



LAW MATTERS

By Franny Rabkin

When Oscar Pistorius went on trial for the murder of Reeva Steenkamp, South Africa's criminal justice system became the object of intense scrutiny across the world. Every statement was dissected, every piece of evidence debated.

I confess I struggled to muster all that much interest myself – except in one way: to see how his case was treated in comparison with other less celebrated cases of intimate partner violence, which we know happen at an alarmingly frequent rate in South Africa.

There was simply no comparison. Okay, so Pistorius was a world-famous athlete and a national hero. But it wasn't only that. Two other things were present: the media and proper legal representation.

I've been thinking about this because of Kanya Cekeshe – the only #FeesMustFall activist that is currently behind bars for the role he played in the student protests of 2016. While other Fallists have gone on to finish their studies – some even on to prestigious institutions overseas – this young man has been behind bars for nearly two years.

Cekeshe pleaded guilty to setting a police vehicle alight, was convicted of public violence and malicious injury to property, and was sentenced to eight years in prison, three suspended.

So much we know. But, his new lawyers argued in court, there were all manner of problems with the way the guilty plea was concluded. Based on the state's evidence, they say, he should never have pleaded guilty to begin with. The CCTV footage from the state – at least that which we have seen – could never have, on its own, secured a conviction. Then, they argue,

the magistrate did not properly ascertain – as required by the law – that Cekeshe was indeed intending to plead guilty to all the elements of the offences.

It was also argued that it was unclear whether he did in fact set the car alight, or if someone else did – with conflicting statements from his legal representatives. Although he had twice said under oath that he did, the first time was in what was argued to be the dodgy plea. The second statement, when he petitioned to appeal, was obtained from Leeuwkop prison in less than ideal circumstances. The statement was not commissioned and not initialled on each page.

He was not properly represented, argued his current legal team, led by renowned advocate Tembeka Ngcukaitobi. Plus, they say, the magistrate's conduct of the trial was deemed problematic. How badly represented, and how problematic, if any, is to be determined. As I write, the high court is still to hear his appeal petition.

But one thing I am fairly sure of: Cekeshe would not be sitting in Leeuwkop today if the same legal team and the same amount of public attention had been devoted to his case from the start. If Julius Malema and Ronald Lamola had been tweeting as much about his trial as they are now, he would at the very least be out by now – if he had even gone to prison to begin with.

I trust and hope that by the time this column is published, Cekeshe will have been released. Even if he is found to have been rightfully convicted, his sentence appears harsh and he has served an adequate chunk of it.

But the thing I keep coming back to is how many other young men are in prison when they might not be, how many other cases that can be presented as “miscarriages of justice” are happening on a daily basis in our magistrates courts.

There was another case – that of Marikana activist Napoleon Webster, arrested for murder. He was denied bail and spent 202 days in prison on what appeared to be the flimsiest of evidence. His case was reportedly remanded eight times because the recording device in court was not working and there was no stenographer. It was a travesty.

But it was not so unusual. Many years ago, as part of my articles of clerkship, I spent six months as a public defender – the free criminal defence lawyers provided by Legal Aid South Africa. I worked first in the Hillbrow Magistrates Court and later at the Johannesburg Magistrates Court.

Back then, it was not unusual for a case to be postponed because there was no interpreter speaking the language of the accused. Or because the police needed a week (I never understood why it took a whole week) to verify the accused’s address. Or because the accused had simply not been brought to court from prison. And I saw many, many guilty pleas that really should never have been entered.

There are so many moving parts for a trial to go ahead – each one is crucial for an accused’s fair trial rights so they cannot be

ignored. If one is missing, then nothing can happen and the case must be postponed. Each time this happens a person – who is by law presumed innocent – must go back to prison and wait.

And each time they come back to court a little more changed. I’m not exaggerating when I say I saw the light die in young boys’ eyes. I saw others - terrified and naïve at the start - turn into grim criminals from their months in prison. Many were found not guilty but they were forever changed by the experience.

I wonder how much has changed since back then. The numbers we see in annual reports can only give us an incomplete picture. But if Cekeshe’s and Webster’s cases are anything to go by, it is very little.

When we think of the rule of law, we often think of it in cases of corruption and other big, political cases. And yes, those are important. But the rule of law matters just as much in the everyday cases and can also be measured by how the law treats those people who are not famous, or rich or celebrated.

I know there is no quick-fix and I am not advocating one. Not every accused can have a silk representing him. The media will never be able to be there for every case. There will always be those cases where the Italian translator turns up instead of the Portuguese one. But I know that we, in the media, could do better at covering our lower courts and I wonder how many advocates who read this magazine do *pro bono* criminal work. **A**



GroundUp/Ciaran Ryan