



# APDUSA VIEWS

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## **WOMEN OF S.A. BETRAYED!**

Yesterday, the 19<sup>th</sup> March 2007, Dr Mohau Pheko was a guest of Xolani Gwala's morning talk show. The subject matter under discussion was what amounted to *double standards* adopted by the ANC as a political party and as the controlling component in the various tiers of government.

In the one case there was Mathew Goniwe, the chief whip of the ANC in the National Parliament. He made a sexual advance to Ms Nomawele Njongo, a young lady employed as a parliamentary assistant. When she declined or resisted the advance he sought to use his position as ANC chief whip to apply pressure on her. The young lady reported the matter to members of the ANC. The ANC itself reacted swiftly and hauled Goniwe before a disciplinary hearing headed by Professor Asmal. He was found guilty and severely punished. He was expelled from the ANC, thereby losing his status as the Chief Whip of the ANC in the National Parliament and also as a Member of Parliament. Among other things he was found guilty of "bringing the ANC into disrepute by violating the moral integrity expected of members..."

The other case is that of Norman Mashabane who was appointed ambassador to Indonesia. While ambassador there, Mashabane went on a rampage of sexual harassment. Thus in 2001, he was charged with 21 counts of sexual harassment. At a duly constituted hearing headed by a duly qualified person, Mashabane was found guilty. For these offences he was removed as ambassador. But there appeared to be a special relationship between him and Dr. Nkosazana Dlamini-Zuma the Minister of Foreign Affairs. She reinstated him pending the outcome of an appeal to be heard by her. In the interim another charge of sexual harassment was laid against him. Again he was found guilty. On appeal to the Minister, Mashabane was acquitted of all charges against him. This despite the fact that Dr Dlamini-Zuma has no experience or training in the adjudication of legal or quasi-legal, whilst contrary was the case in respect of those who had found him guilty.

One of women who was a complainant against Mashabane was appalled by the decision of Dr. Dlamini-Zuma which amounted to a rejection of her complaint. She challenged the Minister's decision in the Pretoria High Court. The High Court set aside the decision of the Minister. The Court went further by ordering the Minister to apologize to the complainant and to pay her legal costs.

The Minister who is a person of few words is no stranger to controversy. She was the one who passed on to Mbongeni Ngema R14 million of the taxpayers' money

in a manner and process which was flawed. So blatant was her conduct that the Public Protector made an adverse finding against her about misleading Parliament in respect of the awarding of a contract to Mbongeni Ngema. Having a hand in misappropriation of public funds, apparently, is not an offence which merits expulsion or removal from office, unless the culprit is a political opponent!

The powers that be in the ANC appear to have been moved by Shakespeare's description of "mercy" as falling like the "gentle rain from heaven" and that it was "twice blessed." Indeed! Mashabane, instead of being expelled was firstly given a position as a "special advisor" to the Premier of Limpopo Province. The second blessing was that he was then made an MPL of the Limpopo Provincial Parliament!

At the talk show referred to above, Dr Pheko posited the matter squarely. Why the difference in treatment of Goniwe on the one hand and Mashabane on the other? The one got the most demeaning punishment – expulsion for three years and the consequent removal as MP and as Chief Whip. The other was made a Special Advisor and then an MPL.

The disparity of punishment goes against the very grain of justice and fairplay. But it was patently clear that the punishment had nothing to do with justice and fairplay. If Goniwe's single foray was considered an act "bringing the ANC into disrepute" why not TWENTY TWO cases of sexual harassment creating disrepute twenty two times more??

Ms Mentoor, an articulate ANC Member of Parliament, who is a frequent participant in the "phone-in" talk show, telephoned and sought to justify the disparity in the punishment. Her justification was as follows: In Goniwe's case, the matter was adjudicated upon by the ANC's disciplinary body and therefore he is liable to be punished as he was. In the case of Mashabane, no ANC disciplinary body has found him guilty and therefore he is not liable to be punished. According to Ms Mentoor the finding of the Court that Mashabane was in effect guilty in the case of the complainant or applicant was not an ANC decision and therefore as far as the ANC was concerned he has not been found guilty and therefore not punished as Goniwe was. In other words, no respect whatever is shown for the judgement of a High Court!

Another regular caller, Ivan de Villiers, from Mogale City meted out a fine lambasting to Ms Mentoor for what he described as her "dishonesty". Like Dr. Pheko, he challenged why has Mashabane not been hauled before the ANC disciplinary committee?

We have maintained consistently that the ANC leadership are not persons whose actions are guided by principles. Principled politics is something quite foreign to them. There are numerous instances of unprincipled politics. Remember how they fawned before that Butcher of Indonesia, General Suharto who slaughtered more than 500 000 so-called Communists in 1965. Their fawning earned them a donation of R28 million for the ANC! Have we forgotten how Mandela urged that the bombing of the Afghan populace should *not be* suspended during the holy (to Muslims) month of Ramadan so as to earn one million dollars from that

imperialist mad dog, George W Bush? And what about the grand send off in death the top brass of the ANC and the ANC Youth League gave to that fraudster, (“Comrade” to the ANC) Brett Kebble because of the obscenely large sums of dirty money he dished out and which they grabbed with both hands.

So in examining the reasons for the disparity in treatment of ANC public figures for sexual offences, the reader can safely push aside all the learned tomes on jurisprudence. Rather look at the dirty politics at play.

It is clear that the Mbeki wing of the ANC have taken a decision to woo the women voters against Jacob Zuma. Hence the appointment of Mrs Ngcuka as Vice President as the opening gambit. The swift and harsh but deserving justice meted out to Goniwe gained praise and approval from all quarters and sections of the population and presumably, the most from members of the female community.

And what of Mashabane? One can only surmise that in inflicting well deserved punishment on Mashabane, the Mbeki wing of the ANC would have believed that it would have *more to lose* than if the “gentle as the rain from heaven” approach was used. Already Ms Mentoor, whose 22 sisters were wronged, has sprung to the defence of the ANC’s lack of consistency with thoughtless rationalisation. There are any number of Ms Mentoor who will follow the path of that shameless white-washer, *Squealer*, from Orwell’s “Animal Farm” and betray their sisters.

So while Mashabane luxuriates in the “comradely” treatment at the hands of the ANC for his sexual rampage, the flip side is the consignment to a living hell of more than 50% of our population, the women and girls, depending how the dirty game of politics is played.

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## **DARFUR DIARIES: STORIES OF SURVIVAL**

**By [Jen Marlowe](#),**

From [AlterNet](#). Posted [January 25, 2007](#).

Three filmmakers chronicle their journey to document the tragedy in Darfur where 200,000 people have been killed and 2.5 million forced from their homes.

*Editor's Note: [Darfur Diaries: Stories of Survival](#) is a book that accompanies a major documentary film [now showing](#) across the world. It tells the story of the genocide in Darfur, through the eyes of the Darfurians. It also shows, "the real lives of these people, and that they had had a thriving life, society, and culture that preceded their appearance on the world stage as victims and refugees," the introduction reads.*

*[Darfur Diaries](#) is written by Jen Marlow with Aisha Bain and Adam Shapiro (Nation Books, 2006).*

*The following excerpt is from Chapter 7,*

### ***"The Antonov Plane and the Wedding."***

"The owner of this house was killed here and so were his wife and kids," Abdullah told us in Arabic. He bent down, slid his stick under a piece of shrapnel and lifted it up high for us to see and for the camera to record.

"This was part of the bomb that hit this home. It exploded on everything all around." The piece of shrapnel dropped to the sand, clanging against another bomb fragment. They were all around.

Abdullah strode out of the burnt house, barely giving us time to refocus the camera on him and follow. He pointed out the carcass of a donkey we passed, telling us that it died from eating the plants that had been covered with a powder from the exploded bombs.

Last time we had been in Muzbat, we had only encountered rebels from the SLA. Now, there were a handful of old men, women, and children walking around. One little boy, wearing a brown galabiya, kicked a tattered soccer ball made of rags to us. We passed it back and forth with him, careful not to accidentally kick it into the small bomb-crater directly next to us.

Musa answered our questions about the civilians. "They are from Muzbat, but they no longer live in the village itself. Their homes are destroyed and they are too afraid to return. They are living in the wadi and under trees, in caves. But the well is the only water source for dozens of kilometers, so they must come to take water."

That explained why we hadn't seen them on our last visit. We had arrived right before sunset and the villagers had already returned from the well to their trees or caves.

"What exactly are they afraid of?" we asked. Muzbat was firmly behind rebel lines; it was not likely that the janjaweed or Sudanese army could come storming through. The damage here had already been done. "The airplanes. They could still bomb us from above," Abdullah's companion answered.

"When did an airplane last bomb here?"

Musa, Abdullah, and his friend gave conflicting answers; one month, two months, four months. In any case, it hadn't happened recently. So, why were people still living so far from their village and only water source? Wouldn't it be much easier and more practical for them to return, rebuild and resume their lives?

He led us to the wracked and twisted frame of a bed that Sheikh Zachariah Madebo had been sleeping in when he was killed by a bomb. The tapping of Abdullah's stick on the burnt metal initially drowned out a low humming noise in the distance. As the humming grew louder and more insistent, Abdullah abruptly stopped speaking. His hand fell to his side. We looked around in confusion.

"Now I am hearing the sounds of an Antonov plane," Abdullah told us, a trace of fear in his voice. "You hear?" He turned on his heels and motioned for us to follow him quickly.

It took a half-minute of squinting into the sun to spot the Antonov, now flying almost directly overhead. "Sit down!" we heard Abdullah shout to villagers as we scanned the sky. "Not over there! Here!" We tracked the plane moving above the village until Abdullah called out urgently, "Aisha! Sit!"

We looked back down. The village appeared to be entirely deserted; everyone seemed to have disappeared into thin air. My eyes adjusted to the scene much as they do when moving from light into darkness. I spotted five children crouched under a tree, an older sister trying to shield her younger brother with her hands. Another tree a few meters away revealed the same. A mother flattened herself against the scarce shadow of a mud-brick wall, restraining her little ones.

We stood in the broad daylight. The drone of the Antonov was the only sound that could be heard. Adam shifted from filming the plane to the people holding each other tightly, trying to find protection under leaves or any other bit of available cover. One of the villagers motioned to us. "Come, get out of the sun, quickly!" Musa urged us. "You are a target if you continue to stand there."

Adam, Aisha, and I moved under the nearest tree, where the huddled children and their parents made room for us. Children continued to mutely hold onto their mothers and each other, long after the plane was out of sight and its droning barely audible. Just five minutes earlier, I had asked myself why people still felt too insecure to return to the village. The question felt ridiculously naïve now.

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## Cultured Speech

### **Introduction:**

#### **“QUESTIONS OF CULTURE, LITERATURE, ART, MORALS**

While politics formed the vital center of Trotsky's activities, his mind probed into the most diversified areas of human experience. "Man does not live by politics alone" was the title he gave to one of his essays on the manners and morals of post revolutionary Russia. In a volume of essays, "Problems of Everyday Life (1923) he discussed upheavals in family life, bureaucracy "enlightened and unenlightened," civility and politeness, vodka, the Church, the movies and other subjects. He reviewed the relations between material and spiritual culture in an article published in the journal "Novy Mir" [New World] for January, 1927. His approach to these matters deserves particular attention in light of recent Russian history. His defense of Freudianism interesting especially for its analogy between Freud and Pavlov, the head of the "reflexological" school in psychology, was virtually banned in Russia as early as the 1920's.

In the summer of 1922-23, Trotsky wrote his "Literature and Revolution" with a twofold purpose. One was to survey the impact of the revolutionary upheaval upon Russian literature; the other was to combat the theory of "proletarian culture" which was then fashionable in various party circles. The workers, he argued, would have neither the time nor the social necessity to fabricate a specific culture of their own. Socialism would aim at creating for the first time in civilization the universal culture of a classless society. In the meantime, the Soviet state, and its ruling party, had no right to dictate to artists and writers what they should do or how they should do it. "The domain of art is not one in which the Party is called upon to command." Even where it consciously served the revolutionary cause, artistic creation obeyed its own laws; it could not flourish and be true to itself without experimentation and unhampered development. This conception, which Lenin shared with Trotsky, clashed, of course, with the Stalinist practice of stringent control over art. The preface to "Literature and Revolution", outlines the general relations between artistic creation and social revolution."<sup>1</sup>

Coarse speech including swearing and obscenities had begun making their appearance in the ranks of a section of the Bolshevik Party during the last days of Lenin. The top leadership of the Bolshevik Party were persons of learning and culture. They had all aspired to be the rounded person that Marx and Engels urged revolutionary intellectuals to become. Use of obscenities was something quite foreign to them.

An incident which highlighted the exception was the occasion when Stalin upbraided Krupskaya, wife and lifelong comrade of Lenin. During his last days, Lenin was virtually a prisoner of Stalin who used the serious illness of Lenin as an excuse to cut Lenin off from all outside contact. When he subsequently discovered that Krupskaya had conveyed a note to Trotsky, Stalin became enraged.

According to Krupskaya:

"Stalin subjected me to a storm of the coarsest abuse. In the whole of these last thirty years I never heard a single coarse word from a comrade."

In response to this assault on the dignity of Krupskaya, Lenin formally broke personal relations with Stalin.

We have little doubt that the article on **Cultured Speech** was directed as much against Stalin (and his henchmen who would have slavishly followed Stalin even in his habits) as towards sections of Russian society brought up in a culture of frequent use of foul and obscene language.

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<sup>1</sup> **The portion of the Introduction in inverted commas is written by Mr. Jack Novack who compiled the anthology and made prefatory notes to each text to assist the reader.**

# The Struggle for Cultured Speech

By

Leon Trotsky

I read lately in one of our papers that at a general meeting of the workmen at the boot factory, the *Paris Commune*, a resolution was carried to abstain from swearing, to impose fines for bad language, etc.

This is a small incident in the turmoil of the present day - but a very telling small incident. Its importance, however, depends on the response the initiative of the boot factory going to meet with the working class. Abusive language and swearing are a legacy of slavery, humiliation, and disrespect for human dignity - one's own and that of other people. This is particularly the case with swearing in Russia. I should like to hear from our philologists, our linguists, and experts in folklore, whether they know of such loose, sticky, and low terms of abuse in any other language but Russian. As far as I know, there is nothing, or nearly nothing, of the kind outside Russia.

Russian swearing in "the lower depths" was the result of despair, embitterment, and, above all, of slavery without hope, without escape. The swearing of the upper classes, on the other hand, the swearing that came out of the throats of the gentry, the authorities, was the outcome of class rule, slave owner's pride, unshakable power. Proverbs are supposed to contain the wisdom of the masses - Russian proverbs also show the ignorant and the superstitious mind of the masses and their slavishness. "Abuse does not stick to the collar," says an old Russian proverb, not only accepting slavery as a fact, but submitting to the humiliation of it.

Two streams of Russian abuse-that of the masters, the officials, the police, replete and fatty, and the other, the hungry, desperate, tormented swearing of the masses - have colored the whole of Russian life with despicable patterns of abusive terms. Such was the legacy the Revolution received, among others, from the past.

But the Revolution is, in the first place, an awakening of human personality in the masses - which were supposed to possess no personality. In spite of occasional cruelty and the sanguinary relentlessness of its methods, the Revolution is before and above all the awakening of humanity, its onward march, and is marked with a growing respect for the personal dignity of every individual, with an ever increasing concern for those who are weak. A revolution does not deserve its name if, with all its might and all the means at its disposal, it does not help the woman-twofold and three fold enslaved as she has been in the past-to get out on the road of individual and social progress. A revolution does not deserve its name if it does not take the greatest care possible of the children - the future race for whose benefit the revolution has been made. And how could one create day by day, if only by little bits, a new life based on mutual consideration, on self-respect, on the real equality of women, looked upon as fellow workers, on the efficient care of the children - in an atmosphere poisoned with the roaring, rolling, ringing, and resounding swearing of masters and slaves, that swearing which spares no one and stops at nothing? The struggle against "bad language" is a condition of intellectual hygiene, just as the fight against filth and vermin is a condition of physical hygiene.

To do away radically with abusive speech is not an easy thing, considering that unrestrained speech has psychological roots and is an outcome of uncivilized surrounding. We certainly welcome the initiative of the boot-factory workers, and above all we wish the promoters of the new movement much perseverance. Psychological habits which come down from generation to generation and saturate the whole atmosphere of life are very tenacious, and, on the other hand, it often happens with us in Russia that we just make a violent rush forward, strain our forces and then let things drift in the old way.

Let us hope that the working women - those of the Communist ranks in the first place - will support the initiative of the Paris Commune factory. As a rule - which has exceptions of course - men who use bad language scorn women, and have no regard for children. This does not apply only to the uncultured masses, but also to the advanced and even the so-called "responsible" elements of the present social order. There is no denying that the old pre-revolutionary forms of bad language are still in use at the present time, six years after October, and are quite the fashion at the "top." When away from town, particularly from Moscow, our dignitaries consider it in a way their duty to use strong language. They evidently think it a means of getting into closer contact with the peasantry.

Our life in Russia is made up of the most striking contrasts - in economics as well as in everything else. In the very center of the country, close to Moscow, there are miles of swamps, of impassable roads - and close by you might suddenly see a factory which would impress a European or American engineer by its technical equipment. Similar contrasts abound in our national life. Side by side with some old-time type of domineering, rapacious profiteer, who has come to life again in the present generation, who has passed through revolution and expropriation, engaged in swindling and in masked and legalized profiteering, preserving intact all the while his suburban vulgarity and greediness - we see the best type of Communists of the working class who devote their lives day by day to the interests of the world's proletariat and are ready to fight at any given moment for the cause of the revolution in any country, even one they would be unable perhaps to locate on the map. In addition to such social contrasts - obtuse bestiality and the highest revolutionary idealism - we often witness psychological contrasts in the same mind. A man is a sound Communist, devoted to the cause, but women are for him just "females," not to be taken seriously in any way. Or it happens that a very deserving Communist, when discussing the smaller nationalities, starts talking hopelessly reactionary stuff. To account for that we must remember the different parts of the human consciousness do not change and develop simultaneously and on parallel lines. There is a certain economy in the process. Human psychology is very conservative by nature, and the change due to the demands and the push of life affects, in the first place, those parts of the mind which are directly concerned in the case. In Russia the social and political development of the last decades proceeded in quite an unusual way, in astounding leaps and bounds, and this accounts for our present disorganization and muddle, which is not confined only to economics and politics. The same defects show in the minds of many people resulting in a rather curious blending of advanced, well-pondered political views with tendencies, habits and, to some extent, ideas which are a direct legacy from ancestral domestic laws. To obviate

that, we must straighten out the intellectual front, that is to say, we must test by Marxist methods the whole complex of a man's mentality-and this should be the general scheme of education and self-education of our own party, beginning at the top. But there again the problem is extremely complicated ... could not be solved by school teaching and books alone: the roots of contradictions and psychological inconsistencies lie in the disorganization and muddle of the conditions in which people live. Psychology, after all, is determined by life. But the dependency is not purely me-meal and automatic: it is active and reciprocal. The problem in consequence must be approached in many different ways - that of the Paris Commune factory men is one in the number. Let us wish them all possible success.

P. S. The fight against bad language is also a part of a struggle for the purity, clearness, and beauty of Russian speech.

Reactionary blockheads maintain that the Revolution without having altogether ruined is in the way of spoiling the Russian language. There is actually an enormous quantity of words in use now which have originated by chance many of them perfectly needless, provincial expressions some contrary to the spirit of our language. And yet the reactionary blockheads are quite mistaken about the future of the Russian language - as above all the rest. Out of the revolutionary turmoil our language will come strengthened, rejuvenated, with an increased flexibility and delicacy. Our pre-revolutionary, obviously ossified bureaucratic and liberal press language is already considerably enriched by new descriptive forms, by new, much more precise and dynamic expressions. But during all these stormy years our language has certainly become greatly obstructed and part of our progress in culture will, among other things, show in our casting out of our speech all useless words and expressions an those which are, not in keeping with the spirit of the language, whilst preserving the unquestionable and invaluable linguistic acquisitions of the revolutionary epoch.

Language is the instrument of thought. Precision and correctness of speech is an indispensable condition of correct and precise thinking. The political power has passed now, for the first time in our history, into the hands of labor. The working class possesses a rich store of work and life experience, and a language based on that experience. But our proletariat has not had sufficient schooling in elementary reading and writing, not to speak of literary education. And this is the reason why the now governing working class, which is in itself and by its social nature a powerful safeguard of the integrity and greatness of the Russian language in the future, does not, nevertheless, stand up now with the necessary energy against the intrusion of needless, corrupt, and sometimes hideous new words and expressions... The struggle for education and culture will provide the advanced elements of the working class with all the resources of the Russian language in its extreme richness, subtlety, and refinement. To preserve the greatness of the language, all faulty words and expressions must be weeded out of daily speech. Speech is also in need of hygiene. And the working class needs a healthy language not less but rather more than the other classes: for the first time in history it begins to think independently about nature, about life and its foundations - and to do the thinking, it needs the instrument of a clear incisive language.

# A JUDGE-PRESIDENT NOBODY BELIEVES

## Introduction:

When it was announced that there was no evidence to contradict Judge-President Hlope's version that he got the consent from the then Minister of Justice to receive a retainer from Oasis Crescent Retirement Fund, two problems were created:

- a) The consent was claimed to be verbal and not in writing
- b) The Minister is dead and unable to confirm the Judge-President's version.

The end result was that the Judge-President was exonerated of any wrong doing. Deep in their hearts, very few people were satisfied with the finding. Mired in disrepute was not only the Judge-President in question but the Judicial Services Commission (JSC) itself.

## Background:

The Judge-President is a person who attracts controversy. Apart from his unprofessional conduct in the Pharmaceutical Industries case (See Apdusa Views No. 79) there were serious allegations against him of conduct most unbecoming a judge. The Judge-President simply made bare denials when more was required of him by way of explanation. Chief Justice Langa initiated a powerful move to prevent the matter from being openly dealt with and from going its full course. He used pressure to get the complainant, Advocate Uys, to state that he, Uys, did not regard his affidavit in which he claimed that he was called a "piece of white shit" by the Judge President as a complaint. Having extracted this from Uys, the Chief Justice blandly walked off saying that *there was no complaint!!*

All decent minded persons were appalled at the Chief Justice for this piece of chicanery. But none so stinging than the then Deputy Editor of the *City Press Khathu Mamaila*.

It is worth repeating what he said on the 23<sup>rd</sup> of October 2005:

"He (Langa) said the complaint against Hlope had been withdrawn and that there was no complaint to investigate. Really? ***This conclusion is a travesty of justice.*** (Our emphasis and italics) If there was no basis of the allegations against Hlope, justice demands that those who made these false allegations must be exposed and be dealt with.....

On the other hand, if Hlope had made those remarks, he should be dealt with in accordance with the law. However, the manner in which the matter has been resolved does not only serve to tarnish the image of the accusers

and the accused but also deals a severe blow to the credibility of the judiciary.”<sup>2</sup>

The Deputy Editor was, in essence, showing his disgust at the COVER-UP by the Chief Justice.

### **More allegations of misconduct:**

During 2006, the legal world and the general public were shocked to hear about a fall-out between two judges. They were the Judge-President and Judge Siraj Desai. The latter the public will associate with the arrest and detention of a South African judge in India in connection with rape allegations. Members of the legal fraternity will also remember Judge Desai as a doughty defender of Judge-President Hlope when the latter had to face allegations of misconduct referred to above.

The fall-out had two parts:

- a) Judge-President Hlope granted an application to a legal entity to institute legal proceedings against Judge Desai for damages.
- b) Judge Desai made the allegation that Judge-President Hlope was in receipt of a monthly retainer of R10 000 from an asset management company, the same company which was granted leave to sue Judge Desai.

Concerning remuneration of Judges, the law requires that for a judge to be entitled to receive remuneration outside his/her salary, employment benefits etc, that judge will have to obtain the consent of Minister of Justice to receive that additional remuneration.

To put it differently, this means that judges are **prohibited** from earning remuneration outside their salaries unless the Minister of Justice agrees to the judge earning that remuneration.

The Judge President claimed that he had indeed received consent from then Minister of Justice. The claim by the Judge President faced certain difficulties:

- a) The Minister of Justice was Dullah Omar who is no longer alive.
- b) The consent allegedly given by Minister Dullah was a *verbal* consent

There was visible disbelief at the nature of the evidence of consent presented. For some reason, the decision on the matter was deferred. In the meantime, the present Minister of Justice had stated that there was *no record* in the Ministry of Justice that the then Minister of Justice had given the consent. The Judge President was then given long leave of absence.<sup>3</sup>

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<sup>2</sup> “The City Press of the 23/10/05 – “CAREFUL WITH WHITES, HLOPE” by Khathu Mamaila.

<sup>3</sup> It seems that whenever Judges are in awkward positions, they are given long leave of absence. Judge Desai was also a beneficiary of long leave when the alleged rape victim sought to sue him in South Africa.

During December 2006, the Judicial Services Commission announced that

*There was no evidence to contradict his assertion that he received oral permission to receive a monthly retainer.*

To put it bluntly, the JSC swallowed hook, line and sinker the version by the Judge-President.

When it comes to evidence about something said or done by a person since deceased and when there is no independent evidence to confirm or contradict that evidence, the courts place that evidence under careful scrutiny for the very obvious reason that the deceased will not be able to contradict a lie.

On the face of it, the Judge-President's version can be seriously attacked:

The question that a court of law will pose is: Are there circumstances which will throw light on the version of the person relying on the alleged statement of the deceased?

Yes, there are.

- a) Although the law does not require the judge to obtain written consent (the Act speaks of just "consent") of the Minister of Justice, common sense plus professional prudence required that the Judge-President to have confirmed the verbal discussion and decision (consent) in writing and to have asked the Minister to confirm his consent in writing. The letter would have been sent by registered post, or by hand delivery with a receipt of delivery or by facsimile.
- b) In the absence of confirmation within a reasonable time, the matter can be pursued until the written confirmation of consent is obtained
- c) In the absence of a letter to or from the Minister of Justice, the Judge-President would have made a written record of the verbal discussion and decision either in his diary or a telephone call book where such matters are recorded. Yet that was not done.
- d) Likewise, it would be expected of a Minister of such an important portfolio to have kept a written record of all verbal discussions and decision of importance or an immediate letter of confirmation. Yet there is no evidence of that.
- e) Bearing in mind that there is a **prohibition** against judges earning outside remuneration **without consent**, it would have been foremost in the mind of the Judge-President to get a letter confirming consent. Thus it will be seen that on the probabilities, it is unlikely that the verbal consent was obtained from the Minister of Justice.

**Failure by the JSC to do its duty:**

On the face of things, the conduct of the Judge- President invites criticism and reprimand. His defence of having received verbal consent from the Minister of Justice and the evidence offered in support of that defence has been most unsatisfactory. This, the JSC ought to have conveyed in no uncertain terms to the Judge-President. Instead the Judge-President gets off scott free on the grounds of absence of evidence to contradict his version. It is clear that the JSC places no importance on the probabilities showing the absence of verbal consent or authority. But if the intention was to acquit then it ought to be expected that the probabilities will be shoved to one side.

Only after acquitting the Judge-President does the JSC recognise the unsatisfactory situation created by “verbal consents” and has therefore urged for legislation to ensure that requests for outside remuneration and their granting have to be in writing. It does not want to open the floodgates of verbal consents from deceased Ministers.

**Conclusion.**

At the end of the day, the reputation and integrity of the Judge-President has been further severely damaged. It would have far better for the Judge-President to have confessed to failure to obtain the consent (if that be the real position) and accept a reprimand from the JSC. At least, then, his integrity would not have been impugned. As it stands, the verdict is:

“He got away with it. Thanks to the JSC.”

*Postscript:* It has since transpired that there is a fresh allegation that the Judge-President was the recipient of a much larger sum than he has admitted to. The DA has asked for the recall of the Judge-President to be questioned by the JSC.

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