

# Hlophe faces boot for alleged misconduct

Constitutional Court judges lodge formal complaint against controversial colleague

KIM HAWKEY

CAPE Judge President John Hlophe could face impeachment after colleagues in the country's highest court made a damning complaint against him this week.

On Friday the Constitutional Court confirmed its judges had lodged a complaint of improper conduct against Judge Hlophe to the Judicial Service Commission (JSC), the body responsible for keeping the judiciary in check.

The crux of the complaint is that Judge Hlophe "approached some of the judges of the Constitutional Court in an improper attempt to influence this Court's pending judgment in one or more cases".

Their complaint centres around four cases — all related to applications by ANC president Jacob Zuma, his attorney Michael Hulley, and French arms companies Thint and Thint Holdings Southern Africa — for leave to appeal three 2007 Supreme Court of Appeal judgments. The matters were heard by the court in March, but judgment has been reserved.

The 11 Constitutional Court judges were scathing of Judge Hlophe's alleged conduct and made it clear their judgment wouldn't be influenced by such conduct.

However, the Constitution makes it difficult to remove a judge from office and none has ever been impeached.

JSC spokesperson advocate Marumo Moerane said the commission would investigate the complaint after Judge Hlophe had formally responded.

"If the JSC arrives at a finding that gross misconduct, incapacity or gross incompetence has taken place, it then refers that decision to Parliament, which will debate it, and if it agrees with the finding by a two-thirds majority, it refers the finding to the President."

Moerane said President Thabo Mbeki would have no discretion in the matter and would have to enforce Parliament's finding.

Mbeki, who appointed Judge Hlophe judge president in 2000, could also suspend him on the JSC's recommendation. The complaint is the latest in a number of attacks on Judge Hlophe, who has survived intact so far.

In October last year the JSC dismissed a series of complaints against him. They included that he improperly received payments from Oasis Group, which he later granted permission to sue one of the judges on his Bench, Judge Siraj Desai.

He was also accused of making "disparaging remarks" to legal counsel about a fellow judge to whom he had allocated contentious case, and racially insulting a legal practitioner.

The JSC found there wasn't enough evidence for gross misconduct. Judge Hlophe could not be reached for comment yesterday.

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ROAD TO NOWHERE: Potholes and open drains in Mthatha have made travelling in the Eastern Cape town intolerable and, when it rains, impossible. Picture: GARY HORLOR

# ANC brass visit Eastern Cape to assess 'collapse'

ZINE GEORGE

TOP officials from the ANC's National Executive Committee visited a neglected part of the Eastern Cape this week to see for themselves how service delivery and infrastructure are literally falling apart.

The visit by party president Jacob Zuma, general secretary Gwede Mantashe, NEC official Bathabile Dlamini and party Treasurer Mathews Phosa comes barely three months after regional ANC leaders investigated the poor state of infrastructure in the OR Tambo Region of the province.

Their findings included that: ● The state-of-the-art Siptho Hospital in Mt Frere has become a white elephant because a 50km stretch of road leading to it is in such a poor condition that it is virtually impossible to drive on when it rains;

● The water supply and sanitation in Mbitzani is in a terrible state. Residents are sometimes forced to survive without piped water for up to a week at a time while the municipality struggles to fix blocked pipes;

● There are regular sewage spills in the heart of Mthatha;

● The Nelson Mandela Academic Hospital in Mthatha, where critical operations are done, has to backup generators and surgery must be rescheduled during power outages; and

● There are more than 300 mud-structure schools in the region.

Eastern Cape Premier Nosimo Balindlela has refused to release the report since it was completed in 2006, on the grounds that it was an "internal planning document".

Regional ANC leaders are demanding Finance MEC Bility Ndlovu, Education MEC Johnny Makgato, Health MEC Nomsa Jajula and Transport MEC Thobile Mhlaho be sacked over the crisis of non-delivery and infrastructure.

"What is clear is that the provincial government is failing us. And when we looked into specifics, we realised that some departments were not (up to scratch) and their political heads are to blame," said OR Tambo Region secretary Sityakholwa Mlamli.

A summary of the fact-finding report was handed over to Mantashe in March, and the party's national working committee is expected to visit the area once more on June 23, to "suggest ways of turning the situation around before the 2009 general elections".

At local level, all municipalities in the area had disclaimers against them, and were described by Auditor-General Terence Nombembe as being in the "danger zone".

"The visit was to see how things could be turned around at local government level.

"A second visit on June 23 will deal with the challenges, which would need urgent intervention at provincial and national government level," said a source who attended the meetings with the NEC members.

The Public Service and Accountability Monitor — a public service watchdog based in Grahamstown — said there were valid reasons why people from the Transkei were angry about the situation.

The province has invested millions in the massive Coega Development Zone near Port Elizabeth.

Monitor spokesperson Derrick Luyt said, "Money has been sliced from, for example, the education department budget to feed the Coega beast."

"The fact is, billions have been put into Coega which could have been used elsewhere and for different purposes."

Luyt said what was of major concern was the state of roads in the region.

"It is undeniably true that the terrible state of roads in the Transkei has an enormous impact on the ability to implement other infrastructure projects."

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OUT OF POCKET: Fraudster Schabir Shaik

MPUMELELO MKHABELA

CONSTITUTIONAL Court judge Kate O'Regan used the analogy of a bank robber's ill-gotten loot to explain why fraudster Schabir Shaik had to forfeit more than R30-million he acquired after he bribed Jacob Zuma.

"In most circumstances, it will be entirely appropriate that all direct profits of crime of which the defendant has been convicted be confiscated," Judge O'Regan said.

"So a bank robber caught red-handed in possession of R50-

# Gloomy outlook for Zuma as Shaik loses his millions

million which he or she has just stolen... may quite appropriately be required to pay (it) back."

In a judgment rejecting Shaik's application to block a High Court order to confiscate his assets, Judge O'Regan said criminals should not be allowed to enjoy the proceeds of crime — even if they were acquired indirectly through criminal means.

Judge O'Regan said Shaik's assets accrued to him — in the form of shares in the company African Defence Systems — due to bribes he paid to Zuma.

In what could be a legal blow to Zuma's forthcoming corruption trial, which is closely related to Shaik's conviction, the Constitutional Court rejected Shaik's argument that Zuma's assistance to him could have been motivated by reasons other than corruption.

During Shaik's applications to block the confiscation, his counsel, Martin Brassey SC, had argued that the state needed to show not only that Shaik paid bribes to Zuma, but also that Zuma intervened on behalf of Shaik in consequence of this — and not because of friendship or some other reason.

But Judge O'Regan said the court had to rule on whether the benefit the state sought to confiscate flowed from bribery.

As for the bribery itself, "counsel for the appellants very properly conceded in argument that, given the criminal conviction of Shaik, it must be accepted for the purposes of these proceedings that Mr Shaik did pay bribes to Zuma", said Judge O'Regan.

The judgment has effectively criminalised the meeting of July 2 1998 between Zuma, Shaik and representatives of arms dealer Thompson-CSF.

Due to Zuma's intervention, Thompson — now known as Thint — agreed to transfer its shareholding in ADS to a South African subsidiary and give shares in the subsidiary to Shaik's Nkobi group. ADS is part of a consortium that received government contracts to provide the combat suites for the SA Navy's new corvettes.

Judge O'Regan observed that Thompson had earlier withdrawn from a proposed joint venture with Shaik's company

because it wanted to go into partnership with a company that would have as a backer a "person of significant influence in government".

At the 1998 meeting, according to Judge O'Regan, "Mr Zuma put that doubt to rest".

On the matter of whether or not Shaik received a return on his investment in Zuma, Judge O'Regan concluded that, in attending the July 1998 meeting, "Mr Zuma did as a matter of fact promote Shaik's interests".

At the time, Zuma was MEC for Finance and Economic Affairs in KwaZulu-Natal.

# JZ camp leads eThekweni purge

PADDY HARPER

THE Zuma camp is set to consolidate its control of KwaZulu-Natal's largest and most powerful region, eThekweni, this weekend, with a purge of leaders perceived to be opposed to his presidency.

At the same time, outgoing ANC regional chairman Bheki Cele announced that he would stand down, following his election to the party's National Executive Committee at Polokwane in December — which paved the way for another ardent Zuma backer, regional secretary John Mchunu, to take the chairmanship unopposed.

Furthermore, members of the provincial legislature Cyril Xaba and Mbuso Khubeka, are also not standing. Both were associated with the campaign for a third candidate for the ANC presidency.

Although Cele said he was standing down voluntarily, the move was initiated by the regional leadership. Cele, who was earlier understood to have aspirations to stand as provincial chairman, has also made it clear he will not contest that position.

With provincial ANC chairman Premier S'bu Ndebele having also recently announced that he would not seek a third term, another key Zuma man, Finance and Economic Development MEC Dr Zweli Mkhize, will stand unopposed.

At eThekweni level, there has been furious behind-the-scenes lobbying to ensure a 20-member regional executive of pro-Zuma leaders is elected, which also accommodates his diverse backers.

Of the top-five positions, only that of deputy secretary will be contested, with a two-way battle between former ambassador to the Czech Republic, Nomusa Dube, and Bheki Ntshangase. The deputy chairman's position went to Stanley Xulu, the secretary's position to Sibusiso Sibiya and Zandile Gumede clinched the post of treasurer — all unopposed.

eThekweni has been at the heart of the campaign to defend Zuma since his arrest in 2005.

eThekweni Metropolitan Council Speaker James Nxumalo is likely to emerge as the region's choice for mayor-elect to replace incumbent Obed Mlaba next year.

Further election results will be announced today.

# Motlanthe marks time in committee

MPUMELELO MKHABELA

ANC deputy president Kgalema Motlanthe is to serve on Parliament's portfolio committee on Home Affairs while waiting for President Thabo Mbeki to appoint him to his Cabinet.

The chairman of the committee, Patrick Chauke, welcomed Motlanthe's posting, announced to the committee this week.

"We appreciate the deployment. It's the biggest deployment in the committee. He will definitely add value," Chauke said.

Motlanthe is expected to serve on the committee while awaiting a call from Mbeki to serve in the Cabinet, as directed by the ANC's National Executive Committee.

Motlanthe's deployment could improve the sour relations between the Home Affairs portfolio

committee and the Department of Home Affairs, which led to Chauke declaring a breakdown of the relationship between the two.

The department's director-general, Mavuso Msimang, has accused committee members of colluding with suspended department officials, while Chauke accused him and his boss, Nosivwe Mapisa-Nqakula, of stifling Parliament's oversight role.

**ENVIRONMENTAL IMPACT ASSESSMENT**

**Ref No. 12/12/20/1204**

**Proposed deviation of the existing 400kV Duvha- Minerva transmission line within the Bravo Integration project, Mpumalanga**

Notice is hereby given in terms of the Environmental Impact Assessment Regulations under Section 24 (5) of the National Environmental Management Act (NEMA) (Act No. 107 of 1998) as amended in GN R385, 386, 387 - Government Gazette No. 28753 of 21 April 2006, of intent to carry out environmental impact assessment for the following activity:

**The proposed deviation of the existing Duvha-Minerva 400kV power line in the vicinity of the new Bravo power station in Emalahleni municipal area, Mpumalanga**

Due to construction of Bravo power station, the existing 400kV Duvha-Minerva transmission line, which cuts through the area identified for the Bravo power station, has to be re-routed inside the eastern and north western borders of the site. This deviation will be approximately 15 km in length. The proposed deviation will take place within existing Eskom property, Farms, Hartebeesfontein 537 JR and Klipfontein 556 JR, Witbank. An EIA has already been conducted on these farms for the construction of the power station (DEAT Ref No. 12/12/20/807).

**PUBLIC COMMENT ENCOURAGED**

The draft Environmental Impact Assessment Report (DEIR) is available for public review from 9 June to 9 July 2008.

**For more information and a copy of the DEIR, please contact the public participation office:**

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Email: aodendaal@zitholele.co.za/ wmosupye@zitholele.co.za  
**This assessment is being conducted on behalf of Eskom**

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**ARC CONDEMNS XENOPHOBIC ATTACKS**

South Africa has in the past two weeks been plagued by xenophobic attacks on people from other African countries and other foreign residents, which have spread all over the country. Not only is this embarrassing and shameful for South Africa but it is totally against what South Africans stand for.

The Agricultural Research Council (ARC), being an institute of "Excellence in Research and Development" and also being an institution that works closely with our African neighbours, strongly condemns these acts of violence. The ARC boasts of their qualified and expert staff employed by the council, many of whom are from other African countries. The ARC recruits personnel based on their academic qualifications, experience and skills; particularly scientific and research expertise. To be a premier research institution, the ARC recruits the best skilled staff to ensure that it excels in the research and development of the agricultural sector. Essentially the ARC does not discriminate against people based on their colour, age, ethnicity or even their country of origin.

These xenophobic attacks pose a threat to the relationship South Africa has with other African countries and is a threat to the prosperity of South Africa. As President Thabo Mbeki said in his nation's address on 25 May, "South Africa's progress and prosperity is dependent on the progress and prosperity of our African neighbours".

The knowledge that South Africa has in agricultural research, is knowledge gained from, and shared with, other African countries. The ARC will continue to harness and foster good relations with other African neighbours; not only for the benefit of the South African economy but for what the true spirit of humanity means and this is what we stand for.

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