to improve their standard of living.

One municipal shelter was in the immediate vicinity of the traffic island but required one to have a South African identity document and pay a daily R8 fee for access. The displaced people were, however, not interested in these services as attested to by the head of the sub-unit.

The SCA judgment contended that the applicant's plastic sheets, cardboard boxes and wooden pallets fell within the definition of "building" or "structure" in section 1 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land (PIE) Act on a purposive construction, and that their removal constituted a demolition

of their homes or structures and an unlawful eviction from their homes. It was also argued that they could not be removed from the traffic island until the City provided them with alternative accommodation and that they were entitled to constitutional relief.

While the removal of property without a court order and the destruction of valuables such as identity documents and other personal possessions is a clear violation of human rights, the judgment does not address the applicant's irrationality in refusing to accept a type of shelter that is not only close to the vicinity of the traffic island, but also secures the right to safe living conditions. The net result of this judgment is that the applicants are still a group of destitute, homeless people who made a home for themselves on a traffic island under the R31 highway bridge on End Street.

Does the law envisage this outcome as the most beneficial to the applicants, while there is a centre within the immediate vicinity of the traffic island with ablution facilities and social workers and opportunities to improve their standard of living?

Did the court find it to be a tall order that the applicants needed to have a South African identity document and pay a daily R8 fee to access it? Not that the applicants did not have SA identity documents, but that some personal possessions were confiscated during the said evictions.

The Department of Social Development shelter is a better alternative accommodation that the applicants do not want, and with the SCA's approval, they wished to live within the vicinity

of the traffic island. When the Supreme Court's judgment suggests that living rough within the immediate vicinity of the traffic island best serves the interests of the applicants, when a Social Development shelter is not only available, but easily accessible, critical questions have to be asked whether the concept of transformative constitutionalism in South Africa is genuine in effectively addressing poverty and inequality.

Whenever the Constitution, and in particular the Bill of Rights, takes a back seat, as evidenced by a Supreme Court judgment that keeps the poor in the streets, it raises questions about whether the courts have a critical role to play in poverty reduction.

In the case of Ngomane & others v City of Johannesburg Metropolitan Municipality & another (734/2017) [2018] ZASCA 57 (03 April 2019), the following SCA order was made:

1. The application for leave to appeal and condonation for its late filing is granted.

2. The appeal is upheld with costs including the costs of two counsel.

3. Paragraph 1 of the order of the court a quo is set aside and replaced with the following:

(a) It is declared that destruction of the applicants' property, listed in the applicants' schedule of reported losses annexed to the founding affidavit, by the first respondent on 1 February 2017, was unconstitutional and unlawful.

(b) The first respondent shall pay each applicant the sum of R1500 as compensation for the destruction of his or her property on February 1,

2017, within 30 calendar days of the date of this order.

(c) The respondents shall pay the costs of the application, jointly and severally, the one paying the other to be absolved.

The rights to life, equality, dignity, administrative justice and socio-economic rights are all instruments that cannot be found in this judgment, as it translates into the rationalisation of poverty, urban decay and homelessness.

Rationalising poverty and homelessness, because that is what the traffic island dwellers have decided to do, bears broader consequences, for not only addressing urban decay in the inner city, but presents the courts as agents that foster the type of inequality that militates against the transformation of our society.

In the case of Ngomane & others v City of Johannesburg Metropolitan Municipality & another, the specific SCA judgment, the court's aims of justice for a specific group whose vulnerability is beyond question are clearly achieved at the greater expense of the City's responsibilities to its civic duty, because other users of the vicinity within the traffic island have the right to a public space free of public defecation and urination on the pavements, excessive rubbish and waste, public abuse of illicit drugs and the disposal of used syringes, theft, robberies and related crimes in the area.

Sithole is Senior Research Fellow at the Centre for African Diplomacy & Leadership, University of Johannesburg. Sitshange is an Independent Consultant

SOWETO UPRISING

The role and duty of the 2022 generation is clear

JANET LOVE

IT WAS the great African scholar Franz Fanon who said: "Each generation must, out of relative obscurity, discover its mission, fulfil it, or betray it."

Looking back at the history of the Struggle against apartheid, there is no doubt that the generation of 1976 defined its mission: the Struggle against apartheid. It was a mission which started with the legendary generation of OR Tambo and Nelson Mandela and was felt to be moving at a snail's pace. Something needed to be done to speed things up. The '76 generation was the catalyst for the building of a popular movement that brought communities and interest groups from every part of the country together to end apartheid. The youth of our country provided a steroid effect that radically changed the pace of the Struggle towards the establishment of democracy.

This 1976 generation was very clear: apartheid minority dictatorship had to be replaced with democratic elections with the will of the people at its centre.

Once apartheid was defeated, the next generation, the 1994 generation, saw its duty as strengthening our constitutional democracy and ensuring regular elections that are recognised by all as free and fair.

The role and duty of the 2022 generation is clear. It must be to sustain, deepen and grow the South African democracy. Simply put, this role is to strive, from today, to build their, and our, future democratic South Africa.

The duty of the Electoral Commission, which we have discharged with pride and internationally recognised integrity, is to manage elections. These lie at the heart of the electoral democracy that defines all our lives as South Africans.

The Commission has, working with a plethora of political parties, presided over quality, free and fair elections at the local, provincial and national level. It is so important the we work together to safeguard this institution. Despite our impressive achievements in the past 28 years, the Commission is extremely concerned at the low voter turnout, particularly amongst the youth, in recent elections. Data collected by the Commission from recent elections show that our youth are not participating in the electoral democracy project at the rate and levels which we think they should. In many instances this is a conscious decision borne out of a lack of faith what any elected party or person will do.

Research shows that those within the age group of 15-34 years constitute more than a third (ie, about 35%) of the estimated population of about 50 million people. However, during the 2021 local elections, a total of 175 206 18-19 year-olds registered of whom 124 905 voted on election day. While this gives us a registered voter participation rate of 71 percent for this age group – which is way above the average turnout of 46% – it highlights the importance of getting young voters to register and to draw them into active understanding of democracy. It seems that, once registered, young voters will participate in large numbers.

So, our call, as we celebrate June 16, is for the youth of 2022 to pause and seriously consider the words of Fanon: What is the mission of the youth of 2022? You are the future.

Let us go beyond social media laments and take part in decisions to choose the leaders of our country to determine the policies and laws and to exercise the proper oversight in relation to implementation in order that we start today to build our tomorrow. We call on SA youth to use the occasion of their 18th birthday to register for elections.

Love is the Acting Chairperson of the Electoral Commission of South Africa



THE Electoral Commission of South Africa is calling on South African youth to register for elections, its acting chairperson, Janet Love, says. | ARMAND HOUGH African News Agency (ANA)