REPORT OF THE JUDICIAL CONDUCT TRIBUNAL

IN RE: JUDGE NJ MOTATA

A. INTRODUCTION

1. The Judicial Conduct Tribunal ("Tribunal") appointed in terms of section 19 of the Judicial Service Commission Act, No. 9 of 1994 ("the JSC Act") hereby presents its report on its investigation of the complaints lodged with the Judicial Service Commission ("Commission") against Judge N J Motata ("the Judge").

2. These complaints arise from an incident which occurred shortly after midnight on 17th January 2007 and the manner in which the Judge conducted his defence at the subsequent trial.

3. Briefly the facts and circumstances appear from the trial record are the following: shortly after midnight on 17 January 2007 the Judge was driving his motor vehicle, a Jaguar, on Gleneagles Road, Hurlingham, Johannesburg. This is a public road to which entry was restricted by a boom gate at a point approximately 60 metres from 20 Gleneagles Road. The Judge attempted to execute a U-turn and in the process, he reversed his vehicle through the pre-cast boundary wall of the property at 20 Gleneagles Road, owned by Mr Baird. The property was occupied at the time by Mr Lucky Melk. It appears that Mr Baird arrived at the

scene consequent upon a telephone call to him by Mr Melk. Mr Baird took a number of photographs. He also digitally recorded some of the exchanges at the scene. Later two female Metro police officers arrived at the scene. They called for assistance because the Judge became difficult and refused to cooperate.

4. Consequently, two male Metro police officers arrived at the scene. Whilst the Judge was still seated in the motor vehicle they hand cuffed him and took him to a hospital where a blood sample was drawn. The Judge was thereafter taken to a police station and charged with *inter alia*, driving under the influence of alcohol.

5. Mr Baird's testimony as to the Judge's state of "inebriety" appears from the trial record. Mr Baird testified that the Judge uttered racial slurs and profanities and used language of a derogatory nature. According to him the Judge was not able to stand up without holding onto his car for support and he smelt of alcohol.

6. Three complaints were lodged with the Commission by:

6.1. The Catholic Commission for Justice and Peace;

6.2. AfriForum; and

6.3. Advocate GC Pretorius SC.

The complaints by the Catholic Commission for Justice and Peace and AfriForum were similar. They related to the utterances made by the Judge at the

scene. The essence of Mr Pretorius' complaint related to the manner in which the Judge conducted his defence at the trial as being inconsistent with the ethics of a judicial officer.

7. These complaints were referred to the Judicial Conduct Committee of the Commission ("the Committee"). In its deliberations the Committee expressed the view that the conduct complained of (against the Judge) if found to have been committed (by the Judge) constitutes gross misconduct. The Committee made the point that, viewed out of context, a conviction for driving under the influence may not constitute gross misconduct, and that a judge may plead not guilty thereto like anyone else. However, a judge may not testify falsely, or in cross-examination put a false or misleading statement to a witness or the court. This is a rule that applies to all officers of the court. A judge bears an even higher duty.

8. With regard to the complaint lodged by AfriForum, the Committee concluded that the complaint, if established, will *prima facie* indicate gross misconduct by the Judge. In arriving at this decision, the Committee considered, amongst others, the following factors:

8.1. The Judge crashed his car into a wall of a house owned by Mr Baird and the remarks complained of were made in the context of that incident.

8.2. It is common cause that the trial court found that the statements complained of were indeed made. This finding was confirmed on Appeal, and there was no reasonable explanation from the Judge.

8.3. The Judge has been convicted of driving a motor vehicle under the influence of intoxicating liquor.

8.4. There are no further Appeal proceedings that are pending.

In the light of the above, of the Committee, in terms of section 16(4)(b) of the JSC Act, recommended to the Commission that the complaint against the Judge be investigated by a Tribunal.

9. The Tribunal convened timeously. However, due to various intervening court proceedings the Tribunal was required to postpone its activities pending the final determination of such proceedings.

10. On 17 January 2018 the Tribunal convened at the Offices of the Chief Justice to commence the investigation.

B. THE TERMS OF REFERENCE OF THE TRIBUNAL

11. The Tribunal's written Terms of Reference are annexed hereto as Annexure A. The salient provisions are as follows:

"***PURPOSE***

3. *The Tribunal is appointed to investigate and report on the complaints lodged with the Judicial Service Commission (Commission) by AfriForum and Advocate G C Pretorius SC (complainants), against Judge N J Motata of the North Gauteng High Court (respondent). The complaints arose from an incident that occurred on 06 January 2007 when the respondent was involved in a motor vehicle accident on Gleneagles Road in Hurlingham, Johannesburg, in which he crashed into a wall belonging to Mr Baird. The essence of the complaint by AfriForum is that the respondent, whilst at the scene of the said accident, allegedly made some racist remarks against Mr Baird, such as "No boer is going to undermine me . . . this used to be a white man's land, even if they have more land. . . South Africa belongs to us. We are ruling South Africa." These utterances were later confirmed in Court to have indeed been made. AfriForum contended that these statements made by the respondents constituted gross misconduct.*

4. *Advocate Pretorius' complaint relates to the manner in which the respondent pleaded to the charges he faced at his criminal trial in which he denied that he was driving a motor vehicle under the influence of alcohol and that he conducted his defence in a manner inconsistent with the ethics of judicial office. The complainant averred that it is one thing for an accused person to put the State to the proof of its case, but it is an entirely different matter for a Judge to publicly state a fact that he knows is false, build a defence on such an untruth and then accuse witnesses of manipulating evidence and being racist. ...*

6. *The Tribunal shall investigate and make findings and report on:*

   6.1 *whether the statements made by the respondent at the scene of the accident can be classified as racist;*

   6.2 *If so, whether these statements made by the respondent at the scene of the accident render him guilty of gross misconduct, as contemplated in Section 177 of the Constitution; and*

6.3 whether the manner in which the respondent conducted his defence during his criminal trial is inconsistent with the ethics of the judicial office, thereby rendering him guilty of gross misconduct, as contemplated in Section 177 of the Constitution."

C. PROCEEDINGS BEFORE THE TRIBUNAL

12. Ms Thenga, the evidence leader, had prepared a charge sheet setting out the charges which in her opinion the Judge should answer to.

13. At the commencement Advocate Skosana, who represented the Judge at the hearing, objected to the contents of the charge sheet. The main thrust of Advocate Skosana's objection was that the charge sheet contained allegations which were outside the Tribunal's Terms of Reference. (The objection is discussed and dealt with from page 4 to page 10 of the Transcript of the proceedings before the Tribunal ("the Transcript")). The Tribunal assured Advocate Skosana that, insofar as portions of the charge sheet may be inconsistent with the terms of reference, they would be disregarded, and the Tribunal would stay within the confines of the terms of reference in its investigations, report and recommendations to the Commission. Advocate Skosana agreed to the Tribunal going forward on this basis.

D. THE EVIDENCE

14. It was common cause at the commencement of the proceedings that the Tribunal was bound by the findings of fact and law made by the trial court which convicted the Judge of driving under the influence of alcohol and the findings of the court on appeal. All parties were in agreement that the record of criminal proceedings ("the trial record") and appeal record were a true reflection of the proceedings in those courts.

15. Notwithstanding this, it was open to the parties to present evidence before the Tribunal. On 17 January 2018, the Tribunal proceeded to hear evidence from three witnesses: Mr Kriel (on behalf of AfriForum), Mr Pretorius (an advocate at the Johannesburg Bar) and Judge Motata.

16. It is common cause that the trial court found that the Judge uttered the following words at the scene of the incident [1]: -

> " ***"MR MOTATA:*** *Yes, but you know all of you, let me tell you most of us this is our world, it is not the world of the boers. Even if they can have big bodies, South Africa is ours.*
>
> ***WITNESS 1:*** *But sir, the problems is you drove into his wall.*
>
> ***MR MOTATA:*** *Even if I can drive into it I will pay it. It is not a problem that I can pay for the wall but he must not criticize me. There is no boer who will criticize me, (indistinct) what he thinks.*
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> ***WITNESS 1:*** *But Mr you of the law person.*

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1 Exhibit 'C' of trial record.

MR MOTATA: *Yes I am the man of the law, I am saying if I knocked his wall ... (intervenes).*

WITNESS 1: *Do you know the law of ... (intervenes).*

MR MOTATA: *Yes I know the law. Let me go to the law. I do not care about him. Yes he must not look at me as a black man. Let me go before the law. That is how much I owe him for the wall which I broke down.*

WITNESS 1: *But then it is not good to insult him.*

MR MOTATA: *Fuck him, fuck him, he must not insult me. I say fuck him. Anybody who insults me, I say fuck you."*

17. Mr Baird was vigorously cross-examined over a number of days and the trial court found him to be a credible witness.

18. Mr Baird was the main focus of the Judge's defence. In the heads of argument presented to the trial court on the Judge's behalf, it was submitted that Mr Baird was biased, unreliable, dishonest and above all that he was a racist. In the course of the trial, it was put to Mr Baird that the Judge would deny that he was drunk or under the influence at the time when the incident occurred at Gleneagles Road.

19. It is against this background that the three complaints against the Judge have to be examined.

(a) Viva voce evidence before the Tribunal

(i) Mr Kriel

19. Mr Kriel, who testified on behalf of the complainant AfriForum, explained why the remarks made by the Judge at the scene should be regarded as racist. In his evidence he stated the following [2]:

> " *In accepting the above quoted utterances, we are of the following view: The word "boer" and even if they have big bodies" is meant to depict in an absolute sense white people, as being inherently racist, bullyish and of a specific physical appearance, have no regard to other persons. They are unsophisticated, un-repented, the ever-oppressor and an unethical immoral person, unworthy of recognition to show any regard to whatsoever. To define in one brush people based on their ethnicity in a particular way is unfortunate and based specifically on race.*
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> *Furthermore, with reference to "boers", Judge Motata stated that this is our world, not the world of the boers, thereby commenting his view that white people are not part of South Africa, not to be recognised as equal citizens and should therefore be disregarded as a whole.*
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> *Judge Motata further states "they must not criticise me. There is no boer who will criticise me". Again, regardless of his conduct, which is deplorable to say the least, he is not to be criticised by a white person and he actually removes [the right] of the person to criticise, simply because of who that person is. Throughout the exchange Judge Motata repeatedly swore at Mr Baird and use the "f" word in all its*

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[2] At pages 17 & 18 of the transcript.

forms, adjective and adverb and known and repeatedly insulted Mr Baird by saying the "f" word.

I think this is relevant, because it creates the context, even though there is an objection to the word being put in the charge sheet. I think it's relative towards an attitude of this regard based on race. The repeated use of the "f" word is of our view consistent with his apparent disdain towards the so-called boers, as stated above, being unwanted people in South Africa.

I reiterate, this rant of Judge Motata was solely based upon colour of the skin of Mr Baird, nothing else whatsoever. We believe there is no evidence to suggest any racism or provocation on the part

of Mr Baird or that Mr Baird was luring Judge Motata to make these degrading statements."

20. Under cross-examination by Advocate Skosana it was put to Mr Kriel that the remarks that the Judge made were because of him being provoked by what Mr Baird had said at the scene. That is to say it was alleged that Mr Baird had referred to the Judge "as a drunken kaffir".

21. Advocate Skosana put it to Mr Kriel that:

"There are just two aspects, which relate to merely the version of the respondent. Mr Kriel, I just want to put it to you or give you the version of Judge Motata that he will say later and testify later that on that day he was provoked and mainly the provocation was caused by the fact that he had been there with a certain Mr Melk, the tenant, and they were waiting for Mr Baird and when Mr Baird arrived, the first thing that he did, he took the key of his car.

So, that was part of the cause for the provocation, and in any event, as I have referred to the record, the ministry (sic) had found that he was indeed provoked. Do you want to comment on that?" [3]

22. It was further suggested:

"... and the second part, which is related, is that pursuant to that provocation, he then said these words, which he was saying to them, directed at the police officers who were there who were black. He was not talking to Mr Baird, hence he spoke in Sesotho." [4]

23. The other salient points of Mr Kriel's evidence were that:

- There is a concern that those appearing before the judge would be judged according to who they are, rather than on the merits of their cases.

- These utterances caused them (members of AfriForum) to believe that the Judge is "prejudiced on a racial basis''.

(ii) Mr Pretorius

24. Mr Pretorius, an Advocate at the Johannesburg Bar complained that the manner in which the Judge advanced his defence at the criminal trial was inconsistent with the ethics of a judicial officer. Mr Pretorius contended that the Judge had denied he was under the influence of alcohol whilst driving his motor vehicle and that this denial was dishonestly advanced in the face of overwhelming

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3 At page 38 of the transcript.

4 At page 38 and 39 of the transcript.

evidence which clearly demonstrated that the Judge was indeed under the influence of alcohol.

25. In his testimony before the Tribunal Mr Pretorius elaborated on his complaint and referred to correspondence between him and the Committee and the Commission:

"All I want to add to my original written complaint is that I have yet to meet anyone who does not regard the Judge's conduct as wholly inappropriate and incompatible with the office of a Judge. His conduct not only caused the office to be the object of ridicule, but his false denial that he was drunk strikes at the heart of the judiciary's integrity. It is one thing for an accused person to put the state to the proof of its case. It's entirely a different position for a Judge to publicly state a fact which he knows is false, build a defence on such an untruth and then accuse witnesses of manipulating evidence and being racist." [5]

26. According to Mr Pretorius the Judge should be disqualified from being a judge on the basis only that he is mentioned in Juta's Digest of African Law, 4 March 2011, at page 4 as a convicted accused.

27. The other salient points of Mr Pretorius's evidence were that:

- The Judge's public protestations that he was not drunk contradict the finding by both the trial court and the appeal court that he had in fact been drunk.

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5 At page 44 of the transcript.

- What was put to the state witnesses was that the Judge was not drunk or under the influence of alcohol and he would testify to that effect. However, he never took the stand.

28. It is to be noted that the Judge never responded in writing to Mr Pretorius' complaint.

(iii) Judge Motata

29. The Judge in his evidence responded to aspects of Mr Pretorius' complaint and explained why the defence was conducted in the manner as it appears in the trial record.

30. When asked by his counsel, Advocate Skosana:

> " *Now, I just want to, perhaps let's start as a point. What did you tell your counsel when you were consulting about this?*
>
> ***Judge Motata**: I told him that I don't consider myself drunk, because I had only 2 glasses of wine and that's below the limit."* [6]

31. The Judge's stance before the Tribunal was that he did not consider himself to be under the influence of alcohol because he had only two glasses of wine that evening between 7 and 11pm. The Judge explained that when the incident occurred at Gleneagles Road he "did not consider himself to have been drunk". It was this belief that caused him to instruct his counsel at the trial, Mr Dorfling,

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6 At page 89 of the transcript.

to put to the court "the accused will deny being drunk or under the influence at the time of driving his motor car".

32. It was explained on behalf of the Judge that although counsel had been instructed that he would deny being under the influence of alcohol, how the defence would be conducted was left largely for counsel to determine. It was contended that it was perfectly permissible for the Judge to have conducted his defence in the manner in which he did.

33. In this regard, it was argued on behalf of the Judge, that he could not have stopped counsel from putting incorrect versions to a witness because earlier in the trial the Magistrate had remonstrated with him for communicating with his counsel and he felt constrained to keep quiet as a consequence.

34. In argument it was submitted on behalf of the Judge that the word "boer" is neutral. Whether the word could be considered racist is dependent upon the context in which it was used. At the time when the Judge used the word it was not addressed to Mr Baird but to the police officers at the scene. The Judge was speaking in SeTswana and therefore in this context his remarks were not racist.

35. When counsel was asked, why then did the Judge raise the question of race, if he was not speaking to Mr Baird? It was submitted that the word "boer" is neutral. The word on its own does not have racial connotations. It had to be placed in context and it is the context which determines whether the use of the word "boer" is racial or not. In this matter the word was spoken in SeTswana, it was not

addressed to Mr Baird but to the traffic officers that were at the scene. It was therefore contended that the remarks though vulgar were not racist.

36. It was suggested to Advocate Skosana that there was no necessity for the Judge to make reference to Mr Baird's race. In response it was submitted that the Judge had been demeaned and angered by Mr Baird's conduct and what the Judge meant to convey by the remarks he made was "no white person is going to treat me like this."

37. In response to questions about whether the Judicial Code of Ethics ("the Code") which was issued on 18 October 2012 was applicable to his conduct, the Judge felt this was not applicable to him, as by this stage he had already been placed on long leave.

E. Discussion of the Evidence

(a) Intoxication

38. Even though the trial court found the Judge was under the influence of alcohol and this was confirmed on appeal, the Judge maintained that he had only had two glasses of wine to drink between the hours of 7 and 11pm. He maintained the stance that he did not consider himself to be under the influence of alcohol. All the evidence before the Tribunal points to the fact that the Judge was indeed intoxicated.

(b) *Vulgarity*

39. It is patent from the trial record that the utterances made by the Judge were replete with vulgarity. This in addition to the other considerations may well have in influence in determining whether the Judge is a fit and proper person to continue as a judicial officer.

(c) Racist language

40. Although under the influence of alcohol, something which the Judge denies, and assuming in his favour that he had been provoked by Mr Baird, the remarks made by the Judge in the context of what had occurred were gratuitous, unjustified and divisive. At the time when the Judge made the remarks complained of, the police were on the scene. It is the Judge's stance that he addressed these remarks to the police at the scene. This is not the apparent source of his alleged provocation. The Judge was uncooperative and did not comply with the instructions given to him by the police officers. He addressed the remarks and his utterances to the police officers in SeSotho/SeTswana. It appears that the Judge was attempting to gain the sympathy of the police officers and alienate them from Mr Baird. It is for this reason that the Judge's remarks can be regarded as self-serving.

41. '*Racism*' is defined in the Merriman Dictionary as '*a belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race*'.

42. The utterances made by the Judge, exhibit the traits set out in this definition. The first statement "no boer is going to undermine me" refers to a specific group of

people, the white Afrikaners. In essence the Judge believes that this group of people is not qualified to criticise or undermine him (or is not worthy to do so). In this sense he used race as a primary determinant for who he would accept criticism from. His attempts to isolate the term "leburu" as the standard term of reference to this group of people, does not take his case any further. The statement must be considered in the context in which he uttered it. His general conduct and other statements form that context.

43. Other statements made by the Judge, such as: "this used to be a white man's land … South Africa belongs to us … this is our world (country) … not the world (country) of the boers ... even if they have more land/bodies … [and that] the police officers should not support the white man" become a racially charged theme which the Judge chose to use in dealing with the situation in which he found himself. The use of the sensitive issue of the South African land which "used to be owned by the white Afrikaners and now is ours" also shows a deliberate racially motivated strategy chosen by the Judge to get the police officers on his side and to alienate Mr Baird.

44. It was contended on the Judge's behalf that the Tribunal proceedings are only concerned with the allegedly racist words quoted above and not any other words that appear in the transcript of the criminal trial. This however cannot be correct, given that the terms of reference, for example, "allegedly made racist remarks against Mr Baird, such as *"No boer is going to undermine me …*" (emphasis added). It is evident that the quoted words were merely quoted as an example.

What is important is the investigation and consideration of the Judge's conduct at the scene of the accident.

(d) Provocation

45. The Judge justified his conduct and utterances and it was argued before us on the basis that Mr Baird had provoked and angered him by insulting him (calling him a "drunken k…") and taking his car keys from him.

46. While the trial court found that he was provoked, it did not set out the provocative conduct. However, the Judge's evidence that he was provoked into making these utterances by being insulted is not borne out by the record. And the fact that at no stage in the exchange of 'pleadings' in these judicial conduct proceedings did the Judge mention that he was provoked by the use of the "k word".

47. But even if he had been provoked, that does not justify his conduct of manipulating race to isolate Mr Baird and to get the police on his side. Further, if he was provoked by Mr Baird he would have, in all likelihood directed his response to Mr Baird and not to the police officers. In this sense, his defence that he was responding to provocation does not make sense. Even if he was provoked, perhaps by the fact that his car keys were taken from him, restraint is an essential trait in the character of a judicial officer. His reaction far exceeded the provocation.

(e) Whether such racism constitutes gross misconduct?

48. Our Constitution protects South African citizens against racism and guarantees their right to dignity. Our judges are custodians of these rights. Post-apartheid, our courts have consistently decried persistent racist conduct and affirmed the right of all South African citizens to dignity. Racist conduct on the part of a judge therefore strikes at the heart of judicial integrity and impartiality, particularly against the background of South Africa's apartheid history. Accordingly, racist conduct on the part of a judge constitutes gross misconduct.

49. It is so that the Code was promulgated in 2012 when the Judge was on special leave, having been so placed in relation with this matter. However, the promulgation of the Code essentially codified ethical and legal norms that had been in existence prior to 2012. The further contention by the Judge that the incident happened in his private time and that he should be judged as a private citizen is wrong. Even before the promulgation of the Code, South African Judges had been guided by ethical considerations in and outside the performance of judicial duties.

50. The test for whether conduct constitutes gross misconduct is an objective one.

51. Section 177 of the Constitution was in existence long before the enactment of the Code, stipulating gross misconduct as a ground for removal of a judge. Sentiments which preceded the promulgation of the Code included the following:

"To fulfil [its] Constitutional Role the judiciary needs public acceptance of its moral authority and integrity, the real source of its power. Accordingly the Constitution commands all state organs to assist and protect the independence,

impartiality, dignity, and accessibility of the judiciary. But it is even more important that judges at all times seek to maintain, protect and enhance the status of the judiciary. To that end they should be sensitive to the ethical rules which govern their activities and behaviour both on and off the bench." [7]

52. In its preamble, the Code refers to the necessity for the judiciary to conform to ethical standards that are generally accepted, more particularly, as set out in the Bangalore Principles of Judicial Conduct (2001) and as revised at the Hague (2002).

53. It will be evident from the passages quoted that impartiality, dignity and acting without favour or prejudice are key elements underpinning our courts and judicial conduct. Conduct which militates against such attributes must amount to gross misconduct because such conduct would undermine these key values and attributes necessary to ensure Judicial Authority. [8]

(f) Dishonesty in the conduct of the criminal trial is inconsistent with the ethics of the judicial office

54. As already stated, the essence of Mr Pretorius's complaint is that the manner in which the Judge conducted his defence during his criminal trial is inconsistent with the ethics of a judicial officer, thereby rendering him guilty of gross

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[7] Judicial Ethics in South Africa – Issued by the Chief Justice, the President of the Constitutional Court and the Judges President of the different High Courts and the Labour Appeal Court, and the President of the Land Claims Court, March 2000: (http://www.sundaytimes.co.za/2000/04/16/politics/pol16.htmy

[8] See Section 165(2) of the Constitution.

misconduct. In his response to this complaint, the Judge stated that he did not consider himself to be drunk. Hence he instructed his counsel to put to the witness (Mr Baird): "The accused will deny being drunk or under the influence at the time of driving his motor car."

55. This response by the Judge does not address the issue as to whether the manner in which he conducted his defence is inconsistent with the ethics of a judicial officer. The question that arises in regard to this issue is did the Judge intentionally advance a defence which he knew to be untrue? It may well be that at the time when the incident occurred and shortly thereafter, the Judge may well not have considered himself to be under the influence of alcohol. However, the material time is not when the incident occurred, but rather when the Judge was conducting his defence. By then, not only did he have available to him all the evidence and statements made by the witnesses who were present, but he had also had the time to reflect on his conduct as well. This is the stage at which it must be determined whether the manner in which he conducted his defence is inconsistent with a Judge's ethical duty.

56. Before instructing counsel, the Judge must have considered *inter alia*, the evidence not only of Mr Baird but the evidence of both the visual and audio recordings made at the locality at the time of the incident. No doubt, the Judge together with his legal representatives must have considered the evidence of witnesses other than Mr Baird as well. All the admissible evidence which would be placed before the court which the Judge had access to before he pleaded, must

have made it clear that a denial of intoxication was against all prevailing evidence and could not be true. The response by the Judge that he had no control over questions put by his counsel to state witnesses cannot be sustained. That being so, the conclusion to be drawn is that the Judge knowingly conducted a defence which he knew lacked integrity.

57. The office of a Judge is a very respectable office. So, must be those who hold it. A Judge's conduct, in and out of court, should not dishonour that high office. Impeccable moral and ethical standing is a crucial hallmark of such a public office. The criminal trial of Judge Motata has placed his conduct squarely within the public domain. A question to be asked is what would be the attitude of an ordinary person, let alone a person of Afrikaner descent, if she/he is to be tried before Judge Motata?

F. CONCLUSION

58. This Tribunal has come to the conclusion that Judge Motata's conduct at the scene of his motor accident and the remarks he made were racist and thus impinge on and are prejudicial to the impartiality and dignity of the courts.

59. Similarly, the lack of integrity in the manner in which Judge Motata allowed his defence to be conducted at his trial, in our view is incompatible with or unbecoming of the holding of judicial office.

60. As to whether the provisions of section 177(1)(a) of the Constitution is to be invoked, the question to be asked is if Judge Motata is to retain the office of a judicial officer, would this negatively affect the public confidence in the justice system? If the answer is in the affirmative, as we suggest it is, then in the discharge of our mandate we recommend to the Judicial Service Commission that the provisions of section 177(1)(a) of the Constitution be invoked in this instance.

Dated this 12th day of April 2018.

Chairperson of the Judicial Conduct Tribunal