

Judges dodge heat

Controversial drunk-driving Judge Nkola Motata has handed South Africa's dodgy judges a disciplinary hall pass.



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Thanks to his latest challenge - this time at the Constitutional Court - to a Judicial Service Commission conduct tribunal, action against other judges accused of misconduct is stymied.

Motata has asked the Constitutional Court to declare unconstitutional the convening by the JSC of a tribunal to examine his conduct.

The JSC has confirmed that no conduct tribunals will sit pending the outcome of Motata's Constitutional Court challenge.

"Judge Motata has challenged the constitutionality of the JSC Act, which includes the provisions establishing the tribunals. He has now challenged the decision of the Gauteng division of the High Court, [which dismissed] his application to have the JSC Act declared unconstitutional," said JSC spokesman CP Fourie.

This is Motata's final bid to have the tribunal created in 2013 to consider disciplining him disbanded.

He has been on special leave since he ran his Jaguar into the wall of a Johannesburg home in 2007 while drunk. He made racist comments at the scene.

Motata has asked the Constitutional Court to finalise his application urgently.

"The resolution thereof will open a gate to a number of cases currently pending against other judges as well," he said.

Constitutional law expert Pierre de Vos said Motata's chances of success were slim.

"He's trying to drag out the process."

Motata is expected to retire this year.

Because of Motata's challenge disciplinary proceedings against Judge Mabel Jansen, accused of racism last year, and Western Cape Judge President John Hlophe, accused of trying to improperly influence two Constitutional Court judges in 2008, are also on ice.

JSC secretary Sello Chiloane said it "goes without saying" that conduct tribunals for all judges are now held up.

Warren Freedman, a law professor at the University of KwaZulu Natal, said the delay in disciplining judges reflected poorly on the judiciary.

"If the judge is innocent, his name must be cleared and if there is a problem we must deal with it. We need an efficient and fast-working judicial system."

Geo Quinot, a law professor at the University of Stellenbosch, said it was important that the rules for disciplining judges be tested.

"The matter is deeply intertwined with the independence of judges. 'Who will judge the judges?' is a difficult constitutional question in all legal systems, not just ours. Rather than pushing ahead with conduct tribunals, it is a good idea [for the JSC] to wait, since a challenge has been raised."

De Vos agreed: "If [the JSC] goes ahead and Motata is successful, the other disciplinary processes would have been a waste of time. It's a cautious approach but not entirely absurd."

Jansen appeared before a judicial conduct committee last week, beginning the formal process of deciding whether a disciplinary tribunal should be appointed by Chief Justice Mogoeng Mogoeng to examine her case.

She came under fire last year for a string of Facebook comments made public by the recipient, filmmaker Gillian Schutte.

The comments included that 99% of the criminal cases she heard were "of black fathers/uncles/brothers raping children as young as five years old".

An advocate, Vuyani Ngalwana, and the Johannesburg branch of Advocates for Transformation are calling for Jansen to be found unfit to hold office.

She apologised for her remarks and said they were taken out of context.

But Ngalwana told the Judicial Conduct Committee last week that her comments were "so racially prejudicial, and promote racial hatred and fear of black men, that I cannot imagine any context justifying [them] being made by a judge of the High Court".

Jansen has been on special leave since May.

Disciplinary proceedings against Hlophe, accused of trying to influence Constitutional Court justices, have been delayed for years.

A judicial conduct tribunal was ready to deal with the Hlophe complaint in 2013 but the two judges Hlophe allegedly approached, Bess Nkabinde and Chris Jafta, raised preliminary challenges against its constitutionality.

Their appeals failed before a full bench of the Johannesburg High Court, in the Supreme Court of Appeal and in the Constitutional Court.

Source: The Times

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