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tion of what was just and equitable in all the circumstances, and the rule was aimed at preventing irreparable damage from being done to the intended appellant. The court, however, had a wide discretion to grant or refuse enforcement and, if necessary, to determine conditions upon which the right to execute could be exercised. This discretion emanated from the inherent jurisdiction of the court to control its own judgments.

The critical component of the approach under Rule 49(11) was judicial discretion, derived from the inherent jurisdiction of the court, to rule in accordance with the equities in a given case. The court would ask which party would be worse off if the order is granted or refused.

In *Incubeta Holdings*, Sutherland J was of the view that the prospects of success in the appeal played no role at all. In *Liviero Wilge Joint Venture*, Satchwell J, Moshidi J concurring, was of the same view. However, in *Justice Alliance*, Binns-Ward J (Fortuin and Boqwana JJ concurring), was of a different view, namely that the prospects of success in the appeal remain a relevant factor and, therefore, 'the less sanguine a court seized of an application in terms of s18(3) is about the prospects of the judgment at first instance being upheld on appeal, the less inclined it will be to grant the exceptional remedy of execution of that judgment pending the appeal. The same, quite obviously, applies in

respect of a court dealing with an appeal against an order granted in terms of s18(3)'.<sup>1</sup>

Authors and writers of the law contend that the court's discretion can be removed if an applicant is unable to prove that they will suffer irreparable harm, and that the respondent will not suffer irreparable harm if the order is granted. There is no deviation in s18(3) of the Superior Courts Act. If the court finds that the respondent will suffer irreparable harm, judicial discretion is removed, and the court's hands are tied. There can be no room for the court to balance the proportional harm that is likely to eventuate from the enforcement or non-enforcement of the order.

### Conclusion

The requirements introduced by ss18(1) and (3) are more onerous than those of the previous law. Apart from the requirement of 'exceptional circumstances' in s18(1), s18(3) requires the applicant, 'in addition', to prove, on a balance of probabilities, that he or she 'will' suffer irreparable harm if the order is not made, and that the other party 'will not' suffer irreparable harm if the order is made. ♦

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## Constitutional Court Art Collection

# 2020 in review: the Constitutional Court Art Collection

FRANCOIS LION-CACHET

**A**midst the challenges faced due to COVID-19, 2020 was a fertile year for the Constitutional Court Art Collection (CCAC). Sustained donor funding made possible the continued efforts towards the conservation of the CCAC, as well as a greater focus on public engagement activities which will continue in the coming years. The public gallery of the Constitutional Court, showcasing a rotating selection of works of the CCAC, is open to the public over the holiday period.

The CCAC is a unique collection of predominantly South African artworks, many of which are internationally acclaimed, that stimulates and

enriches education, critical debate and research on the transformative role of the Constitution and the Constitutional Court of South Africa. The collection provides a visual interface between art and justice for the public entering the highest court in South Africa.

The collection explores and interrogates the themes of transition, human rights, constitutionalism, identity, reparation, reconciliation and social justice in the South African context. Many works in the CCAC portray the political agency



— Lion-Cachet

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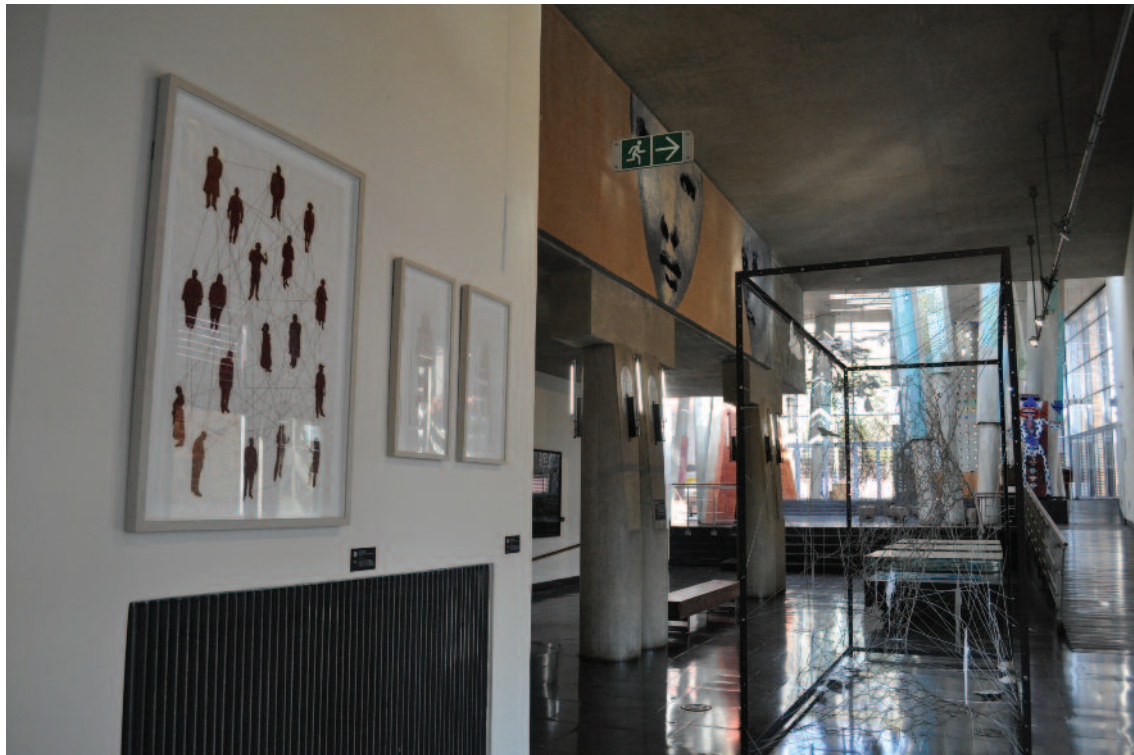
and lived experiences of the artists; others are more abstract and traditional, using form to evoke emotion and understanding – and to celebrate cultural diversity.

A new exhibition from the CCAC's permanent collection was installed in the public gallery at the end of June 2020, as part of the biannual rotation of artworks on public display. Descriptive signage enables self-guided tours. The public gallery is open to the public seven days a week at no cost.

The monthly Art & Justice tours of the CCAC resumed on Heritage Day in September, following the relaxing of COVID-19 protocols. The tours are usually hosted on the last Saturday of every month and bookings can be made by sending an email to [ccac@concourtrust.org.za](mailto:ccac@concourtrust.org.za). Due to the intimate nature of the tour, as well as social distancing protocols, tours are limited to 10 persons and are often fully booked.

Artist Kim Lieberman completed her *Landscape of the Court* (2016/2020) sculpture installation in the Constitutional Court between June and July 2020. This large sculpture, on loan to the CCAC, and on display in the public gallery until February 2021, contains conceptual symbolism of how the Constitutional Court was established. It includes depictions of Justices Pius Langa, Arthur Chaskalson, Kate O'Regan, Albie Sachs, Yvonne Mokgoro, Edwin Cameron and Ismail Mahomed.

This year, the CCAC team prioritised research and conservation, in no small part due to the lockdown, that included work on starting *Art & Justice: A Constitutional Court Art Collection series* of short monographs about CCAC artworks and artists, published by the Constitutional Court Trust. The series also showcases the critical behind-the-scenes conservation work undertaken to document, stabilise, store and preserve artworks



in the CCAC. Other research included signage development and the start of the CCAC artist and affiliate interview project. Multiple in-person and online interviews were conducted with, amongst others, CCAC artists Siphon Ndlovu, Kim Lieberman, Jaco Sieberhagen, Amos Miller, Joanne Patterson, and Eugene Hön.

Conservation of the CCAC continued to be a core activity in 2020. Conservation treatment and framing work was completed on a range of artworks, including Joseph Ndlovu's *Humanity* (the very first work of the CCAC) and *Inspired by L'Ancêtre (Ancestor) 69-71* Oil on canvas by Ernest Ngungunyane Methuen Mancoba, Joanne Patterson's *Pangolin*, Jaco Sieberhagen's *Judge*, Eugene Hön's *Exquisite Slave*, *Popsie*, *Popsy*, Amos Miller's *Nelson Mandela in New York*, Robert Hodgins's *Hotel Room*, and Jan du Toit's *Fruits of Labour*. The team made considerable strides towards the cre-

## Constitutional Court Art Collection



ation of a safe environment for the storage and display of the CCAC, closely monitoring humidity, temperature and light levels in the Constitutional Court, and improving security. An outside storage rack was custom-made for the CCAC, in addition to the CCAC's other artwork storage.

Artwork donations, as a result of the generosity and goodwill of artists, galleries and donors, see to the strategic and sustained development of the CCAC. In 2020, Richard 'Specs' Ndimande, born in 1994, donated three of his drawings to the CCAC, becoming the youngest artist represented in the collection. The works grapple, in part, with the artist's father, a political dissident in the later years of Apartheid, who spent time incarcerated at the notoriously violent Number Four Prison in the Constitution Hill precinct. The inclusion of Specs' works into the CCAC represents the youth of South Africa taking their place in driving South Africa forward.

A series of photographs that resulted from a joint project between the Constitutional Court Trust, custodian of the CCAC, and the Dutch Embassy in South Africa, came into the CCAC in 2020. The photographs depict the Amsterdam Rainbow Dress, made from the flags of all countries in the world where homosexuality is illegal, modelled by transgender activist and model Yaya Mavundla, in front of the Constitutional Court. When the discriminatory legislation is changed, that country's flag is replaced with a rainbow flag. Established artist Usha Seejarim donated her *Affairs of the*



Home to the CCAC this year, speaking to the refugee crisis. The sculpture is to be exhibited next year, along with the other recently donated works. The CCAC artworks committee considers donation proposals of artworks that could form part of the CCAC, in line with its mission, and its acquisition policy.

2020 also saw scholar Eliza

Garnsey's *The Justice of Visual Art* published. Garnsey's study looks at how art can shape ideas and experience of justice as a form of visual jurisprudence and cultural diplomacy; it is a valuable contribution to understanding the role of the CCAC.

Monthly artwork covers for **without prejudice** also appeared between February and November.

The CCAC is managed by the Constitutional Court Trust (CCT) for the benefit of the public, tending to its preservation and presentation through conservation and curatorial programmes. It is dependent on grants and donor funding to carry out this work. The CCT would like to thank the Andrew W. Mellon Foundation, the Bank of America Conservation Program, the Ford Foundation, the Foundation for Society, Law and Art in South Africa, and the Ambassadors' Fund for Cultural Preservation for the financial support aiding its work on the CCAC over the last year.

The CCAC can be followed on social media (@concourt\_art on Instagram and Twitter). For more information visit the CCAC website at [ccac.concourttrust.org.za](http://ccac.concourttrust.org.za). ♦

**Lion-Cachet is an Assistant Curator of the CCAC.**

### PHOTOGRAPHS CAPTION:

Amongst others, works by Dumile Feni, Leonard Matsoso, Kim Berman, Peter Clarke, Amos Miller, Thea Soggot, Velaphi Mzimba, Greg Marinovich, Mikhael Subotzky and Karel Nel are currently on display in the public gallery of the Constitutional Court. Photographs by Francois Lion-Cachet © CCT.

