

IN DEFENCE OF THE ROBING TRADITION

Commentary on the proposed robing requirement for lower courts

INTRODUCTION

1. The legal profession stands as the vanguard of justice, its traditions serving as a testament to the integrity, decorum, and authority of the courts. Among these traditions, robing remains an essential element.
2. In response to the Chief Justice's invitation for comments and objections on the proposed amendment to the norms and standards, some have called for the abolition of the robing tradition altogether. This submission advocates for retaining the robing tradition and implementation in the lower courts, emphasizing its vital role in upholding the dignity and integrity of the judiciary and legal profession at all levels.
3. This submission examines (i) the necessity of a unified dress code, (ii) the appropriate implementation of a robing requirement, (iii) critiques against the robing tradition, (iv) justifications for retaining the robing tradition, (v) the need for proper robing in lower courts, and (vi) an additional proposed provision."
4. Additionally, this submission offers a countervailing perspective on the cogent objections raised by Adv Vuyani Ngalwana SC.¹

¹ Adv Vuyani Ngalwana SC, "*Formal Objection to the Requirement that Counsel Robe in Lower Courts (And All Other Courts)*", (19 August 2024).

THE NEED FOR A UNIFIED DRESS CODE

5. It is apt to consider the submissions herein in light of the following excerpt:

“The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it.”²

6. The **2021 Afrobarometer Survey** revealed the majority of South Africans (53%) have little or no trust in the judiciary.³

7. In response to the 2021 Afrobarometer Survey, Maya J commented as follows:

“Some of the key issues I’ve identified as requiring attention, some very urgent attention, are the following in no order of importance. Among my top worries is the report of the 2021 Afrobarometer survey that the public’s trust in the judiciary has declined. As we all know, loss of confidence in the judiciary does not augur well for the rule of law and our democracy, and I think that this is something that needs the attention of the judiciary itself to do an introspection and check if we are to blame for this change of attitude towards the institution.”⁴

² *Pheko and Others v Ekurhuleni Metropolitan Municipality* 2015 (5) SA 600 (CC) at par 1.

³ <https://www.afrobarometer.org/feature/public-trust-in-sa-courts-weakening>, visited 20 August 2024.

⁴ Chief Justice Interviews: JSC Interview of Justice Mandisa Maya (February 2022) <https://www.youtube.com/watch?v=medfs6HuxMY>, visited 20 August 2024.

8. It is submitted that one of the factors which contributes significantly to the erosion of public trust in the judiciary is the inappropriate attire of many legal practitioners, particularly in the lower courts. Multiple instances have been observed where informal attire like jeans, sneakers, spaghetti tops, and brightly coloured shirts and puffer jackets compromised the courtroom decorum. In some instances, and to great dismay, the witnesses were better dressed than the legal practitioners. This highlights the need for strict adherence to a uniform dress code to preserve the decorum, respect and dignity of the judiciary and legal profession, and to prevent an erosion of public trust.
9. Likewise, some presiding officers unintentionally perpetuate this issue by overlooking inappropriate attire or failing to adhere to proper dress codes themselves. If both practitioners and judicial officers are struggling to comply with the current dress code, it highlights the need for stronger enforcement mechanisms and clearer guidelines to reinforce the importance of professional attire in maintaining courtroom decorum. Rather than removing the robing requirement, stricter enforcement combined with sanctions for non-compliance would ensure that professional standards are upheld across all levels of the judiciary.
10. Empirical observations in the Western Cape, where superior court robing has been enforced in the lower courts since 30 May 2019, demonstrate a marked improvement in courtroom decorum and professional standards. The contrast between the robed courtroom environment and the setting of, for example, an arbitration hearing, is striking. Likewise, a noticeable difference in the decorum

and dignity of the lower courts can be observed between the Western Cape and other provinces where superior court robing is not a requirement in lower courts.

APPROPRIATE INTRODUCTION OF ROBING REQUIREMENT

11. Adv Ngalwana SC contends that an amendment of the norms and standards to introduce a universal robing requirement would be inappropriate, irrational, unlawful, and unconstitutional. I concur with this contention for the same reasons proffered by him.
12. Section 8(2) read with section 8(3)(a) and section 8(6) of the Superior Courts Act 10 of 2013 (“the Act”) clearly confines the application of norms and standards to judicial officers and their performance of judicial functions. No reference is made to legal practitioners. Therefore, an amendment to the norms and standards cannot rationally expand its scope to encompass legal practitioners and is not the appropriate vehicle for introducing a uniform dress code.
13. It is submitted that the more appropriate vehicle to achieve the objective is a directive issued under the auspices of section 8(3)(b) of the Act, which provides:

*“The Chief Justice may, subject to subsection (5), issue a written protocol or directive to judicial officers **regarding any matter affecting the dignity,** accessibility, effectiveness, efficiency or functioning of the courts” (own emphasis).*

14. Section 8(3)(b) grants the Chief Justice broad discretion to address issues that affect the overall operation and perception of the judiciary, which includes the Magistrates' Judiciary.
15. The attire of legal practitioners directly affects the dignity of the court. The attire of legal practitioners reflects their respect for the court and its proceedings. Informal or inconsistent attire may be perceived as a lack of respect for the institution, the presiding officer, and the legal process itself. Such perceptions diminish the dignity of the court and affect the public's respect and trust for the court and its rulings. Over time, this could adversely impact the effective functioning of the judiciary.
16. Given the rational connection between the dress code of legal practitioners and the dignity and effectiveness of the court, it follows that section 8(3)(b) is the appropriate vehicle to achieve the objective. Directing judicial officers in the lower courts to refuse to hear any legal practitioner who is not robed properly will impose an indirect duty on legal practitioners to adhere to the appropriate dress code at the risk of not being heard.
17. Insofar as the legal practitioners are concerned, it is proposed that the Chief Justice collaborate with the Legal Practice Council to reinstate the previously proposed dress code mandating robing for all legal practitioners in the lower courts in the same manner as in the superior courts.⁵ The Legal Practice Council

⁵ The Code of Conduct for Legal Practitioners, Candidate Legal Practitioners and Juristic Entities, Government Gazette 40610 of 10 February 2017. Paragraph 12.1 read: "*An attorney shall dress appropriately when appearing on behalf of a client in any court or before any tribunal, and will be required to robe in all superior or lower courts in the same manner as he or she would robe in the*

has the statutory authority to issue such a directive which shall be binding on all legal practitioners.

18. In conclusion, an amendment of the norms and standards is inappropriate. It is recommended that the Chief Justice issue a directive under section 8(3)(b) of the Act requiring judicial officers to refuse to hear unrobed practitioners, thus indirectly enforcing the dress code and fostering a more respectful and dignified courtroom environment. Furthermore, collaborating with the Legal Practice Council would ensure that the dress code is implemented among legal practitioners.

THE RETENTION OF ROBES

19. The requirement for legal practitioners to wear robes in South African courts is supported by various arguments. These include establishing a formal courtroom atmosphere, promoting equality among participants, and preserving the dignity of the judiciary and legal profession. These arguments will be further addressed below.

Critique Against the Retention

20. Adv Ngalwana SC contends that all of the above arguments can be dismissed with one overarching argument: they are irrelevant to the attainment of the core values and objectives of a modern justice system, namely, the enhancement of access to quality justice, the affirmation of the dignity of all users of the court

superior court.” Paragraph 34.2 further read: “*Counsel shall robe in all superior and lower courts, and shall robe in the same manner as they robe in superior courts.*”

system, and the effective, efficient and expeditious adjudication and resolution of all disputes through the courts.⁶

21. It is submitted that the contention is a simplification and overlooks several important aspects:

21.1. Adv Ngalwana SC dismisses the symbolic importance of robing without considering how symbols influence perceptions of justice. In the legal setting, robes are not merely decorative or traditional; they carry profound meanings like authority, impartiality, and the seriousness of the legal process, reinforcing the rule of law and ensuring that court proceedings are treated with the gravity they deserve. To claim that these symbols are irrelevant overlooks their psychological impact on legal participants and the public.

21.2. Robes promote equality in the courtroom by masking socio-economic differences. The disregard for the equalizing effect of uniform attire underestimates the importance of neutralizing potential biases based on outward appearance. In a society as diverse as South Africa, where socio-economic disparities are stark, uniforms help ensure that all parties, regardless of their background, are perceived equally before the law.

⁶ Ngalwana SC at par 34.

21.3. Adv Ngalwana SC dismisses robes as irrelevant to the professionalism and dignity of the legal profession. This perspective undervalues how attire influences behaviour and perceptions. Robing reminds legal practitioners of the ethical standards and responsibilities they bear, which reinforces their sense of duty and professionalism. This, in turn, can enhance the public's trust in the legal system, as a dignified appearance contributes to the perception that justice is being served by competent and serious professionals.

Grounds for Retention

22. While Adv Ngalwana SC's arguments may carry some merit, it is essential to present an opposing perspective that underscores the importance of preserving the robing tradition.⁷ Such perspective also forms the basis of the overarching submission that the robing tradition should remain and be enforced in all courts as a measure of maintaining the dignity and integrity of the judiciary and the legal profession.

23. The Distinctive Role of the Court: It is crucial to recognize the distinct nature of the courtroom as the ultimate arbiter of justice. This unique role necessitates specific rituals and symbols, including the wearing of robes, to contribute to this environment and to underscore the gravity of the proceedings.

⁷ Ngalwana SC at par 33 – 45.

24. The Courtroom as a Symbol of Authority: The courtroom is not merely a place for legal proceedings; it's a symbol of the justice system and its authority. Robing, in this context, is a visual manifestation of this authority, differentiating the courtroom from other legal fora. While public perception is shaped by multiple factors, the courtroom's image as a place of dignity, impartiality, and solemnity is crucial. The tradition of robing reinforces these perceptions.
25. Colonial Connotations: Despite its origin, it is essential to recognize that the robe can be interpreted as a neutral symbol embodying professionalism and impartiality, divorced from any specific cultural or colonial connotations. As such, robes serve as a unifying element within a diverse legal community. To argue that the practice of robing is incongruous with South Africa's cultural fabric would necessitate a broader critique of the entire legal system and profession as relics of colonialism. If the symbol of robes were truly a relic of colonialism, one would have expected it to be abolished at the dawn of democracy, alternatively, by the Legislature through the promulgation of the Legal Practice Act 28 of 2014. The survival of the robing tradition suggests it has indeed become a neutral symbol divorced from any specific colonial connotations.
26. Equality and Accessibility: While the financial hardship faced by young lawyers, especially those from a previously disadvantaged background, is a valid concern, it is exaggerated to contend that the robing tradition presents an entry barrier to aspiring legal practitioners. Most, if not all, legal candidate legal practitioners or pupils will only require a robe and related court attire at a late stage during their practical vocational training or pupillage, meaning they have already entered the

profession by the time they are required to robe. If, at that stage, they cannot afford to purchase their own robe, they can always borrow from their principals or pupillage mentors, who would no doubt have the appropriate attire. This is observed as a fairly common practice. Ultimately, the core challenges facing aspiring legal practitioners lie in areas such as access to education and candidacy and pupillage opportunities, rather than the cost of a robe. There is no empirical evidence to suggest otherwise. The robing tradition is thus not a barrier and abandoning the tradition is not the solution.

27. It is moreover contended that the argument for uniformity, which creates equality in the courtroom and levels the playing field, is perverse.⁸ The contention is misguided. In a country with significant economic disparities, a requirement to appear in business attire can exacerbate these inequalities. Wealthier practitioners may easily afford designer attire, while those from less privileged backgrounds may struggle to meet the standard. This disparity could undermine the dignity of less affluent practitioners and create a biased perception in the public's eye. As such, a standardized dress code will create equality in the courtroom and keep the attention on the legal issues at hand. Also, a well-regarded and respected legal profession is essential for public confidence in the justice system, and a consistent dress code contributes to this perception.
28. Practical Considerations: The argument that robes hinder efficiency is unsupported by empirical evidence. On the contrary, the tradition of robing has endured for centuries without compromising the effective administration of

⁸ Ngalwana SC at par 36.

justice. While South Africa's climate presents challenges, modern fabrics and designs can mitigate discomfort and there are already robes on the market specifically tailored for the South African climate.

29. Enforcing a business attire dress code for legal practitioners presents significant challenges, including defining appropriate attire, ensuring consistency across diverse cultural backgrounds, and maintaining objectivity in enforcement without appearing discriminatory. This undermines the enforceable nature of a uniform dress code.
30. Public Perception: While it is true that the legal profession should strive to be accessible and relatable to the public, it is equally important to maintain the dignity and authority of the legal system. The notion that robes perpetuate elitism is unfounded. If the symbol of robes were truly a relic of elitism, it would likely have been discarded at the dawn of democracy, alternatively, by the Legislature through the promulgation of the Legal Practice Act.
31. The **Isidima Magistrates Court User Survey Report 2023**,⁹ which surveyed public perception in the lower courts of the Western Cape and Eastern Cape, did not record any instances where members of the public felt excluded from the court system or found justice inaccessible due to the robing of practitioners. This finding is particularly notable given that robing in the lower courts has been mandatory in the Western Cape since 30 May 2019.

⁹ <https://www.magistratesmatter.co.za/wp-content/uploads/2024/01/DGRU-Court-User-Survey-2023-Research-report.pdf>. Visited 20 August 2024.

32. It is thus submitted that the discontinuation of the robing tradition could further erode public trust in the judiciary. The wearing of only business can blur the lines between the professional and personal roles of presiding officers and legal practitioners alike, potentially undermining the perception of impartiality. Additionally, a less formal courtroom atmosphere may be perceived as a lack of seriousness or respect for the legal process which should be avoided at all cost.
33. In conclusion, while the arguments in favour of discontinuing the robing tradition possess a degree of appeal, a careful consideration of the countervailing factors demonstrates the continued value of this practice. Robing contributes to the creation of a dignified courtroom environment, symbolizes the authority of the judiciary, and fosters public confidence in the justice system, which is much needed at this stage.

ROBING IN THE LOWER COURTS

34. The lower courts are the first and only interaction most South Africans have with the justice system, thus lower courts play a crucial role in shaping public perception. The standards maintained in these courts, including the dress code of legal practitioners, directly impact how the judiciary and legal profession is viewed by the public. To promote a consistent and positive image, it is essential to extend the practice of superior court robing (waistcoat, bib and robe) to lower courts for all legal practitioners. This can foster public confidence in the justice system, which is particularly crucial in a country where trust in the judiciary is fragile and needs constant reinforcement.

PROPOSED PROVISION

35. It is submitted that the following provision, or one with a similar effect, ought to be included in the new directive:

"A legal practitioner whose matter is postponed or struck off the roll due to non-compliance with the prescribed dress code, directive, or protocol shall not be entitled to charge or otherwise tax a fee for such appearance unless the court directs otherwise."

36. The primary objectives of this proposal are to uphold professional standards and accountability within the legal profession and to safeguard clients from incurring unnecessary costs arising from a legal practitioner's failure to comply with prescribed dress codes. By imposing a financial penalty for non-compliance, this measure aims to incentivize adherence to the rules and contribute to the efficient administration of justice.

CONCLUSION

37. While modernization of court procedures is inevitable, abandoning the robing tradition could undermine public trust, erode courtroom decorum, and exacerbate socio-economic disparities among legal practitioners. Robes act as an equalizing force in the courtroom, promoting respect for the judicial process and professionalism among legal practitioners, ensuring that the focus remains on the legal issues at hand rather than personal attire.

38. The argument for discontinuing robing overlooks these crucial aspects and oversimplifies the role of symbolic traditions in the legal system. Retaining the robing tradition is essential to preserving the dignity of the judiciary and legal profession, promoting equality, and ensuring that the judiciary remains a respected and impartial institution. By enforcing a unified dress code, with appropriate sanctions for non-compliance, the judiciary can uphold its standards, maintain dignity, and reinforce public confidence in the justice system.

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