



EFF DENOUNCES ATTACKS ON JUDGE MANDLENKOSI MOTHA REGARDING DIRECTIVE IN BEE CASE

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The Economic Freedom Fighters (EFF) denounces the attacks on Judge Mandlenkosi Motha due to the directive recently issued regarding the composition of legal teams in a case pertaining to Black Economic Empowerment (BEE). Critiques aimed at Judge Motha's directive are devoid of essential context, and lack a more comprehensive viewpoint.

In the case overseen by Judge Motha, Periform Work Scaffolding Engineering is disputing a determination made by the Broad-Based Black Economic Empowerment Commission. In light of this, Judge Motha questioned the absence of black counsel in the two entirely white legal teams representing the case, considering its relevance to BEE.

As a result, he mandated both legal teams to provide written arguments addressing the court's apprehensions, particularly the potential breach of section 9.2 of the Constitution due to the absence of black advocates in the case. Section 9.2 of the Constitution mandates legislation to rectify historical inequalities.

Already, some counsel have refused to comply with the directive, with the Pretoria Bar Council asserting that clients should not be compelled to select counsel based on race and transformation. Moreover, accusations have been levelled against Judge Motha, alleging the misuse of his office for political manoeuvres and misconduct deemed inappropriate.

However, it is important to keep in mind the legacy of Apartheid that created systemic barriers that limited opportunities for black and female lawyers to gain experience and

build reputations, leading to ongoing disparities in briefing patterns. While there have been efforts to transform the legal profession, progress has been slow and many institutions still reflect historical power dynamics that favour white male attorneys.

As a result black and female advocates often receive less complex and lower-paying briefs compared to their white male counterparts, perpetuating economic inequality within the profession. Biases held by instructing attorneys also influence their decisions on who to brief resulting in black and female advocates, who have less established networks compared to their white male counterparts, finding it more difficult to secure briefs.

In line with rectifying this, in October 2016, the Judge President of the Gauteng High Courts issued a directive to all Gauteng Judges' secretaries to gather information such as the names of parties and their attorneys, counsel, race and gender of counsel, and the case outcome. Only when there is adequate information can interventions be put in place to enact transformation in our judiciary.

Therefore, the directive given by Judge Motha was essential in gathering statistics on briefing patterns and did not seek to compel litigants to engage any specific race of counsel. It was an independent initiative designed to assess briefing trends in the Gauteng province, with the overarching goal of fostering a competent, independent, and diverse judiciary.

This initiative is also particularly crucial considering that the Department of Justice's own briefing pattern statistics appear to be disconnected from the realities experienced in practice. Therefore, the EFF stands against the misdirected criticism of Judge Motha's directive and calls for a deeper understanding of the broader context within which it was issued.

As the EFF we have consistently advocated for the introduction of legislative measures to ensure the measurable transformation of the legal profession by imposing strictly monitored and enforced targets for briefing patterns of the historically disadvantaged women, and black practitioners.

We stand firm in our commitment to promoting diversity and equality in the legal system, and we call for a more nuanced and informed approach to addressing issues of transformation in the legal profession.


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