

# Press Release



**South African  
Institute of  
Race Relations**

*South Africa's Leading Research and Policy Organisation*

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## Mpshe must stay off the Bench

**The South African Institute of Race Relations calls upon the General Council of the Bar, which has already objected in strong terms to the appointment of state official Mokotedi Mpshe as an acting judge, to bring an urgent action to have this appointment set aside.**

In appointing Mokotedi Mpshe an acting judge, justice minister Jeff Radebe has ignored not only the concerns of the Bench, the Bar, and the Judicial Service Commission but also the Constitution and a relevant ruling by the Constitutional Court.

In 2002, in the case of *Van Rooyen v The State*, the Constitutional Court stressed that judges must be independent. This, it said, requires both individual objectivity and institutional autonomy.

At an individual level, said the court, judges must bring an objective perspective to bear on the disputes before them, not allowing political affiliation, deference to the executive, or hope of financial or other reward to influence their rulings. But Mpshe has already failed this test by demonstrating his political pliability and willingness to bend the rules for the benefit of President Jacob Zuma.

To preserve institutional autonomy, the Constitutional Court went on, there must be 'structures to protect courts and judicial officers against external interference'. One of those structures is the doctrine of the separation of powers between the executive and the Judiciary. That doctrine — guaranteed in the Constitution — bars a state official from simultaneously serving as a judge.

Mpshe is thus doubly disqualified from elevation to the Bench. His appointment demonstrates contempt not only for the Constitution but also for the rule of law and South Africa's highest court. Urgent action is needed to have the appointment withdrawn or set aside.