

THE ORDER OF THE JUDICIAL CONDUCT COMMITTEE APPEAL PANEL THAT MOGOENG MOGOENG SHOULD APOLOGISE UNCONDITIONALLY

3 February 2022

1. Just before the dawn of day number 666 of the lockdown in our land, I was informed of the outcome of my appeal against the five findings made against me and the sanction imposed on me by Mojapelo DJP.
2. His Lordship had found that I had committed the following acts of misconduct:
 - a. Involvement in political controversy by commenting on, criticising and proposing changes to the official policy of the South African Government towards Israel;
 - b. Participating in an extra-judicial activity that is incompatible with confidence in or the impartiality or independence of Judges, by expressing a view on the diplomatic relations between South Africa and Israel;
 - c. Accepting an appointment that is inconsistent with an independent Judiciary, by agreeing to participate in the Jerusalem Post webinar;
 - d. Lending the prestige of my judicial office to advance my interests and those of the Jerusalem Post; and
 - e. Failure to give precedence to my judicial duties over all other duties and activities.
3. Findings (c), (d) and (e) were set aside but (a) and (b) were confirmed on appeal. Part of the remedial action or sanction, namely the retraction of the vow to not apologise for what I believe to be just and right even if 50 million people were to march daily for 10 years, was set aside. And so was the order that I apologise and retract in the presence of the media and my Constitutional Court colleagues. But the other parts were

confirmed. It is however, a split decision. Zondi JA and Dambuza JA on the one side and Victor J on the other side.

4. I am very thankful that: I have not been ordered to renounce God the Father, God the Son and God the Holy Spirit and my faith in Him; I have not been ordered to renounce the Holy Bible; I have not been ordered to renounce prayer; and I have not been ordered to renounce my love for Israel and Palestine and my love for the Jews and the Palestinians as well as my love for all people. For I said during the webinar, as correctly quoted at para 122 of the decision of the Judicial Conduct Committee Appeal Panel:

“Some possibly then expect of me to be very hateful of Israel and the Jews, I [am] not. I love [the] Jews, I love Israel. I love Palestine. I love the Palestinians. I love everybody”.

5. Did I say I will under no circumstances apologise? No. This is what I said at the prayer meeting as correctly quoted at para 89 of the Appeal Panel's decision:

“I would never refuse to apologise for or retract what I believe to be wrong, however correct I might have initially believed it to be. Even if it is a 10 years old child who would have helped me to so understand. I would apologise to him or her for the wrong I would then be convinced I have done to him or others. But, I will never apologise for or retract what I believe to be correct. I would never no matter how many millions, how many presumably or actually, influential people say so. I would never, **unless forced by the law**, align myself with principles or values repugnant to my sense of what is just, right or wrong. I would be happy to stand alone no matter the consequences. There is a tendency to follow the drowning voices that often dictate the narrative either without reflection, or for fear of massive reputational or positional or other conceivable damage. I would rather suffer the worst imaginable consequences than hypocritically apologise for what I don't believe to be wrong – just to please those who think they have the right to demand and secure an apology or to avoid being labelled arrogant! I stand by my refusal to retract or apologise for any part of what I said during the Webinar. Even if 50 million people were to march every day for 10 years for me to do so, I would not apologise. If I perish, I perish.”

6. The operative expression here is “**unless forced by the law**”. The Judicial Conduct Committee is a creature of statute – the law. Unless set aside, its orders are lawful

and binding. And the rule of law is one of the foundational values of our democratic State. It demands of all, including the Chief Justice, to comply with all lawful orders however much we might disagree with them. Individually and together with my judicial colleagues, I have over the years made orders and expected all, including Presidents, to comply with them and they did. I am now forced by the law – the order of the lawfully constituted Appeal Panel of the Judicial Conduct Committee – to apologise unconditionally in terms of the prescribed apology. And because I am not above the law, I hereby apologise as ordered:

“I, Mogoeng Mogoeng, the former Chief Justice of the Republic of South Africa, hereby apologise unconditionally for becoming involved in political controversy through my utterances at the online seminar (webinar) hosted by the Jerusalem Post on 23 June 2020, in which I participated”.



Mogoeng Mogoeng