



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/1093/23

In the matter between:

ERNEST CHAMBISSO

COMPLAINANT

and

JUDGE DANISO

RESPONDENT

Date: 11 September 2024

Decision: Appeal is dismissed

RULING IN TERMS OF SECTION 18 OF THE JSC ACT

THE JUDICIAL CONDUCT COMMITTEE (Jafta J, Shongwe and Mabindla-Boqwana JJA)

Introduction

[1] This is an appeal in terms of section 15(5) of the Judicial Service Commission Act of 1994 (the Act). The appeal was lodged against the decision of the Acting

Chairperson of the Judicial Conduct Committee (JCC) in terms of which the complaint that was filed by Mr Ernest Chambisso (the complainant) was dismissed. The complaint was lodged against Judge Daniso (the respondent). It was dismissed on two grounds. The first was that the complaint related solely to the merits of a judgment and the second was that the complaint did not fall within the parameters of section 14(4) of the Act.

Complaint

[2] On 1 June 2022 the complainant lodged a complaint against the respondent. The nub of the complaint was that the respondent presided over a criminal trial in which the complainant faced murder and robbery charges together with other persons. At the conclusion of the trial at the Free State Division of the High Court, the complainant was convicted and sentenced to life imprisonment. He complained about the insufficiency of the evidence on which the conviction was based. He contended that his right to a fair trial was violated when he was convicted even though no witness had implicated him in the commission the relevant offences.

[3] As mentioned, the Acting Chairperson dismissed the complaint as relating solely to the merits of a judgment and that it was not based on the grounds listed in section 14(4) of the Act. The complainant now seeks to appeal against this decision.

[4] Section 15(5) of the Act empowers the complainant whose complaint was dismissed in terms of section 15¹ to appeal against such dismissal. However, this provision requires the appealing complainant to specify the grounds upon which the

¹ Section 15 (5) of the Act provides that 'a complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (1) 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'

decision is impugned. The complainant has failed to identify clearly the grounds he relies on, to show that the decision to dismiss his complaint was wrong.

[5] The decision to dismiss the complaint may be overturned only if it was wrong and whether it was wrong must be assessed with reference to reasons supporting it. The first reason for the dismissal was that the complaint relates solely to the merits of a judgment. A reading of the complaint confirms that the complainant was unhappy with the judgment in terms of which he was convicted and sentenced. He argued in the complaint that the trial court did not have enough evidence to convict him. The entire complaint raises errors which the complainant says were committed in the process leading up to the verdict. All of these related to the merits of the judgment.

[6] The other reason that was put forward for the dismissal was that the complaint fell outside the parameters of grounds listed in section 14(4) of the Act². Section 5(2) obliges the Chairperson of the Committee to dismiss a complaint on certain defined grounds. The two reasons relied on here for the dismissal are among those grounds. A reading of the present complaint suggests that it was not founded on any

² Section 14(4) of the Act provides that 'the grounds upon which any complaint against a judge may be lodged, are any one or more of the following:

- (a) Incapacity giving rise to a judge's inability to perform the 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 or profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11;
- (d) Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section 17(8), imposed in terms of this Act; and
- (e) Any other 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.'

of the bases listed in section 14(4). When section 15(2)³ is read together with section 14(4) it becomes clear that complaints against judges must be based on the list in section 14(4) for them to be valid under the Act. Consequently, the Acting Chairperson was right to dismiss the complaint in terms of section 15(2).

[7] Accordingly, the appeal is dismissed.



THE JUDICIAL CONDUCT COMMITTEE

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Section 15(2) of the Act provides that "A complaint must be dismissed if it-

- (a) Does not fall within the parameters of any of the grounds set out in section 14 (4);
- (b) Does not comply substantially with the provisions of section 14(3);
- (c) Is solely related to the merits of a judgment or order;
- (d) Is frivolous or lacking in substance; or
- (e) Is hypothetical."