

# Court battle over lack of legal briefs

Black businesses and lawyers should "not be shy" to sue for anti-competitive practices when they are excluded from markets because of their race, said Simba Chitando in court papers on Tuesday (21 May).



The Cape Town-based junior advocate is embroiled in an increasingly bitter and vicious legal fight with three of his senior colleagues at the Cape Bar and four of the big commercial firms of attorneys.

Chitando says he has been excluded from getting briefed on shipping law matters because he is black and Zimbabwean.

In one of his cases before the Competition Tribunal, Chitando has accused law firms Webber Wentzel, Norton Rose, Bowman Gilfillan and Shepstone & Wylie of racism and xenophobia because after three years as an advocate he is yet to receive a single brief in a shipping law matter - despite holding a master's degree in commercial law with a dissertation on shipping law.

His replying court papers in this case would be filed on Monday (27 May) he said.

In the other case, Chitando takes on his own seniors at the Cape Bar - Michael Fitzgerald, Russel MacWilliam and Michael Wragge - asking the Competition Tribunal to interdict them from "racial and xenophobic" unlawful, anti-competitive practices.

He asks the tribunal to order the three senior counsel to select those juniors who had a shipping law background "equally, without prejudice as to race and nationality" and to include him in their "pool of junior advocates".

In turn, the three silks accuse Chitando of attempted extortion and being motivated by self-interest. In their answering papers, they attached an e-mail from him to their attorney offering to withdraw the case, as well as his complaint to the Competition Commission, if each of them were to pay him R300,000.

## Self-interest

They said this showed that Chitando was "clearly motivated by his own self-interest alone, which he attempts to disguise as reflecting the interests of black members of the bar". In his replying affidavit Chitando hit back, admitting that "I carry no brief from anybody in this application, besides myself".

But if he were to be successful in his court case, it would benefit other black counsel "oppressed by the same racist, anti-competitive practices that frustrate their progress," Chitando claimed.

He said he had lost confidence in the ability of legal organisations such as the bar to assist him and encouraged "all oppressed black lawyers to make claims for anti-competitive practices, and seek damages".

"It is clear from the case law that white businesses are not afraid of exercising their right to review so-called black tenders or seek compensation for anti-competitive practices," Chitando said.

He added that the e-mail was a genuine offer to settle, made "without prejudice", and should not have been annexed to the silks' court papers without his consent.

"They know, as silks, that it cannot be extortion to threaten one who has caused harm with legal proceedings," he said.

Complaints to the Cape Bar Council about "racist and xenophobic briefing patterns" would go "unpunished," he said. "The Cape Bar is notorious, among black African advocates, for excluding our people," Chitando alleged.

But the chairman of the Cape Bar Council, John Newdigate, said there were a number of programmes "on the go" to empower young black and women junior advocates.

He referred specifically to a meeting with the big law firms last year about briefing patterns, at which the law firms were "very receptive".

To say nothing had been done would be "simply untrue", Newdigate said.

Source: Business Day via I-Net Bridge

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