



188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: enquiries@judiciary.org.za
www.judiciary.org.za

**MEDIA STATEMENT ISSUED AT THE INSTANCE OF THE CHIEF JUSTICE ON THE
USE OF THE SERVICES OF RETIRED JUSTICES IN SUPPORT OF THE JUSTICES OF
THE CONSTITUTIONAL COURT**

- [1] A few weeks ago there were media reports concerning a support service that Justice Z Yacoob and Justice J Froneman, both retired Justices of the Constitutional Court, were rendering to the Justices of the Constitutional Court and questions were raised as to the need and legal basis for that support service. As was later clarified, the two retired Justices were reading new applications delivered to the Constitutional Court and preparing memoranda for the serving Justices of the Constitutional Court as a support service to the serving Justices. The retired Justices were rendering this support service in terms of section 7 of the Judges' Remuneration and Conditions of Employment Act, 2001 read with paragraph (d) of the definition of "service" in that Act.
- [2] The Chief Justice issued a response to certain organisations and explained not only why the programme was considered necessary when it was introduced but also its legal basis. The Chief Justice *inter alia* indicated that the programme was at a trial stage and it was to be reviewed soon in order to determine whether it was working or was effective in addressing the problem that it was meant to address. The programme had been introduced to deal with the backlog of new applications which results in delays in disposing of new applications. The programme was aimed at improving the quality of the service that the Constitutional Court renders to the public. The backlogs of new applications came about as a result of a huge increase in matters that are brought to the Constitutional Court since the expansion of the Court's jurisdiction about ten years ago.
- [3] The idea was that the preparation of memoranda by retired Justices of the Constitutional Court in new applications would enable the serving Justices to devote more of their time to the preparation of judgments. In his response the Chief Justice indicated that, if it was found during the review that the programme did not work or was not effective, it could be discontinued in which case the concerns expressed or questions raised by some of the organisations about the programme would fall away.



[4] It is quite common for Justices of apex Courts around the world to have experienced lawyers giving them support in the way in which the retired Justices were supporting the serving Justices. In some cases it is Judges of other courts who render a support service to the Justices of apex Courts. Some of the apex Courts whose Justices get support from experienced lawyers include the following:

- | | |
|--|-------------------------------------|
| (a) Federal Constitutional Court of Germany | (f) Supreme Court of India |
| (b) Supreme Court of Canada | (g) Supreme Court of Zambia |
| (c) Constitutional Court of the Russian Federation | (h) UK Supreme Court |
| (d) Supreme Court of Kenya | (i) Constitutional Court of Hungary |
| (e) US Supreme Court | (j) Supreme Court of Norway |

[5] The Chief Justice and his Colleagues in the Constitutional Court recently held a meeting to review the programme. They noted that the Chief Justice's efforts to establish the availability of many retired Justices of the Constitutional Court to participate in the programme revealed that only a limited number of the retired Justices was available as many of the retired Justices were involved in other commitments and were, therefore, unavailable. Some of the other commitments included one or other Commission, work of the Judicial Conduct Committee, judicial functions outside the country as well as teaching at some University.

[6] The meeting concluded that, given the unavailability of many of the retired Justices, it was clear that the programme would not be able to operate in the manner in which it had been contemplated. When introduced, the idea was that the rendering of this support service would be rotated among most, if not all, of the retired Justices of the Constitutional Court. It was never contemplated that it would be the same retired Justices who would render this support service all the time. Given this unavailability of many of the retired Justices of the Court, it was decided to discontinue the programme.

[7] As to how to resolve the problem going forward, the Chief Justice and his Colleagues propose that two measures need to be pursued. The one is that experienced lawyers should be employed to provide support to the Justices of the Constitutional Court including the preparation of memoranda in new applications. Those experienced lawyers will have to be in addition to law clerks. There are many apex Courts around the world who have this arrangement. They include the US Supreme Court, the Supreme Court of Canada and the Supreme Court of Kenya. The other is that the Constitution should be amended to make it possible for the Justices of the Constitutional Court not to sit *en banc* when



deciding new applications but to form panels of three to decide new applications. The Justices would still sit *en banc* when hearing and deciding matters that have been set down for hearing. More information on these proposals are to be found in the document referred to below which is available on the Court website.

- [8] A document titled: **“Final decision: Retired Justices’ services in support of the serving Justices of the Constitutional Court”** has been posted on the website of the Constitutional Court. It contains more information about why the programme was necessary, its legal basis, how the programme operated and what the way forward is on resolving the problem that the programme was meant to address. Anyone who wishes to get more information about the programme can access that document on the Court’s website at www.concourt.org.za.

14 March 2024

OCJ Communications
mediaenquiries@judiciary.org.za

