

Statement by SA National Editors' Forum (SANEF) - Justice must be seen to be done

The SA National Editors' Forum is astounded by the decision of the Judicial Service Commission to hold the three-man sub-committee preliminary hearing into the charges and counter-charges involving Constitutional Court judges and the Cape Judge President John Hlophe behind closed doors.

The decision flaunts the High Court decision in April by Judge Nigel Willis overturning an earlier attempt by the JSC to close the hearings to the public and the media "to protect the dignity of the offices of the Chief Justice, Deputy Chief Justice and the Cape Judge President".

Media groups and the Freedom of Expression Institute made an urgent application to the court that in the interests of "open justice" and the fact that the issues were of high public interest, the hearings should be conducted in public.

Judge Willis ruled that a decision by the JSC to bar the media and the public from the hearings had not satisfied the commission's own rules, in terms of which it must show good cause to exclude the media. He dismissed the commission's argument that opening the hearings could harm the dignity of the offices of the justices involved.

He said the "fundamental principle for proceedings of this nature is that the public should have a right to be there. By allowing the public access to the hearing in open court, the entire judiciary will be enhanced rather than diminished".

He said the issues surrounding Hlophe were of intense public interest and suggested that conducting the hearings in secret would likely do more damage to confidence in the judiciary than an open process.

The complaint by the Constitutional Court is that Hlophe allegedly tried to influence Justice Bess Nkabinde and Acting Justice Chris Jafta in a matter relating to the legal processes invoked by African National Congress president Jacob Zuma in contesting the various criminal charges against him. Hlophe in turn had complained that the Constitutional Court judges had infringed his rights and undermined the judiciary by making public the fact that they had laid a complaint against him with the JSC before he was aware of it.

Sanef notes that judicial support for Judge Willis's decision was given by the Supreme Court of Appeal earlier on Tuesday, March 31, when it ruled that the Constitutional Court judges were not obliged by law to keep their complaint against Hlophe secret and that if the assertion against Hlophe were true, it was clearly to the public benefit that it should be known and its publication would not be unlawful.

Sanef deplores the JSC decision to ignore the decisions of these two high courts by deciding to hold the preliminary inquiry in private -- especially as a JSC official has stated that the transcript of proceedings may not be made public, indicating the public may never know what actually occurred and was said at the inquiry.

Sanef believes this latest decision by the JSC is unconstitutional.

Sanef calls for the JSC to abide by the High Court's ruling and open the hearing to the public.

Sanef believes that the ruling by Judge Willis dealt with a fundamental principle underlying constitutional media freedom that reinforces the ability of the media to gather and disseminate news and information and protect the public's right to be informed. Sanef's view is that it is extremely important that the principle of "open justice" be upheld and that it is imperative that the proceedings before the JSC sub-committee should be open to the public because the issues involve members of the highest court in the country and a judge president of a High Court.