
Friday 02 July 2021

Media Alert

Arms Deal Justice Delayed – for now!

The Judicial Conduct Committee (JCC) met today, Friday the 2nd of July 2021, to hear a complaint lodged against Judge Willie Seriti and Judge Hendrick Musi concerning their conduct during the Commission of Inquiry into the Arms Deal (known as the Seriti Commission). The complaint centres around the Judges' serious misconduct, as judicial officers, in executing their duties. The JCC is empowered by the Judicial Service Commission Act (JSC Act) to hear complaints of misconduct against judges.

However, Judge Seriti and Judge Musi have filed a last-minute application to the Gauteng Division of the High Court challenging the constitutionality of the Judicial Service Commission Act (JSC Act). This has led to a substantive postponement of the JCC hearing until the South Gauteng High Court deals with the constitutionality issue.

In 2019, a full bench of the High Court ruled that the findings of the Seriti Commission be set aside. Judge Seriti was the Chairperson of the Commission, while Judge Musi was a Commissioner. The High Court found that the Commission had failed to conduct a full, fair and meaningful investigation into the corruption that defined the notorious 1999 Arms Deal and that cost South Africa the equivalent of R142 billion in 2020 prices.

Following the High Court judgment, Open Secrets and Shadow World Investigations filed a complaint under the JSC Act against Judge Seriti and Judge Musi for their failure to conduct an investigation into the Arms Deal, either wilfully or with gross negligence. In May this year, we were informed that the Deputy Chief Justice had decided that our complaint had sufficient merit to be referred to the JCC for hearing.

We have reviewed the application in the High Court, brought by Judge Seriti and Judge Musi, and following legal advice, will seek to intervene in the matter. We believe that the application brought by Judge Seriti and Judge Musi is without merit and we will oppose it vigorously.

We believe that the application lodged by Judge Seriti and Judge Musi is an attempt to delay the proceedings of the JCC, so that their indefensible misconduct remains unpunished for as long as possible.

Do Judge Seriti and Judge Musi Want a System of Judicial Impunity?

Judge Seriti and Judge Musi seek an order declaring the definition of 'judge' in section 7(g) of the JSC Act unconstitutional. They argue that the JSC Act allows for judges who have retired to be found guilty of misconduct, but that the Constitution defines a judge only as a sitting judge, and not a retired judge.

We believe that their submission is incorrect. The consequence of the arguments made by Judge Seriti and Judge Musi is a system where retired judges cannot be held accountable for previous acts of misconduct or gross negligence committed whilst they were active Judges. Judges could, as a result, conduct themselves with impunity, safe in the knowledge that they could simply retire if their misconduct was challenged.

It is our view that Judges Seriti and Musi played a pivotal role in denying Arms Deal Justice through their failure to conduct the investigation they were supposed to. They now seek to avoid accountability for their misconduct, arguing that retired judges must be forever immune from the consequences of their actions.

This case is ultimately about strengthening public trust in our judiciary. As civil society organisations we will continue to struggle for accountability and justice every step of the way. No-one should be above the law, even judges.

Legal Team: Shadow World Investigations and Open Secrets are represented by Advocate Geoff Budlender SC and Power Singh Inc.

For more information: Click here to access a [fact sheet](#) and more background on the case.

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