

On 9th November 2009, you sent me an e mail in which you advised that you intend publishing an article in the Mail and Guardian examining the propriety of my relationship with the Encha Group. You say that your research “on the face of it” indicates problems regarding the objective requirement for judicial independence.

At the outset, I must say that there is nothing in my conduct or in the relationship between Encha Group and Sedise Properties Trust, a discretionary family trust, in which I serve as a trustee, which undermines my judicial independence. From 2001, when I was elevated to the bench, I have served as a Judge diligently, with integrity and with the full observance of the law and judicial ethics.

I am the sole trustee of a discretionary family trust known as Sedise Properties Trust (T2653/95), duly registered in April 1995 with the Masters Office. My brother, Tiego Moseneke was one of the first trustees. However, he resigned in 2006. The beneficiaries of the Trust are my children and grandchildren who are entitled to distribution of the capital.

Overtime, Sedise Properties Trust acquired and holds various classes of assets including cash, fixed property, listed and unlisted shares. In particular in 2005, Sedise Properties Trust became a shareholder in Swanvest (Pty) Limited, a shell company which in turn holds 45 percent of Encha Group. This of course means that the effective interest of Sedise Properties Trust in Encha Group is 18 percent. I am not an executive or director of Encha Group. I play no part in any transactions they conclude or any executive decisions management makes. Naturally, I am available for advice to my brother Tiego Moseneke and my son Sedise Moseneke, who both work at Encha Group.

Your letter suggests that I may not have been true to the undertakings I made to the JSC that I have terminated all commercial interests and directorships. I must emphasise that any such inference is incorrect.

When I was appointed a Judge I resigned from all directorships and business executive roles. And that remains so. I have never received any remuneration, directors’ fees or financial benefit from any source other than in my capacity as a Judge. I have no share options in any company and I have made a complete break from all the companies I have been associated with.

However, that does not mean that I may not be a trustee of a family trust or that a family trust may not hold any class of assets. Judicial ethics and the law makes it quite clear that a Judge may be a trustee of a family trust or

hold family assets in a private company and there is no bar to the trust or private company holding listed or unlisted shares. For this, no permission is required from anybody. It is a well entrenched judicial requirement that when a Judge has or is likely to have a financial conflict of interest, he or she is obliged to disclose that fact and in appropriate cases to recuse him or herself from the matter. I add that I support the recently passed legislation which requires a Judge to disclose his or her financial interests. As soon as the law has come into operation, I will make the appropriate disclosures. For the sake of completeness, I enclose herewith a copy of a document containing judicial ethics.

In conclusion, I must emphasise again that there is nothing in my role as a trustee of a family trust that is inconsistent with my oath of office. I have and will continue to serve as a Judge with diligence and integrity.

Yours faithfully
Dikgang Moseneke