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ISSUES

Judiciary:Mlambo lashes 'rogue' lawyers, politicians

Unsurprisngly, Gauteng Judge President Dunstan Mlambo is the JSC's choice to become Deputy Chief Justice, notes **Legalbrief**. The commission's recommendation follows this week's interviews for the posts. There were three contenders – Mlambo, Free State Judge President Cagney Musi and Northern Cape Judge President Pule Tlaletsi. **News24** points out Mlambo's potential ascension to the position of SA's second most powerful judge comes three years after he endured what was widely regarded as one of the JSC's most disgraceful and chaotic Chief Justice interviews when he was confronted with

unsubstantiated sexual harassment rumours that were later expunged. At the time, the Judge President told the JSC he felt 'pained' that a baseless rumour that painted him as an abuser had found its way into his Chief Justice interview. 'I feel it gives credence to the poisoning of the candidature that I have in this position, and it started and gained steam in this process (and) clearly its purpose is to poison my candidature,' he said. Yesterday (Thursday), a JSC member who spoke on condition of anonymity added that **the commission's unambiguous endorsement of Mlambo was necessary redress for the unjustified attacks on his character and integrity** that he endured in 2022. The commissioner said: 'We've corrected a major injustice done over three years ago. That's what matters about this appointment.' Another JSC source agreed but stressed that Mlambo was 'very evidently the best DCJ candidate' who had shown not only a clear vision for the judiciary but profound 'moral courage' in his years on the Bench.

During his JSC interview this week, Mlambo held nothing back – except the names of the rogue politicians and lawyers in his sights – as he took on what he termed 'powerful people' who baselessly accuse judges who rule against them of corruption, notes **Legalbrief**. Addressing Chief Justice Mandisa Maya on Wednesday, Mlambo stated: 'Powerful people who criticise the courts, who impute corruption and other negative imputations to the judiciary, are a threat to our rule of law. South African society is a gullible society. I'm not on social media, but I'm told about what gets said there about the judiciary.' According to a **News24** report, he said he believed that the Deputy Chief Justice should support the Chief Justice 'in **engaging the legal professions as well as civil society organisations in discussing and making them aware that this type of wanton, unfounded criticism of the judiciary is a problem'.** After Justice Minister Mmamoloko Kubayi asked him about these comments and said he appeared to have shied away from referencing the fact that many of the attacks levelled against the courts came from politicians, Mlambo said he believed it was necessary for these issues to be addressed in inter-governmental engagements. He referred to how then-Chief Justice Mogoeng Mogoeng met with then-President Jacob Zuma after ANC politicians attacked the judiciary over its ruling about the arrest of Sudanese leader Omar al-Bashir. It was made clear there that the courts had to uphold international law, and 'you can't have political heavyweights calling judges counter-revolutionary', he said.

The Judge President also did not hold back on his criticism of legal professionals who 'come to court wanting to pick fights with judges', notes the **News24** report. He said: 'You've got a trend now of legal professionals encouraging their clients to lay judicial misconduct complaints against judges who rule against them... This amounts to intimidation of judges; it can't be allowed.' Mlambo further stressed that judges facing unjustified and 'weaponised' misconduct complaints from aggrieved litigants was a threat to the rule of law. **'It can't be that if I sit that I've got to check if I rule this way, is there going to be a complaint?** If I rule this way, there's going to be a complaint. It's an important issue that needs to be confronted,' he said. Mlambo did not name any of the legal professionals he was referring to, but, observes **News24**, removed Public Protector Busisiwe Mkhwebane has laid multiple JSC complaints against judges who have ruled against her. It points out Mkhwebane is represented by former JSC commissioner, Advocate Dali Mpofu SC, who is under investigation by the Legal Practice Council for, among other things, raising baseless sexual harassment rumours about Mlambo in his 2022 interview for the position of Chief Justice.

Mlambo was asked to address a complaint levelled against him by lawyers whom he and his fellow judges, Leonard Twala and Colleen Collis, had ordered to personally pay the costs of six 'cut-and-paste' applications on behalf of refugees seeking asylum. According to *GroundUp*, the judges said it was 'clear from the six applications, and other similar applications which had previously come before the court, that Manamela MA Attorneys was running a 'cottage industry', preying on vulnerable refugees, many of whom could not speak English and were in custody, awaiting deportation'. The judges also ordered that their ruling be sent to the LPC, the Minister of Justice and the NDPP for possible action. **The lawyers against whom these orders were made, who have lodged a misconduct complaint against Mlambo with the JSC, claimed they were not given the opportunity to make submissions** on why they should not be punished with a costs order or referred to the LPC. Mlambo said this was not true, notes **News24**. He explained that the affected lawyers had been asked to address his court's concerns about their conduct but had failed to do so.

Asked about Mlambo's interview, Judges Matter's Mbekezeli Benjamin said the JP had 'received a fair but rigorous shake with the JSC', reports **News24**. 'The questions spanned the breadth of his experience as a leader both on and off the Bench, including his chairing of Legal Aid SA and the Community Advice Offices of SA. He made a fairly compelling case for his appointment, based on numerous initiatives he has led to advance the judiciary, most prominently rolling out the court online system. **However, he stumbled a bit on broader theoretical questions of his judicial philosophy,'** he said. 'It was a robust interview, focused on the content of his knowledge and experience. It was a significant improvement from his 2022 interview for Chief Justice, which descended into chaos.'

In contrast to Mlambo's relatively calm handling of his interwiew, Tlaletsi appeared to struggle. He came under fire from JSC commissioner Tembeka Ngcukaitobi for suggesting that attacks on the judiciary could be largely dealt with if all rulings were translated into all 11 official languages. Pressed on the cost implications of this, and his suggestion that all judges go on 'road shows' to courts around the country, Tlaletsi suggested AI could be used to quickly and inexpensively do these translations at some point in the future. But it

was his insistence that he had never personally dealt with or encountered sexual harassment in the judiciary that saw him come under the most fire, reports **News24**. After Advocate Kameshni Pillay asked him whether he believed sexual harassment in the judiciary was an issue, Tlaletsi responded: 'I wouldn't say it's an issue that I have identified as a problem.' He added that he was not aware of any incidents of sexual harassment but fully supported the anti-sexual harassment policy that the judiciary was developing under Maya's leadership. After Ngcukaitobi pointed out everyone in the JSC recognised that sexual harassment was an issue in the judiciary and asked Tlaletsi to clarify his response, **Maya jumped in and pointed out that the Judge President's Northern Cape division had been the only one to say that there was 'no need' for a judicial sexual harassment policy.** She asked him 'to assure me, to assure us and everybody else concerned that you really support this document and believe that there is need for it'. After confirming that he 'definitely' supported the sexual harassment policy, Tlaletsi added that his response on whether sexual harassment was an issue 'is based on the fact that I cannot say it's not there, it could be there, but it's not in the open'. That response resulted in a flurry of questions from JSC commissioners – including EFF leader Julius Malema – who expressed concern that Tlaletsi appeared not to recognise how pervasive sexual harassment in the judiciary was.
First News24 report
Second News24 report

Mlambo also told the hearing he will propose a national implementation of mandatory mediation for civil cases before trial that he introduced in his division this year. A **Business Day** report notes Maya asked Mlambo whether he would push for the national implementation of his directive in Gauteng that makes it mandatory for civil cases to go through mediation process first before trial. **Mlambo said he would take the measure for a national rollout in the short term to tackle backlogs in affected divisions.** 'I would request the CJ to get the heads of courts to wrap their heads around and see how we can extend the ambit of a directive of this nature or even improve it to apply it to other divisions,' he said. Mlambo said the issue of national rollout of mediation would be clarified by a Bill drafted by the SA Law Reform Commission chaired by retired Justice Chris Jafta. While Mlambo's decision was applauded, some in the legal fraternity pointed out the real problem was a shortage of judges. Mlambo – who leads 46 judges – conceded the High Courts needed to be better resourced to deal with mounting cases.
Full Business Day report