

The Honourable Chief Justice M Mogoeng
 The Chairperson
 Judicial Services Commission of the
 Republic of South Africa
 PRETORIA



Higher Education
 Transformation Network

BY HAND

Dear Sir/ Madam

18 March 2013

RE: VACANCY: DEPUTY JUDGE PRESIDENT–NORTH GAUTENG HIGH COURT
OBJECTION TO THE NOMINATION OF JUSTICE CYNTHIA PRETORIUS

1. It is has come to our attention that Justice Cynthia Pretorius of the North Gauteng High Court has been nominated and shortlisted for the vacant position of Deputy Judge President – North Gauteng High Court.
2. We are alarmed by her nomination and hereby object thereto.
3. We are respectfully of the view that Justice Pretorius is not fit and proper to hold this position. The reasons for our view are elaborated upon hereafter.
4. **THE HIGHER EDUCATION TRANSFORMATION NETWORK (“HETN”):**
 - 4.1 The HETN is a non-profit organization.
 - 4.2 The HETN consists of an independent network of graduates and ALUMNI from various Higher Education and Further Education institutions in South Africa.

- 4.3 We are a separate legal persona with the broad aim of collaborating with Government, tertiary institutions, the private sector and developmental agencies to improve access to and the quality of education and the relationship between education, training, skills development and youth employability.
- 4.4 We are committed to the process of the transformation of education and training to increase equitable and meaningful access to higher education, knowledge, skills and learning to ensure the following:
 - 4.4.1 An education system that is more accessible, especially to the marginalized and the poor;
 - 4.4.2 An education system that is underpinned by progressive values of democracy, non- racialism, redress and broad participation;
 - 4.4.3 An education system whose value system identifies with the aspirations of the people to embrace the rich diversity of South African society;
 - 4.4.4 An education system that narrows the divide between intellectual and manual labour;
 - 4.4.5 An education system that serves the present and future social and economic needs of a peaceful, stable South African society;
 - 4.4.6 The elimination socio-economic disparities through education.
- 4.5 Our membership is open to all ALUMNI from various institutions from further and higher education and training, public and privately owned.

4.6 Although our objectives have focused our attention and programs within the education sector, we have recently found that there is a need to protect the values of our democracy, cultural diversity, freedom, transformation and dignity throughout our broader society. Consequently, our focus has been broadened significantly. This broader focus has also been engendered by the recognition that although our membership have education and ALUMNI in common, they come from every sector of our society.

5. **FACTUAL BACKGROUND:**

5.1 Our objection to the nomination of Justice Cynthia Pretorius for the position of Deputy Judge President – North Gauteng High Court, emanates directly from our interaction with her in an urgent application in the North Gauteng High Court .

5.2 Prior to the urgent application launched by an attorney, Mr. Willem Durrandt Spies, we had objected to the election of Mr. Spies to the Council of the University of Pretoria. The reasons for our objection were based on Mr. Spies' affiliation to the Conservative Party – TUKS; his chairmanship of the Afrikaner Studentewag, the student wing of the Afrikaner Volkswag and his behaviour in these capacities, particularly during his days as a student at the University of Pretoria, during which he disrupted meetings organized by the South African Student Congress at the University of Pretoria. We published the specifics of these actions and Mr. Spies' views particular the support for the establishment of a separate Afrikaner Volkstaat.

- 5.3 Moreover, we attacked the blatant lack of transformation at the University of Pretoria, particularly in the University of Pretoria Council and the ALUMNI elected thereto.
- 5.4 Mr. Spies launched the aforesaid application on an urgent basis, in the North Gauteng High Court, seeking to interdict the continued publication of the aforesaid. At the heart of the matter was the question of the ALUMNI of the University of Pretoria, the Constitution and membership of the ALUMNI Board and the lack of transformation of the said Board.

The matter was enrolled before Justice Pretorius.

- 5.5 Justice Pretorius is a graduate of the University of Pretoria and consequently a member of the ALUMNI. In the circumstances we were and remain of the opinion that there is a reasonable apprehension that Justice Pretorius would not bring an unbiased judgment to bear upon the matter.
- 5.6 Prior to the hearing of the matter, we shared this view through a media statement, which we attach hereto as annexure "A" and addressed a letter to the Judge President of the North Gauteng High Court, which we attach hereto as annexure "B".
- 5.7 At the hearing, we applied for the recusal of Justice Pretorius. Justice Pretorius refused to recuse herself. Further, Justice Pretorius refused to accept the Respondent's opposing affidavit, notwithstanding the urgent nature of the application and we were eventually forced to enter into a partial settlement of the matter.

6. RECUSAL:

- 6.1 As previously stated, after the matter was allocated to Justice Pretorius, we held the reasonable apprehension that Justice Pretorius, as a graduate of the University of Pretoria and a member of the ALUMNI would not bring an unbiased judgment to bear on the application before her. After corresponding with the Judge President of the North Gauteng High Court and issuing a press release sharing the aforesaid view, we commenced to apply for the recusal of Justice Pretorius on the day of the hearing.
- 6.2 Rather than calmly and judiciously dealing with the facts upon which the application for recusal was based, our counsel appearing in the matter was aggressively confronted by Justice Pretorius suggesting that the media statement prior to the hearing was an attempt to blackmail or to coerce her in some or other manner. In her own words, she asked our Counsel **“Are you threatening me?”**
- 6.3 Sadly, neither suggestion had any factual truth to it. The reasons for the application for Justice Pretorius’ recusal were genuine and of genuine concern to us. We are of the view that Justice Pretorius’ emotional and aggressive approach is not suited for a judicial officer and equally non-suited to an incumbent to the Deputy Judge President position.
- 6.4 Rather than deal with the application factually, legally and judiciously, Justice Pretorius approached it, without any factual basis, as a personal attack upon her. This was improper. Justice Pretorius also without any cause suggested an impropriety upon ourselves.
- 6.5 The manner in which Justice Pretorius considered the application for her recusal, in our opinion, sends the incorrect message to ordinary South Africans suggesting that Judges are beyond reproach or question.

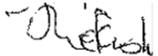
7. **FAILURE TO ALLOW EVIDENCE:**

- 7.1 In her judgement refusing the application for recusal, Justice Pretorius concluded that she could not find any factual basis upon which a reasonable and objective person could conclude that she would have not have been impartial in deciding the application before her. We find this judgement strange because during the application for recusal, we made application to lead oral evidence on the said application.
- 7.2 The application to lead oral evidence was based on the fact that it was an urgent application and a comprehensive application for recusal could not be drafted prior to the hearing. Justice Pretorius dismissed the application to lead oral evidence on the point of recusal. We respectfully submit that the democratic values enunciated in our constitution particularly the right to dignity and the right to have a dispute resolved by a fair public hearing before a court necessitated that Justice Pretorius should have allowed the oral evidence on the point of recusal.
- 7.3 We respectfully submit that Justice Pretorius' approach to the matter and her eventual conclusion relating to the reasons for her refusal of the application for recusal is evidence of her injudicious approach. We respectfully submit that she does not have the sober mind to properly and unemotionally consider matters in the constitutional context of our democracy which requires transparency, openness and sensitivity to the diversity of our country.

8. THE ISSUE RELATING TO THE USE OF AFRIKAANS:

- 8.1 During the application, we mentioned to Justice Pretorius that we have difficulty in understanding Afrikaans language, hence we were late with our answering affidavit. Notwithstanding this difficulty, Justice Pretorius provided us with an Afrikaans order only. At this point we must state that we are aware that the Afrikaans language is an official language of our country and enjoys equal protection with any other language. However, we respectfully submit, that when a member of the judiciary is humbly requested to communicate with the public in a language that is best understood by the public and in a language which that particular judicial officer is conversant, that judicial officer is obliged to do so.
- 8.2 We further respectfully submit that Justice Pretorius' failure to do so is an indication of her injudicious approach in the matter. It is also a clear indication of her failure to appreciate the diversity of our country and to be sensitive to the needs of the common person in South Africa. We suggest, that this lack of appreciation, borders on arrogance and are not the qualities of any judicial officer, let alone a Deputy Judge President. Justice should not only be done, but seen to be done.
- 8.3 In the circumstances, we humbly request that you consider our objection carefully and favourably.

Yours faithfully



Lucky Lempiditse Thekisho

Board Chairperson

Higher Education Transformation Network