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Sunday, 04â\204ç October 2009
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A. Sunday Times

The judicial independent

SAâ\200\231s sudden chief justice
Continues...

Continues...

Battle for control of SA economy
â\200\230Cosatu will insist on Patelâ\200\231

No plot, says angry Mbalula
Power has corrupted us â\200\224 ANC
Shaik to be on foreign ground
Zuma supports case of apartheid victims

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B. Sunday Tribune

Democrats cannot be friends with despots
MEC cracks whip
Would - be king rejected by own clan
NPA will work with British on arms corruption
Opposition fears eThekweni boundary shifts will boost ANC
We will rein in the spooks

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October 4 2009

Mpumelelo
Mkhabela
examines the
rulings and
opinions of
the man who
has suddenly
become South
Africa's chief
Justice

USTICE Sandile

Ngcobo will go

down in history

with the rare
honour of having been
trusted by two presidents
who, at some point, were
at each other's throats
politically.

Legend has it that when
there was a vacancy on
the 11-member
Constitutional Court
bench in 1999, then-
President Nelson Mandela
had his eye firmly set on
Edwin Cameron. -

" But the then-deputy

president, Thabo Mbeki,
blocked Cameron's
appointment. This paved
the way for Justice Ngcobo
to ascend from the Cape
High Court and the
Labour Appeal Court,
where he had served
almost simultaneously, to
the Constitutional Court.

He was a man Mbeki
could trust, unlike
Cameron, who later
blasted Mbeki's
catastrophic Aids
theories and who then

went as far as endorsing
the ANC's decision to
recall Mbeki as president
of South Africa.

The dramatic
recalling of Mbeki a
year ago last month was
the climax of the bitter
fight between the then-
state president and ANC
president Jacob Zuma.
When the latter
triumphed despite the

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@ From Page 1

Constitutional Court
consistently finding against
him and his financial advisor
Schabir Shaik â\200\224 Zuma lost
trust in Justice Dikgang
Moseneke, long-time heir
apparent for the role of chief
justice.

Zuma publicly lost his cool
with Moseneke â\200\224 the anti- -

" apartheid activist with whom
he had been imprisoned on
Robben Island â\200\224 following the
justiceâ\200\231s remarks about the
dramatic Polokwane
conference, which were
perceived as being anti-ANC.
Now the man to trust was
Justice Ngcobo.

Call it luck or sheer
coincidence, or call him an
accidental chief justice, it
doesnâ\200\231t matter. The fact is that
Justice Ngcobo, who as
recently as June was not even
a blip on the radar screen, will
end his term in two yearsâ\200\231
time with a title any self-
respecting jurist would die for:
chief justice. i

In fact, the law allows that
Justice Ngcobo, who is 56,
could have his term extended
beyond July 2011 if Zuma
wishes to keep him. -

Zuma has every reason to
trust Justice Ngcobo, who is
also, on balance, a good judge.
When the Constitutional
Court heard an appeal by
Shaik who challenged the
attachment of proceeds of his
companies, Justice Ngcobo
was off sick. He could not
participate in the judgment by
Justice Kate Oâ\200\231Regan which
concluded that Shaikâ\200\231s money
had flowed from the bribes he
had given Zuma.

When the Constitutional
Court, through outgoing Chief

Justice Pius Langa, ruled that the Scorpions had acted constitutionally in raiding Zuma's homes, Justice Ngcobo dissented. He argued that the National Prosecuting Authority had failed to show that less intrusive measures would not have yielded positive results. On the NPA's argument that a surprise raid was required, the justice said that such thinking was in violation of the constitutional rights to the presumption of innocence.

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~ Zuma's lieutenant, the minister of justice, Jeff Radebe, could not hide his glee when Justice Ngcobo appeared at the recent Judicial Service Commission interviews in Soweto. A member of the JSC, Radebe gave Justice Ngcobo a smile of approval that would have been the envy of the other judges competing for the four vacancies on the court.

This is not to suggest that Justice Ngcobo will be a Zuma stooge; he was certainly not Mbeki's. In the politically charged Masetlha vs The President (Mbeki), Justice Ngcobo dissented from Justice Moseneke's majority judgment. _

He wrote: "The conduct of the president (in axing Billy Masetlha) was therefore in breach of the principle of the rule of law and thus inconsistent with the constitution." He argued that the exercise of public power, including by the president, was constrained by the constitution. This, it can be argued, set Judge Ngcobo's precedent on how he would deal with Zuma, should he be challenged in the Constitutional Court on similar matters of the abuse of power.

â\200\230When the JSC asked him
about his judicial philosophy
â\200\224 which shapes his approach
to interpreting the
constitution â\200\224 Justice Ngcobo
did not spell it out. He gave a
generalised idea: I am guided
by the constitution. But this
does not mean that he does
not have a judicial philosophy
of his own.

In fact, in one judgment â\200\224 in
the case of the National
Director of Public Prosecutions
vs the Minister of Justice â\200\224
Justice Ngcobo stated that he
subscribed to the approach of
Dean Pound, a former Harvard
expert on jurisprudence.

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SAâ\200\231s sudden chief justice

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SA\200\231s sudden chief justice

Pound said that justice Â could not be administered wholly by rule and without any recourse to the will of the judge and his personal sense of what should be done to achieve a result in the case before him.

Arguably among the most notable cases in which Justice Ngcobo spelt out his legal reasoning and his approach to the interpretation of the constitution came in this case. A lower court had ruled that certain parts of the Criminal Procedure Act were unconstitutional because, among other reasons, the act did not provide for intermediaries to assist children who are victims of sexual offences to testify in court.

The lower court also commented on legislation still being debated in parliament. This drew sharp criticism

from Justice Ngcobo who in his own judgment gave what amounted to his â\200\234personal senseâ\200\235 of what was just. He felt that blanket requirement for intermediaries would deny judges the right to make their own calls. The law did not prohibit them from doing so. Whether or not such intermediaries for children are required was for each judge to decide on a case-by-case basis. Thus, Justice Ngcobo advanced his thinking on â\200\234judicial discretionâ\200\235. But he went further and criticised the

* lower court for playing the role

of the executive by instructing it on how to legislate.

Courts, according to Justice Ngcobo, had no power to â\200\234supervise or interfereâ\200\235 with the executive or legislative functions â\200\234unless the circumstances amount to a clear disregard by the

executive of the powers and duties conferred upon it by the constitutionâ\200\235. o

Where such disregard occurred, courts were obliged to intervene. (Judicial review) permits courts to call upon the executive and legislature to observe the limits of their powers but does not permit courts to exercise those powers themselves. Courts therefore have the duty to patrol the constitutional borders defined by the constitution. They cannot, therefore, cross those borders.

Justice Ngcobo believes that the government must do its job. Courts will intervene when it fails to do so. He adopted an almost identical approach on the Joe Slovo informal settlement matter in which squatters had refused to be relocated to temporary

shelter while the government built houses for them in the area in which they lived. Although the court decided that the informal dwellers could be evicted to alternative accommodation, the reasons for arriving at this conclusion varied among the justices. Justice Ngcobo said that the government needed to consult with the people. Both sides needed to show good faith and reasonableness. Controversially, he added that such engagement need not produce agreement, but an understanding of each other's concerns. Ultimately, the decision lies with the government, he argued. Justice Ngcobo's deference did not end with his legal reasoning in court. When the JSC asked how he would ensure that all official languages were used in

courts, he gave a brief explanation before concluding that it was a matter on which he would rather â\200\234deferâ\200\235 to the legislature. â\200\234A dialogue between the legislature and the judiciary could find a solution. But in our courts, people have aright to use a language of their choice.â\200\235 This was rather surprising, given the fact that Justice Ngcobo is known for his belief that judges should have the responsibility to run courts to ensure their independence from executive interference. In an address to a judgesâ\200\231 conference a few years ago, Justice Ngcobo argued that the exercise of judicial power included not only management of cases but also giving judges control of the budgets of courts. â\200\234Independent court administration underpins the

LEADING FIGURES: Justice Sandile Ngcobo and Cyril Ramaphosa at the JSC hearings in Kliptown

Picture: MARTIN RHODES

independence of the judiciary and reduces the potential to interfere with the functioning of the courts. It is for this reason that I would put court administration on top of the agenda for change,â\200\235 he said then.

* Although he exudes a sense of seriousness in his outlook, Justice Ngcobo can be playful even in a moment of tension in the court.

In *The Strange Alchemy of Life and Law*, retiring Justice Albie Sachs wrote how Justice Ngcobo playfully offered him a handkerchief in anticipation that he would cry after delivering judgment in a case in which the court had ordered the government to provide for antiretroviral treatment.

Justice Sachs had difficulty dealing with emotionally charged cases, which Justice

SAâ\200\231s sudden chief justice

Ngcobo often made light of.

Justice Ngeobo â\200\224 who apparently played the strong man in emotional moments â\200\224 had seen Justice Sachs cry following a judgment ordering South African Airways to employ a steward despite his HIV-positive status.

Writing for a unanimous opinion, Justice Ngcobo stated: â\200\234Legitimate commercial requirements are, of course, an important consideration in determining whether to employ an

" individual.

â\200\234However, we must guard against allowing stereotyping and prejudice to creep in under the guise of commercial interests...SAA as a state organ has a constitutional duty to uphold the constitution and may not avoid its constitutional duty by bowing to prejudice and stereotyping. People who are living with HIV must be treated with compassion and understanding.â\200\235

And when then-chief justice Arthur Chaskalson was about to order the government to make ARV treatment available to HIV-positive people, -Justice Ngcobo approached Sachs with a handkerchief: â\200\234Albie, will you need this today?â\200\235

He replied: â\200\234No problem, Sandile. Today, I'm ready. You can keep your hankieâ\200\235. Alas, Justice Sachs cried â\200\224 again. Justice Ngcobo must have felt vindicated.

In addition to the playfulness, Justice Ngcobo is fond of a phrase which is to be found only in his judgments.

When tackling a matter, particularly-a difficulty one, he would say: â\200\234The matter must be approached on the footing thatâ\200\235, before proceeding to make a point.

Well, for now, the â\200\234footingâ\200\235 is that he is the chief guardian of South Africaâ\200\231s constitution,

and a man who rose to the
throne by charming two
warring figures.

MOIPOME MALEFANE

RESIDENT Jacob Zuma is battling to contain a bitter fight that has erupted between cabinet members and trade unions over the control of the country's economy. '

Zuma's efforts to appease his trade union allies by creating the Department of Economic Development and giving it to a Cosatu appointee appear to have come back to bite him. It has emerged that the promise to hand over the re-

sponsibility for the development of macro-economic policy to

the newly created ministry, headed by Cosatu heavyweight Ebrahim Patel, could be in con-

Zuma is said to be seeking legal opinion on how to deal with the fix in which he has placed himself

travention of the constitution and other laws.

- Currently, macro-economic policy resides with the treasury, which is led by minister of finance Pravin Gordhan. Although he has largely kept out of the fight, Gordhan has reminded parliament of his responsibilities as set out in the law.

Zuma is now said to be seeking legal opinion on how to deal with the fix in which he has placed himself. He is under pressure from Cosatu to hand over power to Patel, a move that would make the minister one of the most powerful in the government.

~ The veteran trade unionist was given the ministry at the insistence of Cosatu on the eve of Zuma's inauguration.

ANC leaders saw this as Cosatu's reward for supporting Zuma in his rise to power.

Cosatu celebrated Patel's appointment as a major victory because it placed the federation

at the centre of macro-economic policy, from which it had been excluded during the Thabo Mbeki era.

" The union federation has singled out the minister of national

planning, Trevor Manuel, for attack, blaming him for leading the marginalisation of Patel. The unions also want Manuel's powers to guide policy to be curbed, saying he was central to Mbeki's conservative policies.

Before transferring Gordon's powers to Patel's ministry, Zuma has to sign a proclamation to that effect, something he has not done until now.

The battle for the control of macro-economic policy comes as political tensions grow between the ANC and its Cosatu and SA Communist Party allies

over leadership issues.

It has also angered many ANC leaders, who fear what they see as a gradual takeover of their organisation as a result of the equal membership of the SACP and ANC by communists.

In his confidential political report to an ANC national executive committee meeting two weeks ago, Zuma warned that some members of the ANC's alliance partners were beginning to abuse the relationship of mutual trust and respect.

Although he did not refer directly to the squabble over Patel's powers, Zuma said: "This would mean that we have a new development where people stand for positions as deployees of the alliance rather than as ANC members..."

According to government insiders, Patel's job description clashes with Gordon's.

He operates from the Pretoria offices of the Department of Trade and Industry with only a skeleton staff.

This has incensed Cosatu, which blames its arch-enemy, Manuel, for the state of affairs,

saying he wants to oversee all

-policy co-ordination from his

new position.

The federation has rejected

" the green paper on the national

planning commission - which

Manuel unveiled last month, in

part because the paper does not

recognise the central role of

Patel's department.

The mandate of the minister
of economic development is

effectively negated by the green

paper, Cosatu said in a doc-

ument prepared for its congress

last month. .

Cosatu delegates were un-

equivocal about Patel's role as

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insist on Patelâ\200\231

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chief architect of economic policy, arguing that Zuma had given Patel that responsibility.

Last week, Cosatu urged Patel to â\200\234move with haste to assemble his teamâ\200\235.

â\200\234In so doing, he must make sure to pick the best minds within the movement, so that he begins the long process of undoing the policies of the 1996 class project,â\200\235 a reference to the Mbeki governmentâ\200\231s economic policies. ~ Cosatu has also been turning up the heat on Zuma, reminding him of other undertakings he has given them. The Sunday Times can today reveal that Zuma last month privately met a Cosatu delegation and promised them he would address the issue.

â\200\234Zuma has agreed to address our concerns,â\200\235 a Cosatu leader said.

Cosatu claimed that Zuma told them that he had already met with Manuel and deputy president Kgalema Motlanthe to discuss their concerns.

Zuma had told parliament on June 24 that the new Department of Economic Development would address, among other things, macro-economic development planning. In laying claim to macro-economic policy, Patel has quoted from this speech by Zuma.

But in a presentation to parliament on June 23, Gordhan had listed macro-economic policy co-ordination as one of the treasuryâ\200\231s mandates.

He said the mandate was based on chapter 2 of the Public Finance Management Act, and chapter 14 of the constitution.

Presidential spokesman Vincent Mangwenya said once discussions had been concluded in the government, the role of the Department of Economic Development would relate to economic policy development and co-ordination, economic development planning, spatial economic development and social dialogue on economic matters. .

He said Zuma had been kept abreast of the work being done to develop the new department's strategic plan,

which would be tabled in parliament within the next few weeks.

Asked about Patel's job description, cabinet spokesman Themba Maseko said he was part of the economic cluster in which discussions on economic policy took place. He said Patel was still in the process of putting together his new department.

Cosatu president Sdumo Dlamini told the Sunday Times on Friday: "We envisage a situation where micro- and macro-economic policy is guided by the economic development minister and nothing else."

Last week, ANC secretary-general

. Gwede Mantashe said Manuel could not be singled out for personal attacks for the ANC's collective decisions.

"We are creating an impression that the resolution is not about the National Planning Commission or a green paper, but about creating a job for Ebrahim Patel. You can't do that as a federation. Patel is a minister in the Zuma administration and he is not at the mercy of anybody," Mantashe said.

Presidency communications chief Vusi Mona said: "Trevor is part of the Presidency; it's unfortunate he has been singled out."

"I will not imagine that the green paper is his own product. We must all be nature and engage with the green paper."

Senior ANC and government officials said Manuel had complained to Zuma about the lack of protection he has had in the face of Cosatu's attacks.

"Manuel is taking strain, feeling that the Presidency is not protecting him from Cosatu," a government insider said.

Some even expect Manuel to throw in the towel within months.

He has refused to discuss the turf wars, saying he will speak only about the green paper.

A senior government official said Zuma had created an administration around individuals not based on the

needs of governmentâ\200\235.

He said Patel had yet to produce a paper on how his department should look.

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CHARLES MOLELE

ANC head of campaigns Fikile Mbalula is seething as talk that he is central to a succession plot to oust the current ANC secretary-general in 2012 gains momentum,

Several provinces â\200\224 the Eastern Cape, Western Cape and North West â\200\224 have accused Mbalula of embarking on a campaign to challenge Gwede Mantashe as the partyâ\200\231s new secretary-general in Mangaung, Bloemfontein, in 2012.

This week several provincial leaders in North West told the Sunday Times that those who are opposed to the so-called â\200\234Fikile Mbalula 2012 Projectâ\200\235 are being marginalised.

This claim came after the North West provincial task team set up by the ANC in July dissolved four regional executive committees last week in the Ngaka Modiri Molema, Bojanala, Bophirima and Dr Kenneth Kaunda regions.

A senior ANC provincial leader in the province, who spoke on condition of anonymity, said: â\200\234Part of the problem is that those of us who are suspected of not supporting Mbalulaâ\200\231s programme are being set aside.â\200\235

The provincial leader said the removal of ANC chief whip Bassie Moepeng and the sus-

2012 PROJECT: Deputy minister of police Fikile Mbalula denies ambitions

to be next ANC secretary-general

pension of Ngaka Modiri Molema municipality mayor Themba Gwabeni, who is also an ANC provincial executive committee (PEC) member in North West,

was another attempt at purging people not aligned with the 2012 project.

Mbalula, who is also deputy minister of police, said in an interview this week: "I am aware that there are shapeless and faceless cowards and op-

Picture: KEVIN SUTHERLAND

portunists in the party going around like gun-toting criminals and saying that I was part of a team from Luthuli House to disband the North West provincial executive committee because I have ambitions to become secretary-general of the ANC.

"The problems in North West are well known ... infighting and squabbles resulting in the stagnation of the ANC. I am happy the PEC was disbanded

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and we stand by the decision to do that," he said.

Mbalula vehemently denied there was a succession debate within the ruling party and that he was central to it.

"I have never had any secret meeting with anybody in the Eastern Cape, Western Cape or North West like I did in the run-up to Polokwane," he said.

Mbalula was speaking after Zuma warned ANC national executive committee members last week that leadership tussles were threatening to tear the party apart.

Zuma said: "Within the ANC, lobbying has been a long-standing practice. It cannot and should not take the form of an instruction on who to vote for, thereby creating a culture of despising the will of the ANC branch members in good standing."

He said these actions led to ANC structures not taking the leadership seriously. "Unfortunately, the information in the corridors is that business interests are driving some of the people talking about succession."

At Cosatu's 10th national

congress last week, Zuma warned that tripartite alliance leaders found to be engaged in succession debates would be disciplined, and named and shamed by the party.

Discussion paper lists "sins of incumbency" that beset the party and its leaders

MOIPONE MALEFANE

HE African National

Congress has begun

circulating a discus-

sion document that pulls no punches in describing how state power has corrupted many of its leaders.

The document says the acquisition of power has brought stresses and strains on the values, culture, character and practices of the ruling party.

The document also states that state power has led to the development of social distance and bureaucratic elitism, arrogance of power, careerism and corruption.

The moral and ideological degeneration among rank and file (and the) use of state institutions to fight inner party battles are referred to in the document as the negative effects of state power and described as the "sins of incumbency or ruling-party syndrome".

The document was drawn up by the Gauteng ANC provincial executive committee and has been circulated to the party's Luthuli House headquarters as well as all party structures in Gauteng.

The document was circulated

to the ANC structures shortly before last week's national executive committee meeting, in which party leader President Jacob Zuma is said to have described the ANC as "sick" because of internal party battles sparked by the desire to gain access to state resources. '

At the core of these sins of incumbency, says the docu-

Power has led to

â\200\230social distance,
bureaucratic elitism
and corruptionâ\200\231

ment, â\200\234is that a vibrant or-
ganisational culture and inner-
party discourse is replaced by
battles for the control of state
resources that goes with it. -

â\200\234Factionalism and divisions
centre less on ideological
questions and more (on) the
struggle for control of the
state and the organisation for
self-gain and- for dispensing
patronage.â\200\235

The document, drafted as
part of efforts of â\200\234renewalâ\200\235 as
the ANC approaches its 2012
conference, says the partyâ\200\231s

survival and resilience can on-
ly be found in its â\200\234enormous
capacity for self-reflection and
self-correctionâ\200\235.

It says the ANC and systems
of government need to be ush-
ered into a new era.of renewal,
otherwise the ANC was likely
to repeat some of the mistakes
rejected by the party at its
Polokwane conference.

â\200\234One such cardinal mistake
is to subordinate the political
life of the movement to the
goings-on in the state and pay
scant or rhetorical attention to
genuine mass work and pop-
ular mobilisation.â\200\235 .

The document suggests that
the ANC should not only lead
communities and sectors dur-
ing election campaigns but re-
main visible in communities
all the time.

It also suggests that the de-
ployment process be more
transparent and objective.

â\200\234For the renewal to succeed,
it requires clear and decisive
collective leadership at all lev-
els of organisation â\200\224 courage
and determination to fearless-
ly tackle tendencies that are
beginning to erode the ANC
values, culture and principles
and besmirch its image, in-
tegrity and reputation.â\200\235

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Shaik
to be on
foreign
ground

PADDY HARPER

Â¥ October 4 2009

NEW South African
Secret Service boss Moe
Shaik will head up
South Africaâ\200\231s external
intelligence operations,

! withnorole inthe -

domestic intelligence-
gathering component.
Shaik is one of three
Thabo Mbeki-era
outsiders appointed on
Friday by President
Jacob Zuma to head up
the countryâ\200\231s
streamlined State
Security Agency (SSA).
Both the service, -
which focuses on
intelligence operations
abroad, and the
National Intelligence
Agency, which has a
domestic mandate, will
now fall under the SSA.
Previously, these
were stand-alone
agencies under the
former Department of
Intelligence. â\200\230
The NIA will now be
run by Lizo Gibson
Njenje, a former NIA
deputy director-general
who left after being
embroiled in the
botched surveillance of
Mbeki loyalist and
businessman Saki
Macozoma.
Both Njenje and

Shaik will report to SSA

director-general
Mzuvukile Jeff
Maggetuka, a former-
director-general of
home affairs and the
current SA ambassador
to Algeria.

Warnings tha US-led ihvestigators could swoop on state

CARMEL RICKARD and
NKULULEKO NCANA

RESIDENT Jacob
Zuma has backed
minister of justice
Jeff Radebeâ\200\231s recent
letter to support court action
in the US against multina-
tionals accused of aiding the
apartheid government.

A spokesman for the'Pres-
idency, Vincent Magwenya,
said the South African gov-
ernment could not interfere
with the rights of people who

were seeking some kind of Â°

redress for the injustices and
suffering they believed they
went through.

_â\200\234There is no law in our
country that can be used to
stop this process. We respect
the rights of individuals to
pursue whatever avenue
available in seeking justice,
and we equally respect that
the US. court has decided to
hear this matter.

â\200\234We will therefore observe

and wait to see its final out-

come and resolution.â\200\235 .
The statement said that
South Africa would â\200\234always

be open to multinational -

companiesâ\200\235 wanting to do
business in the country.
Several lawyers familiar
with the case have warned
that unless Pretoria strongly
stated that it disapproved of
the litigation continuing,
2010 could turn into an em-

barrassing public-relations

disaster for.South Africa,
Radebe wrote to the US

district judge hearing the
case in New York to say that
the government of the Re-

. public of South Africa ... is

now of the view that this
court is an appropriate forum
to hear the remaining claims

of aiding and abetting in vi-
olation of international law. This could lead to US-led
teams = of investigators
swarming around govern-
ment buildings, demanding
documents relating to the lit-
igation and taking evidence
from a range of prominent
South Africans including

commissioners - from the
Truth and Reconciliation
Commission.

The plaintiffs said that
Radebe's letter so fundamen-
tally changed the situation
that the court should recon-
sider its decision to allow the
targeted companies the right
to appeal.

The multinationals had
been given the go-ahead to
challenge a finding that the
US courts have jurisdiction

over the dispute.

In legal papers submitted
to the court, the plaintiffs
said that the letter provided

a clear indication that Pre-

toria no longer believes that
its sovereign interests are
threatened by this litiga-

tion. Therefore, the basis of-
the companies' planned ap- |
peal would fall away. '

Lawyers for the apartheid
victims said: The govern-
ment of South Africa has not
merely lifted its opposition to
this litigation; it has affirma-
tively stated that ... it be-
lieves that the district court is
an appropriate forum to hear
the remaining claims.

Radebe's letter and the
statement from the Presi-
dency herald a complete
about-turn from the position

â\200\230We respect the rights of individuals to pursue
whatever avenue available in seeking justiceâ\200\231

buildings

of former president Thabo
Mbekiâ\200\231s administration.
Mbekiâ\200\231s view was that such
litigation, taking place in a
foreign country, would in-
fringe the sovereignty of
South. Africa and that it ran
counter to Pretoriaâ\200\231s decision

â\200\234toâ\200\235 deal with apartheid-era
-atrocities through the TRC.

- This attitude was support-
ed by Washington, which
stated that support for Pre-
toriaâ\200\231s efforts to deal with
apartheidâ\200\231s legacy was a cor-
nerstone of its policy and
anything damaging South
Africaâ\200\231s efforts to ensure
â\200\234reconciliation and equitable
economic growthâ\200\235 would be
detrimental to US foreign
policy.

If the letter is taken as
approval by South Africa for
the case to be heard by the
US courts, and the litigation
continues on that basis, the
next phase would be discov-
ery by the two sides.

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RESIDENT Jacob Zumaâ\200\231s

sudden change of heart is

puzzling. Before the elections, the ruling party promised to be tough with Robert Mugabe. No more Mbekiâ\200\231s quiet diplomacy and - cuddling approach.

Today he is singing a - different tune. It did not take him long to become Uncle Bobâ\200\231s emissary. .

Zumaâ\200\231s interview with CNN correspondent Christiane Amanpour is instructive. For his sake, I wish the Alice in the Wonderland faith were not misplaced. Dealing with Mugabe is like running on the treadmill - all sweat and no progress. Look at former president Mbeki.

Mugabe single-handedly destroyed Mbekiâ\200\231s African Renaissance legacy. That is the problem with dictators: they have no sense of decency. Why would Zuma tarnish his name defending Mugabe? Calling for the lifting of sanctions is premature. Actually, the targeted sanctions are for Mugabe and his cronies.

We-dare not forget that Mugabe is the architect of Zimbabweâ\200\231s woes. He is a barrier to progress and prosperity. He cannot be trusted with its future.

Peta Thornycroftâ\200\231s insightful piece, â\200\234Mugabe the builderâ\200\235, featured in last weekâ\200\231s Sunday Tribune - shatters any illusions. It offers concrete evidence that the much publicised farm grabs have little to do with land redistribution, and much to do with filling Mugabe bulging coffers.

Seizure

Coincidentally, on
Amanpour's show Mugabe
strongly defended the seizure of
white-owned farms by his
acolytes. This past week 223
white farmers were prosecuted
for failing to vacate their farms.
According to South Africa's
Business Day, friends of war
veteran Tekler Madhuze
attacked the tobacco farmer,
Murray Pott.

On the political front , the
school bullyboy (Zanu-PF) is up
to his old tricks. Harassments
and arrests are the order of the
day. Poor MDC. Roy Bennett's
humiliation is illustrative. He is
part minister; part prisoner.

NOTHING
SACRED

Lucas __,
Ntyintyane/

mMocrats cannot be
riends with despots

Morgan Tsvangirai is a
frustrated paper prime minister,
with no tangible powers. It's
obvious all is not well. Zuma is
asking us to ignore these
atrocities.

Endorsing dictatorship is
contrary to the spirit of our
constitution. You cannot be a
democrat and still be friends
with despots. There is an
alternative to Mugabe. Holding
free and fair elections is the
only option for Zimbabwe. Any
other suggestion is a waste of
time. Human lives are more
important than political
expediency Feigning blindness
to the unfolding catastrophe is
negligence.

Mbeki's velvet glove
approach was ill-conceived.
Repeating the same mistake is
foolish. Expecting Mugabe to
change is misguided. Leopards
do not change their spots.

Sick joke

- Mugabe is interested in one
thing = himself. How can we
expect him to resuscitate his
country? Imagine president

Barrack Obama asking the failed executives of Enron and while Lehman to revive the collapsed companies. Or Dali Mpofu being re-appointed to save SABC? It is a sick joke.

However, Zuma expects

international investors to trust

- Mugabe with their money. The

same man who strangled his country into economic stupor is required to perform mouth-to-mouth. I would be laughing, if this was not tragic. If you want Zimbabwe to prosper, remove Mugabe from the levers of power.

It is the ethical responsibility of African leaders to call for early elections. Let ordinary Zimbabweans make their choice without fear of victimisation. This is the essence of democracy: liberty to choose.

The future of Zimbabwe is in the ballot box. Delaying the inevitable is tantamount to criminality.

The interim government is imploding. Are you surprised? You cannot run the race with your eyes blindfolded. The MDC is in a no-win situation. It is trying to rebuild the country, while Zanu-PF is planting limpet mines. A functioning Zimbabwe is a perfect antidote to the daily influx of immigrants across the Limpopo River to South Africa. Throwing money at the problem will not solve it. .

Zimbabwe needs new blood, and fresh thinking. Mugabe is too divisive a figure to foster reconciliation and rebirth.

As good neighbours, it is our responsibility to call Mugabe to account. South Africa should use its financial leverage to stop the rot. The era of signing blank cheque to despots and offering blind African solidarity is over. Zanu-PF's one-eyed pirates must answer.

Otherwise the electorate will be asking: Why give money to Uncle Bob whilst millions of

South Africans are living in dire poverty? It is time for Pretoria to change tack. Difficult decisions must be made. Mbeki failed, allowing Mugabe to dictate negotiation terms. Let us not repeat the same blunder.

For Zuma to be dancing the tango with Mugabe is disheartening. It is a betrayal of the new African agenda. The new African leadership represented by President Zuma is expected to bring politics of hope and accountability.

Zero tolerance to . dictatorship, is the first step. Many Zimbabweans look to Zuma for direction. If Africa is to grow, we need courageous leaders, who do not shy away from uncomfortable decisions.

/6%

SUNDAY TRIBUNE OCTOBER 4 2009

KS

Beware dodgy contractors and crooked officials – our head of housing is sending chancers to jail, writes Juggie Naran

FWAZULU-NATAL
Human Settlement
and Public Works
F s VEC Maggie Govender is clamping down on fly-by-night contractors who produce shoddy workmanship, and corrupt officials and individuals who use the government's housing subsidy to get homes fraudulently.
The concerted campaign has netted 12 government offi-

cials who appeared in the Lady-

smith Regional Court on Thursday for allegedly attempting to defraud the government through its subsidy scheme.

Those charged come from

various areas including Nquthu, Newcastle, Madadeni, Glencoe, Nondweni, Bilanyoni, Ntokozweni and Ladysmith.

The cases were adjourned to December.

Since May, 29 people who did not qualify for the subsidy scheme have been prosecuted and convicted in the Pietermaritzburg Magistrate's Court

Human Settlement and Public Works MEC is getting tough with housing corruption.

alone, for fraudulently misrepresenting their position to benefit from a housing project.

The usual sentence rneted out by the court has been a nine-month suspended jail sentence together with an order that the subsidy money be repaid to the department.â\200\234The causes of the annual increase in housing backlogs are not new and the delivery of habitable units is hampered partly by inept, fly-by-night contractors who present shock-

ingly bad work, and by individuals defrauding their way into a unit that was never intended for them,â\200\235 said Govender.â\200\234Valuable resources aimed at improving the lives of poor

_people cannot be wasted on

enriching those who choose crooked methods:â\200\235

Govender also sent out a warning that the department was not a â\200\234cash cow to line the pockets of unscrupulous -contractors or to earn a salary for half a job, and no one, officials included, is above the lawâ\200\235.

She said the department was determined to ensure that low-cost housing reached the intended beneficiaries, and was intent on enforcing proper

.performance by contractors

and department officials.

In the meantime, the MEC was committed to support continuing investigations by the Special Investigative Unit into subsidy fraud.:

This was aimed at ensuring true beneficiaries were not robbed of the opportunity to

have a decent roof over their heads by anyone who misrepresented their position, public servant or otherwise, she said.

â\200\234The latest service level agreement signed with the Special Investigative Unit mandates it to investigate fraud, corruption and maladministration in low-income housing contracts.

â\200\234The department is committed to provide all the support and information the unit needs

to complete this task.â\200\235

Govender said she would also revive departmental commitment to enhanced service delivery and to the prompt payment of contractors when payment was due.

In Shallcross, a generator providing electricity to families in temporary homes was recently removed because of non-payment to the supplier.

Govender met the residents on site and remained there until officials had remedied the situation and the generator had been replaced.

Would-be
king rejected
by own clan

NATHI OLIFANT

THE MAN who would be king, Inkosi Melizwe Dlamini of Nhangwini, near Highflats, has had his claims roundly rebuked from all quarters. Not only are the Zulu royal household and the provincial government questioning his kingship, Dlamini was this week publicly rebuked when three amakhosi from his own clan distanced themselves from his claim. The amakhosi said they knew of only one monarch in KwaZulu-Natal.

â\200\230Dlamini has often referred to himself as Dlamini ITI. However, the amakhosi, backed by premier Zweli Mkhize, said there was only one Dlamini I - King Mswati ITI of Swaziland - and that all other Dlaminis were his subjects.

â\200\234We do not know where his claims emanate from,â\200\235 said â\200\230Prince Kholwani Dlamini.

At a press briefing on Thursday in Durban, the prince recited the lineage of the Dlamini kings and claimed the pretender was not even a legitimate inkosi. He alleged thatâ\200\230Melizwe was not even in the lineage because the rightful mkosi was in fact Mggiggelwa Dlamini, who was also present at the press briefing.

Threat

The provincial government, through Mkhize, has requested the department of Traditional Affairs MEC, Nomusa Dube, to help record the history of Nhangwini and the Dlaminis.

However, the Nhangwini traditional leadership alliance, sympathetic to Dlamini, issued a statement late on Friday threatening that whoever tried to distort the history of Nhangwini would be sued.

Dlamini has been at logger-heads with the Zulu royal household since asking that he be declared a second monarch

in KZN, a status he wants to share with the Zulu king. '

On Tuesday, Dlamini was in the North Gauteng High Court to force the Moleleki Commission to finalise his application to be declared king.

The court ruled in his favour and ordered that the findings of the commission be released in three months.

The commission was appointed by former president Thabo Mbeki in 2003 to probe traditional leaders' disputes.

However, Dlamini's bid suffered an unexpected blow on Thursday when amakhosi of his clan pledged their unwavering support and loyalty to King

Goodwill Zwelithini. Mkhize appeared alongside the Zulu king and Zulu traditional prime minister Mangosuthu Buthelezi at the press briefing. Amakhosi apologised to the monarch and condemned Dlamini, saying they were not consulted about his (Dlamini's) plans to become a monarch.

dUNDAY TRIBUNE OCTOBER 4 2007

NPA will work
with British on
arms corruption

FIONA FORDE

THE National Prosecuting Authority will consider extraditing any South African who is wanted if Britain's Serious Fraud Office (SFO) prosecutes arms giant BAE Systems.

The company is alleged to have paid bribes to former and current ANC and government members in the controversial 1999 arms deal. :

Talks between the London-based anti-fraud office and the arms firm broke down this week when BAE refused to enter into a plea bargain. . '

In terms of the deal, it would have admitted a degree of guilt in corrupting a number of foreign governments, possibly named and shamed the recipients of the bribes, and ultimately coughed up hefty fines of more than half a billion pounds.

The details of the deal are still unknown, but failure to reach an agreement left the SFO with no alternative but to threaten prosecution.

Should the SFO want to go to court, it will first have to seek the permission of Baroness Patricia Scotland, Britain's Attorney-General.

Co-operation

Though a final decision on a trial is weeks away, a number of high-profile South Africans are likely to be called to take the stand in London if it goes ahead.

'We would consider any request for extradition or any kind of co-operation if and when that happens,' said the NPA's Mthunzi Mhaga. 'But we have not been approached yet.'

As news of the intent to prosecute broke on Thursday, ANC spokesman Brian Sokutu said the BAE saga was a British concern, as the arms deal was a closed matter for South Africa. Government spokesman Themba Maseko could not be reached for comment.

It is understood that BAE is not refuting the critical and substantial evidence which the years-long investigation carried out by the anti-fraud office has thrown up. Rather, it is disputing the amount of the penalties and level of guilt it would have to admit to.

The allegations involve a £100 million fund allegedly used to grease the hands of the governments of South Africa, Tanzania, the Czech Republic and Romania. In the case of South Africa, the alleged bribes run into tens of millions of rands and spotlight those involved in the procurement of Hawk trainer and Gripen fighter aircraft 10 years ago.

The credibility of the anti-fraud office was dealt a

blow three years ago, at the height of the so-called war against terror, when it was forced to drop its probe into alleged corruption involving Saudi Arabia and BAE.

Opposition parties have welcomed the move and say they will follow events closely.

â\200\234If there is any evidence of wrongdoing (by South
_ Africans), we would support whatever happens next,â\200\235
said Cope spokesman Phillip Dexter.

JUNDAY TRIB

UNE OCTOBER 4 2009

Opposition fears e Thekwini
boundary shifts wil

MATTHEW SAVIDES

THE ANC could use shifts in
eThekwini ward boundaries to
strengthen its majority amid
concerns that service delivery
shortfalls could put it under
pressure in the 2011 local gov-
ernment elections.

This is the belief of opposi-
tion parties, which have also
raised concerns about the cost of
adding new wards.

The process, run by the
Municipal Demarcation Board,
involves adding as many as 12
wards to the municipality,
though local government MEC
Nomusa Dube has recom-
mended only seven new council-
lors â\200\224 which translates into
three or four wards.

After Dubeâ\200\231s recommenda-
tion, the demarcation board
decides on the actual number of
new wards and then a period of

public consultation should

begin. This is likely to take place
over the next few months.

Any additional wards would
result in the shifting of existing
boundaries, which the DA says
the ANC could use to strengthen
its support in some areas while
gaining a foothold in areas
where its support is low.

The handling of the Durban
Transport bus crisis, issues over
low-cost housing developments
and run-down road and traffic
infrastructure are among the
issues that could have the ruling
party under pressure.

ANC provincial secretary
Sihle Zikalala strongly dÃ©nied

these claims.

Officially, the reason behind
the addition of new wards was
the higher number of registered
voters in the metro. A ratio of

15000 registered voters to one councillor is the accepted norm and, partly because of moreregistrations before the April national election, this ratio has grown in many areas.

This means ward councillors would find it difficult to meet the needs of their communities.

Younger

Municipal manager Michael Sutcliffe, who used to chair the demarcation board, said another factor leading to the increased voter numbers was that Durban's population was younger than the other metro municipalities, meaning people were not 18 and eligible to vote when the boundaries were first drawn up.

The diversity of wards in terms of needs and wealth levels was also something that needed

. to be addressed.

DA caucus leader Tex Collins said that if these were the real reasons behind the proposal, then this is something we can work with. If this is the reason they want to make the changes, then that doesn't represent a problem.

However, he was sceptical. He suggested the ANC would create the additional wards to bolster their support in certain areas ahead of the 2011 local government elections.

Political analyst Protas Ma-

| boost ANC

dlala said this tactic was commonly used in the past, particularly by the apartheid government to ensure election victories.)

However, he did not believe this is the case now.

Minority Front councillor Jayraj Singh agreed that the increased number of registered voters did necessitate the addi-

" tion of new wards.

For one person to manage

more than 15 000 registered voters is difficult, especially when there are non-registered voters living in the area who call on the councillor for help. When you go into the more disadvantaged areas, the work becomes even more difficult," he said.

Sutcliffe said there could be as many as 12 wards, but there were likely to be much fewer.

"We don't want every ward to change; the realignment is not going to be massive," he said.

Zikalala said the DA's claims were "unfounded".

"There's no way the ANC will use the re-demarcation process to boost its support. Where there needs to be a review of the wards, it will be done in the context of the social and economic impacts on our people, along with the number of people in a particular ward," he said.

Zikalala said a process of consultation was under way for the party to make a recommendation to the demarcation board, "in the same way that any other party would".

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SUNDAY TRIBUNE OCTOBER 4 2009

We will rein
in the spooks

Intelligence boss Jeff Maqetuka
promises big shake-up in agency

XOLANI MBANJWA

g OUTH Africaâ\200\231s new intelli-

gence boss has vowed to

8 shake up the agency, rid-

@EP ding it of politically parti-

san spooks who found themselves

in the middle of ANC succession

battles. He has also promised to

crack down on unauthorised inter-

ceptions of communication and to

fire operatives who leak sensitive
information.

Jeff Maqetuka, the new direc-
tor-general .of the State Security
Agency - a new, powerful agency
which combines the National
Intelligence Agency (NIA) and the
SA Secret Service (SASS) - has
laid down the law and promised to
â\200\234chopâ\200\235 spooks that leak sensitive
information and conduct unau-
thorised spy operations.

â\200\234No intelligence service can
allow a situation where there are
random leaks,â\200\235 he said. â\200\234The
country cannot afford - that.
Clearly, mechanisms will have to
be put in place to deal with this.

â\200\234The challenge is to minimise
these problems through mecha-
nisms. Should an agent do these
things, you chop (off) his head or
her head so that it should be a les-

son to the others. You reprimand.

You coach an individual who has
not committed a serious offence.â\200\235

Maqetuka said he would sort
out divisions emanating from the
ANC'â\200\231s succession battle leading to
the Polokwane conference.

Speaking after his appointment by President Jacob Zuma this week, Magetuka assured citizens there would be no repeat of the shenanigans that brought the country's intelligence services into disrepute.

Zuma also appointed two of his close allies to top posts in the intelligence service. Moe Shaik is now head of the foreign intelligence

service, the South African Secret .

Service

Gibson Njenge another casualty of Zuma's fight with former president Thabo Mbeki, will head the National Intelligence Agency, the domestic intelligence arm.

No intelligence service can allow a situation where there are random leaks... The country cannot afford that. Clearly, mechanisms will have to be put in place...

Zuma seems to have opted for those loyal to him when appointing the three new bosses. They have been part of his inner circle since their days in exile, when he was chief of the ANC's intelligence department. .

Shaik is said to have played a key role in acquiring tapes which featured intercepted communication between former National Prosecutions boss Bulelani Ngcuka and ex-Scorpions boss Leonard McCarthy sharing information on the timing of corruption charges against Zuma. The NPA used the tapes to justify its decision to let Zuma off the hook.

Shaik leaked news of Zuma's imminent acquittal and the existence of the tapes to newspapers. It is believed he handed the tapes to Zuma's lawyer Michael Hulley.

Shaik was central in the high political drama that became the Hefer Commission in 2003 to look into claims that Ngcuka - might

have been
an apart-
heid spy,
when he:

Jeff Madetuka

broke down while giving testi-
mony. He is the brother of Zuma's
former financial adviser, Schabir.

Njenje was fired by Mbeki as
NIA operations chief in 2005 for
unauthorised surveillance of for-
mer ANC national executive com-
mittee member, businessman and
prominent Mbeki ally Saki Maco-
zoma. He was later cleared and
resigned from the NIA.

Magetuka cut his teeth in the
ANC's department of intelligence
and security in 1979 under Zuma.

Now he wants to rein in spooks
he says have 'embarrassed' the
country, such as the 2005 hoax
e-mail saga and the unauthorised
tailing of Macozoma in the run-up
to Polokwane.

He said he would not allow
spooks to play a part in politics,
because it led to partisanship.

'You should not allow agents to
be involved in politics in whatever
way,' said Magetuka, who left the
country yesterday to announce his
resignation as ambassador to
Algeria. 'We will reprimand them
because what the agents will do
(is) embarrass the country, the
government, the minister and the
president. It is a norm and a prac-
tice that intelligence services
should never get involved in poli-
tics and political activities.'

Magetuka claims he was a
'bystander' of events leading to
Polokwane: 'I am a member of the

- ANC. But I cannot and I should not

be allowed to be an office-bearer of
the ANC. If you hear that I am an

-(ANC) office bearer in a branch in

the area I live in, that would be

'wrong. I would be partisan.'

He expected a 'great' working
relationship with Njenje and
Shaik because they go 'way back'.

Magetuka said his priorities included revitalising the national intelligence academy to help recruit and train new spooks.