



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/982/22

In the matter between:

LUNESH SINGH

COMPLAINANT

and

JUDGE SELEMENG MOKOSE

RESPONDENT

Date: 14 October 2026

Decision: The appeal is upheld and the decision of the inquiry conducted by Victor J in terms of section 17 of the Act is set aside.

RULING ON APPEAL

**THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ, JAFTA J
AND MABINDLA-BOQWANA JP):**

Introduction

[1] This is an appeal against the decision of Victor J in terms of which Judge Selemeng Mokose (respondent) was found guilty of misconduct and was subjected to a reprimand by the Chairperson of the Judicial Conduct Committee (Committee). The impugned decision was reached at the conclusion of an inquiry in terms of section 17 of the Judicial Service Commission Act¹ (Act). This section empowers a Judge against whom such decision is made to appeal to this Committee.²

[2] Unhappy with the outcome of the inquiry conducted by Judge Victor, a designated member of the Committee, the respondent filed this appeal. She challenged it on the ground that the facts established at the inquiry fall short of supporting the commission of misconduct, as contemplated in section 14(4) of the Act. She contended that it was not proved that she had wilfully breached the Code of Judicial Conduct (Code) or that such breach was grossly negligent.

[3] This appeal requires us to examine carefully the facts found to have been established at the inquiry before Victor J. But before doing so it is necessary to outline the relevant legislative provisions, for a proper appreciation of the argument advanced by the respondent.

¹ 9 of 1994.

² Section 17(7) of the Act provides:

“(a) A complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (4)(a) or (5)(c)(i) may, within one month after receiving notice of that decision, appeal to the Committee in writing against that decision, specifying the grounds for the appeal.

(b) A respondent who is dissatisfied with any finding or remedial steps contemplated in subsection (4)(b) or (5)(c)(ii) may, within one month after receiving notice of that finding and remedial steps, appeal to the Committee in writing against that finding or remedial steps or both such finding and remedial steps, specifying the grounds for the appeal.”

Legislative provisions

[4] Complaints against Judges are lodged and processed in terms of the Act. Section 14 of the Act is at the heart of how such complaints should be handled from the moment they are lodged. It requires that they be lodged with the Chairperson of the Committee who is expected to peruse each complaint and determine a section of the Act applicable to it. The provision lists three sections from which the Chairperson has to choose the appropriate section for processing a particular complaint. These are sections 15,16 and 17.

[5] Section 15 applies to complaints which must be summarily dismissed for conditions defined in section 15(2). If any of these conditions exist, the complaint falls to be dismissed without consideration of the merits. Section 16 regulates the processing of complaints based on incapacity, gross incompetence and gross misconduct. These are regarded to be the most serious complaints which may result in the respondent Judge being removed from judicial office under section 177 of the Constitution. Once the Chairperson holds the view that a particular complaint must be dealt with under section 16, he or she must refer it to this Committee with the request that the Committee recommends the establishment of a Tribunal to the Judicial Service Commission (Commission). Under the Act it is a Tribunal alone which may investigate complaints that may lead to impeachment.

[6] The merits of all other complaints may be determined in terms of section 17 of the Act. Therefore, if a complaint does not fall within the bounds of section 15 or section 16, the Chairperson must direct that it be dealt with in terms of section 17. Such inquiry may be conducted by the Chairperson or a member of the Committee, designated for that purpose by the Chairperson. Here Victor J was designated to conduct the inquiry.

[7] Of importance to the argument raised by the respondent, is section 14(4) of the Act. Section 14(3) tells us that a complaint brought against a Judge must be based only on the grounds listed in 14(4) which provides:

“The grounds upon which any complaint against a judge may be lodged, are any one of the following:

(a) Incapacity giving rise to a judge’s inability to perform functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177(1)(a) of the Constitution;

(b) Any wilful or grossly negligent breach of the Code of Judicial Conduct referred to in section 12, including any failure to comply with any regulation referred to in section 13(5);

(c) Accepting, holding or performing any office of profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11;

(d) Any wilful or grossly negligent conduct, other than conduct contemplated in paragraph *(a)* to *(d)*, that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.”

[8] The language used in this provision is plain. First, when read together with subsection (3), it means that complaints against Judges may be based only on the grounds enumerated in it. Second, only two of those grounds do not require that the impugned conduct be wilful or grossly negligent. These are the grounds in subsection (4)(a) and (c). Subsection (4)(a) contains the grounds of incapacity, gross incompetence and gross misconduct. Evidently two of them are positioned at the level of gross but this word does not qualify the degree of negligence. As stated, these are grounds which may lead to impeachment of a Judge. Whereas subsection (4)(c) proscribes the holding of other offices of profit by Judges or receipt by them of payment in contravention of section 11 of the Act.

[9] All other grounds require that the conduct complained of should either be wilful or grossly negligent. These include subsection (4)(b) which deals with the breach of the Code. It requires that the breach should rise to the level of wilfulness or gross negligence for it to constitute misconduct. The corollary of this is that a simple breach or even a negligent one does not amount to misconduct under the Act unless the negligence in question is gross.

[10] This formulation of misconduct based on the violation of the Code creates a gap in the relevant law. On the one hand, section 12 of the Act in mandatory terms obliges Judges to comply with the Code.³ On the other, section 14(4) limits the enforcement of the Code to instances of wilful and gross negligence only. This leaves without any form of enforcement simple violations of the Code, including negligent ones, for as long as they are not gross. The rationale for this unusual approach to ethical transgressions is not evident from the Act. What is clear though is that under the Act enforcement procedures may be undertaken only where a breach of the Code is either wilful or grossly negligent. A different non-compliance with the Code triggers no action against the culprits. In other words Judges may violate the Code with impunity, if their conduct is not grossly negligent or wilful. There can be no justification for not holding accountable Judges who, by their conduct, break the law. Section 12 of the Act requires all Judges to comply with the Code. A breach of the Code also constitutes a violation of this section. Moreover, even Judges to whom fault is attributable for the breach may not be held accountable unless the breach is wilful or grossly negligent. Without a doubt this is an untenable legal position that warrants the attention of the Chief Justice and the Minister of Justice and Constitutional Development.⁴

³ Section 15(5) of the Act provides: “The Minister must, once every twelve months, table a report in Parliament containing particulars, including the outcome, of every application made terms of subsection (1) or (2), including any conditions attached to any application granted, during the period covered by the report”.

⁴ Section 12 of the Act provides:

“(1) The Chief Justice, acting in consultation with the Minister, must compile a Code of Judicial Conduct, which must be tabled by the Minister in Parliament for approval.

The complaint

[11] Before her appointment to the Gauteng Division of the High Court, the respondent was the Chairperson of the Upper Houghton Body Corporate (the Body Corporate) from 2008 to 2016. She was also a trustee of the Serai Family Trust which owns two apartments in the Upper Houghton complex. She continued to be a trustee at the time the complaint arose. The Body Corporate instituted sequestration proceedings in the Gauteng Division, Johannesburg against the complainant. A notice to oppose was filed but opposing papers were never filed. The matter came before the respondent on 22 November 2021 and the complainant appeared in person, in an attempt to persuade the court not to grant the provisional sequestration order.

[12] However, the complainant did not raise the issue of the respondent's disqualification to preside in the matter. Having heard both sides and after considering the record, the respondent was of the view that a proper case for the relief sought had been made out and proceeded to grant the sequestration order. Unhappy with the outcome, the complainant undertook two steps. He lodged an appeal against the order on the basis of the respondent's disqualification. The appeal was directed to the Supreme Court of Appeal (the SCA).

[13] He also filed a complaint against the respondent with the Chairperson of the Committee. After outlining the facts narrated above, the complaint stated:

(2) The Minister must table the first Code under this section in Parliament within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (1) both versions of the Code must be tabled in Parliament within the said period.

(3) When the Code or any amendment thereto is tabled in Parliament in terms of subsection (1) or (2), Parliament may, after obtaining and considering public comment thereon, approve the Code or such amendment-

(a) without any changes thereto; or

(b) with such changes thereto as may be effected by Parliament.

(4) The Code must be reviewed at least once in every three years by the Chief Justice, acting in consultation with the Minister, and the result of such review, including any proposed amendment to the Code, must be tabled in Parliament, for approval, as contemplated in subsection (3).

(5) The Code shall serve as the prevailing standard of judicial conduct, which judges must adhere to, and the Code and every subsequent amendment must be published in the Gazette."

“JUDGE MOKOSE UNDERMINED THE INDEPENDENCE OF THE JUDICIARY

- 4.1. Judge Mokose served in a position which undermined the independence of the judiciary.
- 4.2. Judge Mokose failed to sever professional ties upon permanent appointment to the judiciary.
- 4.3. Judge Mokose occupied an office for profit.

5.

JUDGE MOKOSE MISCONDUCT (CODE OF JUDICIAL CONDUCT)

- 5.1. Judge Mokose failed to uphold the independence of the judiciary as required by Article 4

4. Judicial Independence

(1) A judge –

- (a) must uphold the independence and integrity of the judiciary and the authority of the courts;*
- (b) must maintain an independence of mind in the performance of judicial duties;*

- 5.2. Judge Mokose failed to refrain from advancing her private interests associated with the SERAI FAMILY trust, as required by Article 12, 1(d):

“(1) A Judge must not-

... .

(d) use or lend the prestige of the judicial office to advance the private interests of the judge or others.”

- 5.3. Judge Mokose failed to sever professional links with SERAI FAMILY trust, as required by Article 12, (2)

“(2) Upon appointment, a judge must sever all professional links and recover speedily all fees and other amounts outstanding and organise his or her personal business affairs to minimise the potential for any conflicting of interests.”

[14] The Chairperson designated Judge Victor, a member of the Committee, to determine the merits of the complaint, in accordance with section 17. In response

to the complaint, the respondent confirmed that the matter was placed before her in the unopposed motion court and that after hearing the complainant and the Body Corporate, she granted the provisional order. With regard to the disqualification, the respondent underscored the point that the complainant “never raised the issue of conflict of interest nor did he request her to recuse herself”. She stated that she did not know the complainant and the question of the disqualification did not arise during the proceedings.

[15] Having considered both versions Victor J concluded that the respondent was disqualified to hear the matter by her previous association with the Body Corporate as its Chairperson and also by the fact that she was a trustee of a member of that Body Corporate which stood to benefit as a creditor from her order. Victor J rejected the contention that without an objection and a request for recusal, the respondent has not acted improperly in deciding the matter. Victor J held that the respondent should have recused herself from the matter *mero motu* and that her failure to do so constituted a breach of the Code. She stated:

“The entire conspectus of facts which served before Judge Mokose at the provisional sequestration hearing should have raised an alarm for Judge Mokose when reading the papers and in the court hearing itself. Albeit that Mr Singh did not seek her recusal at the hearing, she should *mero motu* have recused herself.”

[16] Meanwhile the appeal to the SCA was heard on 4 September 2024 and judgment was delivered on 21 October 2024. Affirming Victor J’s view on the question of disqualification, the SCA said:

“The JCC report, taken together with the other considerations alluded to, is sufficient, in my view, to tip the scales in favour of a finding that Mokose J ought not to have heard the application. When all the facts are viewed cumulatively it must be concluded that the reasonable person, with knowledge of them would reasonably apprehend that Mokose J might

not have approached the sequestration application with an open mind. A case for her recusal is properly established.

This conclusion serves to advance public confidence in the judicial system. At the same time, it does not result in undue prejudice to the body corporate. This is an important consideration because the body corporate bears no responsibility for the events that led to the appeal. Where it is found that a judicial officer ought to have recused herself, the proceedings before her must be regarded as a nullity. Consequently, the order granted by Mokose J provisionally sequestering Mr Singh's estate falls to be set aside. It follows that the application by the body corporate for the sequestration of his estate must be remitted for consideration afresh by a different judge."

The present appeal

[17] The respondent was dissatisfied with the finding that she had committed misconduct in breaching the Code and that as a result she should be reprimanded. Two grounds were advanced in support of the appeal. It was contended that Victor J has erred in finding that the respondent should have recused herself on her own accord (*mero motu*). It was argued that the respondent's previous chairpersonship of the Body Corporate and trusteeship in one of the members of that Body Corporate were not enough to sustain a conflict of interest that warranted self-recusal by the respondent.

[18] When the entire record is considered, especially the SCA judgment, there is no merit in this argument. It will be recalled that the SCA unanimously endorsed the conclusion reached by Victor J pertaining to recusal and concluded that if all the relevant facts are taken into account, a person would reasonably apprehend that the respondent "might not have approached the sequestration application with an open mind". Consequently, held the SCA, a case for her recusal had been established. This decision by the SCA is binding on this Committee.

[19] The second ground of appeal was that Victor J erred by holding that the respondent had committed a misconduct as contemplated in the Act. It was argued that although the facts before her may have indicated that the Code was breached, they did not show that such breach was wilful or grossly negligent. With reference to section 14(4)(b) of the Act, it was submitted that a finding that the respondent had committed a misconduct could properly be made only if the facts established that the breach of the Code was wilful or grossly negligent. The facts, continued the argument, did not prove this nor did Victor J make the finding that the respondent's failure to recuse herself was wilful or grossly negligent.

[20] In fortifying this argument the respondent referred to the decision of this Committee in *De Broglia Attorneys Incorporated v Judge Fisher*, JSC/89/4/21, delivered on 5 November 2025. In that matter a section 17 inquiry held that Judge Fisher was not wilful nor grossly negligent when she violated an article of the Code but proceeded to find that she had committed a misconduct. On appeal this Committee held that in the absence of wilfulness and gross negligence, misconduct was not established.

[21] When the same reasoning is applied to this matter, a similar outcome must be reached. The fact that the evidence shows a breach of the Code does not, without more, translate into misconduct under the Act. As mentioned above, not even a negligent breach of the Code constitutes misconduct. It is only a grossly negligent or wilful breach that amounts to misconduct. This is how section 14(4)(b) is framed.

[22] This framing of the Act is unquestionably dissatisfactory. It means that Judges who conduct themselves in violation of the Code escape accountability unless their conduct is wilful or grossly negligent. The consequence of the Act,

as it is presently framed, is that the Code is seriously diminished, contrary to the purpose of section 12 of the Act which, in peremptory terms, obliges Judges to comply with the Code.

[23] As it appears from the language of section 12(5), the Code serves as a standard against which judicial conduct of Judges must be measured. This goal cannot be attained if Judges are allowed to ignore the Code to the extent that their conduct is not wilful or grossly negligent. By effectively insulating Judges who breach the Code from being held accountable, section 14(4) is in direct conflict with section 12 which compels full compliance with the Code. Section 14(4) creates this conflict by limiting misconduct pertaining to the Code to a wilful or grossly negligent breach. If the language of sections 12 and 14 reasonably allowed it, these provisions would be read in a manner that removes the conflict. However, their language is not reasonably capable of such an interpretation. Consequently, it is impossible to enforce both sections owing to the conflict.

[24] The idea that Judges may culpably breach the Code with impunity is antithetical to not only the object of the Code but also to the constitutional value of accountability. The rationale for permitting as normal conduct that is in breach of the Code, is not discernible from the Act. It may well be that this was done in error during the drafting of the Act. That is why it is necessary that the issue should receive the attention of the competent authorities, both the Chief Justice and the Minister of Justice and Constitutional Development. If the position outlined above is not rectified, the public confidence in the courts would be eroded. If Judges are allowed to conduct themselves unethically, members of the public would lose confidence in the Judiciary.

[25] Due to the special position they hold in society, Judges ought not to be allowed to behave or conduct themselves in a manner that violates the Code they

are obliged to follow. What compounds this issue is the fact that a breach of the Code also constitutes a violation of section 12 of the Act, regardless of whether it was negligent or not. As enforcers of the law, Judges cannot be law-breakers. This point is underscored by article 6 of the Code which obliges Judges to comply with the law at all times.⁵

[26] Returning to the present appeal, on the law as it currently stands, the appeal ought to succeed. The evidence before Victor J fell short of establishing misconduct, as presently defined in section 14(4)(b) of the Act.

[27] Accordingly the appeal is upheld and the decision of the inquiry conducted by Victor J in terms of section 17 of the Act is set aside.



THE JUDICIAL CONDUCT COMMITTEE

⁵ Article 6 of the Code provides: "A judge must at all times, also in relation to extra-judicial conduct, comply with the law of the land".