

# Ntlemenza's lone battle suffers a setback

Franny Rabkin

**H**awks head Mthandazo Berning Ntlemenza must stay away from work while the appeal court decides whether he is fit and proper to head the elite police unit, the high court in Pretoria decided on Thursday.

The judgment was a victory for Police Minister Fikile Mbalula, who has been at loggerheads with Ntlemenza over whether he could return to work pending his appeal to the Supreme Court of Appeal.

Their stand-off escalated last month when, despite a court order setting aside Ntlemenza's appointment as the head of the Directorate for Priority Crime Investigation (Hawks), he ambled into work on April 24.

A furious Mbalula then went to the Hawks head office and held a press conference denouncing Ntlemenza's return and saying he would not allow him to turn South Africa into "banana republic".

Ntlemenza then went to court urgently for an order that would allow him to return.

After the judgment, Mbalula said he "had always been right" on the correct interpretation of the law.

The judgment, by Judge Sheila Mphahlele, will apply until the appeal court has had its say. It is due to hear the case on June 2.

Ntlemenza is hoping the court will overturn the decision of a full Bench of the high court in March, which set aside his appointment by former police minister Nathi Nhleko.

The court said the appointment was unlawful because Nhleko had not properly considered a scathing judicial rebuke in an earlier case

Ntlemenza had been involved in.

The axed Hawks head has been the subject of controversy from even before he was permanently appointed to head the Hawks.

His acting appointment as Hawks head came on the back of the suspension of his predecessor Anwa Dramat, who claimed he was being targeted because of several high-level investigations.

And, when Ntlemenza suspended Gauteng Hawks head Shadrack Sibiya, Sibiya claimed Ntlemenza was an "ally" of former crime intelligence boss Richard Mdluli. Ntlemenza has

always dismissed this as far-fetched and a conspiracy theory.

When Sibiya challenged his suspension in the high court in Pretoria, Judge Elias Matojane described Ntlemenza as "biased and dishonest" and said he "lacks integrity and honour; he made false statements under oath".

This led to two nongovernmental organisations, Freedom Under Law and the Helen Suzman Foundation, challenging his appointment, saying he was not fit and proper for the post.

A full Bench, led by Judge Peter Mabuse, agreed and set aside the appointment. It refused leave to appeal and also granted an execution, or enforcement, order — ruling that, even if its judgment is appealed, it must be enforced until the appeal has been decided.

Normally, an appeal suspends a court order. But the effect of the enforcement order was that Ntlemenza could not return to work unless and until the appeal court decided differently.

Up to that point, he had the full backing of Nhleko in court. But Mbalula, surprising many, said he would not appeal the decision, leaving Ntlemenza to fight for his job on his own.

Mphahlele's judgment turned on two questions: whether the case was urgent and whether section 18(4) of the Superior Courts Act was applicable in Ntlemenza's case.

Section 18(4) says that if an enforcement order is appealed it is itself suspended. If the section applied, it would have meant that Ntlemenza could have gone back to work.

But Mbalula had argued that section 18(4) did not apply because of the clear wording of the enforcement order.

Although the "default position" was as described by Ntlemenza, "properly interpreted, the order of the full court specifically altered the default position". "I agree," said Mphahlele. "The wording of the order ... is very clear."

She also agreed that it was not for her, a single judge in an urgent court, to overturn a full Bench.

She added that Ntlemenza had failed to show that he would suffer irreparable harm if he was not allowed to return to work, one of the requirements for an urgent interdict.

He had cited "humiliation" and "loss of reputation", she said.

But the interests of justice "far outweighs any harm that may be suffered by the applicant".

Ntlemenza's attorney could not be reached for comment.



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## IMPORTANT NOTICE

### WESTERN CAPE GAMBLING AND RACING BOARD: INVITATION FOR NOMINATIONS TO FILL VACANCIES

**Nominations** are hereby invited for appointment to the Western Cape Gambling and Racing Board in terms of Regulation 3 of the Western Cape Gambling and Racing Regulations. The Board is an independent statutory body established in terms of the Western Cape Gambling and Racing Act, 1996 (Act 4 of 1996) ("the Act"). The Board's main objective is to, inter alia, control and regulate all gambling and racing activities in the Province, to collect all relevant taxes, levies, duties, fees and penalties and to conduct ongoing research into gambling and racing.

**The responsibilities** of Board Members include, but are not limited to: attending monthly Board meetings, conducting site visits, conducting assessments and participating in the activities of committees to which they have been appointed (Audit Committee, Limited Payout Machine Committee, Horseracing Committee, Casino Committee and/or, Human Capital).

**Members of the Board** must be eligible in terms of the Act, and be persons with appropriate knowledge and qualifications, especially in the fields of finance, economics, accounting/auditing, human resource management, legal, social/community/NGO, and/or experience in exercising the responsibilities listed above.

**Successful applicants** would undergo induction and training in the legislative provisions from which the Board's role, functions and mandate derive. All short-listed candidates will be subject to probity investigations.

**Candidates are invited to forward nominations to:** Provincial Treasury, 3rd Floor, Room W3-07, Provincial Legislature Building, 15 Wale Street, Cape Town (Private Bag X9165, Cape Town, 8000), for the attention of Ms C Horton. Interested candidates need to note that **nominations close at 16h00 on 08 June 2017**. Nominations must be accompanied by a brief Curriculum Vitae listing contact details, qualifications and applicable work experience.

On receipt of a valid nomination the Accounting Officer: Provincial Treasury will provide each nominee with an application form. Nominees must complete and return the form to the Accounting Officer: Provincial Treasury within 21 (twenty-one) days from the date on which the form was placed at their disposal.

In terms of Section 4 of the Act, in order to be **eligible** for appointment as a member, a person shall:

- have attained the age of twenty-five years;
- be a citizen of the Republic of South Africa and ordinarily reside in the Province of the Western Cape;
- be a fit and proper person whose character, integrity, honesty, prior conduct, reputation, habits and associations are beyond reproach;
- be of good financial standing; and
- not be disqualified in terms of Section 5 of the Act.

In terms of Section 5 of the Act, the following persons shall be **disqualified** from being appointed to the Board:

- anyone who has been convicted of an offence relating to gambling or racing;
- anyone who has been convicted of an offence relating to dishonesty;
- an unrehabilitated insolvent or anyone who is subject to any legal disability;
- anyone who has been removed from any office of trust on account of misconduct or dishonesty;
- any political office-bearer; and
- anyone who, whether personally or through his or her spouse, an immediate family member, a partner or an associate or any person connected to such person by marriage -
  - has or acquires any interest in any gambling business or activity, or
  - has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties.

All candidates must be willing to provide their fingerprints and to disclose full details of their family, friends and associates and personal and business/financial information. This is in line with international standards that require probity investigations into all persons intending to be involved in the regulation of the gambling industry.

Nominations and appointment to the Board are subject to the Western Cape Gambling and Racing Act (Act 4 of 1996) and its Regulations.

The Western Cape Gambling and Racing Board intends to achieve representivity amongst its members. Preference will therefore be given to **designated groups, especially female candidates and people with disabilities**, in its quest to achieve this.

**Enquiries** can be directed to Ms C Horton, telephone number (021) 483-6037.

<sup>1</sup> The criteria to be utilised to determine whether an applicant is ordinarily resident in the Province is available on request from Provincial Treasury.