
COMPLAINT

I, the undersigned, PATRICIA GOLIATH, do hereby make oath and say:

- 1] The facts set out in this affidavit are to the best of my knowledge and belief true and correct and, unless otherwise indicated, within my personal knowledge.
- 2] Since 1 January 2006 I am a judge of the Western Cape High Court. On 1 July 2016 I became its Deputy Judge President (DJP). I continue to occupy the latter position, albeit now only in name.
- 3] This complaint relates to gross misconduct on the part of the Judge President, JUDGE JM HLOPHE, and his wife JUDGE G SALIE-HLOPHE, misconduct which compromises the proper functioning of our court, the concomitant imperatives of integrity and significantly, and severely, impinges on the court's dignity.
- 4] I am sharply aware of the broader ramifications of this complaint. However, I am left with no option but to pursue it in the light of the continuous, and sustained, assault upon my dignity by HLOPHE JP who makes my working conditions intolerable.
- 5] I reserve to myself the right to amplify this complaint should the need arise.
- 6] I may mention that it appears not to be a salutary practice for the partner of a judge president to serve in the same division. In respect of sensitive allocations questions of propriety will frequently and inevitably arise.
- 7] In any event, upon my appointment as DJP I initially performed all the duties which were traditionally done by deputy judges president in this division. This, however,

has summarily ended.

- 8] During 2018, that is for the entire year, I acted as a judge in the Constitutional Court. I then went on long leave and returned to the division on or about 15 April 2019.
- 9] Upon my return all my duties as DJP were suspended. HLOPHE J acted unilaterally in this regard. As was, and is, the norm I presented myself at his chambers during the first week of the term. He did not raise any problems with me nor did he indicate that I was no longer required to perform my duties, the duties which I had performed prior to my appointment to the constitutional Court.
- 10] There was absolutely no open process with regard to the suspension of my duties and the other judges were not informed that I was no longer functioning as the DJP. This caused me considerable embarrassment, especially when judges or counsel sought an audience with me.
- 11] My then registrar – whose husband is an acting judge for several terms – prepared the usual Full Bench Appeals, Petitions and the Circuit Court Roster but instead of handing it over to me as was the usual practice, she handed it over to HLOPHE J. When I enquired what was happening, she indicated that HLOPHE J had instructed her to prepare my work and forward it to him until further notice.
- 12] In effect, HLOPHE JP undermined my relationship with my registrar without any transparent process or discussion and in a manner patently directed to damage my authority.
- 13] There is an “allocation” room in which we would meet to attend to the allocation of the various matters pending in this division for the week. Upon my return I noticed that HLOPHE JP attended to the allocations privately and in his chambers.

- 14] In the absence of HLOPHE JP I was no longer allowed to see members of the public, the profession or even colleagues who may have queries. His registrar referred everything to him even when he was absent from the building. He managed the division remotely, or rather telephonically, when not in the building. This compounded my embarrassment especially when other judges or counsel needed assistance.
- 15] HLOPHE JP's chambers and mine were opposite each other with only the offices of our respective registrars in between. It seems that our registrars were coached to conduct the business of the court in such a manner so as to exclude the DJP, namely myself. I established that they were expressly instructed not to refer anyone or any matter to me and that this was the manner in which the division was run when DESAI J acted in my position in 2018.
- 16] Matters were allocated to me in the normal course and if for any reason I was not in court, HLOPHE JP would enquire from his registrar or mine why I was not in court. It became apparent that the registrars were micromanaging me. This was the position from April 2019 to December 2019.
- 17] On 21 November 2019, HLOPHE JP launched the Eastern Circuit Court Local Division at Thembaletu in George. He did not inform me that he was going to be absent from the division for a few days. Senior judges alerted me to the fact that HLOPHE JP had in fact appointed a very junior judge, PAPIER J, to perform the functions of an acting judge president during his absence.
- 18] During his absence it was brought to my attention that his registrar referred ADVOCATE T DICKER SC to PAPIER J while I was present in the building. I addressed letters HLOPHE JP, PAPIER J and the registrar expressing my displeasure at the manner in which they had conspired to undermine me and my office. They did not respond to my letters. A copy of the letter is annexed.

- 19] I need hardly state that **Section 6(5)(ii) of the Superior Court Act 10 of 2013** expressly provides that the deputy judge president must exercise the powers and perform the functions of the judge president in his absence.
- 20] HLOPHE JP has accused me of not supporting him. I accept that on several occasions we had disagreements. I sought on those occasions to uphold and protect the Constitution in keeping with my oath, especially when his conduct fell short of an acceptable standard. I refer to a few instances.
- 21] When the matter EARTHLIFE AFRICA – JHB and the MINISTER OF ENERGY and 6 OTHERS (19529/2015) had to be allocated, HLOPHE JP told me that the criticism against former president ZUMA with regard to the nuclear deal was unwarranted. He attempted to influence me to allocate the matter to two judges he perceived to be favourably disposed to the former president. I immediately dismissed the idea and referred him to a Daily Maverick article in which negative aspersions were cast on his allocation in another matter. Although unhappy, he did not pursue the matter and we agreed upon the two judges subsequently appointed to hear the matter.
- 22] I was intermittently provided with the “judges’ availability list” – in other words a list of judges available at that point in time to hear matters. After I allocated the matter MT MULAUDZI and OLD MUTUAL LTD and 2 OTHERS (954/2016) to BOZALEK J, the list was withheld from me. It appears that in the MULAUDZI matter HLOPHE J had been subjected to stringent criticism in the SCA and the matter was remitted to this court for further hearing. Quite properly I allocated the matter to DAVIS J without discussing the allocation with HLOPHE JP. Subsequent to this event HLOPHE JP refused to engage with me and held his first management meeting in my absence. Our relationship deteriorated rapidly thereafter until I left for the Constitutional Court.
- 23] On my return to office on 15 April 2019 the attorneys in the MULAUDZI matter

asked to see me. This led to some consternation amongst the two registrars who were reporting to HLOPHE JP. It appears that the attorneys had problems during 2018 with the MULAUDZI file going missing and having to be reconstructed. I assisted the attorneys and allocated the matter to BOZALEK J. This resulted in my being denied the tools to allocate matters expressly on the instruction of HLOPHE JP.

- 24] The allocation of STATE v RHODE a criminal matter still pending in the SCA to SALIE-HLOPHE J raised considerable unhappiness in the division as she was then one of the most junior judges. As it was a high profile matter I elected to discuss the allocation with HLOPHE JP. This was in or about August 2017. I proposed that the matter be allocated to LE GRANGE J a relatively senior judge and an experience criminal lawyer. HLOPHE JP disagreed with my suggestion and indicated that he needed time to consider the allocation. Later the same day he allocated the matter to his wife, SALIE-HLOPHE J. I accepted his decision – he is the judge president.
- 25] A week later SALIE-HLOPHE J came to my chambers quite apparently to discuss the allocation. I explained that I had not considered her simply because I was of the view that a more senior judge should be appointed. I indicated to her in express terms that my view was not meant to question her ability, but merely a preference for a more senior judge.
- 26] The above incident took place on the Friday. The Monday following my discussion with SALIE-HLOPHE J, HLOPHE JP was visibly angry with me, gave me hostile stares and, for a few days, the “silent treatment”.
- 27] The role of SALIE-HLOPHE J in the division is disconcerting to say the least. She wields enormous power and, I say this reluctantly, some judges are afraid of her.
- 28] After my appointment as DJP, I became aware that SALIE-HLOPHE J is actively

involved in the management of the court, the allocation of matters and, most disturbingly, the appointment of acting judges. Judges complained that she is receiving preferential treatment in terms of her workload. Counsel she worked with or with whom she shared “school mom” duties were appointed acting judges. I do not know whether the appointment of the registrar’s husband as an acting judge for such a long period is at her instance or that of HLOPHE JP himself.

- 29] While mentioning acting judges, I note that there is some concern in the division that the same candidates are repeatedly appointed to act – for long periods – until ultimately permanently appointed. One acting judge is an attorney from Pietermaritzburg who for no apparent reason – and at great expense to the state – has been acting for over a year. There are rumours that his wife has some connection to HLOPHE JP. I am unable to verify it.
- 30] Simply stated there is no transparency whatsoever in the choice of acting judges. The other judges of the division, whatever their seniority, are not consulted.
- 31] One acting judge – a friend of SALIE-HLOPHE J – when first appointed to act caused some consternation amongst the older judges. Apparently in his student days the acting judge was extremely conservative and was implicated in the attempted shooting of COLIN EGLIN a Democratic Party MP. The acting judge was acquitted on the said charge. I raised the matter with HLOPHE J who agreed that this person should not be reappointed to act. Shortly after I left for the Constitutional Court the acting judge was reappointed and continues to act for long periods. His presence underlines the power which SALIE-HLOPHE J wields.
- 32] I am also aware that if SALIE-HLOPHE J does not approve of a potential acting judge, such person will not be given an acting appointment. If a person is appointed, and SALIE-HLOPHE J has some issue with him or her that person will not be reappointed.

- 33] I am personally aware of complaints against judges made by SALIE-HLOPHE J to HLOPHE JP. These complaints impacted negatively on the relationship with the other party not knowing why HLOPHE JP was suddenly hostile to him or her.
- 34] There are two other more serious incidents involving SALIE-HLOPHE J. I do not have personal knowledge of either incident. It is, however, common knowledge amongst the judges and, I believe, spoken about in the legal profession.
- 35] The first incident involved one of HLOPHE JP's better friends on the bench. The allegation is purportedly of a sexual nature and I do not propose repeating it. HLOPHE J apparently verbally abused the judge and it seems that the judge was compelled to do criminal work as a form of punishment.
- 36] The other incident is of a similar nature but in this instance HLOPHE, JP went to the judge's chambers and physically assaulted him. The judge concerned drew up an affidavit for the purposes of filing a criminal complaint. However, it appears, that PAPIER J (and another judge, I think) intervened and persuaded the judge not to proceed with the criminal complaint.
- 37] In my own view the allegations involve sexual impropriety and the parties concerned should have reported themselves to the JSC. Two judges now have unresolved serious allegations against their name.
- 38] Most judges are appalled by the above incidents, especially with HLOPHE J resorting to physical violence. It renders our working environment intimidating, hostile and unsafe.
- 39] I may add that SALIE-HLOPHE J chooses who she does NOT want to sit with on the bench. HLOPHE JP usually goes along with her decision.
- 40] The RHODE matter (*supra*) was allocated in accordance with the judge president's

prerogative. When SALIE-HLOPHE J came to my chambers to interrogate me about the allocation, it was evident that she wanted me to endorse the allocation. I refused to do so and remained firm in my view.

MEETING ON 2 OCTOBER 2019

- 41] I raised my concerns with HLOPHE JP at a meeting held in his chambers on 2 October 2019. The purpose of the meeting, as far as I was concerned was to establish what he required me to do in order to support him in the division.
- 42] HLOPHE JP essentially provided me with two reasons why he had withdrawn my duties.
- 43] The first involves a personal domestic incident at his house between him, his wife (SALIE-HLOPHE J) and a third party, another woman. He stated that I had interfered in his personal life and that he considered it fatal to our relationship. This is a private matter but due to the attack upon me I have no option but to refer to it.
- 44] The second reason furnished was that he no longer required a DJP. I shall deal with this aspect shortly.
- 45] In or about September 2018 HLOPHE JP forwarded a photograph of a third party – a female legal practitioner whose name is known to me – to his wife (SALIE-HLOPHE J). She forwarded the photograph to me and several other people in order to ascertain the identity of the person on the photo. The photo was also sent to HLOPHE JP's registrar who promptly identified the person. SALIE-HLOPHE J then took it upon herself to conduct further investigations.
- 46] Subsequent to the above an incident occurred at HLOPHE JP's residence in Pinelands – not where SALIE-HLOPHE J resides – involving the third party. The incident occurred during recess. SALIE-HLOPHE J was at his residence. She

called me, disclosed certain information – which I elect not to set out herein – and also told me that there was an electricity outage at her house. She asked me to go to her house to attend to her daughters for safety reasons. I went to her home.

- 47] She later arrived at her house. HLOPHE JP's bodyguard drove her vehicle and another driver followed in a second vehicle. SALIE-HLOPHE J was clearly distressed and in pain. She asked me to take her to hospital and explained to me in graphic detail what had transpired at HLOPHE JP's house. Her hand, it appears, was injured during an altercation. The injury was sufficiently serious to require stitches.
- 48] Should it be necessary to do so I will at a later stage set out how her hand was injured but this would be her version of what occurred at HLOPHE JP's house.
- 49] As the incident occurred during recess I only saw the JP on the first day of the last term in 2017. I went to his chambers. He shouted at me in a very aggressive manner, chased me out of his chambers and called me a "rubbish" and "a piece of shit". We never discussed the incident.
- 50] At the meeting on 2 October 2019 HLOPHE JP referred to the incident and accused me of interfering in his personal life. He informed me that he was aware that SALIE-HLOPHE J phoned me while she was at his residence and that I subsequently took her to hospital. He added that his wife made certain damaging statements against me relating to the incident. I will disclose them at a later stage if required to do so.
- 51] He explained that because of the allegation made by his wife he no longer wanted to work with me.
- 52] Notwithstanding his aggressive outburst I continued at that stage – that is in 2017 – to perform my duties as DJP.

- 53] The second reason furnished by HLOPHE JP for not requiring my services was that he no longer needed a DJP. For the year that I was away from the division, DESAI J was the acting DJP. During this period he says he realised that he does not need a DJP. He felt that he could run the division on his own and was happy to do so.
- 54] At the said meeting he also indicated that he was supposed to go on long leave but would rather forfeit the leave than go away for three months and come back to being without a job because of me. The decision not to vacate his office even for a short while gives rise to several negative perceptions. I elect not to speculate.
- 55] Surprisingly he also stated that I had been working to get him out of the division, that he was going nowhere and would not take his long leave as long as I am in the court building.
- 56] He went on to say that he thought I was ready for the job but I am not capable of running the division and I am not judge president material. He indicated that I would remain DJP but not do the work of a DJP. He would delegate work to me as he saw fit.
- 57] He made further negative statements which I shall deal with at a later stage if required.
- 58] Following our conversation I elected to move my chambers to the other end of the building where I am now located. I do not occupy the chambers designed to accommodate the DJP simply because I am no longer functioning as the DJP. A result of HLOPHE JP's current conduct.
- 59] Undermining the effective management of the division, HLOPHE JP changes the rules when it suits him to do so. On an earlier occasion HLOPHE JP firmly advised

all the registrars that under no circumstances are they allowed to move away from their appointed judges. When I elected to move my chambers my registrar was informed by HLOPHE JP's registrar that she was under no obligation to move with me. The fact that my former registrar is still performing the duties of the DJP's registrar has caused confusion in the division. Incidentally my previous chambers were occupied last term by the registrar's husband, the acting judge.

- 60] In our October meeting HLOPHE JP also mentioned his decision to move the Eastern Cape Circuit Court from George to Thembalethu. He said he was sick and tired of "white colleagues" who go to George all the time. He added that there is a lot of competition because they want to go and sit "comfortably for the National Party". He indicated that now the seat of the court was in Thembalethu. He named a so-called white judge and others who will not be going any longer "which is fine". I found these remarks both inappropriate and disconcerting since judges are allocated circuit court on a voluntary basis and those who seldom go are usually accommodated if they so wish. In other words judges who regularly go on circuit will step aside if others volunteer their services.
- 61] I need hardly restate that upon my return from the Constitutional Court SALIE-HLOPHE J was still receiving preferential treatment and the situation had worsened. From my own observations it was apparent that she determined her own working days and hours, this while I was being micromanaged by HLOPHE JP's registrar.
- 62] It was also brought to my attention that during my stint in the Constitutional Court HLOPHE JP during morning coffee and in the presence of a few judges and acting judges referred to me as a "klein kak".
- 63] The appointment of a junior judge - PAPIER J – as acting JP, albeit for a short while, caused considerable unhappiness in the division and some judges took exception to PAPIER J allocating work to them.

- 64] HLOPHE JP has abandoned some of the more important useful practices in this division in order to advance his narrow personal agenda.
- 65] Judges met regularly every Friday to discuss the work for the week, policy matters and any other issues affecting the judiciary. These meetings were at most times cordial, if not pleasant.
- 66] HLOPHE JP has abandoned this practice and judges have not met as a group for a long time. I think he avoids such meetings because contentious matters relating to his conduct in the division may well be raised by one or other of the judges.
- 67] Such meetings it seems would be inconsistent with the dictatorial manner in which he elects to run the division.
- 68] We had a clearly fair and transparent process to advertise available chambers. Should a judge retire, the availability of his chambers was advertised in the division and allocated on the basis of seniority. Anticipating the retirement of FOURIE J, HLOPHE JP took control of the allocation of chambers and later allocated the chambers of FOURIE J to his wife, SALIE-HLOPHE J. She was then the most junior judge in the division and the availability of the chambers was not advertised or communicated to the other judges for them to apply to occupy said chambers.
- 69] The division is currently divided and more seriously, a climate of fear and intimidation prevails.
- 70] In my humble view HLOPHE JP is acting in an unconstitutional manner, causing divisions on the bench, abusing his powers in the exercise of his function as JP of the division, especially in unilaterally removing me from my constitutionally appointed position.

- 71] HLOPHE JP as is apparent from the above has committed gross misconduct and acted in a manner unbecoming a judge by verbally abusing judges, physically assaulting a judge, victimising judges (including myself), giving preferential treatment to his wife, speaking of me and other colleagues in derogatory terms and insulting “white” judges who volunteered to do circuits.
- 72] I am currently operating in an unsafe, unhealthy and oppressive working environment and request urgent intervention to enable me to fulfil my constitutional role as DJP. My present plight, especially as a woman, is untenable.
- 73] I state clearly and unequivocally that this complaint is not brought lightly. However, in my capacity as DJP I would be failing in my duty to uphold the Constitution and the integrity of the judiciary in not doing so.
- 74] I submit myself to your wise counsel and processes.

GOLIATH, DJP
Deputy Judge President of the Western Cape High Court

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit that was signed and affirmed/sworn to before me at _____ on this _____ day of _____ 2019, under compliance with the regulations contained in Government Notice R1258 dated 21 July 1972, (as amended).

COMMISSIONER OF OATHS

FULL NAMES:

STATUS:
STREET ADDRESS: