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Office of the Family Advocate

Celebrates 29 years of service



The Month of May is dubbed the Children's Month in South Africa and which is marked by the commemoration of the Child Protection Week that will be celebrated from 2 - 9 June.

As part of these celebrations, **Justice@Work**, dedicates this special edition to the Department's very own family law component which specialises in protecting and advancing the best interests of children.

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Justice@Work is an online staff newsletter of the Department of Justice and Constitutional Development. It aims to help staff to network, get motivated and stay informed about issues in the department.

For the latest issues and archived editions visit: <http://djini/default.aspx>

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We zoom into the Office of the Family Advocate (OFA), initially established through the promulgation of the Mediation in Certain Divorce Matters Act (Act No 24 of 1987) and is currently celebrating 29 years of existence.

In this edition, we look into the broader mandate of this office whilst sharing some exciting stories emanating from the OFA's service points across the country.

Although the OFA is dedicated to putting the best interests of children first, many service points do confront challenges which require an innovative approach to overcome. Read more about how the North West OFA's approach of rotating staff and sharing resources to ensure that the office delivers service regardless of staff shortages. In the same breath, we also showcase a similar initiative by the Limpopo's OFA of partnering with courts to expand their footprint and reach out to members of the public in rural and most remote areas.

We also bring you heart-warming testimonies from members of the public who benefitted from the assistance of the Western Cape OFA to re-establish contact with their children and regained primary care rights. Find out more on how these parents are commending the stellar work done by this office through its interventions and recommendations.

Lastly, we also share with you great work done by two OFA officials, in Gauteng and the Eastern Cape respectively, in showcasing their efforts that they invest to unite parents with their children.

We hope you will enjoy reading this edition draw inspiration from it and further recommend the OFA to your friends, relatives or community members who are encountering parental disputes arising from a divorce and/or custodianship.

Until next time,

Rodgers Ndhlovu

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Office of the Family Advocate celebrates 29 years of service

Luyanda Makapela

“By limiting the OFA service to matters arising from the Divorce Act, 1979, legislation implied that only children born of civil marriages could benefit from the services whereas any other child, regardless of the parent’s marital status is equally affected by the negative and harsh circumstances of parental separation or conflict.”



At the helm: Chief Family Advocate, Advocate Petunia Seabi-Mathope.

This year, the Office of the Family Advocate (OFA) is celebrating 29 years of existence. OFA was initially established through the promulgation of the Mediation in Certain Divorce Matters Act (Act No 24 of 1987), where the services were available to few privileged South Africans who could afford to litigate in the high courts as prescribed in terms of Divorce Act, 1979.

According to Chief Family Advocate, Petunia Seabi-Mathope OFA services were initially restricted only to children born from civil marriages although in terms of the Mediation in Certain Divorce Matters Act, the office was created to promote the best interest of minor children affected by divorce proceedings.

“By limiting the OFA service to matters arising from the Divorce Act, 1979, legislation implied that only children born of civil marriages could benefit from the services whereas any other child, regardless of the parent’s marital status is equally affected by the negative and harsh circumstances of parental separation or conflict,” explains Advocate Seabi-Mathope.

The mandate of the office, she adds, was then extended due to the subsequent promulgation of various pieces of legislation, international instruments and policies such as the:

- Children’s Act; the National Action Plan for Children;
- Hague Convention on the Civil Aspect of International Child Abduction, 1980;
- African Charter;
- Civil Jurisdiction of Regional Courts;
- Maintenance Act 99 of 1998 and
- Recognition of Customary Marriages Act (1998).

As a result of the extension, says Advocate Seabi-Mathope, the Office of the Family Advocate’s functions and duties emanating from applicable legislation include the filing of court reports,



306

designated maintenance courts



261

maintenance investigators



139

maintenance officers
countrywide



court appearances, conducting mediations between the parties and dealing with public queries. "It further extends to dealing with child abductions cases and Central Authority services in international cases as well as disputes over parental rights and responsibilities in all tiers of court," she explains.

The Office of the Chief Family Advocate is designated as a Central Authority to discharge duties which are imposed by the Hague Convention on the Civil Aspect of International Child Abduction, 1980. "The Hague Convention is a multilateral treaty which seeks to protect the children from the harmful effects of abduction and retention across international boundaries by providing a simplified procedure to bring about their prompt return or to facilitate the effective exercise of contact rights, says Advocate Seabi-Mathope.

Additionally, South Africa is a member state of the United Nations and consequently a signatory of various international instruments such as the United Nation Convention of the Rights of the Child, 1959. ●

Some of the OFA highlights to date:



The Office of the Family Advocate turns **29 years old in October 2019**. The promulgation of mediation in Certain Divorce Matters Act (Act No 24 of 1987), which came into effect on 1 October 1990, brought about this office into existence. Back then, it comprised of only **six (6) offices** situated at the seats of high courts of the Republic of South Africa, resulting into limited services. The office has now grown exponentially to **25 service points** countrywide, servicing all the courts in the country, including the children's courts and maintenance courts.



The Office of the Family Advocate is now a multidisciplinary component, with staff establishment of **127 family advocates, 44 Family law assistants** and **150 family counsellors** as well as administration support staff members countrywide.



Article 27 of the Convention on the Rights of the Child, which South Africa ratified in 1989, enjoins the State parties and governments to recognise the **right of every child to a standard of living which is adequate for the child's physical, mental, spiritual, moral and social development**. Thus, the Maintenance Act 99 of 1998 (hereinafter referred to as the Act) came into operation on 26th November 1999 to introduce various improved mechanisms aimed at establishing a fair and equitable maintenance system that is accessible to all citizens in need.

It further takes all appropriate measures in order to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child. All these provisions seek improve the maintenance system within the country's courts so as to deliver the effective and efficient maintenance services within the shortest turnaround period.



The Chief Family Advocate, as the head of office, was given a mandate to oversee maintenance services and currently, there are **306 designated maintenance courts, 261 maintenance investigators** and **139 maintenance officers** countrywide.

Other initiatives related to improving maintenance



Operation Isondlo:

Operation Isondlo is an initiative that was devised to improve the functioning of the maintenance system. The successes and lessons learned from *Operation Isondlo* include the successful tracing of maintenance defaulters as well as maintenance beneficiaries whose large sums of monies were lying in unclassified accounts.

KHA RI UNDE



Project 'Kha Ri Unde':

Project '*Kha Ri Unde*' is an African term derived from the Tshivenda phrase; "let us provide." It was one of the maintenance initiatives with project objectives to improve the finalisation of maintenance applications quicker and swifter.. This was done through the introduction of innovations aimed at improving the quality of and the turnaround time in the delivery of pre-order services within the maintenance value chain.



Third Party Funds:

The Department administers monies on behalf of third parties through Third Party Funds. This fund was tasked to improve the turnaround time in maintenance payments which was done through the office of the Chief Financial Officer by introducing **MojaPay**.



Information and Systems Management:

This project is tasked at improving information and system management in maintenance and is led by the Information and Systems Management (ISM) section. To date, **150 maintenance sites** are monitored monthly to ensure that maintenance matters are finalised **within 90 days** from date of proper services of process.



Benefits of consulting with the Family Advocate:

- If the parents/parties reach an agreement on the care and contact of their children, the matter does not proceed to court, thereby **saving legal costs and time**.
- **Courts will not readily issue a decree of divorce** where there is a dispute regarding minor children without the report or recommendations of the Family Advocate.
- The Family Advocate can **amend or terminate parental rights and responsibilities agreements** registered by the Family Advocate's office. This means that the parents/parties do not have to go to court if they want to amend the agreement when the need arises.

The rights of parents

Parents are expected to:



Take care of their child/ children.



Maintain contact with their child/children.



Act as a guardian to their child/ children.



Provide financial support to their child/children.



Provide for the needs of their child/children.

- Parental rights and responsibilities agreements or parenting plans registered with the Family Advocate have the **same legal effect as a court order**.
- **Courts or Judicial officers** are required by law to consider the report and/or recommendations of the Family Advocate when making a decision in the best interests of a minor child.



Step-by-step guide on solving a dispute



A Family Advocate is an unbiased family law specialist who assists parents in dispute (for example, those going through a divorce) to reach an agreement regarding the care and contact of their children.

- 1 Upon application by either of the parties or by direction of the court, the Family Advocate will **interview the parties** in the presence of each other or separately where necessary, to ascertain their personal circumstances and background details in the matter.
- 2 The Office of the Family Advocate also **interviews the child with the assistance of the Family Counsellor** in order to obtain and convey the child's views on the matter to court. The aim is to protect the child from testifying in a potentially harsh court environment.
- 3 The Family Advocate **helps the parties reach an agreeable or viable solution** through mediation by applying their legal expertise and dispute resolution skills in the matter.
- 4 If the parties reach an agreement the Family Advocate will then help them **draft a parenting plan or responsibilities and rights agreement** which can be registered with the Office of the Family Advocate or made an order of court.
- 5 If the parties **cannot reach an agreement**, the Family Advocate will then **compile a report for court and make a recommendation** based on the enquiry that was conducted.



NW family advocate uses resources sparingly for effective service delivery

Rodgers Ndhlovu

“The family advocate offices are strategically located to service busy areas ... This has required that we develop an approach of sharing resources and rotating staff across all three offices.”

One of the challenges which continue confronting the Department is servicing a large population with limited resources available at its disposal. However, the North West Office of the Family Advocate's (OFA) approach of rotating both personnel and resources proves that more can be done, regardless of the limited resources allocated.

Faced with serving more than five (5) million South Africans through three offices namely Klerksdorp, Mafikeng and Rustenburg, officials in the North West OFA have developed a unison approach, rather than working in silos, to maximise the value and effectiveness of the services disbursed to members of the public.

This approach is a response to the staff shortages and attempts to utilise the Department's resources optimally, an approach that is close to the Department's Director-General's heart. **Justice@Work** recently visited the North West Principal Family Advocate and head of office, Advocate Sibongile Matjila to find out how she manages to do the best she can, given the limited resources against the demand for services in the province.



"The family advocate offices are strategically located to service busy areas; however, we still have areas that are located about two to three hours away from our offices. This has required that we develop an approach of sharing resources and rotating staff across all three offices," she highlights, adding that this method comes handy in filling the gaps where there are staff shortages and when other officials are on leave.



Advocate Matjila reveals that her office further applies this strategy to alleviate workload whenever each office experiences more cases than the others. "Hence it is common for Klerksdorp officials to deal with cases in Mafikeng or Rustenburg and vice versa, and a perfect example can be drawn from Mr Mohlabi Mphahlele, one of our family counsellors based in our Rustenburg office but spends a week, every month, assisting the Mafikeng office as a set routine. He is doing so because Mafikeng has one family counsellor, she explains, adding that at some point, she also worked in Rustenburg for two weeks in a month," explains Advocate Matjila.



All three offices have three cars respectively. However, in an event that a vehicle is unavailable, booked for service or awaiting a licence disc renewal, we then reallocate a vehicle from one of the other offices so that service delivery is not impacted."

North West Family Counsellor Manager, Ms Maureen Mabote, shares Advocate Matjila's sentiments, saying that despite being unable to fill the vacant family counsellor position in Mafikeng, due to the moratorium in the filling of posts, this strategy has ensured that they get the work done to members of the public's satisfaction.

Currently, adds Advocate Matjila, there is a crisis in the Rustenburg office with regards to the administrative support. "For instance, one administrative clerk is on leave; another one is on sick leave; I have to dispatch an administration clerk from Mafikeng to go and assist there."

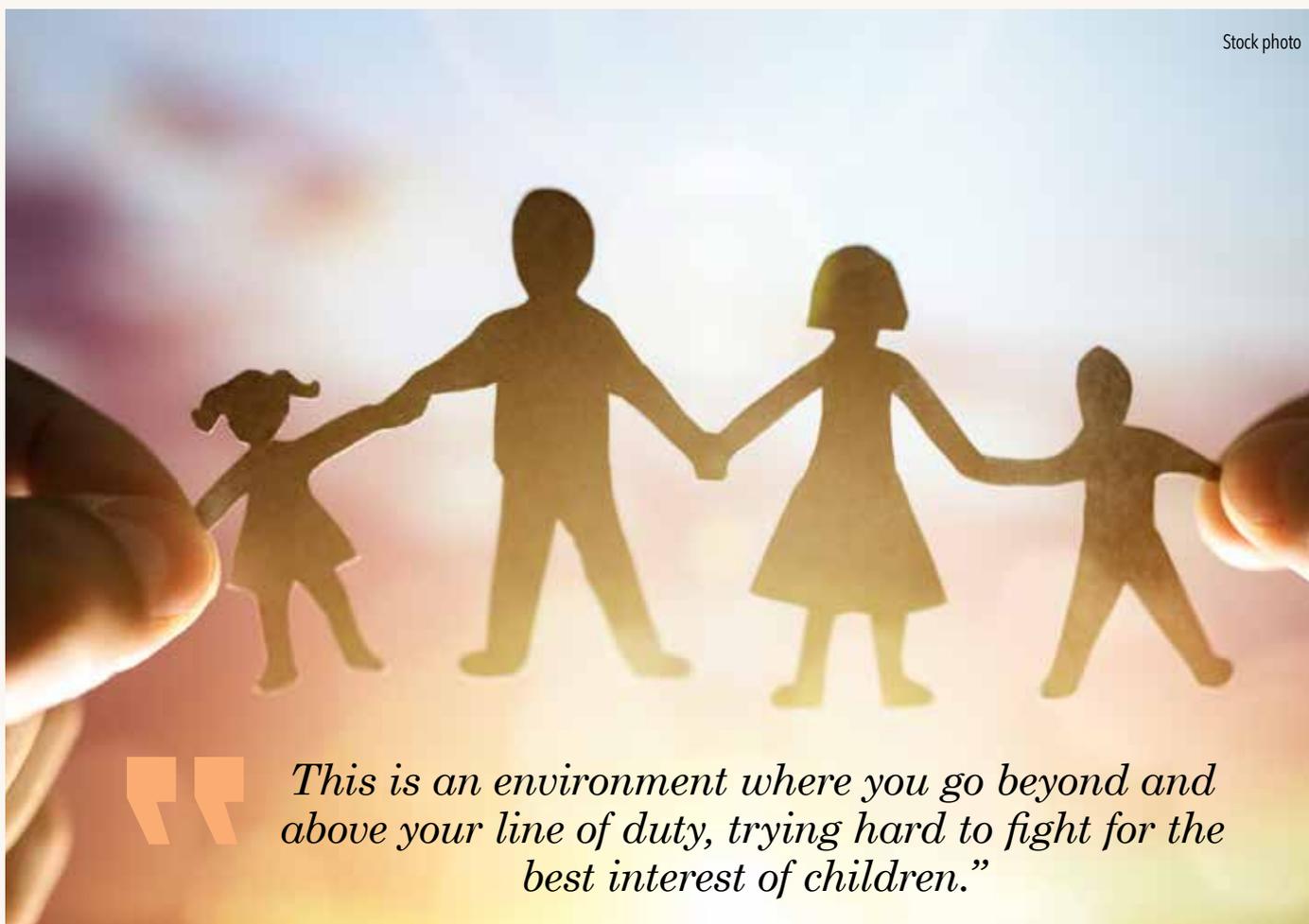
The same approach, she highlights, is also extended to sharing assets like the Department's vehicles. "All three offices have three cars respectively. However, in an event that a vehicle is unavailable, booked for service or awaiting a licence disc renewal, we then reallocate a vehicle from one of the other offices so that service delivery is not impacted," she concludes. ●



GP family advocate acts for children's interest in a foreign case

Luyanda Makapela

Stock photo



This is an environment where you go beyond and above your line of duty, trying hard to fight for the best interest of children.”

A 'daunting' case about a couple of foreign nationals recently caught the attention of the Gauteng Office of the Family Advocate (OFA), where interests of their minor children were at stake, thanks to the excellent work done by this office, the children's interest and wellbeing remained a priority.

The case involved Mr Steven Hanson* and Ms Regina Hanson* (not their real names) who both came to South Africa on a tourist visa, and had to leave the country with their children every three months. Steven is of German origin whilst Regina is of African origin.

Gauteng Family Advocate Madelize Fourie, who worked on the case together with Family Counselor, Ms Judith Sphiwe Ngwenya, recalls how things turned sour when the child's mother – after being

granted permission by the father to visit her country of origin with her children without the father accompanying them - did not return with them to South Africa upon the agreed time in 2017.

According to Advocate Fourie, the father immediately approached the South Gauteng High Court seeking the immediate return of the children to the country and for the children to primarily reside with him, subject to the mother's visitation in South Africa.

The OFA was then directed by the high court to conduct an investigation to determine the children's best interest given the circumstances. "We had to conduct an urgent investigation and report back to the high court within a month, however, the matter was delayed to be placed on the court roll due to the fact that the

father, who was an applicant in the matter, was not satisfied with our recommendations as the Office of the Family Advocate at the time," recalls Advocate Fourie.

Alternatively, she explains further, the father sought assistance of a clinical psychologist to conduct psychological assessment on all of them including the children; hoping for different results that would influence the court to grant the order in his favour.

"However, the clinical psychological report arrived to the same conclusion and made similar recommendations to the ones initially made in the report from our office. Upon receiving the same recommendations, the applicant (the father) did not embrace them and failed to re-enroll the matter as per the court order which resulted to the matter pending for unreasonable period of time. This negatively impacted in the best interest of children in the process and we had to intervene urgently," explains Advocate Fourie.

“Dealing with difficult parties is always a challenge. I always advise that regardless of any residence or contact arrangements, both parents are co-holders of parental rights and responsibilities for their own children; they need to find an amicable way of co-parenting and put their differences aside for the best future and well-being of children.”

The delay raised concern within the Gauteng OFA, which necessitated an urgent intervention of the Chief Family Advocate, Pertunia Seabi-Mathope, Gauteng Head of Office, Advocate Brenda Makganyoha and Advocate Fourie, who, after deliberations, decided to approach the South Gauteng High Court to consider a preferential date for the matter to be heard, following the father's silent approach in the matter.

"After consultations with the judge president, a date was urgently set and the matter was heard

and finalised, with the court ultimately endorsing our initial recommendations as the OFA. Although it was a daunting case, it took a year to finalise the matter," says Advocate Fourie.

Advocate Fourie, who believes in team work in dealing with difficult matters within the OFA office, describes the feeling of cracking up a case of this nature as fulfilling. "Dealing with difficult parties is always a challenge. I always advise that regardless of any residence or contact arrangements, both parents are co-holders of parental rights and responsibilities for their own children; they need to find an amicable way of co-parenting and put their differences aside for the best future and well-being of children."

She admits that working in the family law environment is challenging but yet fulfilling. "This is an environment where you go beyond and above your line of duty, trying hard to fight for the best interest of children. Talking and sharing our experiences with colleagues and socialising with family and friends is the best thing to do to unwind and compose myself," concludes Advocate Fourie. ●



Hard worker: Gauteng Family Advocate Madelize Fourie.



Social, religious dynamics pose a challenge to OFA work

Rodgers Ndhlovu



Passionate: Advocate Elaine Botha is concerned about the social dynamics which sometimes impact negatively on the OFA work.

South Africa, as a constitutional democratic country, is a diverse and cosmopolitan nation that is home to a population that subscribes to different cultural practices and religious beliefs. However, this diversity sometimes presents a challenge to children born in relationships where parents practise conflicting religious beliefs and, as an extension, make the work of the Office of the Family Advocate more challenging.

The OFA, which primarily deals with safeguarding the interest of children, is – from time to time – inundated with cases of parents from different cultural practices and religious beliefs, undergoing divorce and, as a result, children frequently find themselves in the crossfire of disputes emanating from a crumbling relationship.

Justice@Work recently visited the Eastern Cape Office of the Family Advocate in Port Elizabeth where one such case took place. Relating the case, Senior Family Advocate Elaine Botha recalls how

a 2014 divorce case she once dealt with had a nasty ending. The divorcees belonged to a rather unusual religious practice which discouraged its members from having contact, forming friendships or developing relationships with non-members of the group.

According to Advocate Botha, initially, both parents, who were married, were members of the religious group called the Exclusive Brethren. The group obliges its members to live separately from the community at large and their children are not allowed to socialise with people outside their religious practice. As a result, they do not attend public or private schools; they are taught at home and are not allowed to visit cinemas, or watching film as all those are outlawed by the practice.

Nonetheless, the father was disenchanted with certain aspects in the group and decided to leave. His ex-wife, however, remained and the husband's departure, from the perspective of the Exclusive

Brethren, meant not only a breach of rules with the group, but also with his family too, and this was the root cause for the divorce.

"Subsequently, short visits to his children were permitted and supervised by the members of the Exclusive Brethren and eventually, he was not allowed contact with his children, who were aged nine and six years old respectively at the time," explains Advocate Botha.

After the children's father decided to approach the OFA, adds Advocate Botha, as a neutral entity looking after the best interest of children, we weighed all options to determine what was best for the children.

"Although he was the best parent to their children, something that even his estranged wife bears testimony to, but due to the fact that the children grew up under the Exclusive Brethren way of doing things, and were deeply convicted to their faith, they resented their father because maintaining contact with a non-member is perceived as a sin in the group," she highlights.

As a result of growing up under this practice, and the beliefs now deeply embedded in children's minds, they could not cope in spending a weekend with their father as per the initial recommendation by the OFA, says Advocate Botha, therefore had to try shortening the visitation time, as ultimately, the office is more concerned with the best interest of the children.

"Sadly, our office tried all possible intervention techniques in its powers to mend the relationship between the father and his children but the children were not coping around him.

"The children were traumatised by their father's presence as they perceived it as a 'sin' being or seen with him; this had an adverse effect on their psychological and emotion wellbeing. It is so shameful that the relationship between a father and his children could not be fixed because of religious convictions," adds Advocate Botha.

"Eventually, the mother and children relocated to the Bahamas and the father had no fighting power left in him because the children did not perceive him as their father anymore. He consented to the children's relocation and agreed to the termination of his parental rights and responsibilities in respect of the children. Although it was not enforceable, owing to the children's feelings, our office recommended that the father retain his right of reasonable contact with the children. In turn, the mother was ordered to inform the father of the children's whereabouts."

Eastern Cape OFA sought mediation between the two parties, but unfortunately, the father had already spent a lot of money in private attorneys while trying to litigate the matter and this left a huge mark in his financial standing. "This is why our office prefers parties to mediate instead of litigating because, unlike litigation, mediation is free of charge," she say. ●

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unlike litigation,
mediation is free of
charge."*





Limpopo OFA partners with courts for efficient service

Rodgers Ndhlovu

According to a recent report by Statistics South Africa (StatsSA), more than half of the country's population lives in poverty and the unemployment rate is currently standing at 27.6%.

With such high rate of poverty and unemployment, many people, especially in rural areas, encounter difficulties in raising funds for travelling to access justice services. Living in one of the poorest and rural provinces, most Limpopo residents have to embark on a long journey, often costly, to access government services.

Realising the severity of the situation of serving approximately 5, 5 million people through their three offices that are remotely located, the Limpopo Office of the Family Advocate (OFA) initiated an efficient counter measure of allowing its staff members to travel and assist members of the public in remote areas. This initiative is realised through partnerships that the office has established with magistrates offices within the province.

According to Limpopo's Principal Family Advocate Mosiwa Khesa, the initiative has been up and running for a number years now. "As much as it is taking a toll on our travelling budget, the initiative has added value to the lives of many people in Limpopo because not everyone affords a bus or taxi fare to reach us. It has also been endorsed by the Chief Family Advocate, Petunia Seabi-Mathope, who embraces it and continuously encourages us to go further to serve our previously disadvantaged communities," he says.

The initiative comes as second nature to Limpopo OFA officials and members of the public appreciate the effort. "We develop a weekly schedule to determine which areas to visit, based on the number of cases received per area; we further notify members of the public telephonically about our availability. Through this initiative, we have managed to increase our footprint despite the vastness of the province," he explains.

“Through this initiative, we have managed to increase our footprint despite the vastness of the province.”



Passionate: Mr Siyabonga Zondi is very committed to bringing OFA services closer to the people.

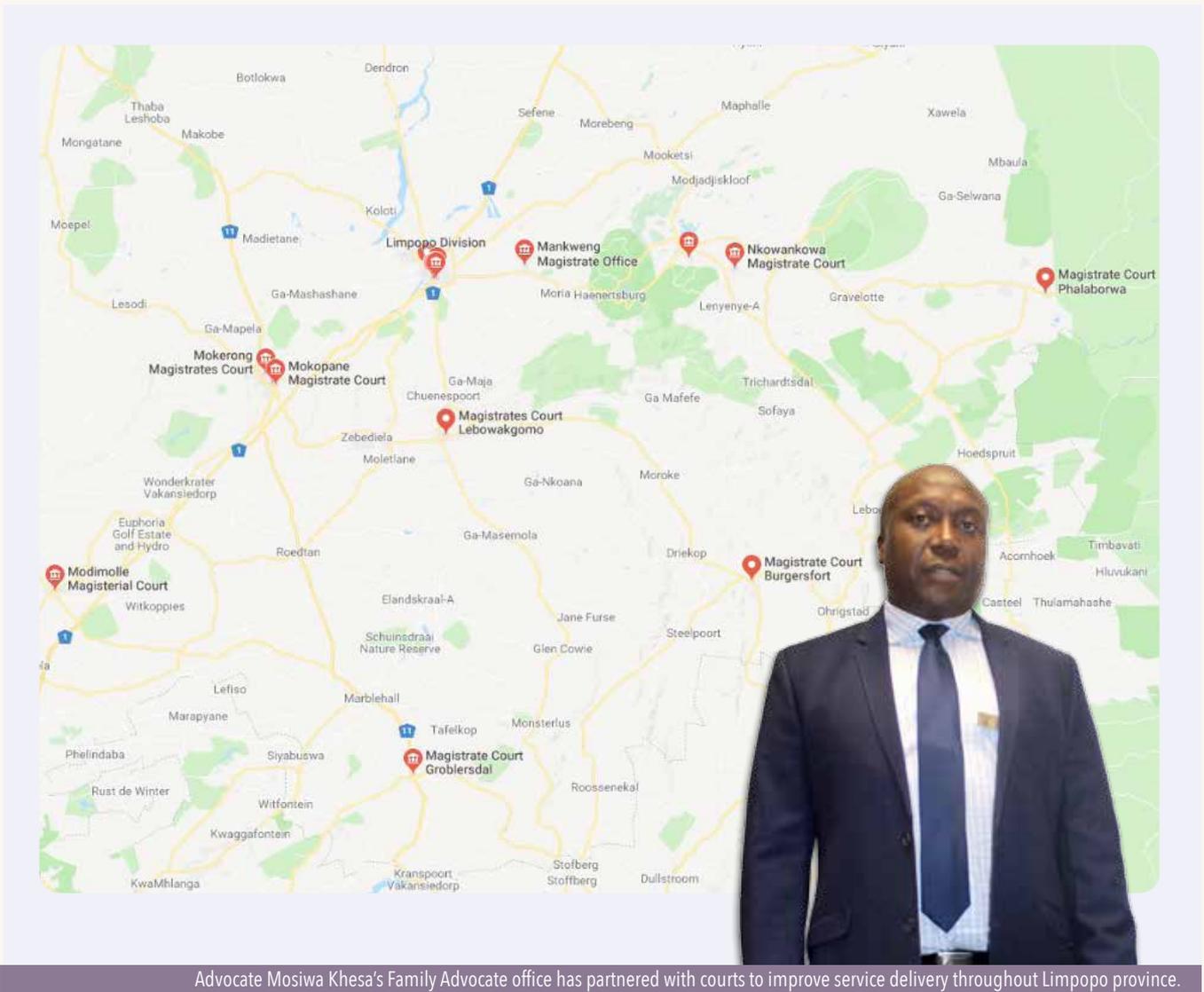
“As much as it is taking a toll on our travelling budget, the initiative has added value to the lives of many people in Limpopo because not everyone affords a bus or taxi fare to reach us.”

Advocate Khesa attributes the success of the initiative to team effort and willingness of colleagues, court managers and area court managers who allow them to use their court space to assist the public. He adds that the Limpopo Regional Office has played a huge role in ensuring that this initiative is a success. Mr Siyabonga

Zondi, a Family Counsellor who is also actively travelling to assist members of the public, said the initiative assists to curb travelling costs for members of the public and also prevents the need for parents to travel more than 200km to their offices with their children for consultations.

He appealed to the Department to consider looking into funding reasonable accommodation for officials to rest after travelling long distances. “In some instances we have to travel more than 400km return trip, it would be greatly convenient if the budget can also accommodate sleepovers, as much as we love what we do, sometimes we get fatigued and that might present a health hazard,” says Mr Zondi.

He further advised the Department to consider having a designated OFA workspace in each magistrate’s court so that OFA officials do not inconvenience other court officials when they work on site. ●



Advocate Mosiwa Khesa's Family Advocate office has partnered with courts to improve service delivery throughout Limpopo province.

Justice@Work

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