
B37 Expert Witness Testimony and DNA Evidence in South Africa

Antonel Olckers, PhD, DNAbiotec (Pty) Ltd, 25A De Havilland Crescent, Persequor Park, Pretoria, Gauteng 0020, SOUTH AFRICA*

After attending this presentation, attendees will understand that the diligence and manner in which DNA evidence is processed and interpreted in the South African justice system should indeed serve justice. The contributing factors that prevent this from happening, as well as relevant solutions, will be discussed.

This presentation will impact the forensic science community by explaining how contesting DNA evidence in South African courts is not the norm. In addition, there are few independent DNA experts to assist either the prosecution or the defense and bias is rife. The forensic science profession is not regulated and the national laboratory of the state is not accredited. All of the above factors have contributed to a less-than-ideal situation in terms of the criminal justice system in South Africa and, indeed, justice itself.

Even though the status quo does not always serve justice, it does maintain a high conviction rate — which is sometimes the only metric employed to measure “success” in terms of forensic science in South Africa.

Over the past 16 years, South Africa has observed that bias testimony is prevalent and mostly accepted by the courts. Since the first case where DNA evidence was contested in depth, *State v. Maqhina*, there have been some improvements in how DNA evidence is presented in court. There have also been improvements in the discovery process, albeit that both these improvements came about after judgments that were not in favor of the State in significant/key cases.

The level of science is not high when testimony is delivered in court. Statements of identity are common and the bias is perpetuated throughout the system in case after case. Specific examples will be discussed to illustrate what the level of science is in the current status quo. Is there a solution to this for the South African justice system?

Although the solution seems logical, its implementation will require a totally new frame of mind at various levels, including science, law, and policy, in order to truly serve justice. At a minimum, the following will be required in order to address the above challenges: (1) regulation of the forensic science profession in South Africa; (2) accreditation of forensic science laboratories; (3) correct interpretation of DNA evidence — a major factor; (4) addressing the lack of scientific knowledge by forensic scientists; (5) interaction with other forensic science professionals and peers at the national and international levels; (6) transparency with regard to processes followed in the forensic community; (7) eliminating the emphasis on the prosecuting perspective; and, (8) trained legal professionals that can competently handle DNA evidence in court.

Regulation of the profession is key since it will put measures in place to allow the ethical practice of science. Without this aspect, the bias that currently prevails in the system will not be eradicated and justice cannot be served. It will also serve to lift the level of science in the courts, as testimony should be scientifically correct and not mere assumption.

No perfect system exists in forensic science globally; however, if the above can be addressed in South Africa, regardless of how steep the climb to achieve it is, at least justice will be served — as promised to the people of South Africa in the Constitution.

To achieve this goal, both the scientific and legal professionals in South Africa will have to work together in order to bring about the change, without which justice in the forensic science context will remain elusive in South Africa.

DNA Evidence, Interpretation, Ethics