OPINION PIECE

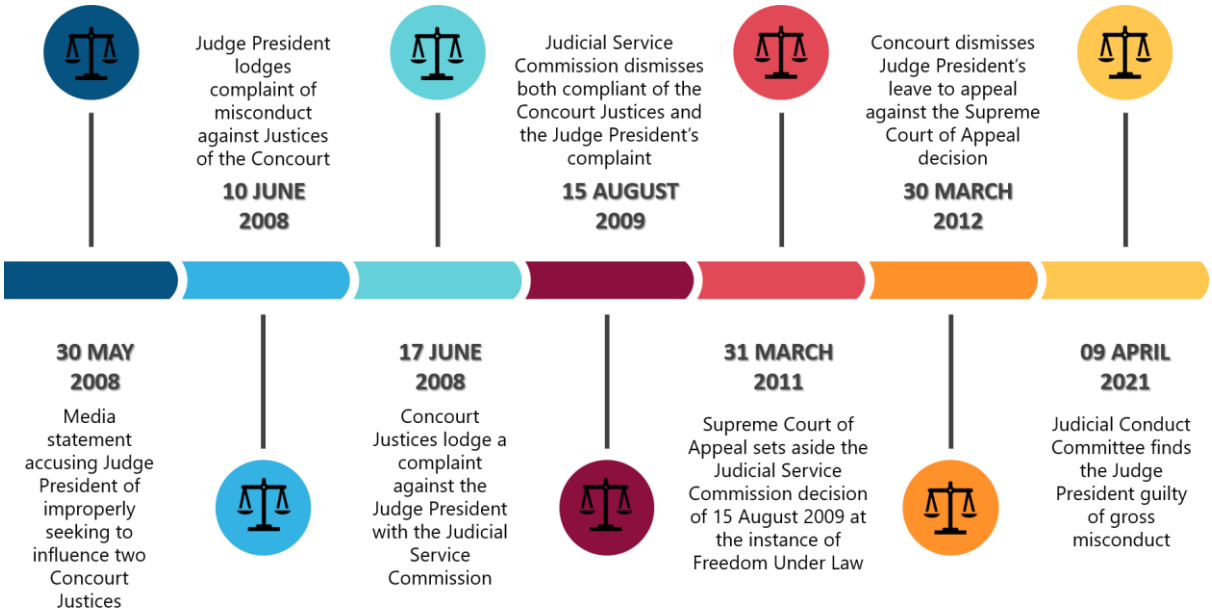
The Judge President

vs

Justices of the Constitutional Court

What Are the Missing Facts?

How it unfolded - The Timeline



On 9 April 2021, the Judicial Conduct Tribunal of the Judicial Service Commission in South Africa found Judge President Hlophe of the Cape High Court guilty of gross misconduct. This follows a complaint lodged by Justices of the Constitutional Court on 17 June 2008 (I have never accepted that the complaint was lodged on 30 May 2008, as widely reported, because the JSC only afforded the Justices to substantiate their complaint subsequently, which resulted in the 17 June 2008 complaint). Most of the Justices who lodged that complaint are no longer serving on the Constitutional Court.

Having read the Tribunal's decision several times, I believe that a full and fair critical analysis of it will be best done in a scholarly work in due course. For now, I deal only with facts that have received little or no attention in the public discourse.

Along the 13-year timeline of this judicial spat, I get the sense that some material facts have been lost as each commentator carves his or her own factual matrix to fit a particular narrative. Inevitably, when that happens – when sailors cut the sails to fit the trim, as it were – the parallel factual matrix so carefully carved out in the public media creates a momentum in a specific direction of public opinion.

In such an environment, what actually happened tends to be relegated to an irrelevance.

Here are just three examples of what I am talking about.

Some commentators believe that the Judge President made a special trip from Cape Town to the Constitutional Court in Johannesburg, some 1,400km or 870 miles away, with a view to influencing the two Justices. As a factual predicate, this is incorrect as clearly borne out by undisputed facts contained in pleadings or affidavits that should inform the decision of a decision-maker. This will become clear later in this discussion.

Other commentators say the Judge President does not have recourse ultimately to the Constitutional Court because it is the Justices of that Court who laid a complaint of gross misconduct against him. Again, this does not hold up against the actual fact that the Constitutional Court did in fact sit and hear the Judge President's application for leave to appeal and unanimously dismissed it in 2012. That is the decision that made the re-hearing of their complaint possible by this Tribunal after their complaint had been dismissed by the Judicial Service Commission in August 2009.

The two Justices said to have been improperly approached by the Judge President also approached the courts to challenge the JSC process on the grounds, among others, that there was no proper complaint against the Judge President for lack of an oath. That challenge coursed through the courts from September 2014 in the high court, March 2016 in the Supreme Court of Appeal ("the SCA") and all the way to the Constitutional Court in August 2016 which refused them leave to appeal against the judgment of the high court and the order of the SCA refusing them leave.

There is a third fact-free belief. People believe that it is impermissible for one Judge to discuss a case, in which he or she is not a member of the panel hearing it, with another Judge who is. But Chief Justice Langa himself did not say this in his statement of complaint dated 17 June 2008 to the JSC. What he said was impermissible was a Judge from one court discussing a case with Judges from the highest court, the Constitutional Court. No one stops to ask how a Judge who is not a member of the Constitutional Court would be aware of such a convention (as that's what it is) when it is not contained in any directive that has been widely circulated in writing to all Heads of Courts.

The truth is that Judges do discuss legal principles arising in cases with other Judges not sitting with them to hear a case. If the Constitutional Court was the exception, then this should have been communicated in writing to all Heads of Courts, and not left to their interpretation of s 165(2) of the South African Constitution, which talks about judicial independence, and s 165(3) which forbids interference with the functioning of the courts. This is because, it is in the nature of application of the law that it is open to varying interpretations by various judges. What may be ***"elementary principles of judicial ethics"*** to one judge in his interpretation of s 165 of the Constitution, may not be so obvious to another judge. And so, to find a judge guilty of gross misconduct just because he does not agree with interpretation that the Justices of the Constitutional Court place on a provision of the Constitution seems unduly harsh.

It should not be hard to imagine why Judges discuss cases even with other judges not sitting in those cases. It is for the same reasons Counsel and academics do it: intellectual stimulation and rigour; continuing legal education; bouncing off ideas on legal principles; even checking that one may not be missing some important point in one's proposed conclusion in a case. I shall later give you examples of this from reported judgments.

Ah, but there is a difference, some commentators say. The Judge President did not seek to ***"discuss"*** the case, they say; he sought to ***"influence"*** the outcome of the case. Let us explore that argument.

- Firstly, in order to conclude that someone sought to influence anything, you must establish his intention. Intention is not what the observer or commentator wishes; it is a legal concept that must be legally established. In criminal cases it must be established beyond reasonable doubt. In civil cases (including inquisitorial proceedings) it must be established on a balance of probabilities. Balance of probabilities takes into account the credibility of witnesses in proceedings resembling civil trials, such as this process of the Judicial Conduct Tribunal. Now, in what world is a Tribunal, consisting of a panel of judges, likely to treat the evidence of Justices of the highest court in the land as less credible than that of a Judge President against whom they have lodged a complaint of gross misconduct, for purposes of establishing intention on a balance of probabilities? Indeed, it should hardly be surprising that the Tribunal has done exactly that: preferred the version of the Justices of the Constitutional Court above that of the Judge President. The legal professional, the judiciary no less, is notoriously hierarchical.
- Secondly, all along, the highwater mark for the establishment of the Judge President's intention in the gross misconduct complaint against him has been the expression ***"sesithembele kinina"***, isiZulu for ***"we place our trust in you"***. When that was addressed by expert evidence, the Tribunal dismissed the evidence as ***"irrelevant"*** and ***"inadmissible"***. With the meaning of that expression as determined by an expert now excluded from evidence as being ***"irrelevant"***, what remains of the foundation for the Judge President's intention to influence the two Justices?
- Thirdly, the Tribunal says because the Judge President did not use that expression to one of the Justices, it is irrelevant for determining his intention towards her. But this ignores the inferential nature of evidence from factual averments that surround it. The expert evidence on the meaning of the expression ***"sesithembele kinina"*** may have been ruled

"irrelevant" by the Tribunal; but the expression itself cannot be unheard, and its lingering meaning as understood by the complainant Justices of the highest court in the land, cannot be erased from the Tribunal's mind. Remember that the Tribunal has ruled only the evidence of the expert on the meaning of the expression to be irrelevant and inadmissible. It has not ruled that the expression itself is irrelevant and inadmissible. So, in my understanding, it is the context given by the expert to that expression that has not been admitted into evidence. But what of the Justices' own understanding of the **import and significance** of the expression, not just its meaning? Does the exclusion of the expert's context not have the effect of giving weight to the understanding of the import and significance of that expression by the Justices for purposes of establishing the Judge President's intention, in the bigger scheme of how they perceive him?

- Fourthly, if you understand how the court system works, the process of judgment-writing in an appeal court comprising multiple judges, the concept of judicial independence indelibly carved into s 165(2) of the South African Constitution, the presumption of impartiality in a judge, and the concept that judges are presumed to know the law, what does the decision of the Tribunal say about all these things? It is a fact that the Constitution confers judicial independence in every Judge. No Judge can conceivably be influenced ***"improperly"*** by another. Each Judge swears an Oath of Office to ***"administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law"***. That being so, if any Judge is ***"improperly"*** influenced by another, is that not an indictment on both the influencer and the influencee? Is it not upon a realisation of this problem that one of the Justices changed her evidence at the last moment to say the Judge President did not ***"clearly"*** influence her but rather ***"attempted"*** to do so? Why did the Tribunal not highlight this important aspect of her evidence in its ruling?

These are some of the considerations that I find absent in public discourse about this case.

Here are the other facts that have either been lost or distorted over the 13 years in public media reports on this case. This evidence is contained in the pleadings record of the Supreme Court of Appeal and the Rule 53 record in the review application of Freedom Under Law.

The Evidence of the Judge President on the Meeting with Justice Jafta

The Judge President had scheduled a visit to Pretoria on private business during March 2008. As he had learnt that Justice Jafta, who had previously been an academic colleague of the Judge President's at the University of Transkei, had taken up an acting position at the Constitutional Court, the Judge President called him a few days before his scheduled visit to Pretoria and arranged to meet him for coffee or tea. They agreed to meet at Justice Jafta's chambers at the Constitutional Court.

The Judge President had first met Justice Jafta in 1990 when the Judge President was Professor and head of the Department of Public Law at the University of Transkei. Justice Jafta was then a lecturer of Constitutional Law in the department.

They talked for approximately 90 minutes about their respective families, the Judge President's divorce, their past experiences at the University of Transkei, their experiences as judges, issues of transformation on the bench and at the Bar, Justice Jafta's experience as judge of the Supreme Court of Appeal, the property he had bought in Bloemfontein, his experience as Acting Judge of the Constitutional Court, his intention to avail himself for permanent appointment in the event of a vacancy arising in the Constitutional Court, and general management of the Constitutional Court.

They also discussed the principle of attorney and client privilege which had been argued before the Constitutional Court on 11 to 12 March 2008 in the cases of **Thint (Pty) Ltd v NDPP and Others; Zuma and Another v NDPP and Others** (**"Zuma/Thint cases"**). That conversation had been sparked by numerous files of the record which were clearly marked so that any person walking into Justice Jafta's chambers would be able to recognise them. That the cases concerned the issue of privilege was in media reports.

They discussed the importance of fair trial rights and privilege. The Judge President expressed the view that he felt generally strongly about the issue of fair trial rights and privilege. Justice Jafta indicated that he felt the same but that he was not sure that everyone, particularly his white colleagues, felt the same. It was in that context that

the Judge President then said to Justice Jafta ***"sesithembele kinina"***.

At no stage during that conversation did Justice Jafta suggest that the Judge President was acting inappropriately in expressing views on the issue of privilege. At no stage did Justice Jafta demonstrate any discomfort about that conversation. At no stage did the Judge President suggest that Justice Jafta should ignore the evidence and rule in any particular way. The conversation was pleasant and ended cordially when Justice Jafta walked the Judge President to Justice Ngcobo's chambers.

This evidence is not in dispute. As I understand his evidence, Justice Jafta talked about ***"some level of discomfort"*** some 12 years after the conversation.

The Judge President's Evidence on the Meeting With Justice Nkabinde

The Judge President had coffee with Justice Ngcobo and left after about 15 minutes. He did not discuss the **Zuma/Thint cases** with him. As he was leaving Justice Ngcobo's chambers he then, by sheer co-incidence, ran into Justice Nkabinde who was with Justice Madala. He had not seen Justice Nkabinde since her appointment to the Constitutional Court. She said although she had not seen him for a while, she had read about the Judge President in the newspapers. They laughed about that and the Judge President then promised to pay her a visit the next time he had occasion to be at the Constitutional Court.

That occasion presented itself some 3 or so weeks later when the Judge President attended a meeting scheduled by the Chief Justice's chief director at the Constitutional Court. It was a meeting of the Local Organising Committee of the Commonwealth Magistrates and Judges Association. The Judge President was chairman of the Local Organising Committee at the Chief Justice's request.

The Judge President gave Justice Nkabinde a courtesy call to inform her that he would be at the Constitutional Court for the Local Organising Committee meeting and would visit her for a few minutes before meeting the Chief Justice about the Local Organising Committee. He says they know each other and have mutual friends. He had met her some 6 years before her appointment to the Constitutional Court when she was still a trial judge. They shared a mutual interest in Labour Law.

The Judge President arrived in Johannesburg a day before the date scheduled for the meeting of the Local Organising Committee because he had been invited to attend a function of Aspirant Female Judges at Velmo Hotel near Pretoria. He had been one of the examiners of aspirant female judges. Justice Nkabinde was at that function and she gave a vote of thanks. After her vote of thanks, she introduced the Judge President to her husband and left, saying she would see the Judge President the following day. She also indicated that she would be available anytime before lunch since she had plans to travel to the North West that afternoon.

None of this was disputed. On these facts, the Judge President did not go to Justice Nkabinde's chambers uninvited, or specifically to meet only Justice Nkabinde about a specific case.

The following day, the Judge President went to the Constitutional Court and got there at about noon. Justice Nkabinde offered him tea and fruit which were in a bowl on a table. They talked about family, her surname, divorce, the Judge President's experience at the Cape High Court and Justice Nkabinde's experience at the Constitutional Court. She asked the Judge President whether all his *"problems in Cape Town"* were over. The Judge President indicated that his *"problems"* (referring to the racism allegations and the Oasis issue regarding an allegation that he gave permission to Oasis, in which he allegedly had an interest, to sue a fellow judge) had become significantly less than in the past. They both laughed it off.

When Justice Nkabinde asked what had brought him to the Constitutional Court, he told her he was attending a meeting of the Local Organising Committee and that he had a mandate from the Chief Justice to be the Committee's chairperson. As with Justice Jafta, the record of the **Zuma/Thint cases** was in clear view.

Justice Nkabinde told him that she was busy doing a note on the issue of privileged communication between attorney and client. The Judge President expressed his own views on the issue of attorney and client privilege and Justice Nkabinde told him about the importance of that issue in the **Zuma/Thint cases**. She said because the Constitutional Court was the final court it was important that they get things right first time all the time. (Justice Nkabinde disputed this in her evidence at the JSC in April 2009. I discuss that later.)

The Judge President noticed the record in the **Zuma/Thint cases** in Justice Nkabinde's chambers because it was in clear sight. Although Justice Nkabinde did not discuss the merits of legal privilege as relates specifically to these cases, she did say that it was an important legal issue in the case. The Judge President agreed with her and remarked, from his reading of the SCA judgment, that the Supreme Court of Appeal did not attach much weight to the issue of privilege when those cases served before it.

He says he knew no more about the case than what he had read in public documents. He did not know, until Justice Nkabinde told him, that she was writing a note on privilege.

The conversation with Justice Nkabinde lasted for about 30 to 45 minutes and ended as it had started – cordially. At no stage did Justice Nkabinde indicate any discomfort about the issues discussed including the issue of privilege. At no stage did she convey to the Judge President that his conduct was improper.

In her evidence given in the Judge President's absence before the JSC on 8 April 2009, Justice Nkabinde for the first time

- denied that the Judge President mentioned anything about his mandate from the Chief Justice to chair the Local Organising Committee of the Commonwealth Magistrates and Judges Association
- denied that the Judge President said anything to her about the conference that he was attending at the Constitutional Court the day he paid her a visit
- denied that the Judge President spoke to her about anything else other than the issue of attorney and client privilege
- denied that she said anything to the Judge President about writing a note on privilege in the **Zuma/Thint cases**
- denied that she was pressured into becoming a co-complainant in the impeachment proceedings
- said she told the Judge President that he was not entitled to discuss the issue of privilege arising in the **Zuma/Thint cases** because he was not a member of the Constitutional Court and did not sit in those cases.

These are the facts on the meeting with Justice Nkabinde. How do these facts, even factoring in Justice Nkabinde's denials, establish an intention to influence the decision of the Constitutional Court comprising between 8 and 11 Justices?

The Judge President says he is unable to explain why Justice Jafta would warn Justice Nkabinde of his alleged attempt to influence him. Nothing that transpired between him and Justice Jafta could have prepared him to meet this accusation. But then, this alleged warning is at odds with

- the warm manner in which Justice Nkabinde received him in her chambers
- the free manner of their exchange of views on the issue of privilege
- the cordial manner in which they parted at the end of that conversation
- the period of a month that Justice Nkabinde waited before raising the issue of her conversation with the Judge President as a concern with Justice Mokgoro.

What many people seem not to know is that this misconduct complaint was dismissed by the JSC in August 2009 and the matter was considered finalised. But a non-governmental organisation chaired by a retired Constitutional Court Justice revived it. It is that to which I now turn.

Dismissal and rebirth of the complaint

The complaint of gross misconduct was dismissed by the JSC in August 2009. It was when Freedom Under Law, chaired by former Constitutional Court Justice Johan Kriegler, entered the scene that the complaint was kept alive. Freedom Under Law approached the High Court to set aside the JSC decision. It lost. Then it appealed to the SCA in Bloemfontein and succeeded on 31 March 2011. Not only did the SCA review and set aside the JSC decision to dismiss the Justices' gross misconduct complaint against the Judge President, it also dismissed the Judge President's cross-appeal in relation to his complaint against the Justices.

But the Justices themselves, on the one hand, and the Judge President, on the other, appeared to have buried the hatchet and moved on.

Chief Justice Langa, Justice Jafta, Justice Kroon and the Judge President had all expressed the pain that this process had occasioned them.

- Chief Justice Langa said under oath:

"I did not have a desire to have Judge President Hlophe impeached and this was a painful matter to me."

- Justice Jafta said the following when he was interviewed for a seat in the Constitutional Court:

  "Yes it has been [painful to me], Mr Moerane. Well, it didn't really end there, the matter was also hurtful to also our families."

- Justice Kroon, also on the occasion of his interview for a seat in the Constitutional Court, said ***"painful is a very apt word"*** to describe developments in the complaints between the Judge President and the Constitutional Court Justices.

The Constitutional Court, then under the leadership of Chief Justice Langa, did not balk at the decision of the Judicial Service Commission by its statement of 1 September 2009 which read as follows:

> "**PRESS RELEASE BY JUSTICES OF THE CONSTITUTIONAL COURT**
> **Justices of the Constitutional Court and Judges Jafta and Kroon who laid the complaint concerning the conduct of Judge President Hlophe, have received the decision of the Judicial Services Commission and note the contents of the majority and minority decisions.**
> **The Commission is the body mandated by the Constitution to deal with complaints relating to judicial conduct. The Justices have no comments regarding the decision of the Commission.**
> **They wish to reaffirm their commitment to continue to uphold the independence and impartiality of the judiciary and, to the best of their ability, to adjudicate all matters before them in accordance with their oath or solemn affirmation to administer justice to all people alike, without fear, favour or prejudice, guided only by the Constitution and the law.**
> ***Statement issued by the Constitutional Court, Braamfontein, Johannesburg, September 1 2009***"

When Freedom Under Law launched its review application to set aside the decision of the JSC, it did not assert that it had the support of any of the protagonists in the relief that it sought. Its review application was dismissed by the high court. It appealed to the SCA and got its wish on 31 March 2011. The Constitutional Court, including 3 Justices who were signatories to the complaint against the Judge President, unanimously dismissed the Judge President's subsequent application for leave to appeal to it. In effect, therefore, the Constitutional Court (including 3 complainant Justices against the Judge President) played a significant role in ensuring that their colleagues' complaint against the Judge President was revived, and the Judge President's complaint against them remained dismissed.

No one seems to ask the obvious question: what happened to the age-old principle that no one should be judge in a matter in which he has a material interest? There can be little doubt that the Constitutional Court Justices of 2012, who sat in that case and dismissed it, had an interest in the gross misconduct complaint that their colleagues had lodged against the Judge President ***"to protect the institutional integrity of the apex court"*** (as the Tribunal puts it) being brought back to the JSC and determined in their favour.

Justices Jafta and Kroon, on the one hand, and the Judge President, on the other, also expressed their aversion to having the matter re-opened after the August 2009 dismissal by the JSC.

Justice Jafta expressed the view, categorically, that ***"it would not be wise for anyone to reopen"*** the enquiry. He gave the following reason for this view

> ***"I think the matter has done so much damage to the judiciary and to this Commission, as an institution, as well and I think even if one doesn't agree with the outcome, one has to bear in mind that dragging it causes more damage to the institutions, leaving aside the individuals involved. Individuals may come and go but doing damage to the institutions is something that I find unfortunate."***

Justice Kroon, who was acting in the Constitutional Court when the allegations against the Judge President arose, expressed himself in similar vein

> ***"I think in the interests of the judiciary as a whole, of the Constitutional Court and of Judge Hlophe, the chapter must be regarded as closed."***

The Judge President said he regarded the matter as finalised and that

> ***"there is no wisdom [in reviving or prolonging this matter] and … that's why when the matter was finalised I immediately went back to work and resumed my duties as Judge President of the Western Cape."***

The case that Freedom Under Law said would be laid bare by cross-examination at the Commission had already been proven by the evidence of the Justices of the Constitutional Court themselves. I deal here briefly with some of the factors that further militated against the re-opening of the complaint.

First, in his sworn evidence before the JSC in April 2009, Chief Justice Langa said there was ***"nothing wrong"*** with the Judge President saying to Justice Nkabinde the **Zuma/Thint cases** ***"were important in that they would clarify once and for all specific legal principles like privilege and the guidelines for determining the constitutional validity of search and seizure warrants"***. The only thing he said he ***"would question"*** was the Judge President discussing the case with ***"a Judge who was involved in hearing the argument"***.

But there are numerous examples of judges discussing cases with other judges not sitting with them in a particular case.

- In **S v Kwadiso and Another 1977 (3) SA 876 (E)** the following was said:

> ***"Fully appreciating the magistrate's difficulties as to the appropriate method of dealing with an "offender" of his nature, I discussed the matter with some of the other Judges in this Division and we were all perturbed at the concept of committing a child of nine years to a reformatory. I therefore referred the matter to the Attorney-General for his views …."***

- In **S v F 1989 (1) SA 460 (ZH)**, where the bench comprised two judges, we read:

> ***"Though the constitutionality of the matter is not up for decision, as this Court is the upper guardian of all minors, I must express its condemnation of what has occurred. Like Addleson J in S v Kwadiso and Another 1977 (3) SA 876 (E) I have discussed the matter with other Judges of the High Court and we are all very perturbed. It is also of great concern that the Acting Attorney-General is still of the attitude that the proceedings were warranted and the conviction and sentence appropriate."***

- In **Knight NO v Harris 1962 (2) SA 317 (SR)**, the following appears **(per Beadle CJ)**:

> ***"Mr. Elliott, who appeared for the plaintiff, while conceding that the precise meaning of the Rule was not clear, argued that the practice of the Court had been to confine the hearing of evidence in cases of this sort to the quantum of damages only. I know of no such practice nor do any of the other Judges of this Court with whom I have discussed the matter, although it may well be that on occasions individual Judges may have given orders without hearing such evidence, but even if this is so such cases have certainly not been sufficiently frequent to establish any accepted practice, and it is as well for the guidance of practitioners that the Court should now give its interpretation of this Rule."***

- In **Selepe v Santam Insurance Company Ltd 1977 (2) SA 1025 (D)**, the court said **(per Didcott J)**:

> ***"By reserving the costs of the application in the event of its success, the Court can then retain the power to penalise him in case it emerges at the end of the litigation that he misled it. I have discussed the present topic with the Judge-President and a number of other Judges in this province, and their***

general view is that this practice should be followed here in the future."

I pause here to point out that ***"the province"*** of Natal (now KwaZulu-Natal) has had 2 divisions of the high court since 1910, one in Durban and another in Pietermaritzburg.

- In **Miller and Another v Hosiosky and Another 1973 (1) SA 113 (W)**, we read **(per Galgut J)**:

  "With great respect to the learned Judge who made the order directing the Taxing Master to hear evidence, I feel I should state that it is the view of my Brother Judges whom I have been able to consult, that such orders should not be made."

- In **Brener NO v Sonnenberg, Murphy, Leo Burnett (Pty) Ltd 1999 (4) SA 503 (W)**, Stegmann J made reference to Galgut J's consulting other judges without any whimper or discomfort. Thus, the concern raised by Chief Justice Langa has in practice never been something that judges consider inappropriate at all. And, as I have pointed out earlier, in the absence of a general notice to all judges across the country that it is impermissible to discuss pending Constitutional Court cases with Justices of that court, this cannot fairly be regarded as an ethical standard by which every judge must be measured. It is an old elementary principle of human rights law that until a law has been published, it cannot fairly be said to be binding on people to whom it has not been conveyed.

Second, when asked whether he thought the Judge President was trying to influence him at the time of their conversation in his chambers in Braamfontein, Justice Jafta said under oath:

"at the point of the discussion I considered it to be possibly an innocent discussion which I didn't want to get into details for reasons that I have said. I did not at that stage form an opinion that he was attempting to influence me. And I suppose if there was no approach later to Judge Nkabinde I would not have formed that opinion."

But Justice Nkabinde's account before the Commission on 8 April 2009 offers no reason for Justice Jafta to have changed his mind about the Judge President's intentions. She acknowledged, more than once, that the Judge President assured her during that fateful discussion that he did not mean to interfere with her work.

Third, on 30 July 2009, again under oath before the Commission, Justice Nkabinde said the Judge President did not ask or tell her to decide the case in a particular way.

Fourth, it is clear from the sworn evidence of Justice Nkabinde (and from her joint statement with Justice Jafta dated 12 June 2008) that she did not consider the discussion with the Judge President as warranting a complaint. On her own evidence, and on the evidence of Justice Mokgoro, Justice Nkabinde only discussed the matter with the Chief Justice after raising it with Justice Mokgoro. Justice Mokgoro even admitted that it was the pressure that she individually had brought to bear on Justice Nkabinde that brought matters to a head, and denied that it was improper pressure. She said her pressure was neither undue nor inappropriate but rather ***"the right thing to do"***.

It was in fact Justice Nkabinde's confiding in Justice Mokgoro that set in motion the events that culminated in the initial JSC proceedings. Had she not done so, there would have been no complaint and no JSC proceedings.

This is all evidence that is publicly available in court papers.

In the circumstances

Based on the facts, unadorned by wishful commentary in the public media, it is difficult for me as a legal practitioner to reconcile the decision of the Tribunal with the facts.