



## BEFORE THE JUDICIAL CONDUCT TRIBUNAL

In the complaint between:

JUDGE DENNIS MARTIN DAVIS AND OTHER JUDGES      COMPLAINANTS

And

JUDGE MUSHTAK KASSIEM PARKER      RESPONDENT

Reference Number: JSC/790/2020

AND

In the complaint between:

THE CAPE BAR COUNCIL      COMPLAINANT

And

JUDGE MUSHTAK KASSIEM PARKER      RESPONDENT

Reference Number: JSC/787/2020

### Members of the Panel

Judge B M Ngoepe, Retired Judge President.

Judge P Boruchowitz, Retired, Member

Ms D Mthimunye, Attorney, Member

Heard on 24 February 2025

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## **REPORT**

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### **INTRODUCTION**

1. Judge Mushtak Kassiem Parker (respondent), appeared before this Tribunal to answer two charges emanating from two separate complainants. One complaint was laid on 23 March 2020 by 10 Judges of the Western Cape High Court Division (the Judges), being Matter No JSC/790/2020; it was supported by the affidavit made by Judge D M Davis dated 23 March 2020, and by affidavits by other 9 judges of the same court; in addition, there were two confirmatory affidavits by other judges of the court. The second complaint was laid by the Cape Bar Council (the CBC) on 31 March 2020, being Matter No JSC/787/2020, supported by an affidavit made by the then chair of the CBC, Adv Andrew Mark Breitenbach SC, dated 31 March 2020.
2. Both complaints were laid against Judge Parker in terms of Section 14 of the Judicial Service Commission Act 9 of 1994 ("the Act") with the Chief Justice of the Republic of South Africa. The complaints were dealt with together from the beginning until they reached this Tribunal. We therefore deal with them together in this Ruling.
3. By his letter of 23 May 2020, the Chief Justice referred the two complaints to the Judicial Conduct Committee (JCC) in terms of section 16(1) of the Act to consider whether it should recommend to the Judicial Service Commission (JSC) that the complaints be investigated and reported on by a Judicial Tribunal. Briefly, the

complaint by the Judges, as later summarized by the JCC, was that Judge Parker gave two contradictory and mutually exclusive versions about an incident which appeared to have happened in his Chambers on 25 February 2019: The one version being that he was assaulted by the then Judge-President, and the other being that he was not. The complaint by the CBC was also about alleged dishonesty on the part of Judge Parker. It was said that when he completed the JSC questionnaire for application to be appointed a permanent judge, Judge Parker answered “NO” to questions he should have answered in the affirmative; in doing so, he failed to disclose that the law firm of which he was a partner, had for a long-time incurred trust shortfalls, which he also failed to report to the body governing the profession. The complaint was said to be based on the grounds set out in section 14(4)(b) and/or (e) of the Act.

4. After representations were made by the Judges, the CBC and on behalf of Judge Parker to the JCC, it resolved as follows below in its decision of 11 June 2020 in respect of the two complaints:

- 4.1. Regarding the Judges’ complaint: *“If the complaint is established without the respondent having given a valid reason or an acceptable explanation as to why he changed his version early in February 2020, his conduct in changing his version would be seen as extremely serious, particularly because he is a judge. Furthermore, the respondent would have known that he was corroborating a version that Judge President Hlophe was going to place before the Judicial Conduct Committee. That would be very serious. Given the above and all the facts in the affidavits before us, we*

*consider that, if the first complaint is established, it will, prima facie, indicate gross misconduct by the respondent.*

- 4.2. Regarding the Cape Bar Council complaint: *“if it is established, it will prima facie indicate gross misconduct on the part of the respondent. The existence of a trust deficit could indicate that the respondent and/or his partners misappropriated the funds of their trust creditors while he practised as attorney. If established, misappropriation of funds would be a serious conduct that may inter alia reflect negatively on the integrity of the respondent. It will also prima facie indicate that the respondent would have acted in breach of terms of the rules of the law society over a long period by not disclosing to the law society when there was a trust deficit in the trust account of his law firm. The respondent’s failure to disclose in his nomination questionnaire and in the interview before the JSC that the trust account of his law firm had had a deficit for a long time while he was the managing director is extremely serious.”*
5. The JCC therefore resolved that *“both individually and cumulatively, the two complaints will, if established, prima facie indicate gross misconduct on the part of the respondent that will be seen as bringing the judiciary into disrepute.*
6. The recommendation of the JCC was accepted by the JSC, in consequence of which it asked the Chief Justice to appoint this Tribunal. The Chief Justice did so, with the following as the Tribunal’s Terms of Reference, dated 26 January 2021, paragraph 6 thereof, to investigate, make findings and report on:

*“6.1 Whether the respondent acted dishonestly in giving two contradictory and mutually exclusive versions about the incident that*

*happened in his Chambers between himself and Judge President Hlophe on 25 February 2019. And by giving these two contradictory and mutually exclusive versions, whether the respondent rendered himself guilty of gross misconduct, as envisaged in section 177(1)(a) of the Constitution.”*

*“6.2 Whether the respondent and his partners misappropriated funds of their trust creditors while he practised as an attorney and acted in breach of the rules of the law society over a long period by not disclosing to the law society when there was a trust deficit in the trust account of his law firm. And whether his failure to disclose in his nomination questionnaire and in the interview before the JSC that the trust account of his law firm had had a deficit for a long time while he was the managing director constitutes gross misconduct on his part.”*

7. While members of the Tribunal were appointed by the Chief Justice in January 2021, the hearing was only held on 24 February 2024; some explanation is required. After the Tribunal took management of the matter, it kept on receiving letters from doctors indicating that Judge Parker was not well or fit for work, for one period after another:

- 7.1. There was a Sick Certificate by Dr M Imran Parker, a radiation Oncologist, dated 1 March 2021, that Judge Parker would be fit for work only the following year on 1 January 2022.

- 7.2. There was a letter by Dr MI Parker (not the above oncologist) dated 12 May 2021 that judge Parker was ill, attaching the Sick Note referred to in 6.1 above.
- 7.3. There was a Medical Certificate by Dr Ozayr S Ameen, a neurologist, dated 1 March 2022 which put Judge Parker off work for health reasons from 1 March 2022 to 1 March 2024 – a period of 2 years!
8. These medical certificates posed a moral and legal dilemma for the Tribunal. There was also a letter from the judge's former attorneys, Shaheed Dollie Incorporated, dated 22 June 2022 which said he was ill and on extended leave; it also indicated that he was applying to be medically boarded. Copies of the correspondence referred to above are in the custody of the staff of the JSC. In the second half of 2024, the Tribunal began to press for the hearing; the matter was set down for 18 October 2024, on which occasion it was postponed to 24 February 2025 for hearing.

### **THE COMPLAINT BY THE JUDGES**

9. On 16 March 2020 a collective complaint against Judge MK Parker was submitted by 10 (ten) Judges of the Western Cape High Court to the JSC.<sup>1</sup> The complaint was set out in a letter dated 16 March 2020.

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<sup>1</sup> The complainants are Judge S Desai (retired); Judge DM Davis (retired); Judge YS Meer (retired); Judge LJ Bozalek (retired); Judge AG Binns-Ward (retired); Judge ET Steyn (retired); Judge PAL Gamble (retired); Judge RCA Henney; Judge OL Rogers (now a Justice of the Constitutional Court) and Judge M Sher

10. On 24 March 2020 the complainants submitted affidavits to the JSC and the Chief Justice in accordance with Section 14(3)(b) of the JSC Act confirming the nature of the complaint and the facts on which it is based.
11. The complaint against Judge Parker is fully described in an affidavit deposed to by Judge D M Davis dated 23 March 2020. In summary, the complaint against Judge Parker as appears from the letter of 16 March 2020 and in the complainants' affidavits is that:
  - 11.1. On or about 25 February 2019 Judge Parker was allegedly assaulted in his chambers by the then Judge President of the WCHC, Dr Hlophe;
  - 11.2. Immediately thereafter, Judge Parker visited the chambers of Judge ED Wille and informed him of the alleged assault;
  - 11.3. At the request of Judge Parker, Judge Wille drew up an affidavit recording the events, which affidavit was later deposed to before a Commissioner of Oaths for purposes of laying a criminal complaint against Dr Hlophe. This will hereafter be referred to as "*the Wille affidavit*";
  - 11.4. Judge Parker told several of his colleagues of the assault upon him during the third and fourth terms of 2019 as well as at the beginning of 2020. The colleagues whom he told about the alleged assault included Deputy Judge President Goliath ("the DJP") as well as Judges Sher, Henney, Le Grange and Steyn. The complaint was also reported by Judge Parker to an un-named Judge who preferred to remain anonymous for purposes of the complaint. That Judge has subsequently

- written to all permanent Judges of the WCHC confirming that Judge Parker related full details of the event to her on Friday, 6 December 2019;
- 11.5. In January 2020 the DJP lodged a complaint with the JSC against Dr Hlophe. Among the complaints levelled against him is that he assaulted Judge Parker. Even after the complaint was lodged, Judge Parker maintained his version of events regarding the alleged assault upon him.
- 11.6. On 17 February 2020, almost a year after the assault allegedly took place, Judge Parker requested that Judge Wille return the Wille affidavit to him. Judge Wille complied with this request;
- 11.7. On 13 March 2020, Judge Parker was requested by a deputation made up of Judges Bozalek and Rogers to make the Wille affidavit available for scrutiny. He declined to do so;
- 11.8. Later that day Judge Parker wrote to Judge Le Grange denying the allegations contained in Judge Le Grange's letter to Judge President Hlophe dated 11 March 2020, in which Judge Le Grange had set out what Judge Parker had told him and the other Judges about the alleged assault;
- 11.9. In his letter, Judge Parker further informed Judge Le Grange that he had come to the realisation that the alleged assault did not in fact take place as he had earlier related to several of his colleagues and that "*Very soon thereafter*" ("the alleged assault") "*without anyone having influenced me in any way whatsoever I realised that events may not have unfolded in the way I had initially perceived*";



- 11.10. When Dr Hlophe responded to the complaint laid against him by the DJP he denied, in his affidavit dated 7 February 2020, that any assault had taken place in the chambers of Judge Parker as alleged. He stated in his affidavit that Judge Parker (although he is not identified in this affidavit) had *“been shown this portion of the affidavit relating to him and agrees with this version”*. (See in this regard paragraph 11 of Judge Davis’ affidavit and the reference to paragraphs 36 to 44 and 196 of Dr Hlophe’s affidavit)
- 11.11. The net result of all of this is that Judge Parker has given diametrically opposed versions of the alleged assault to the various colleagues referred to above; he has, over a period of many months, consistently described the event in some considerable detail. This detail is substantially in accordance with the contents of the Wille affidavit.
- 11.12. After the retrieval of the Wille affidavit and in his reply to Judge Le Grange, Judge Parker has recanted from the version told directly to Judges Sher, Henney and Steyn. Moreover, Judge Parker has persisted with his now recanted version as late as January 2020. This stands in contrast to his claim in his letter of 13 March 2020 *“that very soon”* after the alleged assault, he had come to a different conclusion. Judge Davis has reason to believe that the alleged assault took place in February 2019, and Judge Parker’s claim in the letter of 13 March 2020 cannot reasonably be possibly true;
- 11.13. In confirming the contents of Dr Hlophe’s affidavit of 7 February 2020, Judge Parker agreed that no assault by the Judge President whatsoever

took place in his chambers. He has therefore given 3 conflicting versions of the event, one of which, at least, is under oath;

11.14. The complainants are of the view that the fact that Judge Parker has given conflicting versions in relation to the assault leads to the inevitable conclusion that Judge Parker has failed to uphold the integrity of the Judiciary as he is obliged to do under Article 4(a) of the Code and, further, that he has failed to act honourably in the discharge of his duties as he is required to do under Article 5 of the Code. The same is true of the manifest inconsistency between his assertion that “*very soon after*” the incident he realised that events had not unfolded as he previously perceived, and the versions he recounted to various Judges months after the incident;

11.15. The claimants contend that integrity is central to an independent Judiciary. Judicial dishonesty eviscerates the foundation of this key institution. Judge Parker’s conduct has unquestionably brought the Judiciary into disrepute.

### **THE EVIDENCE**

12. The evidence leader handed the ten complainants’ affidavits into evidence. Judge Parker did not make any admissions before the Tribunal. He elected not to testify and did not provide his version of the events.
13. Because Judge Parker declined to make any admissions, the complainants were required to give oral evidence, confirming the content of their respective affidavits.

14. Judge Parker's legal representatives stated in response to a question from the Tribunal as to whether he had any objection to the admission of the affidavits of the complainants (as distinct from any admission as to the truth of the contents of those affidavits), that Judge Parker had instructed them not to raise any factual disputes and that he did "*not oppose the presentation of the affidavits to the Commission or to the Tribunal*".
15. The following salient facts arise from the affidavits and oral evidence given by the complainants:

**The evidence of Judge Rogers**

- 15.1. Judge Rogers who was the first witness to give evidence, confirmed the content of his affidavit and that the content thereof is true and correct. He further confirmed that the documents marked as Annexure "JC" and as Annexures "A" to "D" respectively are annexures to his affidavit;
- 15.2. Judge Parker's legal representatives did not cross-examine Judge Rogers or put Judge Parker's version to him. Consequently, Judge Rogers' oral and affidavit evidence is uncontested. The following relevant facts emerge from Judge Rogers' evidence:
  - (a) Judge Rogers confirmed the content of the affidavit of Judge DM Davis insofar as it relates to him. He confirmed that he is a signatory to the complainants' letter and that he persists with the complaint against Judge Parker for the reasons set out in that letter;
  - (b) Judge Rogers made it clear that he has no personal knowledge of what happened in Judge Parker's chambers in February 2019.

Judge Parker at no stage spoke with him about the alleged assault. He relied on what Judges Wille, Le Grange, Henney, Sher, Steyn and Cloete had confirmed to him and to the other complainants as regards the alleged assault;

- (c) Judge Rogers further stated that he adopts no position as to which, if any, of the inconsistent versions Judge Parker has given is the truth. His concern is that on one or more occasions Judge Parker has not spoken the truth. In his view, even on a private matter, untruthfulness by a Judge constitutes serious misconduct. However, the matter involving Judge Parker is not a private one arising outside the judicial sphere. It concerns an alleged incident between Judge Parker and the then Judge President, arising from an interaction between Judge Parker and Judge Salie-Hlophe to which the then Judge President took offence;

15.3. Judge Wille informed Judge Rogers that he and Judge Parker gave Goliath DJP an account of the alleged assault in October 2019. This became one of several matters which Goliath DJP made the subject of her complaint against Dr Hlophe in January 2020, who in turn has made counter-complaints against Goliath DJP;

15.4. Because Judge Parker told Dr Hlophe that he agreed that there was no assault, Dr Hlophe accused Goliath DJP of making the allegation of assault recklessly, maliciously and in bad faith and of relying on reckless rumour and gossip;

- 15.5. If there was no assault, there is evidence from multiple sources that Judge Parker misled Goliath DJP, Judge Wille and a number of other Judges of the WCHC into believing that there was an assault, resulting in the making of a damaging claim by Goliath DJP against the Dr Hlophe. If on the other hand there was an assault, it is grossly dishonourable for Judge Parker to support Dr Hlophe in denying it and to expose Goliath DJP to the criticisms made by Dr Hlophe.
16. Judge Rogers has annexed the following documents to his affidavit, which are referred to in the affidavit of Judge Davis:
- 16.1. Annexure “A”, being a portion of Goliath DJP’s affidavit dated 15 January 2020 in respect of her complaint against the then Judge President.
- 16.2. Annexure “B”, being the Dr Hlophe’s affidavit dated 7 February 2020 responding to the DJP’s complaint. Specific reference is made in the affidavit of Judge Davis to paragraphs 36 – 34 and 196 of Dr Hlophe’s responding affidavit.
- 16.3. Annexure “C”, being Judge Le Grange’s letter to Dr Hlophe dated 11 March 2020; and
- 16.4. Annexure “D”, being Judge Parker’s letter to Judge Le Grange dated 13 March 2020;
- 16.5. Finally, Judge Rogers states that it is honesty and integrity, and not the rights and wrongs of an alleged assault or sexual misconduct which are at stake.

**The evidence of Judge Wille**

17. Judge Wille, who is not one of the complainants, gave oral evidence and deposed to two affidavits, one dated 23 March 2020 and the second dated 29 April 2020. He confirmed the correctness of the contents of these affidavits.
18. Judge Parker's legal representatives did not cross-examine Judge Wille or put Judge Parker's version to him. Consequently, Judge Wille's oral and affidavit evidence is uncontroverted.
19. Judge Wille's evidence is the following:
  - 19.1. Judge Parker came to his chambers on 25 February 2019. He seemed very upset. Judge Parker told him what had happened with the then Judge President Hlophe earlier that day and asked him to type up an affidavit for him, setting this out briefly;
  - 19.2. Judge Wille typed up what Judge Parker told him. He then read the document back to Judge Parker who confirmed that it reflected what he had told Judge Wille. Judge Parker then requested Judge Wille to e-mail the affidavit to his private e-mail address which Judge Wille did. The document that Judge Wille typed is the Wille affidavit which is Annexure "A" to Judge Wille's second affidavit;
  - 19.3. When Judge Parker came to see Judge Wille on 25 February 2019, he brought with him a key. Judge Parker said this was the key which was broken when he fell against a book case in his chambers after he had been struck by the then Judge President. He showed Judge Wille the broken key. Judge Wille decided to take a photograph of the key, which

he kept on his mobile phone. Judge Parker then left his chambers after Judge Wille had e-mailed the Wille affidavits to him;

19.4. Judge Parker came back to Judge Wille's chambers later that day with two signed affidavits which were in exactly the same form as the Wille affidavit. Both affidavits were signed by a Commissioner of Oaths. Judge Parker asked Judge Wille to keep one of these affidavits in safe-keeping. Judge Wille agreed and placed the signed affidavit in a folder in his chambers in a cupboard that can be locked;

19.5. On 17 February 2020, Judge Wille received a phone call from Judge Parker who asked him to return the original Wille affidavit. Judge Wille asked Judge Parker what the reason was for his request. Judge Parker said that he had been advised that the Wille affidavit was his affidavit, and that there was no longer any need for Judge Wille to have it;

19.6. Judge Wille felt uncomfortable about the request and sought the advice from a senior advocate who advised him that he should return the Wille affidavit, with a covering letter setting out Judge Parker's request. Judge Wille did so. He attached the original signed Wille affidavit to that letter and put it in brown manila envelope and asked his Registrar to deliver it to Judge Parker;

19.7. The content of the covering letter was as follows:

*"I refer to the abovementioned matter and your specific request earlier this morning. I herewith return to you the original of your commissioned affidavit duly, together with the duly initialled coloured annexure".*

- 19.8. Judge Wille attached to the covering letter, a copy of the photograph that he had taken of the broken key that Judge Parker had shown to him;
- 19.9. Shortly before the hearing, Judge Wille found a copy of a photograph that he had taken of the signed Wille affidavit and a copy of a photograph that he had taken of the broken key;
- 19.10. In Judge Wille's second affidavit dated 29 April 2020 Judge Wille recorded his interaction with Judge Parker on 17 February 2020<sup>2</sup>. He attached to that affidavit copies of the unsigned Wille affidavit<sup>3</sup>;
- 19.11. Judge Wille explains in paragraph 3 of the second affidavit that the content of the unsigned Wille affidavit is precisely the same as the content of the affidavit which was subsequently deposed to before a Commissioner of Oaths by Judge Parker. The unsigned affidavit is a "mirror image" of the signed affidavit and was saved on his laptop and subsequently on his "time capsule". The unsigned Wille affidavit which Judge Wille prepared for Judge Parker reads as follows:

"AFFIDAVIT DEPOSED BY MUSHTAK PARKER

*I, the undersigned*

*MUSHTAK PARKER*

*do hereby make oath and state that:*

- 1. I am a Judge of the High Court, Western Cape Division.*
- 2. On the 25<sup>th</sup> of February 2019 and at about 11h50, the Judge President (Judge Hlophe) entered my Chambers. I was alone.*

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<sup>2</sup> Judges' complaint bundle, p 83

<sup>3</sup> Annexure "A" to Judge Wille's second affidavit. Judges' complaint bundle, p 86



3. *The Judge President approached me and accused me of being a racist and accused me of wanting to “screw his wife”. (Judge Salie-Hlophe).*
4. *I advised the Judge President that these allegations were false. The Judge President lost his temper and struck me with his fist on my chest, after repeatedly threatening to “fuck me up”.*
5. *I fell down to the ground and in so doing broke the key that was in the cupboard housing some of my legal books.*
6. *This is an abridged version of what transpired and I reserve my rights to elaborate on these unfortunate events.*

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MUSHTAK PARKER

*I certify that on this \_\_\_\_ day of \_\_\_\_\_ 2019 in my presence at \_\_\_\_\_ the Deponent signed this affidavit and declared that he:-*

1. *Knew and understood the contents thereof;*
2. *Had no objection to taking this oath;*
3. *Considered the oath to be binding on his conscience and uttered the words “I swear that the contents of this declaration are true, so help me God”*

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COMMISSIONER OF OATHS”

### **The evidence of Judge A Le Grange**

20. Judge Le Grange who is not one of the complainants also gave evidence. He confirmed the truth and correctness of his affidavit.<sup>4</sup> He further confirmed the

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<sup>4</sup> Page 65 of the Judges’ complaint bundle

correctness of the documents attached to Judge Rogers' affidavit, in particular his letter of 11 March 2020.<sup>5</sup>

21. Judge Parker's legal representatives did not cross-examine Judge Le Grange, and nor did they put Judge Parker's version to him. Accordingly, his oral evidence and the evidence in his letter of 11 March 2020 and affidavit stand uncontested.
22. In his affidavit Judge Le Grange confirms that he is aware of the complaint lodged against Judge Parker in the letter signed by 10 (ten) Judges dated 16 March 2020. He confirms that the said letter is true and correct insofar as it relates to him. He also confirms that the facts stated in his letter of 11 March 2022 are true and correct and summarise his interactions with Judge Parker on the subject of the alleged assault.
23. Judge Le Grange's evidence as set out in his confirmatory affidavit and letter of 11 March 2020 is the following:
  - 23.1. On 6 March 2020 he and Judge Parker were allocated to hear an appeal in a criminal matter. On the same day of the allocation Judge Le Grange went to Judge Parker to inform him that he intended to recuse himself.
  - 23.2. In his letter to the then Judge President, Dr Hlophe, Judge Le Grange records what transpired between him and Judge Parker, and the reasons why he indicated his unwillingness to preside with Judge Parker;

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<sup>5</sup> Exhibit 6, Judges' bundle, p 52

- 23.3. In the letter Judge Le Grange states that Judge Parker told him that Dr Hlophe had viciously pushed him against a cupboard in his chambers and as a result of the attack on his person, a cupboard key was broken. He had made a sworn statement to that effect and a photograph of the broken key was attached to the statement. Further, Judge Parker told him that some fellow Judges persuaded him not to file a criminal complaint against Dr Hlophe;
- 23.4. A few days after the Wille affidavit was deposed to, Judge Wille showed it to Judge Le Grange as proof that he holds it for safe-keeping;
- 23.5. It later came to Judge Le Grange's knowledge that Judge Parker had also informed other colleagues, including the DJP, of the alleged attack;
- 23.6. Judge Le Grange informed both Judge Wille and Judge Parker of their obligation to bring the matter to the attention of the Chief Justice and to report it to the Judicial Conduct Committee as soon as possible. Judge Le Grange's advice was regrettably ignored;
- 23.7. the DJP subsequently brought this incident to the attention of the Judicial Conduct Committee. In paragraphs 15 -17 of his letter to Dr Hlophe, Judge Le Grange states the following:

*"15. My difficulty arises from the fact that Judge Mushtak Parker told me in no uncertain terms that you, without provocation, intentionally pushed him in his own chambers. It is inconceivable that Judge Parker, with vast experience of criminal law as an attorney, could be mistaken on that issue. Yet your statement is in total contradiction to what Judge Parker has told me (and many other colleagues) about what transpired in his chambers. More alarming*

*however is the fact that in your statement in denying the attack it has been recorded that:*

*“The Judge concerned has been shown this portion of the affidavit relating to him and agrees with this version”.*

16. *I believe that Judge Parker did not file a confirmatory affidavit but there is no reason not to believe that the relevant portion of the affidavit was shown to Judge Parker and that he agreed with it as you say.*
17. *It follows that the two versions of Judge Mushtak Parker are diametrically opposed to each other. Common sense dictates that both of them cannot be the truth. It is here that my ethical dilemma arises when called upon to preside in a matter with Judge Mushtak Parker. The prevailing climate of untruthfulness makes its simply untenable to dispense justice in accordance with my oath of office”.*

24. On 13 March 2020 Judge Parker responded to Judge Le Grange’s letter. His response is Annexure “D” to the affidavit of Judge Rogers. In that response Judge Parker stated the following in paragraphs 3, 4, 6, 8, and 9 of his letter:

- “3. *Quite simply having reflected on the narrative with regard to the alleged assault, very soon thereafter, and without anyone having influenced me in any way whatsoever, I realised that events may not have unfolded in the way I had initially perceived. This is quite understandable, given my emotional state at the time. I therefore came to the firm but inescapable conclusion, that a complaint of any nature in this regard, will be both inappropriate and unnecessary.* [Our emphasis]
4. *I regard the matter as personal, private, confidential and fully resolved. In this regard, I fully align myself with the comments*

*expressed by the Judge President in his response to the complaint by the DJP, and confirm it as true and correct.*

... ..

- 6 *Furthermore, I categorically deny that I told you or anyone else that I was influenced or persuaded by any of my colleagues not to pursue any perceived complaint against the Judge President. This narrative is simply false.*

.....

- 8 *You appear to be fixated with wanting to destroy the Judge President at any cost, regardless of the consequences, and seemingly for your own ambitions, and in this endeavour have no regard for who you use as a stepping stone.*

.....

9. *I urge you to respect the JSC/JCC process. As far as I am concerned, I am satisfied that there is absolutely no basis for a complaint against the Judge President, and request you once again, to respect my decision."*

### **The evidence of Judge Sher**

25. Judge Sher confirmed the truth and correctness of his affidavit (Exhibit 7).
26. In his affidavit Judge Sher confirms the contents of Judge Davis' affidavit in support of the complaint which had been lodged by 10 (ten) Judges of the Western Cape Division including himself in respect of the apparent misconduct of Judge Parker. He confirmed the contents of this affidavit insofar as reference is made therein to himself and associates himself with the views expressed therein.
27. He also confirmed for the reasons set out in Judge Davis' affidavit and the letter by the 10 Judges sent to the Judicial Service Commission on 16 March 2020 that he considers there to be *prima facie* evidence that Judge Parker has made

himself guilty of dishonourable conduct unbecoming a Judge, which requires investigation by the Commission. He also states that he has read the accompanying supporting affidavit of Judge Rogers in final draft and associates himself with the averments which are made in paragraphs 8 to 12 thereof.

28. Judge Sher confirmed that during or about October 2019 Judge Parker informed him that he had been assaulted by Judge Hlophe. The circumstances which gave rise to him imparting this to him were as follows:

28.1. At the commencement of the third term in October 2019 a rumour started circulating amongst colleagues (as well as members of Court staff and members of the legal profession) that Dr Hlophe had assaulted a Judge in the Division and had verbally abused another. The Judge who was allegedly assaulted was Judge Parker;

28.2. He was concerned by what he had heard and in the course of a conversation with Judge Parker mentioned that there were disturbing rumours doing the rounds. Judge Parker informed him that he was aware thereof and it was necessary for him to tell him what had actually happened;

28.3. He then informed Judge Sher that Dr Hlophe had assaulted him in his chambers by shoving him backwards against a cabinet, causing him to injure his back against a key, which broke in the process, and which resulted in him falling to the floor. Judge Parker said that he had been very upset by what had happened and had immediately informed Judge Wille thereof. Judge Wille assisted him in preparing a statement in which the circumstances of the assault were set out, which statement was sworn

to before a Commissioner of Oaths and thereafter kept in safe-keeping by Judge Wille, together with a broken key or a piece thereof;

28.4. From his discussions with Judge Parker, it was evident to Judge Sher that Judge Parker felt humiliated and upset by what had happened, and he intimated that apart from the physical injury which he had sustained it has also been necessary for him to receive counselling from a psychologist;

28.5. In the circumstances Judge Sher persists with the complaint and requests the Judicial Service Commission to investigate Judge Parker's conduct, particularly his apparent confirmation of Dr Hlophe's version that there was no assault on him, and Judge Parker's assertion in a letter which he wrote that, having considered the matter shortly after the incident had occurred, he had come to the conclusion that the events may not have unfolded in the way that he had initially perceived. Insofar as the statements by Judge Parker are or may be contrary to what he informed Judge Sher they appear to be dishonest and untrue and reflect adversely on his integrity as a Judge.

29. Judge Sher states that Judge Parker informed him that subsequent to the assault he had been called to attend a meeting with Dr Hlophe and two other Judges (Judge Papier and Judge Dolamo), at which the incident was discussed and there was apparently a "*suggestion*" that he should not proceed with any action in respect thereof.

30. It was at no stage suggested by Judge Parker in any discussions which Judge Sher had with him, that over the course of time he had realised that he "*misperceived*" or misunderstood what had happened. During his numerous

discussions with Judge Parker it was quite clear that he had been assaulted by Dr Hlophe and it was apparent to Judge Sher that the incident had caused him distress and humiliation.

31. In his oral evidence supplementing his affidavit (Exhibit 7) Judge Sher stated the following:

31.1. During or about October 2019 there were rumours circulating in the WCHC of a Judge who had been assaulted. Judge Sher mentioned these rumours to Judge Parker. He knew Judge Parker very well. They had an association that went back to 1985. When Judge Sher joined the Bar, he did regular work for Judge Parker who was an attorney at the time. They had acted together in 2016 and 2017 and were appointed to the bench at the same time;

31.2. Judge Parker said to Judge Sher that he was aware of the rumours and that it was necessary for him to tell Judge Sher what actually happened;

31.3. He then informed Judge Sher that Dr Hlophe had come into his chambers, that he had been shoved backwards against a cabinet, that he had injured his back against a key which had broken in the process, and that he had fallen to the floor;

31.4. Judge Parker said that the incident was brought about by an allegation that he had in some way or other been inappropriate towards Dr Hlophe's wife, Judge Salie-Hlophe;

31.5. Judge Parker told Judge Sher that he had tugged on Judge Salie-Hlophe's gown in the tea room one day. She had interpreted that as an inappropriate gesture or action. She had reported this to Judge Hlophe



as a form of sexual assault or harassment. Judge Parker told Judge Sher that the assault had been caused or provoked by this;

31.6. Judge Parker told Judge Sher that the then Judge President came into his chambers, accused him of wanting to have sexual relations with Judge Salie-Hlophe and also accused him of being a racist. Whilst he was trying to explain to Dr Hlophe that none of these allegations were true, Dr Hlophe advanced upon him in a very threatening manner and physically shoved or pushed him backwards. He hit the key, and fell to the floor. Dr Hlophe then left the room;

31.7. Judge Parker told Judge Sher that he immediately went to Judge Wille to report the incident, and that Judge Wille assisted him in drafting a statement which he signed before a Commissioner of Oaths, who was a Police Officer stationed at the Court. Judge Parker told Judge Sher that the affidavit was then kept by Judge Wille for safe-keeping;

31.8. It was clear to Judge Sher from the way Judge Parker recounted the events, that he was clearly traumatised by what had happened, he felt humiliated and degraded. He had sustained a physical injury to his back, and had to undergo psychological counselling to assist him to deal with the matter. Judge Parker said that the incident bothered him for a considerable period. He spoke about the incident to Judge Sher on more than one occasion and recounted these events;

31.9. Judge Parker informed Judge Sher that he had been called to attend a meeting with Dr Hlophe and two other Judges at which the incident was discussed and there was a suggestion that Judge Parker should not

proceed with the complaints against Dr Hlophe. Judge Parker put it across as if he had been pressurised not to proceed with any action in respect of what had happened;

31.10. Judge Parker did not at any stage inform Judge Sher that he had misconstrued what had occurred, either shortly after the incident or at any later stage. The version that Judge Parker gave him was repeated on numerous occasions after that and through into 2020;

31.11. In response to a question from the Tribunal, as to whether he had ever noticed that Judge Parker was distressed or disturbed at any point, Judge Sher stated that Judge Parker had confided in him that he was very distressed about what had happened, that he said as much to Judge Sher on more than one occasion, and that he said that he had felt humiliated and degraded by what had happened.

### **The evidence of Judge Steyn**

32. Judge Steyn confirmed the content of her affidavit dated 23 March 2020 (Exhibit 8). She also gave oral evidence supplementing the content of her affidavit.

33. As with all other witnesses Judge Parker's legal representatives did not cross-examine Judge Steyn. Accordingly, Judge Steyn's oral and affidavit evidence is uncontroverted.

34. In her affidavit Judge Steyn states that she had read the main affidavit of Judge Davis dated March 2020, in support of a complaint by Judges of the WCHC in respect of the ostensible misconduct of Judge Parker. She confirms the contents thereof insofar as they relate to her and associates herself with the views expressed therein. She also confirmed that she has had sight of and was

signatory to the letter forwarded to the Judicial Service Commission on Monday 16 March 2020 lodging a complaint against Judge Parker.

35. Judge Steyn further stated the following in her affidavit:

35.1. during 2019 she became aware of rumours that Judge Parker had been assaulted by Dr Hlophe;

35.2. on an unknown date she was advised by a Judge that Judge Parker had told him about the incident soon after it occurred and that he was requested to type his dictated version, as he did not want his Registrar to type the document. The document was typed in affidavit format and was commissioned. The Judge concerned was asked to retain the affidavit. Judge Steyn was shown the alleged document and a photograph annexed but did not read it. A version of what had happened was explained to her by the said Judge, which accorded with the version that Judge Parker related to her many months later;

35.3. as the year progressed it was apparent more people were finding out about the alleged assault. She was sympathetic to Judge Parker and was concerned that the tension would result in his health being compromised;

35.4. at one stage, there was a rumour that in the end Judge Parker and Dr Hlophe had reconciled;

35.5. on 21 January 2020 she read in the media that the Deputy Judge President had filed a complaint against Dr Hlophe and his wife. In the complaint, insofar as she is able to recall it was mentioned that a Judge

- had been assaulted in his chambers by Dr Hlophe and that other Judges had attempted to persuade him not to lay charges or to file a complaint;
- 35.6. shortly after the first term commenced in 2020 towards the end of January or the beginning of February 2020, she went to see Judge Parker in his chambers. She sympathised about the difficult situation he was in and asked if an actual assault had taken place. He related substantially the same version to her that was related to other Judges, as apparent from some of the confirmatory affidavits and from the version of the Judge who had Judge Parker's affidavit;
- 35.7. Judge Parker confirmed that he had been shocked and distressed by what had happened and that he immediately dictated his version. He had shortly before Judge Steyn's visit listened to his dictation again and his extreme distress was obvious, even from the dictation. He said that days after the incident there was still a mark on his back where the broken key had hurt him. He then added that it was not correct that any Judge had persuaded him not to lay charges or to lodge a complaint; it was his own decision. He mentioned that there were Judges who were trying to persuade him to lay a complaint;
- 35.8. it was subsequent to their discussion that Dr Hlophe responded to the complaint by the DJP and lodged a counter-complaint;
- 35.9. Judge Steyn stated that she did not know until much later, that Judge Parker had agreed that no assault took place. He never discussed this aspect with her;

- 35.10. in the circumstances she supports the views of Judge Davis in his affidavit in support of the complaint, and also associates herself with the views expressed by Judge Rogers in paragraphs 8 to 12 of his affidavit;
- 35.11. in evidence Judge Steyn testified that it was Judge Wille who had called her in to his chambers and enquired whether she knew what had happened with Judge Parker. He said that Judge Parker had come to him in a state of high agitation. Judge Wille then explained what had occurred involving Judge Parker and the circumstances under which Judge Parker made the Wille affidavit;
- 35.12. Judge Steyn had a further discussion with Judge Parker towards the end of January 2020 or early February 2020, and asked him whether he was really assaulted, or whether he had just mistaken the fact that there was an assault;
- 35.13. Judge Parker said to Judge Steyn that he really had been assaulted, that he had been pushed against a cupboard and that a key had broken as a result of him being pushed into the cupboard. He further told Judge Steyn that Dr Hlophe had said to him *“I know you want to have sex with my wife and things to that effect”*;
- 35.14. Judge Parker said that he immediately sat down to dictate exactly what had happened to him. He then went to see Judge Wille and gave his dictation to Judge Wille to type out his statement because he wanted to get it all on record and he didn’t want his secretary to do it;

- 35.15. after this discussion Judge Steyn was allocated to sit in a matter with Judge Parker. She approached Dr Hlophe to ask if she could be excused from sitting with him, as by then she was one of the complainants in this matter. Dr Hlophe became angry and said that if she did not sit with Judge Parker, he would report her to the JSC. She then sent a letter to Dr Hlophe asking to be excused from sitting with Judge Parker, but he said that she was required to sit with Judge Parker on the matter as he had been allocated to her. Judge Steyn then suggested to Judge Parker that the matter be disposed of on the papers given that this was during the Covid Lockdown;
- 35.16. in response to a question from the evidence leader, Judge Steyn clarified that subsequent to her discussion with Judge Parker she became aware from press reports that Dr Hlophe had responded to the complaint by the DJP against him, and had lodged a counter-complaint. She said that she did not know until much later that Judge Parker had seemingly agreed that no assault took place;
- 35.17. Judge Steyn stated Judge Parker did not at any point, in any of their interactions, say that no assault had taken place.

### **The evidence of Judge Henney**

36. Judge Henney is a complainant. He confirmed the truth and correctness of his affidavit, and gave oral evidence supplementing the content of his affidavit (Exhibit 9).

37. Judge Parker's legal representatives did not cross-examine Judge Henney. His oral and affidavit evidence therefore stands uncontroverted.
38. In his affidavit Judge Henney confirmed the contents of the affidavit of Judge Davis dated 23 March 2020 insofar as they relate to him and that he associates himself with the views expressed in that affidavit. He also confirmed that he was a signatory to the letter forwarded to the Judicial Service Commission on Monday 16 March 2020 in which a complaint was lodged against Judge Parker for the reasons set out therein.
39. He also confirmed that he had read the affidavit of Judge Rogers dated 23 March 2020 and that he associates himself with the views expressed in paragraphs 8 to 12 thereof.
40. In paragraph 8 of his affidavit Judge Henney states that in and during the third term of 2019, in a private discussion Judge Parker informed Judge Henney that he was assaulted earlier during the year by Judge Hlophe, in his chambers. Judge Hlophe came to his chambers. Judge Parker said he was in a very violent manner pushed by Judge Hlophe against a door which resulted in him having sustained an injury against his back.
41. He advised Judge Parker to lay a complaint, but he declined to do so.
42. Judge Henney states that he has no personal knowledge of the incident that happened between him and Judge Hlophe and solely relies on the version Judge Parker relayed to him and cannot vouch for the truthfulness thereof.
43. In his oral testimony Judge Henney testified that he and Judge Parker went for lunch sometime in the last week or two of the third term of 2019. Judge Parker

asked Judge Henney if he had heard about the incident between him and Judge Hlophe.

44. Judge Henney said that he had heard about the matter and Judge Parker proceeded to tell him what had happened. He told Judge Henney that Judge Hlophe had come to his chambers and in a very violent manner pushed him against a cupboard door which resulted in him sustaining an injury to his back.
45. Judge Henney also testified that he recently recalled that Judge Parker had told him that while he was either dressing or undressing himself his wife saw the wound on his back and asked what had happened, and that he had given her a different reason for what happened from the reason that he had given Judge Henney.

#### **The evidence of Judge Savage**

46. Judge Savage confirmed the truth and correctness of her affidavit, and gave oral evidence supplementing the content of her affidavit (Exhibit 4).
47. Judge Savage's evidence was also not disputed by the legal representatives of Judge Parker.
48. Attached to Judge Savage's affidavit was a letter dated 14 April 2020 which she had addressed to Chief Justice Mogoeng. She confirmed that the contents of the letter are true and correct.
49. In the letter Judge Savage states the following:

*"5. I have over the past five years acted for two terms per year in the LAC. In late 2019 Judge President Waglay asked me to act in the LAC for a further two terms in 2020. I approached Judge President Hlophe in his chambers to discuss this. At the end of our discussion Judge Salie-Hlophe arrived. I proposed to leave but was invited to remain.*



*Salie-Hlophe J showed me a copy of a letter in which she had raised a complaint of sexual harassment against Judge Parker. After I asked for some details, Hlophe JP requested that I follow him with Salie-Hlophe J to his adjacent meeting room. I understood that this was to discuss this issue.*

- 6. The Judges present in the meeting room were Hlophe JP, Salie-Hlophe J, Parker J, Papier J and me. Parker J and Salie-Hlophe J stated that the issue had been resolved between them and there was agreement that, in response to an enquiry from the press, a statement was to be issued that no issue existed. The wording of the statement was agreed. I stated expressly at the meeting that a judicial misconduct must be referred to the Judicial Conduct Committee (JCC) for determination.*
- 7. After the meeting Parker J and I walked together back to our respective chambers. While doing so I asked Parker J whether the only issue being discussed at the meeting was the sexual harassment complaint raised by Salie-Hlophe J against him. He replied that it was not and that, although not mentioned at the meeting, the meeting had also concerned an assault perpetrated on him by Hlophe JP.*
- 8. I was shocked and asked what had happened. Parker J told me in some detail that following the sexual harassment complaint raised against him by Salie-Hlophe J, Hlophe JP had come to his chambers. Hlophe JP was apparently angered by the complaint raised, had shouted at Parker J and then allegedly assaulted him by pushing him against a door in his chambers in such a manner that it caused the key in the lock of the door to break. Parker J said that his back had bled as a result of the injury to it caused by the key. He said he had been deeply shocked and had suffered some trauma after the event, more so given his age and that he had not experienced an incident of such a nature before. I indicated to Parker J that such an allegation of judicial misconduct should be referred to the JCC and asked him if he had done so. He told me he had not but that he had deposed to*

*an affidavit recording events which was in the possession of Judge Wille. We both then proceeded to our respective chambers.*

*... ..*

11. *I have no knowledge of the veracity of the allegation of assault made. I understand from what I have read in the media that Hlophe JP has denied the allegation of assault and that Parker J, more recently, has also denied any assault. I consider it both deeply regretful and damaging to the judiciary that serious allegations of misconduct have abounded and am of the view that the truth or otherwise of such allegations clearly urgently require determination”.*

### **The evidence of Judge Cloete**

50. Judge Cloete confirmed the content of her affidavit dated 10 February 2025 (Exhibit 5). She also gave oral evidence supplementing the content of her affidavit.
51. In the affidavit Judge Cloete confirmed that she had written the letter dated 17 March 2020 annexed marked “A”, as well as the covering letter to the then Judge President, Dr Hlophe, on the same dated marked “B”. She also annexed the response of Judge Parker marked “C”, and subsequent correspondence with Mr Chiloane on behalf of the Judicial Conduct Committee over the period 8 to 16 April 2020 marked “D”.
52. Judge Parker’s legal representatives did not cross-examine Judge Cloete and her evidence is uncontroverted.
53. Judge Cloete’s letter dated 17 March 2020 reads in relevant part as follows:

**“STRICTLY CONFIDENTIAL – TO PERMANENT JUDGES ONLY**

Dear All

re: RESPONSE – PARKER J TO LE GRANGE J LETTER, AND LETTER FROM CERTAIN COLLEAGUES SUBSEQUENT THERETO DATED 16 MARCH 2020 (“THE COLLEAGUE LETTER”)

1. On Friday 6 December 2019 Parker J and I presided together in the civil appeal of *Swartz v Sheriff Worcester and 3 Others*. It was either during an adjournment or after we adjourned (I cannot recall which) when we were sitting together in my chambers that he voluntarily disclosed to me that he was assaulted in his chambers by the Judge President. Until receipt of the colleague letter, I had no idea when it was alleged to have occurred and I did not ask Parker J, given that I had not in any way sought to elicit information from him. The colleague letter however confirms that the incident is alleged to have occurred on 25 February 2019.
2. I also do not recall the exact details of what he conveyed to me, other than that it allegedly involved him being shoved against a cupboard with such force that its key either broke or was damaged in some or other way.
3. Having had sight of Parker J’s response (which was made public) to the confidential letter written by Le Grange J to the Judge President, and more particularly Parker J’s averments therein that *“very soon”* after the alleged assault he realised that *“events may not have unfolded in the way I had initially perceived”*, it will be self-evident that either Parker J was untruthful to me on 6 December 2019 in making a grave allegation against the Judge President, or he is being untruthful now in making the aforementioned averments in his response”.
4. I have not been privy to the content of the “Wille affidavit” and am accordingly not in a position to comment on whether it accords with what Parker J conveyed to me. However, given the above, it is untenable for me to preside in any matter with Parker J since it would offend, not only against my oath of office, but also my personal integrity.

54. In her oral evidence Judge Cloete explained that what prompted her to write the letter of 17 March 2020 was the fact that at that stage she had sight of Judge Parker's response to the confidential letter written by Judge Le Grange to Dr Hlophe in which he stated that *"very soon after the alleged assault he realised that events may not have unfolded in the way I initially perceived"*.<sup>6</sup>

#### **EVALUATION OF THE JUDGES' COMPLAINT**

55. On 16 March 2020 a collective complaint against Judge Parker was submitted by 10 Judges of the Western Cape High Court to the JSC. The complaint was set out in a letter dated 16 March 2020.
56. Each of the complainants submitted affidavits to the JSC and the Chief Justice on 24 March 2020 in accordance with Section 14(3)(b) of the JSC Act confirming the nature of the complaint and the facts on which it is based.
57. The complaint against Judge Parker is summarised in the affidavit deposed to by Judge Davis dated 23 March 2020.<sup>7</sup> A full summary of the complaint is set out in paragraph 11 above.
58. The complaint, as outlined in Judge Davis's affidavit, is supported by the uncontested affidavits and oral evidence given by Judges Rogers, Wille, Le Grange, Steyn, Sher, Henney, Savage and Cloete.
59. In summary, the following is the uncontested evidence before the Tribunal:
- 59.1. Judge Parker told several Judges of the WCHC that he had been assaulted by the then Judge President, Dr Hlophe, in his chambers on 25 February 2019;

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<sup>6</sup> Transcript, pages 65 to 67

<sup>7</sup> Judges' complaint bundle, pages 9 to 13

- 59.2. Judge Parker informed these Judges that Dr Hlophe had approached him in his chambers accusing him of having sexually harassed or assaulted his then wife, Judge Salie-Hlophe. Judge Hlophe punched or pushed him and used abusive language towards him. As a consequence of the assault he fell against a cupboard in his chambers, a key to the cupboard broke off and he was physically injured;
- 59.3. on 25 February 2019 Judge Parker asked Judge Wille to type an affidavit to which Judge Parker later deposed before a Commissioner of Oaths, setting out details of the assault by Judge Hlophe;
- 59.4. Judge Parker recounted details of the assault to *inter alia*, Judge Wille; Judge Savage; Judge Cloete; Judge Le Grange; Judge Sher; Judge Henney and Judge Steyn at various points from 25 February 2019 to around late January 2020 or early February 2020;
- 59.5. on 13 March 2020 in a letter to Judge Le Grange, Judge Parker recanted from the version that he had previously given to his judicial colleagues. He stated that: “*very soon after*” the alleged assault, he had come to realise that events had not unfolded as he had initially perceived;
60. In October 2019 both Judge Wille and Judge Parker gave Goliath DJP an account of the alleged assault. This became one of several matters which Goliath DJP made the subject of her complaint against Dr Hlophe in January 2020.
61. Dr Hlophe deposed to an affidavit dated 7 February 2020 in response to the complaint lodged Judge Goliath DJP with the JCC, in which he denied that the assault took place, and in which he stated that Judge Parker agrees that no assault took place. Judge Parker has not denied that he was shown a copy of Dr Hlophe’s

affidavit dated 7 February 2020 in which Dr Hlophe denies that the assault took place, and states that he, Judge Parker, agrees with his version.

62. Because of what Judge Parker told Dr Hlophe that he agrees that there was no assault, Dr Hlophe, in his affidavit, accuses Goliath DJP of making the allegation of assault recklessly, maliciously and in bad faith and of relying on reckless rumour and gossip.

63. Judge Parker has given diametrically opposed versions of the alleged assault. The conflicting versions include the affidavit which he made to Judge Wille (alleging the assault), and information apparently given to Dr Hlophe for his affidavit to the JSC (denying the assault).

64. If, indeed, there was no assault, there is evidence from multiple sources that Judge Parker misled Goliath DJP, Judge Wille and a number of other Judges into believing that there was an assault. If on the other hand, there was an assault, it is grossly dishonourable for Judge Parker now to support Dr Hlophe in denying it and to expose Goliath DJP to the criticisms made by Dr Hlophe.

65. The Tribunal accordingly finds that Judge Parker has given diametrically opposed versions of the alleged assault. The fact that he has given conflicting versions leads to the inevitable conclusion that Judge Parker has failed to uphold the integrity of the judiciary as he is obliged to do under Article 4(a) of the Code and, further, that he has failed to act honourably in the discharge of his duties as he is required to do under Article 5 of the Code.

## **THE COMPLAINT BY THE CAPE BAR COUNCIL**

66. Returning to the affidavit by Adv Breitenbach SC, the complaint of the Cape Bar Council, briefly, was that Judge Parker and his erstwhile firm of attorneys, of which he was a managing partner, misappropriated trust funds; secondly, he did not disclose this aspect when he completed the JSC questionnaire when applying for appointment as a permanent judge, when he should have, nor did he report the short falls to the law society. The affidavit stated the following as the grounds, set out in section 14(4)(b) and/or (e) of the Act, on which the complaint was based:

*“wilful or grossly negligent breaches of articles 4(a)<sup>8</sup> and 5<sup>9</sup> of the Code of Judicial Conduct<sup>10</sup>; and/or  
other wilful or grossly negligent conduct, other than conduct contemplated in section 14(4)(a) to (d), that is incompatible with or unbecoming the holding of judicial office.”*

67. It is necessary to give some details leading to the complaint by the CBC. The information is gleaned from the affidavit of Adv Breitenbach SC, based on the papers and affidavits that were filed by the South African Legal Practice Council (LPC) for the striking off the roll of the respondent’s former partners in the law firm; the case number is given in the affidavit of Adv Breitenbach SC as 22707/2019 in the Western Cape Division of the High Court, Cape Town.

68. From 2005 until his appointment as a permanent Judge of the Western Cape High Court with effect from 1 November 2017, Judge Parker practised as an attorney with Adburahman Khan (Mr Khan) and his younger brother Irfan

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<sup>8</sup> The duty of a judge to uphold the integrity of the Judiciary.

<sup>9</sup> The duty of a judge to always act honourably etc.

<sup>10</sup> Government Notice R 865, Government Gazette 35802 of 18 October 2012

Kassiem Parker (Mr Parker) under the name and style of Parker & Khan Attorneys Inc (Parker & Khan/the law firm).

69. From 10 October 2016, he held a number of stints as an Acting Judge in the Western Cape Division of the High Court; i.e. 10 October to 15 December 2016; 30 January to 20 March 2017 and 10 April to 30 June 2017. On 28 June 2017 he completed and submitted his application for permanent appointment as Judge of the Western Cape High Court. In the application, he described himself as a founder and managing partner of Parker and Khan. Amongst the documents he submitted with his application, was a JSC questionnaire with, amongst others, the following questions to both of which he answered 'No':

- *"Are there any circumstances, financial or otherwise, known to you which may cause you embarrassment in undertaking the office of a Judge?"*
- and
- *"Is there any other relevant matter which you should bring to the attention of the commission?"*

70. On the basis of his application, Judge Parker was shortlisted by the JSC on 31 July 2017, interviewed on 5 October 2017 and subsequently appointed as a permanent Judge of the Western High Court with effect from 01 November 2017.

71. In the LPC proceedings, it was not in dispute that the firm's trust monies belonging to the firm's creditors were used to pay for business and operating expenses, that trust funds of other creditors were used to pay the shortfall of others, and that Khan was involved in this misappropriation of funds. Only IK Parker filed answering affidavits in his personal capacity and on behalf of the



firm. None were filed by Judge Parker and Khan. The trust shortfalls could not be disputed.

72. For purposes of completeness and convenience, we tabulate the firm's Trust Account shortfalls by date, as they appeared in the papers filed in the LPC matter. On 17 June 2016, the shortfall appears to have been R4 623 998.52, this increased to R5 703 132.23 on 7 October 2016; then to R5 718 132.23 on 20 October 2016; R6 372 963.94 on 23 June 2017; R6 390 523.06 on 30 June 2017; R7 033 847.07 on 29 September 2017; R7 158 847.07 on 06 October 2017; was reduced to R7 046 303.46 on 31 October 2017 (a day before his permanent appointment); at R7 066 303.46 on 02 November 2017; and significantly reduced to R4 780 530.13 on 08 and 16 August 2019 and was finally eliminated by 20 February 2020, which is the date on which Mr IK Parker filed his second answering affidavit in the LPC proceedings.
73. Annexures to Adv Breitenbach's affidavit referred to above included relevant portions of Judge Parker's application for appointment as a judge, affidavits filed in motion proceedings initiated by the LPC, including answering and replying papers thereto as well as bank statements for the relevant period depicting trust deficits during those periods. None of these were denied by the respondent.
74. Admitted into the Tribunal's proceedings as evidence, with no objection from the respondent, were the affidavit by Adv Breitenbach SC, and the affidavit by IK Parker in the LPC proceedings.

75. At the hearing before us, Adv Breitenbach SC testified and confirmed the correctness and the truthfulness of his affidavit and his signature thereto and that he stood by his affidavit. He confirmed that the CBC complaint was based on the two grounds stated in his affidavit; firstly, the fact that there was a trust account shortfall in Judge Parker's firm during his tenure as the managing partner thereof; secondly, the misrepresentation he made in the JSC questionnaire by omitting to disclose that. There was no counter evidence by Judge Parker.
76. Mr IK Parker also testified and confirmed the truthfulness of the contents of his affidavit he had filed in the LPC proceedings. During cross examination by the CBC Counsel, Adv McCurdie SC, he confirmed that the shortfall was noticed as early as March 2016. It appeared from Mr Parker's affidavit that Judge Parker was at all material times aware of the trust shortfalls.
77. As quoted in Adv Breitenbach's affidavit, the LPC's founding papers state: *"One is not dealing here with trust deficits arising from simple accounting errors. There appears to be a continuous pattern of concealing trust deficits, by keeping a separate list of trust deficits, which demonstrates an element of deceit, inimical to the honour associated with the profession of an attorney. The attorneys' profession demands of its members complete honesty, reliability and integrity."*
78. As said earlier, Adv Breitenbach SC confirmed the truth of his affidavit also as it related to the proceedings by the LPC. There were no opposing papers by the respondent. The affidavit, together with the LPC proceedings referred to therein, are herein incorporated.

79. From this body of evidence, the following is clear:

79.1. that there was a trust deficit during the periods stipulated above; that the respondent was at all material times aware of it, and that he himself participated in the misappropriation of trust monies. This was not disputed in the legal proceedings brought by the LPC. It was clear from the papers filed by the LPC that neither the respondent nor any of the partners made an effort to report this shortfall to the Cape Law Society, instead, the Cape Law Society was alerted by an anonymous tip off on 25 July 2018.

### **REGARDING BOTH COMPLAINTS**

80. Justice Parker made no admissions in respect of the version put before the Tribunal and though represented, throughout the proceedings, chose to neither put any version nor to make any submissions on the merits. Instead, his Counsel, Adv King SC, told the Tribunal that his instructions were to raise no factual disputes in the matter. Furthermore, the respondent did not oppose the admission of the various affidavits referred to above in respect of both complaints. No evidence was tendered in his defence. The complaints were therefore not contested.

81. The only submission raised by Mr King SC was that the Tribunal was not empowered to recommend to the JSC that the provisions of Section 177 (1)(a) of the Constitution of the Republic of South Africa Act of 1996 be invoked. He argued that the Tribunal could only to make factual findings and a determination

on the merits of the allegations and to submit a report of such findings to the JSC, but not to recommend a sanction.

82. The undisputed evidence is that the respondent gave two contrary versions in respect of an incident that happened in his chambers between him and Judge Hlophe. Regardless of which version is true, one of them had to be a lie, and that is also incompatible and unbecoming the holding of judicial office. Secondly, the respondent lied to the Judicial Service Commission that there were no circumstances, financial or otherwise, known to him which might cause embarrassment in undertaking the office of a Judge. The trust deficit in his firm was at that time, a live financial circumstance that he should have disclosed.

### **THE LEGAL FRAMEWORK**

83. Article 4(a) of the Code of Judicial Conduct provides that *a Judge must uphold the independence and integrity of the judiciary and authority of the courts.*
84. Article 5 of the Code provides that *“A judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office”.*
85. Article 6 of the Code provides that *“A judge at all times, also in relation to extra-judicial conduct, comply with the law of the land”.*

### **FINDINGS**

86. Given the body of the evidence before us, we make the following findings in respect of the two complaints:

- 86.1. The respondent acted dishonestly in giving two contradictory and mutually exclusive versions about the incident that happened in his Chambers between himself and former Judge President Hlophe on 25 February 2019. And by giving these two contradictory and mutually exclusive versions, the respondent rendered himself guilty of gross misconduct, as envisaged in section 177(1)(a) of the Constitution.
- 86.2. The respondent and his partners misappropriated funds of their trust creditors while he practised as an attorney and acted in breach of the rules of the law society over a long period by not disclosing to the law society when there was a trust deficit in the trust account of his law firm. His failure to disclose in his nomination questionnaire and in the interview before the JSC that the trust account of his law firm had had a deficit for a long time while he was the managing director, constitutes gross misconduct on his part.
87. Individually and cumulatively, the above two findings, each constituting gross misconduct on the part of the respondent as they do, bring the Judiciary into disrepute.

DATED this 12th day of July 2025



Signed on behalf of Members of the Tribunal by Judge B M Ngoepe.

Members of the Tribunal:

JUDGE B M NGOEPE, Retired Judge President, President of the Tribunal;  
JUDGE P BORUCHOWITZ, Retired, Member of the Tribunal;  
ATTORNEY D P MTHIMUYE, Member of the Tribunal.

Appearances:

Evidence Leader:

Dr C Dzengu

Office of the NDPP

For Judge D M Davis and Others:

Adv G Budlender SC

Assisted by

Adv A Schutte

Cape Bar

Instructed by the State Attorney

For the Cape Bar Council:

Adv Janet McCurdie SC

Cape Bar, Cape Town

For Judge Parker:

Adv W King SC

Assisted by

Adv B Prinsloo

Cape Bar, Cape Town

Instructed by

Ben Matthewson Attorneys

Cape Town