

PO Box 27021

Monument Park

0105

03 March 2009

Judicial Service Commission (JSC)

The Constitutional Court

Constitution Hill

Braamfontein

Johannesburg

**Re: Complaint against Judges Seriti and Ebersohn**

Dear Sir/Madam:

I hereby tender my response to the answers furnished by Judges WL Seriti and PZ Ebersohn as contained in the letters to the JSC dated 21 January 2009 and 3 February 2009 with regards to the above mentioned complaint.

I am of the opinion that the above mentioned letters are a very poor and outright shocking response to the serious issues that I have raised in my complaint. The response is unprofessional and completely devoid of substance. It does not address any of the issues raised in my complaint. It creates the impression that the gross miscarriage of justice is a laughing matter in the Judiciary and it further serves to enforce my point that the mentioned Judges are not fit to hold the office that they do. If this is the best answer that they can deliver then I have serious concerns about their ability to understand

the complaint that I have lodged let alone respond to it in an appropriate manner.

The way this case has been bungled from one court to another combined with the woeful response to this complaint and with consideration of all the embarrassing revelations floating around in the press, most notably the suspicious handling of the Judge Hlophe saga, I have come to the conclusion that honour is a word that has no place in the South African Judiciary. With this in mind I can honestly only expect my complaint to be treated with the same disdain that the rule of law receives. I must muster all my strength to refrain from drawing parallels with our very controversial neighbour - a country that should be a dire warning to us all, not an inspiration. It is in light of this that I choose to persist with this complaint - for the benefit of all South Africans.

The above mentioned Judges chose to align themselves with the utterly meaningless letter submitted by Judge President BM Ngoepe thus foregoing their privilege, right and duty to think for themselves. Their first claim is that my complaint is about the merits of this case and therefore does not constitute a valid complaint. This sentence is preposterous. The misguided belief that there was merit is probably what brought this case to court in the first place. As my analysis has shown, a competent Judge would most likely have dismissed this case after the State witnesses' testimony. That being said, my complaint is about the handling of this case. It is about preferring accomplice testimony above physical evidence. It is about denying the accused the benefit of doubt where doubt is bountiful. It is about Judges blatantly ignoring the rules of good logic. It is about Judges "massaging" the evidence and sometimes bluntly forcing it to fit a preconceived verdict instead of weighing it

fairly. It is about Judges stubbornly dismissing important physical evidence to secure a popular verdict. It is about Judges failing to thoroughly understand a case before venturing an opinion about it. It is about denying the accused almost every right that they are entitled to under South African law. The bottom line is that it is about gross incompetence and gross negligence and the dreadful consequences that ensued.

The second claim, that the specific case was dismissed by both the Supreme Court of Appeal and the Constitutional Court is disgraceful. If South Africa was not crippled by our inability to take responsibility for our actions, this comment would be laughable. I am of the opinion that hiding behind the findings of other courts, especially after the numerous and clear concerns raised, is nothing other than an act of cowardice. It serves as further proof that the mentioned Judges are unfit to hold the offices that they do. I lodged a complaint against them, with very specific examples of incompetence and negligence and they were unable to address these accusations. Every professional person, regardless of their chosen profession, knows and accepts that they are fully accountable for every document that they sign their name to. This is even more critical where your decisions can ultimately ruin people's lives. The Judges should have considered that the higher courts could also have made rookie mistakes, especially given that they did not actually hear arguments in this case but rather dismissed the petitions out of hand. Given the clear examples that I highlight in my analysis it shows that the higher courts probably never even read the petitions. That being said, my complaint was lodged against specific people with specific details about negligence and incompetence and therefore it would be their professional duty to disprove every single one of these allegations. They failed to do this. They blatantly

chose to dismiss this complaint regardless of the serious nature of the allegations.

At this stage I would like to refer to a paper written by Judge President BM Ngoepe himself, entitled: "*The Relationship Between Judicial Independence And Judicial Accountability: The Package Of Draft Laws On The Judiciary*". Judge President Ngoepe quotes the Constitution as the source of judicial independence through section 165(2) as it reads: "*The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.*" [highlights are my own]. Judge Ngoepe does explain that maintaining judicial independence is very challenging and an ongoing battle, but that the final responsibility for protecting the independence of the judiciary lies with the Judges themselves: "*While it is the duty of other arms of state authority to protect the independence of the Judiciary, judges need to understand that the final responsibility lies with them.*".

He then continues as follows: "*But Judicial independence should never be used as shelter against incompetence and under-performance, nor should it be used as a shield against legitimate criticism. This brings me to the next aspect of my presentation, namely, accountability.*" [highlights are my own]. Judge Ngoepe goes on to give a very impressive explanation of accountability that is as follows: "*For every decision a judge takes or the order made, a judge is under a legal duty to explain themselves not only to the parties in the matter, but to the world at large. Full and clear reasons must be given. If none are given, any party would be entitled to ask for, and be given, same. In doing so, a judge must express himself/herself clearly so as to be understood. That is accountability.*" [highlights are my own]. He also wisely adds: "*A judge who is not independent, who simply produces judgments dictated to by others, would not be able to explain himself/herself.*"

This document shows that Judge Ngoepe did not make the statements in his letter dated 21 January 2009, with which Judges Seriti and Ebersohn sided without reservation, as a result of ignorance. The Judge is fully aware of the factors required to make a judgement constitutionally sound and the rights of the public to question any judgement and to request an understandable explanation of judgements that might seem dubious. The only alternative that remains is that Judge President BM Ngoepe chose to ignore the principles that he publicly touted for reasons that he is not prepared to share and more shockingly, Judges Seriti and Ebersohn deliberately chose to side with him without apparent consideration. This only serves to deepen the suspicions in this case. It is this very reason that makes this letter so shocking. I have clearly shown that the judgement upheld and reinforced by Judges Seriti and Ebersohn was not subject to the Constitution or the law and was not impartial and without prejudice at all. It then follows that the courts were not independent as required by the Constitution and I therefore have every right to request full and clear explanations for the obvious miscarriage of justice that took place here. Furthermore, by fully associating themselves with the erroneous statements made by Judge Ngoepe it seems clear that Judges Seriti and Ebersohn are prone to acting without thought and would therefore be inherently susceptible to outside influences of all kinds, deliberate or otherwise. A person that acts without any form of consideration of the consequences of his action and without any thought about the reasons for his action can never be independent and fair as is required by the constitution. A person that is incapable of governing himself is wholly unfit to hold any position in the judiciary and only serves to poison the institution from within.

The final point I would like to address is the statement made by Judge Ngoepe and unconditionally accepted by Judges Seriti and Ebersohn that the

conclusions drawn by said Judges were made in the normal executions of their duties and it is irrelevant whether they are right or wrong. In my opinion this statement is criminal to say the very least. It was made by a man in a position of influence and sucked up without reserve by his subordinates. This is the very essence of decay. This is a clear indication of full blown democratic cancer.

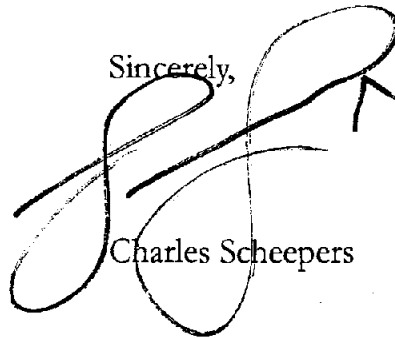
Is this the definition of the duties of a High Court Judge? Is corruption, incompetence and negligence part of the normal execution of a Judge's duties? Is ignoring the Constitution and shunning the law a part of the normal executions of a Judge's duties? How exactly is it irrelevant when a Judge is wrong? It is very relevant when a Judge is wrong. This is the very reason why we have all the different levels of the Judiciary - to protect the people of this great country against Judges who are wrong. It is a system, apparently incapable of functioning according to its design, which has failed every single person in this country.

I can not accept that this is the level we have sunk to. This is a very serious matter that needs to be addressed urgently. The handling of the trial was detestable and should be reason enough for an outcry. The way in which the above mentioned Judges refused to address these serious allegations is nothing short of a crisis in the making. I fear that these are signs of obvious rot in our most valuable of systems and apparently there is no interest in addressing it. I request that the JSC investigate this matter with the integrity, honour and clear determination that we, as a nation, deserve. There is no question that none of our systems can function without a strong moral foundation. It is my opinion that the Judiciary is supposed to be this foundation it must be protected at all cost.

March 3, 2009

I have no doubt that the Judiciary failed in this trial and the entire nation deserves an explanation as to what happened. I further request an explanation of the logic employed in this verdict. I request an explanation of how this matter can be resolved and what will be done to prevent it in the future. I request that this matter is addressed openly as this is a matter of national concern and we can not tolerate secretive behaviour and inaction anymore.

Sincerely,

A handwritten signature in black ink, appearing to be 'CS', with a large loop and a horizontal stroke extending to the right.

Charles Scheepers