“JUDGMENT WRITING AND DRAFT ORDERS”

A PRESENTATION BY

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AT THE END OF THE FIRST TERM 2019 JUDGES’ SYMPOSIUM

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DATE: 05 APRIL 2019

Judges often engage in the activity of putting on paper, or entering into computer databases, products of their thinking on the legal meaning of the facts of cases they preside over. Every Judge knows what judgment writing involves. He or she will have produced a written judgment in the exercise of judicial power. Some Judges may feel that judgment writing is a subject they have mastered and they need not be addressed on it.

Rarely does a Judge have time and cause to sit back to reflect on the theory and importance of judgment writing. That does not, however, detract from the fact that in judgment writing a Judge is engaged in a professional activity. He or she writes as he or she does because of the demands of the office. Judgment writing is therefore a subject so relevant to a Judge that he or she has to directly or indirectly concentrate on it throughout his or her service career. It is because judgment writing goes to the very heart of the judicial function that it is a subject worth discussing.(1)

A written judgment is supposed to deliver justice. There has to be a standard by which readers are able to measure the written product to distinguish a good judgment from a bad one. What is clear is that judgment writing is an expression of a product of a mental process as a result of which a decision and reasons thereof on issues or points for determination are reproduced to take an existence of their own

independent of the decision maker. A judgment must not be discovered as one is writing.

WHAT IS A JUDGMENT?

A judgment is a decision given by a court or tribunal on the relief claimed, which resolves a controversy and determines the rights and obligations of the parties in accordance with the applicable law. It is the final act in a case by which a court accomplishes the purpose of its creation. A valid judgment resolves or settles the contested issues submitted to the court in an action or proceeding, and fixes the rights and liabilities of the parties. The lawsuit is ended by a judgment, since it is regarded as the court's official pronouncement of the law on the action that was pending before it. It states who wins the case, and what remedies the winner is awarded. In other words, it is a determination by a court that on matters submitted to it for decision, a legal duty or liability does, or does not, exist, or that, with respect to a claim in suit, no cause of action exists or that no defence exists. In that sense, a judgment signifies the end of the court's jurisdiction in the case. It is a means of achieving an objective that is universal: the just resolution of conflict which is the core business of every court of law.(2)

The comprehensive definition of judgment shows that the concept can be used in a narrow and broad sense. In the narrow sense, judgment refers to the decision on the

question for determination and the order issued. In the broad sense, a judgment includes the reasons for the decision, consisting of the considerations, findings and conclusions of both law and fact, stated by the court in substantiation of its judgment.(3) It is in the wide sense that the concept is used here.

The definition is also important for the fact that it shows that not every judgment has to be written. In our case, the law does not require that a judgment be in writing at the time it is pronounced, although orders are ordinarily reduced to writing at the time they are pronounced. In other words, a judgment does not derive its quality of being a judgment from the form in which it is presented to the audience. A judgment can be given by a court immediately after the evidence and argument have been presented on the facts and the applicable law by the parties or by their legal representatives. The reasons for the decision made by the court on the legal meaning of the facts found proved are given orally. It is not an order without reasons on its grounds.

Ex tempore judgments are indeed a common feature of court proceedings. They are encouraged in the light of the increasing pressure of work Judges have to bear. The principle that decisions should, where it is reasonably practicable, be rendered expeditiously justifies the use of *ex tempore* judgments. They are addressed to the parties and their legal practitioners.

This address is concerned with the case where a Judge, either out of exercise of discretion, or for the reason of the complexity of the factual and legal issues raised by a case, decides to put the judgment into writing. What one has in mind, in discussing the subject of judgment writing, is a full–dressed judgment a Judge has to write. A full–dress judgment is one that requires structured discussion of the facts, legal principles and governing authorities in some detail. The significance, or number of the issues presented, the novelty of the questions, and the complexity of the facts, are among the factors that determine whether a judgment requires full–dress treatment.

WHY WRITE THE JUDGMENT?

Judgment writing, like any other human endeavour, is influenced by the purpose or object the writer seeks to achieve. The overriding purpose of a written judgment is to persuade the reader to accept, on the basis of the reasoning, the correctness of the finding of facts in issues; the analysis of the legal principles and the application of the law to the facts. Judgment writing is a creation of a permanent record subject to confirmation, variation or setting aside by an appellate court. Every judgment is case-based. As such, the sole concern for a Judge in writing a judgment may be to inform the parties to the proceedings and their legal practitioners of the outcome of the case. Reasons ought to be given for legal decisions, otherwise the parties cannot

feel that their cases have had serious attention. They must understand why the judgment went the way it did.

In *Strategic Liquor Services* v *Mvumbi N.O.* 2010 (2) SA 92 (CC) at 96G it is stated:

> "It is elementary that litigants are ordinarily entitled to reasons for a judicial decision following upon a hearing and, when a judgment is appealed, written reasons are indispensable. Failure to supply them will usually be a grave lapse of duty, a breach of litigants' rights, and an impediment to the appeal process."

See also *Botes* v *Nedbank Ltd* 1983 (3) SA 27A-28A.

In *S v Makawa and Anor* 1991 (1) ZLR 142 (S) at 146D-E it was held that:

> "Although there are indications in this case that the magistrate may have considered the case, a large portion of those considerations remain shared in his mind instead of being committed to paper. In the circumstances, this amounts to an omission to consider and give reasons. See *R* v *Joko Nya* 1964 RLR 236G."

Fox & Carney (Pvt) Ltd v *Sibindi* 1989 (2) ZLR 173 at 179G-H.

The purpose of writing a judgment may be influenced and defined by the extent to which the decisions of the court and the legal principles on which the judgment is

based have binding effect on readers other than the parties. The judgment of a Labour Court, for example, may provide guidance to disciplinary committees and arbitrators by articulating the legal principles on which disputes may be resolved. So a judgment of a Labour Court may be written with the agencies whose decisions the court reviews in mind.

A judgment may require additional factual development, and legal analysis if it has something to say to others besides the parties. How much analysis is required, and how detailed it should be, would depend on the subject matter, and the probable audience.

When writing a judgment for the parties and their legal practitioners only, the Judge may confine himself or herself to giving reasons that show why the losing party lost the case. It is natural for someone who loses to feel disenchanted with the legal process. It is, therefore, important that the reasons for a judgment show that the losing party was listened to, and his or her or its submissions seriously considered.(4)

When a decision involves novel issues and the Judge is aware of the fact that the judgment he or she is writing is likely to develop the law in the area, it is appropriate to trace the prior development of the law and develop the legal and policy rationale at some length.(5)

Judges of lower courts need not worry about getting it right when writing a judgment with the appellate court in mind. It takes an immense burden from a Judge of a lower court to know that there is some other body to correct his or her decision if it is found to have been wrong. What the Judge needs to do is to consider, at the time of writing a judgment, whether a statement of facts and legal analysis to explain the decision to the parties, will suffice also for the appellate court to understand the basis for the decision. When, the decision turns on complex facts, a more elaborate explanation than is necessary for the parties may be helpful to the appellate court.(6) Without reasons for legal decisions, court of appeal would have nothing to upset or confirm.

A written judgment is the only means by which a court can engage in a discourse with the public on matters relating to how it decided a case. Members of the general public do not ordinarily read the actual text of the judgment. They rely on the reports communicated by the media on what they believe to be of public interest. When writing a judgment that addresses an issue of general public interest, or is likely to attract media attention, a Judge must ensure that what is written will be understood and not misunderstood. The mark of a well-written judgment, in any event, is that it is comprehensible to an intelligible layperson.

The foreword to the *Judicial Writing Manual* prepared by the Federal Judicial Centre in the United States of America in 1991 highlights the importance of judicial writing by stating that:

> "The link between courts and the public is the written word. With rare exception, it is through judicial opinion that courts communicate with litigants, lawyers, other courts and the community. Whatever the court's statutory and constitutional status, the written word, in the end, is the source and the measure of the court's authority."(7)

PREPARING TO WRITE

The decision the Judge makes and what he or she says to explain it are products of the Judge's thinking process. In the writing lies the test of the thinking underlying it. As Ambrose Bierce said: "good writing, essentially, is clear thinking made visible".(8)

Before starting to write a judgment, a Judge should have in his or her mind the decision and the reasons for arriving at it. The Judge should think through all the stages of the case relevant to arriving at the decision. This is what is referred to as the process of discovery. It is the process by which the Judge arrives in his or her mind at the conclusion of the case constituting the judgment. That involves

considering the scope to the judgment, the prospective audience, and whether the judgment will be published. He or she should marshal the material facts, formulate the issues, identify the applicable rules of law, and determine the appropriate form of judicial relief. The procedure by which the conclusion is justified is referred to as the "process of justification".(9)

The fact that a Judge should have completed the process of discovery, and reached a conclusion, before starting to write, does not mean that he or she may not change his or her mind. A Judge may discover, in the process of writing, that he or she cannot get where he or she wanted to go.

The point being made is that Judges, like all other good writers, must organise their thought before starting to write. What a Judge must never do is to write a judgment, even in draft form, before hearing the case because a judgment is a product of the determination which follows the hearing. A Judge must approach every case with an open mind. Approaching a case with a draft judgment is not only evidence of possible bias, it can be a ground for challenging the fairness of the decision of the court if discovered by the losing party. A judgment is, in fact, evidence that the writer was involved in the hearing proceedings, as it must address the questions raised during the proceedings and the answers given to those questions. It is,

therefore, essential to the existence and validity of a judgment that the decision shall have been rendered in an action or proceedings before the court.

STARTING TO WRITE

Judgment writing is a process characterised by stages with different considerations. It has organisational, structural and stylistic techniques. Clear and logical organisation of a written judgment is very important. It helps the reader to understand the judgment. Headings and subheadings, or other means of disclosing the organisation to the reader, provide road signs for the reader. They also help to organise the writer's thoughts and test the logic of the judgment. There should be coherence in the judgment.

In an "*Address to the Canadian Institute for the Administration of Justice Seminar, on Judgment Writing: July 2, 1981*" Canadian CHIEF JUSTICE BRIAN DICKSON stressed the importance of organisation in judgment writing. Explaining the point that poor judgment writing is often a product of careless judicial thinking he said:

> "Thoughts straggle across the printed page like a gaggle of geese, without form, without beginning or end, lacking in coherence, conciseness and convincingness."

There is, of course, no one way of writing a judgment in a democracy with a free and vibrant judiciary. For us, the basic and broad requirements of a written judgment are not prescribed and formalised, as is the case with other jurisdictions where the structure of a judgment is indicated by statutory provision. Recognition of the fact that there are different ways to write a judgment is also a recognition of the fact that some ways are better than others. The point being made is that a sound judgment is the reflection of a logical process of reasoning, from premises through principles to conclusions. The framework in which that process takes place should be visible to the reader from the organisation of the judgment. That organisation will be a road map, enabling the reader to follow from the beginning to the end without being lost.

To Judges who face many choices about their judgments and how to write them, the organisational format suggested here is reflective of the elements of the process. Every legal argument can be distilled to the same simple structure of facts, the law (contract, regulation, precedent, section of a statute or Constitution) in the context of which they are viewed, and the conclusion (relief sought) they lead to. The logic never varies. It is called "the universal logic of the law". The credibility of a judgment will depend on the ability of a Judge to convey the reasoning of the court in a form that reflects this universal logic of jurisprudence.(10)

STRUCTURE

A full-dress judgment should contain the following:

(1) An introduction;
(2) A statement of the issues;
(3) A description of the material facts;
(4) A discussion of the legal principles;
(5) The application of the law to the facts; and
(6) The conclusion and the necessary orders.

INTRODUCTION

A Judge cannot be in a position to write an introduction of a judgment until he or she knows what it is that he or she is going to introduce. The purpose of an introduction is to orient the reader to the case. A good beginning makes the reader want to read more. The introduction and conclusion are possibly the only parts in a judgment where a Judge can count on the reader's attention. The introduction should state briefly what the case is about. The parties should be identified at this stage, preferably by proper names. Begin by giving a sketch of facts, telling a brief story of what happened to the party who brought the grievance to the court. Relating the facts as they affect a party brings out the human significance of the case and avoids making the beginning read like an abstract problem.(11) Write in a manner that makes the reader see the human being with his or her problems and not the writing.

All the reader needs in an opening paragraph is a generic description of who did what to whom – just enough detail to provide a context in which the issues will make sense.

It is at this stage that the issues to be determined can be set out unless they are so complex that they are better treated in a separate section. Every case is about issues. So issues should be stated at the beginning of the judgment. In fact, a perfect introduction provides two things: a synopsis of the facts and a brief statement of the questions (the issues) that the court needs to decide. The brief combination of facts and issues provides the context in which the analysis and the reasoning underpinning the judgment will make sense and be worth reading. By delineating the issues in a few lines, the Judge foreshadows the structure of the whole judgment.

Stating the issues effectively requires steering a course midway between too much detail and too little. Too much detail overwhelms the reader and predicts what follows in specificity not just in structure. The issues as stated at this stage should contain sufficient information to give the reader a glimpse of the grounds on which each side bases its case. The issues should, therefore, not provide too little by not explaining what is at stake.(12)

The introduction should not contain too much reference to the sections of the statutes. It should be attractive to a layperson who just wants to know what the case is about.

The Judge may indicate the decision of the court at this stage, particularly if there is one issue to decide.

Giving a summary of the holding at the outset is important when regard is had to the fact that some of the audience for whom the judgment is written may not have the interest and time to go through the whole judgment. It saves time for researchers who would be able to decide immediately whether to read the rest of the judgment. Providing a summary holding at the introductory stage helps the Judge to state the decision precisely and succinctly.

STATEMENT OF ISSUES

This is the cornerstone of the judgment. Every judgment has a factual or legal question it decides. How the issues are framed determines which facts are material. They form a context in which individual facts have meaning, as facts have no significance until they are placed in the context of an issue. It also determines which legal principles are to govern the resolution of the issues. A Judge should state the issues in the manner he or she considers material to the determination. He or she is

not bound to adopt the issues as stated by the legal practitioners. Issues do not arise from the facts with a logical inevitability. Even when opposing legal practitioners agree on the issues, they can frame them differently to gain an advantage.

The fact that an issue has been stated by the legal practitioners does not mean that the Judge has to address it. The test is whether the resolution of the facts covered by the issue is material to the decision. A statement of issues should be brief.

Issues must be phrased with neutrality. They should not show bias toward any side. The issues should not contain too much detail. Too much detail overwhelms the reader. Issues should be raised in a logical order. Issues relating to service of process, *locus standi*, jurisdiction and prescription should be dealt with first.

FACTS

The most frequent cause of obscurity in judgment writing is haphazard organisation compounded by facts and allegations that have no bearing on any of the issues.

In a single–issue case, facts can be set out in one statement early in the judgment. Where there are a series of issues raised, the statement may be limited to stating common cause facts, leaving the specific decisional facts to be covered when the individual issues are discussed.

Some Judges have the habit of repeating what each witness said, before rounding out the narrative by declaring that they find witness so and so credible. This approach reveals the apparent fear of being accused of not having understood the evidence presented. There is also fear of being accused of having omitted material facts. The more fundamental fear is that of analysis. Quite often, Judges are unwilling to grapple with the problems of evaluating and assessing evidence, and arguments presented by the parties, in accordance with the competent rules of analysis, to make findings of fact. A judgment should avoid repetition, especially with reference to the evidence of witnesses.

The proper way of dealing with the facts, in the writing of a judgment, is based on the presumption that the Judge has read the transcript of the evidence of witnesses, and understood the facts, together with their contradictory and corroborative effects.

A Judge who has fully comprehended the case will do the following:

(a) He or she will set out, in chronological order, all the facts that are common cause. These facts do not show themselves up in every case. It is for the Judge to extract them from the case. The Judge should set out the common cause facts in a story-telling manner, covering the beginning, middle and end of the dispute. These are facts that cut across the stories of the parties in dispute such that, by stating them honestly and accurately, the Judge

avoids the temptation of reciting verbatim the evidence given by each witness.

(b) Accurately stated, common cause facts tend to clear the mind to see the fact in issue. The Judge will then take each issue in turn. He or she analyses the evidence adduced on the facts in issue separately, and decides whether or not the facts have been proved or not. The rules of credibility and probability in the assessment of evidence are applied. In other words, the determination of facts also involves the problems of admissibility, cogency and effect of evidence.

Treating each issue separately enables the Judge to focus his or her analysis on each one individually. It also enables the reader to move from one issue to the next with a sense of orderly progression.(13)

On each issue the Judge should state briefly what the plaintiff's position is, then state the defendant's position, and made a definite finding of the fact in issue.

A Judge should offer a clear explanation of findings of fact. Findings should never be recorded without the necessary discussion of evidence and reasons for the findings. It generally makes sense to begin with the position of the party with the burden of proof whether that party loses or wins. He or she must say why facts contained in some pieces of evidence are found to be the truth of what happened and

not those allegations contained in other pieces of evidence. The expression of reasons for every decision made on the facts in issue is a demonstration that justice is done and that the Judge applied his or her mind to the evidence and arguments presented by the parties.

Appreciation of evidence is a cardinal principle of the administration of justice. The evidence must be evaluated and assessed logically on the basis of well-known and well-settled principles of analysis. When discussing the credibility of witnesses strong or superlative language and disparaging remarks should be avoided. The Judge should criticise a witness only to the extent it is necessary to decide the issues. Such criticism should be made in dignified language.(14) Once all the facts in issue have been determined, they may be briefly brought together and stated to complete the chronological order of the common cause facts.

Only the facts necessary to explain the decision should be included. Excessive factual detail may be distracting. Dates should be left out unless they are material to the decision or helpful to its understanding. A statement of facts must be full and fair to the extent it is necessary to the decision. Facts significant to the losing side should not be ignored. Above all, the statement of facts must be accurate. Judges cannot decide cases objectively if the facts are inaccurate. The Judge should not assume that the facts recited by a legal practitioner in the heads of argument are

correctly stated. He or she must read the record. A judgment should be based on the evidence on record. It should not be based on matters within the personal knowledge of the Judge. It must be based on legal facts and not on suspicion.

DISCUSSION OF LEGAL PRINCIPLES

Every court is established by law and is therefore a court of law. A court of law is given, by the statute establishing it, powers to determine disputes over rights the law gives to people in general, or to specific classes of people who enter into specific relationships. The court is then given powers to determine and enforce the prescriptions of the law. The power of a Judge is to decide, according to law, which is to be found in the Constitution or in the Statutes or in the doctrines laid down by his or her predecessors over the years.

The discussion of legal principles is the heart of the judgment. It must demonstrate that the court's conclusion is based on reason and logic. It should persuade the reader of the correctness of the result by the power of its reasoning. It is essential to the validity of a judgment that it be based on, and be in conformity with, recognised principles and fundamentals of law. Where the mode of exercising the powers conferred on the court is prescribed, the course pointed out must be substantially pursued otherwise the judgment is invalid.(15)

This part of the judgment will involve the question of which law governs the facts. It may involve the question of whether a court has jurisdiction or whether the cause of action has prescribed. It may also involve an inquiry into the question of the meaning of the law to be applied to the facts. In jurisprudence, only three arguments can occur: one about facts, the other two about the law -

1. The litigants may contest factual allegations;
2. Or they may claim that the other side has cited the wrong law;
3. Or they may concede that the other side has cited the right law but misinterpreted it.

Every case boils down to some combination of these three basic disputes. There are no others.(16)

What the Judge should bear in mind is that every law is a rule of some conduct or other consistent with the value system prescribed and envisioned by the society. It prohibits some specific conduct under threat of sanctions for disobedience whilst permitting other conduct. The description of the conduct prohibited or permitted by law is what is referred to as the essential elements of what is provided for.

Once the nature and scope of the conduct provided for by the law is determined, it becomes easy to determine whether the facts found proved constitute the prohibited

or permitted conduct under the applicable law. In other words, the task of the Judge, at this stage of the judgment, is to find and declare the rule which is applicable to the facts. The manner of application of the judicial mind is the same as in discussing issues of fact. The important questions of law involved in the case must be stated and analysed, the contending rules compared and the correct rule selected. In other words, the points for determination are stated, the decision on them made and reasons for the decision given. In that way, the court is able to show that is conscientiously applied its mind to all the points in controversy.

The following are some of the things to watch for in the discussion -

STANDARD/GROUND

Identify the standard contended for by the parties on which the decision is sought to be based, or if the proceeding is an appeal or review the grounds on which the decision of the court *a quo* or tribunal is sought to be impugned. For example, is the question one of lack of jurisdiction, one of failure to exercise jurisdiction, one of applicability of the law to the facts, or is it purely one of interpretation (finding the meaning of the law).

ORDER OF DISCUSSION

The court is not bound to discuss the legal issues in the order they have been stated or presented by counsel. The order in which the issues are discussed should be dictated by the organisation of the judgment. Generally, dispositive or preliminary issues must be discussed first. Non-dispositive issues should not be discussed at all.

WHICH ISSUES TO ADDRESS

A judgment should address the issues that need to be resolved to decide the case. If an issue has not been raised, but the court considers that it is dispositive of the case, the Judge should notify counsel and provide them with an opportunity to address on the issue. Issues not necessary to the decision but seriously urged by the losing party should be discussed only to the extent of showing that they have been considered.

CASE CITATION

Most points of law are adequately supported by citation of decisions on the point. There are some Judges who have the habit of quoting judgments by reproducing the headnotes of the law reports. These headnotes are sometimes misleading and do not convey what has been decided. Such quotations give the impression the Judge has not taken the trouble to read the relevant portion of the authority. It must be said, though, that headnotes may explain the *ratio decidendi* of a case in clearer and

more precise terms than one is able to extract from the judgment itself. If a headnote has to be used, the Judge should state that he or she is quoting from the headnote. When the matter is settled and the legal principle clear, citation of a string of cases on the point adds no value to the decision. A dissertation on the history of the rules only succeeds to create the impression that the Judge is showing off his or her erudition. If the judgment is breaking new ground, the Judge must marshal existing authority, analyse the evolution of the law in the area, and show how the extension of the existing principles supports the formulation of the new rule.(17)

SECONDARY SOURCES

Law review articles, texts and non-legal sources are not primary authority. They should be cited sparingly. Some authors are so well respected in their fields that in the absence of a case in point their word is persuasive.

QUOTATION

It is more effective to quote directly from a case to support a point than to paraphrase or cite. The impact of a quote on the reader is inversely proportional to its length. The shorter the quote the more effective is its impact on the reader. Quotes should be fair. They must be in context and accurately reflect the tenor of their source. If you trust your ability to paraphrase, go ahead and paraphrase the passage from the

authority before passing it on as a quotation. If you think the reader trusts your ability to paraphrase, you need not quote.(18)

AVOID ADVOCACY

In justifying a decision, a Judge is required to explain why the contrary arguments were rejected. In addressing this point the judgment should not be an argument against the legal practitioner whose views of the law are rejected.

A Judge should be able to reject the losing argument without being contentious. Put aside emotions and personal feelings. If necessary, avoid the use of adjectives and adverbs when discussing points of view of the law submitted by legal practitioners or the parties.

TREATMENT OF THE COURT BELOW

Appellate judgments should be able to correct a decision of the court or tribunal below without criticising the court or tribunal. The appellate judgment need not attack the wisdom or attitude of the court or tribunal below in order to reverse its decision. Humility is the mark of fairness and objectivity. Collegiality is a hallmark of civility and professionalism, qualities Judges must themselves possess and encourage in others.

APPLICATION

The purpose of discussing the legal principles would have been the finding of the applicable rule. The analysis would have been aimed at establishing the nature and scope of the acts which, under the rule, can be done as a matter of right or obligation.

Once the juristic facts or the legal facts have been ascertained from the meaning of the law, the next task for the Judge is to place the mirror of the juristic facts over the facts of the conduct found to have been committed by the party, the legality of whose conduct is impugned.

The test is whether or not the facts of the conduct found proved fall completely or partially within or outside the definition of the legal facts. The application of the law to the facts must be accompanied by close analysis, characteristic of the judicial mind, to arrive at the correct decision. Reasons for the decision must be given. The legal effects of the facts should flow from the application of the law to the facts. The legal effect of the facts would be that when the acts were committed they were or they were not in violation of the governing rule as it existed at the time. In other words, this part of judgment writing contains the grounds of judgment which are the reasons on which the decision of the court is based.

It is clear that justice, the reasons for a decision and the writing process are closely linked. The application of legal principles to the facts produces interpretations of the law which would be applicable to solve disputes in cases based on similar sets of facts in future.

Those who apply the particular law in doing business or resolving disputes would be entitled to act in accordance with the ruling of the court in similar circumstances. Judges should therefore create narrow propositions that relate to the particular facts of the case. A definitive judgment helps legal practitioners to determine in similar cases in future whether they have a case or not, and whether they should advise their clients to settle rather than enter into litigation they are likely to lose. Nothing can be more frustrating to the legal profession and to the public than a high profile decision that is not supported by a clear and logical application of law to facts. The propositions should not be too narrow because an impression may be created that the Judge hurried the decision and the dispute will likely continue. Judges must also state workable rules – both theoretically correct and easy to apply.

CONCLUSION

The conclusion flows from the answer to the application of the law to the facts. The application procedure would have decided whether the conduct committed by the defendant was right or wrong. This part contains the enacting terms of the judgment

by which the measures taken by the court are expressed. The enactment terms, which are the essential part of the judgment, must also be as precise as the grounds of the decision. When all is said and done, a well written judgment should reflect an orderly sequence of the treatment of the subject matter, driven by an engine of logic in which a result emerges from an application of law to fact. The goal of jurisprudence, which is to pluck the essential issues, the relevant facts and controlling laws from the maelstrom of arguments, allegations, precedents and principles, would have been achieved.(19) What is decided should be clearly and specifically stated.

If the plaintiff is successful, the decision would be that the defendant acted in violation of the plaintiff's rights, entitling the latter to the relief sought. If the plaintiff has not succeeded, the decision would be that the defendant did not act unlawfully, entitling him or her or it to dismissal of the action or claim. Either way, a decision brings a case to an end. The judgment should be delivered within a reasonable time after the conclusion of the hearing. The court becomes *functus officio* after rendering judgment.

ORDERS

An order must specify in clear and concise language what the party against whom the order is made must do. It must be enforceable. An order must be drafted in

precise terms, naming specifically the parties, their duties, the deadlines, the amounts of money, the interest rates to be paid.

An order must not be ambiguous. It must not leave the party at whom it is directed guessing as to what it requires. It must be clear for the enforcing court or the enforcement agents, without further discussion, what obligations the parties have to fulfill according to the decision of the court. Any vague formulation of an execution order could cause the parties to start a new dispute about the execution, and the contents of the order.

This requires a high degree of care. The Judge has to choose terms that accurately express the substance and intention of the order. A badly drafted order reflects confusion in the Judge's thinking process. It shows that he or she has not fully grasped the nature of the relief sought and its legal basis. It is important for the Judge to ensure that what is demanded in the draft order is not only specifically stated but also that it can properly be granted in the exercise of the court's jurisdiction.

If the proceeding before the court is an appeal, the order must reflect that. It must state whether the appeal succeeds or not with or without costs. The order of the court *a quo* must then be addressed. It must be set aside if the appeal is allowed. Regard must be had to the notice of appeal. If the notice of appeal states that only

part of the judgment is appealed against, the order should not set aside the whole judgment. If a Judge does that he or she is granting an order nobody wants to have.

Once the whole or part of the judgment of the court *a quo* has been set aside it must be substituted with something. There cannot be a vacuum. It must not be substituted with the appellate court's judgment. It must be substituted with the order the lower court ought to have granted had it acted in accordance with the law.

LANGUAGE, STYLE AND SELF-EDITING

Every Judge has a style of writing judgments, whether he or she knows it or not. At the end of the day, it is how a Judge has written a judgment that decides whether there has been good judgment writing. Whilst accommodating the individualistic variations, there are rules of writing which guarantee good judgment writing. The corollary statement is that there are ways of writing that guarantee bad judgment writing. The idea is to do everything possible in improving your judgment writing style so that your writing does not fall into the bad judgment writing category.

CLARITY

The rule is not to start to write a judgment until you are clear in your mind about what you want to write and how you want to write. You must say what you want to say and nothing else. The word is no better than the thought from which it springs.

If you start writing about something about which you have a vague idea, the chances are that the words chosen to express what you want to say will be vague. A judgment should not be ambiguous, resulting in every party thinking that it is in his or her or its favour.

Even complex ideas can be expressed in simple language understandable by the general reader. The Judge should understand the idea expressed fully. That enables him or her to break it into its essential components. It should not be necessary for the reader to have a dictionary at hand while reading the judgment.

The judgment must be free of technical jargon. Judgments are never written exclusively for lawyers who know the jargon so well that they hardly notice it. Non-lawyers are expected to understand and abide by the law. Archaic or opaque English or Latin expressions which have English equivalency should be avoided.(20) Where there is an English equivalent to a Latin phrase the Judge should use it. For example, use "among other things" instead of "*inter alia*". Use "Will" instead of "Testament".

Judges' thoughts should be conveyed to their readers in clear, ordinary language, not the language that lawyers use to dominate the less educated. For example, a lawyer is likely to use the words "prior to" instead of "before" or "earlier". Clear thinking is the key to clear writing. A clearly expressed judgment demonstrates interest in the subject matter and the exposition of legal reasoning. Legal writing has, of course,

a few legitimate terms of art. These are words or phrases that either cannot be easily translated or perhaps should not be translated because the original language triggers a doctrine that lawyers might not recognise by any other name (e.g. *habeas corpus*, *estoppel*).

CONCISENESS

Precision is the main concern of good writing. Some legal writers lack the ability to write simple, straightforward prose. Precision in judicial writing is important not simply as a matter of style but also because judicial officers write for posterity. Once a judgment is distributed or reported, legal practitioners and others will read it with an eye to how they can use it to serve their particular purpose no matter how remote that may be from what the writer had in mind.(21) It is well for judicial officers to think how the words they choose might be used by others and write to forestall their abuse.

You do not have to be as precise as JUDGE MURDOCH sitting in the US Tax Court. It is reputed that a taxpayer testified: "As God is my judge, I do not owe this tax". JUDGE MURDOCH replied: "He is not, I am; you do".(22)

Concision issues often result from lawyerisms. Lawyers love to repeat themselves. Judges should not use words with overlapping meaning in the same sentence. For

example, it is incorrect to write: “Brief summary”, “could possibly”, “rest residue” and “remainder” and “advance planning” and “null and void”.

Judges should avoid sexist language because it degrades and obscures content. They should use “he or she”. They should use gender neutral language like “husband and wife”, not “man and wife”. Gender-neutral language keeps readers focused on the content of the decision rather than on a discriminatory style.

In the book titled “*The Elements of Style 23*” (3 ed) (1979) co-authored with E.B. White, Professor W. Strunk says:

> “Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short or that he avoid all detail and treat his subjects only in outline but that every word tell”.

BREVITY

Good judgment writing is not only concise. It is also succinct. The longer the judgment, the more mistakes, the less read and remembered. A judgment should not necessarily be lengthy, as long as it is intelligible and to the point. To be succinct is, however, not an excuse for leaving out full facts and principles of law. A

judgment is succinct to the extent that it contains all that is necessary to a decision. If because of the complexity of the factual and legal issues a judgment has to cover more pages, it is not a long judgment in the sense of not being short. To be concise is to make every word count. It is, therefore, important to remember that while brevity is desirable, Judges should elaborate their reasoning sufficiently so that the reader can follow.

A judgment that omits steps in the reasoning essential to understanding its content will fail to serve its purposes. The point is that a Judge should avoid writing in such a manner that he or she gets entangled in syntax so knotty that he or she cannot understand it. The judgment should avoid metadiscourse.(23) Metadiscourse consists of announcing what the writer is going to write before he or she writes it. Examples are: "Having heard all the testimony, the court concludes that ...; "It is clear that …"; "After careful consideration this court finds that …". Metadiscourse takes up unnecessary space in the judgment.

Judicial writing should be direct. Short declaration sentences are preferable. Good judgment writing is characterised partly by absence of tangled sentence structure. Every word must count. The sentence length and structure may, however, be varied from time to time for emphasis and reader interest. A more accurate rule would be, "If you don't know how to write a good long sentence, stick to short ones".

Another concision technique is the use of the active voice rather than the passive. The active is usually more direct and forceful that the passive. In the active voice, the subject performs the action. In passive voice, the grammatical subject receives the action. It is incorrect to write "The Judge was contradicted by the lawyer". It should be: "The lawyer contradicted the Judge". "I shall always remember my first day as a Judge", should not be "My first day as a Judge will always be remembered by me".

Avoid overuse of adjectives and adverbs. They are verbose. Avoid "it" and "there" when used as dummy subjects where they stand in for words that might be the real subjects of the sentence. Instead of this: "It was submitted by counsel for the plaintiff that the extension was not qualified by the proviso", say: "Plaintiff's counsel submitted that the extension was not qualified by the proviso". Adverbial excesses like "clearly" and "obviously" exaggerate. They are conclusory and raise the bar by requiring the court to explain why something is obvious rather why it is merely so. (24) They cover for lazy writing.

HUMOUR

The community relies on Judges to settle disputes in a fair manner. Parties take issues between them seriously. They are unlikely to see anything funny in the

litigation. Litigants may interpret a joke in a record of judgment as a sign of judicial arrogance and lack of sensitivity.(25) The reaction of litigants to humour in a judgment is always unpredictable. It is unfair, in any case, for a Judge to take advantage of the exercise of judicial power, which is retaliation proof, to indulge in humour at the expense of parties or their legal representatives or witnesses.

Judges should share the view of W Prossere in the "*Judicial Humorist*" 1952 that:

> "… the bench is not an appropriate placed for unseemly levity. The litigant has vital interests at stake. His entire future, or even his life, may be trembling in the balance, and the robed buffoon who makes merry at his expense should be choked with his own wig".(26)

Considering the permanency of the record of a judgment, the unpredictability of the reaction of litigants to humour in judicial writing, the potential harm to the reputation of the subject of the humour, the difficulty of affording an adequate answer or correction and the attention given to the comment because of its humorous expression, humour is better kept out of judgment writing.

GRAMMAR AND PUNCTUATION

Grammar and punctuation are the invisible elements of style. Using proper grammar and punctuation shows professionalism and make writing easier to understand.(27)

The rules of grammar and punctuation are often invoked in the determination of the meaning of clauses in contracts, provisions in statutes or precedents on the presumption that the Legislature or Judge actually knew of the rules. What is set out here covers those situations that seem to be common problems in judgment writing.

GRAMMAR

Pronouns

Pronouns substitute for nouns. Examples include "he", "she", "it", "me", "our", "their", "us".

Pronouns may be reflective: "I said that to myself". They may also be intensive: "I myself said that". Reflexive and intensive pronouns only refer back to a pronoun.

When a judge is not sure whether to use "I" or "me" in a sentence, he or she should delete the first part and leave the part of the sentence beginning with "me". Example: "The lawyer and me discussed the issue". The Judge should delete: "the lawyer and". The part remaining is "me discussed the issue". This makes no sense. So the correct pronoun to use is "I". "I discussed the issue". The sentence should therefore be: "The lawyer and I discussed the issue".

Pronouns should agree with their antecedents in gender, person and number. Example: "John (singular antecedent) brought a case against his (singular, male

pronoun) landlord." "John and Jane (plural antecedents) brought a case against their (plural pronoun) landlord."

Indefinite pronouns do not refer to a specific person or thing. Examples include "all", "everybody", "each", "someone". These indefinite pronouns are singular. Incorrect: "Someone submitted their brief". Correct: "Someone submitted his brief". To eliminate sexist language write: "Someone submitted the brief". Some indefinite pronouns can be plural. Incorrect: "All Judges hears arguments". Correct: "All Judges hear arguments".

MODIFIERS

A modifier is a word such as an adjective or adverb that qualifies the sense of another word. A modifier is misplaced if it seems to describe the wrong word. When a modifier is misplaced, it can change the meaning of the sentence.

Examples:

"The Constable, based on previous experience with the defendant, felt it best to contain him in the vehicle". (WRONG). "Based on the foregoing testimony the Judge finds that the defendant intentionally concealed the dagga". (WRONG). The words beginning with based qualify "Constable" in the first sentence and "the Judge" in the second. These sentences suggest that the Constable and the Judge were themselves somehow based on what they observed. The phrases are intended to

qualify the feeling the Constable had and the finding the Judge made. They should follow the word felt in the first sentence and find in the second.

"He wrote notes for the Judge on a legal pad". The phrase "on a legal pad" is misplaced to qualify the word "Judge". The writer is not trying to say; "The Judge is on a legal pad". **Correct**: "He wrote notes on a legal pad for the Judge". The phrase "on a legal pad" is meant to qualify the word "notes".

Squinting modifiers cause confusion. They may qualify a preceding or following word. Squinting modifier problems often arise with adverbs, which modify a verb, adjective or another adverb. Examples include "slowly", "badly", "already", "often", "only", "too", "where", "almost". The solution is to place the adverb next to the word it modifies.

Example:

Incorrect: "He almost argued all his points". **Correct:** "He argued almost all his points".

A dangling modifier is one in a sentence from which a noun or pronoun to which the phrase refers is missing or is in the wrong places. This can occur at the beginning or end of a sentence.

Example:

Incorrect: "After editing for two hours, the judgment was finished".

This sentence suggests that the judgment was editing for two hours. The pronoun that is missing is "I". **Correct**: "After I edited the judgment for two hours, the judgment was finished".

AGREEMENT

The Judge should make sure that subjects and verbs agree even if they are separated in a sentence by intervening words.

Example:

Incorrect: "The limits of police powers to stop a vehicle on a road are not entirely clear and has been debated for some time".

The subject is limits and the verb is has been.

Correct: "The limits of police powers to stop a vehicle on a road are not entirely clear and have been debated for some time".

Incorrect: "The length of the papers are important".

The subject is length, not papers.

Correct: "The length of the papers is important.

When a judge is using "neither … nor", "either … or", or "not only … but also", the verb must agree with its nearest subject.

Example:

Incorrect: "Neither the lawyer nor his client was in court".

The nearest subject to the verb is “client” not lawyer.

Correct: “Neither the lawyer nor his client were in court”.

PARALLELISM

For a sentence, especially one with a list, to be parallel, nouns should match nouns, verbs should match verbs, and so on.

Example:

Incorrect: “The Judge called for the lawyer, litigants and for the Registrar of the Court”.

The use of the word “for” breaks the matching of the nouns.

Correct: “The Judge called for the lawyer, litigants and the Registrar of the Court”.

Parallel coordinates should form matching pairs.

Examples are “although/yet”, “both/and”, “neither/nor”, “not only/but also”.

Example:

Incorrect: “The lawyer was neither on time or prepared”.

Correct: “The lawyer was neither on time nor prepared”.

RUN-ON-SENTENCES

Run-on sentences are ungrammatical and hard to read. There are three types of run-on-sentences:

The first forms when a conjuctive adverb separates two clauses and when a semicolon or full stop does not precede the adverb.

Example:

Incorrect: "The Judge liked the style of the brief, on the other hand, he did not like the content".

Correct: "The Judge liked the style of the brief; on the other hand, he did not like the content" or "The judge liked the style of the brief. On the other hand, he did not like the content".

The second type of run-on sentence forms when no punctuation separates two clauses.

Example:

Incorrect: "I read the judgment I should understand the case".

Correct: "I read the judgment. I should understand the case" or "I read the judgment; I should understand the case" or "I read the judgment. Therefore I should understand the case" or "I read the judgment; therefore, I should understand the case".

The third type of run-on sentence forms when a comma splices two independent clauses.

Example:

Incorrect: "I read the opinion, I should understand the case".

Correct: "I read the opinion. I should understand the case".

"THAT" versus "WHICH"

"That" is a demonstrative pronoun. ("That paper"). "That" introduces a restrictive clause. A restrictive clause is necessary to the sentence's meaning.

Example:

"The document "that" proved innocence was missing. Remove "that", the sentence loses its meaning.

"Which" is an interrogative pronoun ("which paper"). "Which" introduces a nonrestrictive clause. A nonrestrictive clause is not necessary to the sentence's meaning. "Which" is used to define, add to, or limit information. "Which" is usually set off with a comma. When a judge cannot put a comma before a "which" he or she probably should have written "that".

Example:

"The agreement satisfied all claims, which either party might have against the other under the Matrimonial Causes Act" (WRONG).

The comma cannot be put before "which" in this sentence. So, "that" should have been written.

"Which" is normally used to insert non-essential information into a sentence. That is why "which" clauses are normally set off by parenthetical commas.

Use "which" if you can drop the clause without losing the meaning of the sentence.

Example:

"The document, which was printed on white paper, was missing". If you delete "which was printed on white paper" the sentence's meaning remains intact.

ELLIPSIS DOTS

A judge should not put ellipsis dots at the beginning of quoted material.

Example:

"According to the police officer's report, the defendant's motor vehicle" … would have been travelling at 80k/hr" (WRONG)

The ellipsis dots are unnecessary because the initial lower case "w" in "would" indicates that words have been omitted at the beginning of the quoted sentence.

POSSESSIVES BEFORE GERUNDS

A gerund is the "… ing" form of a verb used as a noun. It is different from a present participle, which is the "… ing" form of a verb used as an adjective or part of a compound verb.

Example:

Incorrect: "This agreement was conditional upon the plaintiff securing suitable premises in First Street, Harare". (WRONG)

Constable John remained on the property despite the defendant telling him to leave (WRONG).

Correct: This agreement was conditional upon the plaintiff's securing suitable premises in First Street, Harare".

Constable John remained on the property despite the defendant's telling him to leave.

Infinitives

A Judge should not split infinitives. An infinitive is the form of a verb preceded by "to" e.g. "to file", "to argue", "to grant", "to deny" etc.

Example:

Incorrect: "Was there a lawful basis to initially search the defendant's residence?" (WRONG)

Correct: "Was there a lawful basis to search the defendant's residence?"

Infinitives consist of one word. They are impossible to split.

Ending Sentences with Prepositions

Do not end sentences with prepositions. Prepositions are words that show relationships including relationships in time, space or agency: e.g. "by", "before", "on", "upon" etc. Prepositions are a group of words that just do not make any sense unless they have a noun after them. That is why these words are called "pre-positions". They must have another word after them.

PUNCTUATION

Full Stops

Do not use full stops for degrees or metric abbreviations.

Examples:

"cm" for "centimeter" and "c" for "centigrade".

Do not use full stops for acronyms.

Examples:

"NATO" stands for "North Atlantic Treaty Organisation". SADC stands for "Southern African Development Community".

Use full stops for abbreviations, which are different from acronyms. When using abbreviations, you pronounce each individual letter.

Examples:

U.S.A., A.U.

Colons

Colons push readers forward. Use a colon after a formal solution.

Example:

"Dear Mr Smith".

Use a comma for an informal salutation.

Example:

"Dear John,"

Use a colon to tell time.

Example:

12:00 p.m.

Use a colon to separate book titles from subtitles.

Use a colon to introduce a definition.

Example:

"colon: a sign used in a sentence".

Use a colon after an independent clause to introduce a list or quotation or to show that something will follow.

Example:

"The court considered three factors: injury, causation, and redressability".

If there is no independent clause appearing before the list no colon is needed.

Example:

"The factors the court considered were injury, causation, and redressability".

Semicolons

Semicolons have the opposite function to colons. They slow readers down.

Use a semicolon to avoid run-on sentences.

Use a semicolon to separate independent clauses if the second independent clause starts with a conjunctive verb e.g. "accordingly", "also", "furthermore", "however", "on the other hand".

Use a semicolon in a list with internal commas or an "and" or "or".

Example:

"On the first day of trial, please bring the original bills and receipts; copies of time cards and stubs; and pictures of the house and yard".

Use a semicolon to replace commas and conjunctions.

Example:

"The client asked the lawyer to listen, but the lawyer was busy".

Becomes: "The client asked the lawyer to listen; the lawyer was busy".

COMMAS

Do not use commas unless you need them. This rule presumes that the Judge knows where he or she needs commas. Commas are another way to slow down readers. Adding a comma creates a pause.

Use a comma to separate dates and parts of addresses.

Examples:

"The court date is Monday, October 12, 2009". "Send inquiries to Mr James P.O. Box CY 870, Causeway, Harare, Zimbabwe."

Use a comma before a title. Example: "John Doe, Esq.".

Use a comma to separate digits.

Example:

100,000

Use a comma to set off interruptive phrases or transitions. These are phrases tucked within a sentence.

Examples:

"The accused, who had twice escaped from custody, was escorted into the court with chains on his hands and feet".

"The legal practitioner tried, for example, to raise a question".

Use a comma after an introductory word or clause.

Examples:

"Fortunately, it was time to begin".

"Although her argument was strong, she lost the case".

Use a comma to set off a tag question.

Example:

"He understood the question, did he not?"

Use a comma to separate coordinate adjectives.

Example:

"She was a smart, hardworking legal practitioner".

Use a comma to separate independent clauses joined by "and", "or", "but".

Use a comma before the coordinating conjunction.

Example:

"He worked hard and he won the case".

"The accident happened in Bulawayo, but the suit was filed in Harare".

Use a comma to enclose appositives. Appositives are nouns or pronouns that rename or explain the nouns or pronouns that follow.

Example:

"Joe, the plaintiff, argued that Anne, the defendant, caused the accident".

Use a comma to separate a series of three or more words or phrases.

Example:

"The legal practitioner represented John, Joe, and Jane".

Use a comma to set off nonrestrictive clauses, clauses unessential to the sentence's meaning.

Example:

"The photographs, which were black and white, showed evidence at the crime scene".

Use a comma before "because" only when a sentence is long.

Example:

"The legal practitioner wanted to end the case before lunch, because he knew that he needed to be back at the office for a meeting".

Put commas around clauses beginning with "which".

Example:

"The report, which was filed at this hearing, indicated a value of $13 000".

One comma is enough if the "which" clause occurs at the end of a sentence.

Example:

"The wife signed the agreement, which was then signed by the husband".

When you cannot put a comma before a "which", you probably should have written that".

EDITING AND PROOFREADING

Judges should critically edit what they have written. Editing what one has written is not an easy task. Writers reading their own works are prone to read what they meant to write rather than what they actually wrote.(28)

It is important for Judges to strive to be objective about their writing. They should be prepared to read every paragraph carefully instead of sliding over the text because it is familiar. A judge editing his or her work should ask these questions:

Have I said precisely what I intended to say?

Is there a better way to say it?

Does thought flow clearly and logically?

Will the reader understand it?

In revising and editing his or her work the Judge seeks to ensure that the final product meets the requirements of all the rules of good judgment writing.

Editing is the essence of the revision process. It involves striking out needless words and unnecessary facts, rewriting unclear and sloppy sentences, eliminating repetition, reorganising and making the reasoning clearer, sharper and tighter.

Editing addresses large issues like content. It assures readability. It also enables the Judge to identify areas in which he or she can improve coherence to ensure that each part of the judgment fulfills its intended purpose. In that sense the Judge should check for internal consistency. He or she should go back to the introduction to see whether the judgment has addressed all the issues and answered the questions as they were initially formulated.

The Judge should re-read the statement of facts to see whether it covers all the facts found significant to the decision. He or she should review the discussion of legal principles to see whether the judgment has addressed, in logical order, the issues that needed to be addressed. He or she should consider whether the conclusion follows logically from the discussion.

The revision process continues with proofreading. Proofreading involves correcting typographical errors, grammar, and format, whilst double checking citations and quotations. Sometimes it is easier to divide proofreading into stages: first grammar, then spelling, then formatting, then cite-checking.(29)

Revision requires patience. Judges revise their work for the only one who counts: the reader. The revision and editing processes may take a Judge through many drafts before a polished judgment emerges. It may even be necessary to put the draft aside for a few hours or even a few days and return to it with a fresh state of mind. The

Judge should, however, let too much time pass lest he or she become lazy and forgetful.

The pride Judges take in their written work should encourage self-evaluation. Professor Robert Leftar in an article entitled "*Some Observations Concerning Judicial Opinions*" 61 Columbia Law Review 810 (1961 at 813 states:

> "Pride of authorship is by no means an unmitigated evil. … This can drive a man to hard work and with meticulous effort. The poorest opinions are apt to be written by Judges who take no pride in them, who regard the preparation of them as mere chores. Pride in work well done is a proper incident of good craftsmanship in any field of work, including law. An opinion in which the author takes no pride is not likely to be much good".

ANNOTATIONS

1. The Right Hon. Sir Harry Gibbs: "Judgment Writing" (1993) 67 Australian LJ 494 @ 495

2. Mr. Justice Muhammad Bashir Jehangiri: "Judgment Writing" www.fja.gov.pk/judgment.htm

3. Mr. Justice Huhammad Bashir Jehangiri: "Judgment Writing" (Note 2 above)

4. The Hon. Justice Roslyn Atkinson, Supreme Court of Queensland: "Judgment Writing" (Paper delivered at Magistrates Conference, Gold Coast, March 21, 2002)

5. "Judicial Writing Manual": p 6

6. "Judicial Writing Manual": p 6

7. "Judicial Writing Manual" Foreword

8. A. Bierce, "Write it Right" 6 (revised edition, 1986)

9. R.A. Wasserstrom; "The Judicial Decision: Towards a Theory of Legal Justification" (1961) referred to in the "Judicial Writing Manual" p 9

10. James C. Raymond Ph. D. (2002): "The Architecture of Argument: Seven Easy Steps to Effective Organisation". www.fja.gov.pk/judgment.htm

11. James C. Raymond (2002) 33/46

12. James C. Raymond (2002) 33/46

13. The Hon. Justice Roslyn Atkinson: "Judgment Writing" p 3

14. Mr. Justice Shafiur Rahman " JUDGMENT – WHAT AND HOW TO WRITE": 25/46 www.fja.gov.pk/judgment.htm

15. Mr. Justice Huhammad Bashir Jehangiri: "Judgment Writing" 6/46 www.fja.gov.pk/judgment.htm

16. James C. Raymond (2002) 27/46

17. “Judicial Writing Manual”: p 18

18. James C. Raymond (2002) 39/46

19. James C. Raymond (2002) 28/46

20. Chief Justice Beverly McLachlin: “Legal Writing: Some Tools” (2001) 39 Alberta Law Review 695

21. “Judicial Writing Manual” p 21

22. Hon. Justice Roslyn Atkinson: “Judgment Writing”

23. The Hon. Gerald Lebovits: “Judgment Writing in Kenya and the Common-Law World” (2009) www.kenyalaw.org/kl/fileadmin

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25. “Judicial Writing Manual”: p 22

26. The Hon. Justice Michael Kirby: “On The Writing of Judgments” (1990) 64 Australian Law Journal 691

27. The Hon. Gerald Lebovits: “Judgment Writing in Kenya and the Common-Law World” (2009)

28. “Judicial writing Manual” p 24

29. The Hon. Gerald Lebovits: “Judgment Writing in Kenya and the Common-Law World” 2009