



THE MERCURY



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RACISM STOPS WITH ME

Court dismisses Zuma and Mbeki's bid to remove Justice Khampepe from TRC Commission

Ruling upholds legal protection for retired judges amid allegations of bias

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JUSTICE Sisi Khampepe cannot be removed from the commission probing political interference in TRC investigations, the Gauteng High Court ruled yesterday.

This comes after the Gauteng High Court, Johannesburg, dismissed the legal bid by former presidents Jacob Zuma and Thabo Mbeki to have her recused from the Truth and Reconciliation Commission (TRC) inquiry. Justice Khampepe was appointed by President Cyril Ramaphosa in May last year to head the commission.

A whistleblower had alleged that Justice Khampepe colluded with the commission's evidence leader, Advocate Ishmael Semanya, and gave him advice during an application last year for his recusal from the commission.

The claims included that she also told him to give certain "tips" to advocate Vas Soni SC, who had represented him in the recusal application, and that she had "coached" him on how to conduct his case.

In a majority judgment consented to by two judges, the court upheld a preliminary argument by the Khampepe Commission that as Justice Khampepe is a judge, although retired, Zuma and Mbeki should have obtained prior permission to haul her before the court.

The court said they should have first asked the permission of Chief Justice Mandisa Maya before they launched the review proceedings. This is per Section 47 of the Superior Courts Act, which states that the head of court must give the go-ahead

before legal proceedings may be instituted against a judge. This is, amongst other things, to safeguard judges from being hauled to court by aggrieved parties who are unhappy about remarks a judge might make about them in judgments.

Advocate Tembeka Ngcukaitobi earlier argued on behalf of the commission that the matter should be struck from the roll as it is not properly before the court.

His argument was that Section 47 of the Superior Courts Act clearly stated that a judge — which includes a retired judge — can never face civil legal proceedings (which includes a review application in this case) prior to the go-ahead of the head of the court. This was not done in this case.

"She is left to dry on her own," he said. Ngcukaitobi pointed out that Section 47 is the only protection she has, which she is being denied.

Zuma and Mbeki sought Justice Khampepe's removal as chair of the commission probing apartheid-era cases to determine whether there was political interference in not prosecuting those cases. They argued that her failure to disclose the full extent of her role as deputy years ago in the National Prosecuting Authority, as well as the role she played earlier during TRC hearings, creates a reasonable apprehension of bias.

President Cyril Ramaphosa, who appointed Khampepe as chair of the commission, did not oppose the application but said he is not empowered to remove her and that this power is only vested in the court.

The former presidents argued that Justice Khampepe's refusal to recuse herself as



RETIRED Constitutional Court Justice Sisi Khampepe should not have been hauled before the court without the prior consent of the Chief Justice, the court ruled. | INDEPENDENT NEWSPAPERS ARCHIVES

chairperson of the TRC inquiry investigating allegations of political interference in the prosecution of TRC cases should be overturned.

While the respondents opposed the application on its merits, they also forwarded several preliminary arguments, including that the court did not have jurisdiction over her due to the lack of prior consent for instituting the proceedings.

The court accepted the arguments by Ngcukaitobi that although Justice Khampepe is a retired judge, Section 47 applies with equal force to retired judges who continue to perform judicial or public service.

It was argued on behalf of Zuma and Mbeki that they did not need to obtain prior consent to haul her before court, as she is retired and heading a commission at this stage and not performing judicial functions.

Acting Deputy Judge President Thifhelimbilu Mudau, who wrote the con-

senting judgment, however, said Justice Khampepe, although a retired judge, continues to perform public service as chairperson of the commission of inquiry. In doing so, she remains bound by her judicial oath and the ethical standards attached to her office.

"She is entitled to the same protections as a judge in active service, precisely because the threats to judicial independence, vexatious litigation and personal attacks are no less real in the commission context," the judge said.

He added that the president's own concerns about potential "public criticism of the commission" underscore the real pressures to which a judicial officer in this position is subject.

"Consent must be obtained before proceedings are instituted. Once proceedings are launched without consent, they are a nullity from the start and cannot be validated," the judge said.

CHALLENGE

Suspended Senzo Mchunu dares Mkhwanazi to provide evidence of wrongdoing

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SUSPENDED Police Minister Senzo Mchunu has again challenged KwaZulu-Natal provincial Police Commissioner Lieutenant-General Nhlanelhla Mkhwanazi to substantiate the allegations linking him to a meeting with former National Director of Public Prosecutions Advocate Shamila Batohi and Vusimuzi 'Cat' Matlala's legal team.

Speaking on the sidelines of a funeral in Richards Bay on Sunday, Mchunu reiterated his calls to Mkhwanazi to provide evidence to back his claim that he and Batohi, together with Matlala's lawyers, went to Kgosi Mampuru prison to meet with Matlala.

Matlala is a South African tender tycoon and criminal suspect known for his involvement in large state contracts and related controversies.

During a recent appearance in the Parliament's Ad Hoc Committee, Mkhwanazi presented a handwritten letter that he claimed he obtained from fraud-accused, awaiting trial prisoner Jermaine Prim.

In the letter, Prim claimed that Mchunu, Batohi and Matlala's lawyer visited Matlala to sign an affidavit stating that Matlala did not know Mchunu.

However, Mchunu dismissed the claim as lies, challenging Mkhwanazi to provide proof.

"I never met Batohi. I never met her with these people, as claimed by Mkhwanazi.

"This is a problem when people would go around making allegations against other people without providing evidence. If you make allegations against other people without evidence, they can also make allegations against you without providing proof," said Mchunu.

He also announced his readiness to return to both the Madlaga Commission and Parliament's Ad Hoc Committee if necessary.

Mkhwanazi's allegations emanate from his media briefing last year, where he claimed that Mchunu disbanded the Political Killings Task Team in order to protect a Gauteng drug cartel.

This led to Mchunu's suspension as police minister and he subsequently stepped aside from his political work as a National Executive Committee member of the ANC.

Last week, he wrote to the ANC asking to resume his duties as an NEC member.

On whether the ANC approved the resumption of his political work, Mchunu said his letter to the party was merely to inform it about his return to active politics.

OUTSOURCING

Excessive use of consultants is depleting municipal skills

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THE excessive use of consultants to perform some of the work of municipalities is depleting the internal capacity of these entities and putting them under financial pressure.

Councillors and local government experts state that while there are some cases where the use of consultants is necessary, it is unacceptable to use them for tasks that should be performed by municipal staff. They have spoken on the issue following a warning by President Cyril Ramaphosa. There are growing calls for councils to rely on internal staff capacity and scale back the use of consultants for tasks that should typically be performed by municipal officials.

The Auditor General of South Africa (AGSA) has previously raised concerns about the amount of money spent by municipalities on consultants, saying for the last financial year alone R1.4 billion was spent on these services.

The AGSA has also highlighted that even when financial statements are prepared by consultants, material misstatements are often found, calling into question the value for money of this service in some cases.

Speaking at the ANC conference in Limpopo on Sunday, President Ramaphosa said that some municipal functions must be insourced. He noted that the excessive use of consultants was having a destructive impact on

the skills and capacity of staff in municipalities.

"The problem is that in the municipalities, we have outsourced everything; some of the things must be insourced. The use of consultants has depleted the skills in some municipalities because all the functions are now being done by consultants," he said.

He warned that functions ranging from preparing financial statements to cutting grass are being outsourced. For instance, he mentioned that in one municipality in the Free State, everything was being done by consultants, from financial reports to other issues.

"Municipal staff come to their offices and do nothing all day because consultants are handling all the work, and they are the ones being paid. The consultants are also paid, some of them as much as R34 million each month; they are paid first, even before the salaries of the municipal workers," said the president, pointing out that such a situation is unacceptable.

Local government expert Mike Sutcliffe said the issue of competency and capacity in municipalities is a serious problem.

"In some cases, it is not only hollowing out of skills; it is that a wrong decision was made in the appointment, as there could be a lot of corruption and nepotism in some municipalities, where they (municipal recruiters) would hire someone who does not have the skills to do the work."

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