

## North West High Court, Mafikeng (or what's in a name?)

By John Stander, Mafeking

### A short history

In March 1994, after a three day spree of bloodshed, arson and looting, the administration of Bophuthatswana collapsed. The 'homeland state' was reincorporated into South Africa and on 18 October of that year the Bophuthatswana capital, Mmabatho (Mother of the People), became the capital of the North West Province. In 1996, the name Mafikeng was reinstated in place of Mmabatho. Mafikeng, as she is now known, was already the seat of the High Court in Bophuthatswana and remains so in the North West Province.

Place name changes are a common occurrence in the new South Africa and Mafikeng is no stranger to name changes. It has been known by four names since 1852 when Molema, younger brother of the Barolong Bo Ratshidi Chief, Montshioa, settled along the banks of the Molopo River at a place with large volcanic rocks. In 1881, Molema's Town became known as 'Mahikeng', the 'place among the rocks.'

Mahikeng was shortly thereafter subjected to a siege (1882-1885) by Boers who had settled in the 'Republic of Goshen' 20 kilometers south of Mahikeng. Thousands starved to death in that period and eventually Chief Montshioa surrendered Mahikeng. Montshioa, however, appealed to Britain for assistance and on 11 March 1885 a British military expedition under General Charles Warren arrived in Mahikeng, expelled the Goshen Boers and restored the town to the Barolong. Warren's motives were not altogether altruistic. The strategic location of Mahikeng on a reliable water supply, to the west of the Transvaal Republic and just south to the territories intended for colonisation by Cecil John Rhodes, had been noticed. Warren's troops, which included members of the Royal Engineers, laid out a neat, new, little colonial town, naming it Mafeking to distinguish it from the tribal town of Mahikeng. The territory was annexed to the Cape Colony and the importance of Mafikeng grew as the railway north to the Rhodesias was laid. It is not necessary to mention the events between the years of 1900 and the early 1970s. Whilst some are interesting (like the origin of the verb 'to maffick'), they have nothing to do with the subsequent, sometime confusing name changes of Mafeking.

In short, the policy of separate development of white and black in South Africa moved towards the establishment of the black homeland states of the Transkei, Bophuthatswana, Ciskei and Venda, each with its own legislative, judicial and administrative independence, apart from white South Africa.

On 6 December 1977 the Republic of Bophuthatswana Constitution Act 18 of 1977 came into operation. Chapter 7 of that Act provided for the establishment of the Supreme Court of Bophuthatswana, including both a General and an Appellate Division. In practice, however, the Appellate Division in Bloemfontein continued to act as the court of appeal until 25 June 1982. The seat of the new court was to be the new town of Mmabatho, being planned and developed as the capital of Bophuthatswana, less than two kilometers north of 'white' Mafeking. Originally excluded from Bophuthatswana, in 1980 Mafeking opted for incorporation and Mafikeng (the slight name change being effected to give recognition to the original name of Mahikeng), became part of the city of Mmabatho. The name Mmabatho was retained for the capital until 1996, but remained the name of the seat of the High Court which exercised jurisdiction in the 'Bophuthatswana Provincial Division', so named until the formal renaming of the High Courts in South Africa in late 2009.

In summary, Molema's Town became Mahikeng, which 'became' Mafeking, which became Mafikeng which became a suburb of Mmabatho. Mmabatho was renamed Mafikeng in 1996, Mmabatho retaining its identity as a suburb of Mafikeng. The Supreme Court of Bophuthatswana became the Bophuthatswana Provincial Division of the High Court of South Africa in 1996, with its seat at Mmabatho

until the court's renaming in 2009 as the North West High Court, Mafikeng.

If this is not sufficiently confusing already, it was announced on 6 February 2010, that Mafikeng is to be renamed Mahikeng in the near future ....

### The court buildings

Writing in the 1993 May *South African Law Journal*, Henry Lever (now SC) stated in his article discussing the Bill of Rights contained in the Bophuthatswana Constitution:

'Within the South African context, Bophuthatswana may be regarded as an important social experiment. Whilst South Africa moved in one direction, politically, Bophuthatswana moved in another. Simultaneously with its independence, Bophuthatswana repealed all racially discriminatory legislation. By a simple step it removed the country's inhabitants from the most pernicious effects of apartheid ... Needless to say, the town (Mafikeng after incorporation in 1980) prospered ... On the economic front, thousands of jobs were created, per capita income of Bophuthatswana's inhabitants increased in real terms, and industries were established and relocated. Furthermore, schools were built, medical services expanded, a university and technical colleges established and tens of thousands of homes built. In short, quality of life improved ... of the TBVC states, Bophuthatswana remains the only success story ...'

The developments referred to above were planned and directed from 'Parliament Building', a semi-prefabricated two storey complex which then stood alone in the semi-desert veld where the future Mmabatho was planned. The building, devoid of any architectural embellishment, was, to be kind, ugly. The complex housed the legislature, numerous state departments, and the Supreme Court of Bophuthatswana. The court and related offices occupied the south eastern aspect of the building. For the next seventeen years, this 'temporary structure' was the headquarters of the Bophuthatswana administration until Garona (the new administrative complex), the new Parliament and the new Supreme Court building were completed in 1990. The exact date is uncertain because the bronze plaque commemorating the opening of the new court building has been removed. The court rooms and the related offices in the temporary building were strictly functional and austere. Brown vinyl covered the work surfaces in the court rooms and beige carpet covered the public benches. Whoever chose the colour scheme was colour blind or worse; bright emerald green doors, sunburst yellow railings, all matched with the walls painted with that cream which is designed to show dirt and scuff marks. All the rest was 'public works brown.'

In contrast, the new court building is aesthetically pleasing as well as being well equipped and designed. Three civil courts and three criminal are available and the appeal court room is set off to the left of the registry. The acoustics are excellent. The judges' chambers are exceptionally well appointed, with leather in abundance.

### For the record

History is incomplete without reference to the role players. The first Chief Justice was Victor Hiemstra who was succeeded by Theal Stewart. The first judges of the Bophuthatswana Appellate Division in 1982 were Hiemstra CJ, IC Steyn and L van den Heever JJA.

The first registrar was Piet Oberholtzer. The State Attorney was CR (Rufus) Kieck. The Attorney-General was I Slabbert who was succeeded by Johan Smit in 1982. Johan is still, after 28 years, the Director of Public Prosecutions. Lastly, Danie van Zyl was the Chief State Law Advisor. I mention these colleagues and former colleagues of mine because of the invaluable input contributed by them in those early years – particularly the mentoring and training of numerous present South African judges, including a member of the Constitutional Court.

