



## **JUDICIAL CONDUCT COMMITTEE**

Ref no: JSC/1144/23

**In the matter between:**

**Mr Angus Norkie**

**Complainant**

**and**

**Judge P A L Gamble**

**Respondent**

**Date: 26 July 2024**

**Decision: The appeal is dismissed.**

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### **RULING**

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**THE JUDICIAL CONDUCT COMMITTEE (JAFTA J, SHONGWE JA,  
SALDULKER JA and MABINDLA-BOQWANA JA)**

#### **Introduction**

[1] This is an appeal against the decision of the Acting Chairperson in terms of which a complaint was dismissed. This complaint was lodged in terms of

section 14 of the Judicial Service Commission Act<sup>1</sup> (JSC Act) by Mr Angus Norkie (complainant) against Judge P A L Gamble (respondent).

[2] Having considered the complaint, the Acting Chairperson summarily dismissed it in terms of section 15(2) of the JSC Act on the following grounds –

(a) The complaint solely relates to the dissatisfaction with the merits of a judgment; and

(b) It does not fall within the parameters of the grounds set out in section 14(4) of the JSC Act.

### **The complaint**

[3] The complainant is the managing director of Nocksoil (Pty) Ltd which had applied for finance from the Industrial Development Corporation (IDC). The request for finance was declined by the IDC. Unhappy with the outcome, the complainant laid a complaint with the Public Protector who declined to investigate the matter.

[4] In November 2022 the complainant instituted a review application in the Western Cape Division of the High Court, challenging the Public Protector's decision. The matter was opposed by the IDC which also launched a counter-application to set aside the complainant's notice of motion on the ground that it was defective. The matter was heard on 28 April 2023 and the presiding Judge removed it from the motion court roll and directed that it be placed on the Semi-Urgent roll for hearing on 16 October 2023.

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<sup>1</sup> 9 of 1994 as amended.

[5] But on 20 July 2023 and without permission, the complainant set the matter down for hearing on urgent basis. During that time Parliament was preparing to interview candidates for the vacant post of Public Protector and Adv Kholeka Gcaleka was one of the shortlisted candidates. The complainant held the view that this process had rendered the matter urgent because a pronouncement by the Court on the suitability of Adv Gcaleka would strengthen his objection to her candidacy.

[6] The matter was placed before Gamble J for hearing on 11 August 2023. Having heard the complainant and the IDC, the respondent concluded that the complainant had set the case down in violation of the earlier order in terms of which the matter was to be heard on 16 October and thus the complainant's conduct constituted abuse of power. The respondent struck the matter from the urgent roll and ordered the complainant to pay costs. Dissatisfied with the turn of events, the complainant lodged a complaint against the respondent with the Judicial Conduct Committee. He alleged that he was denied the opportunity to present the merits of his case.

[7] In his response to the complaint, the respondent points out that the complainant was afforded more than an hour to make his oral submissions before the order striking the matter from the roll was made. Relying on the record of what transpired in court on the day in question, the respondent refuted the allegation that the complainant was not afforded a fair hearing.

## The appeal

[8] In the documents filed on appeal, the complainant does not address the grounds on which his complaint was dismissed but persists that he was not accorded a fair hearing. He cites specific articles of the Code which he claims were breached by the respondent. However, the complaint that was dismissed does not refer to a single article of the Code and does not say that the respondent has violated the Code.

[9] In these circumstances the Acting Chairperson cannot be faulted for dismissing the complaint on the grounds she relied on. There is nothing on record which suggests that the respondent has wilfully or in a grossly negligent manner breached the Code. Section 14(4) of the JSC Act defines misconduct in relation to the Code to be a wilful or grossly negligent violation of the Code.<sup>2</sup>

[10] Moreover, it does not appear that any fault can be attributed to the respondent for striking the matter off the roll because it was set down contrary to a court order. In any event section 15(2) does not countenance a complaint based on dissatisfaction with a court order. On the contrary this section obliges the Chairperson to summarily dismiss such a complaint.

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<sup>2</sup> Section 14(4) of the JSC Act provides:

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 of 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.

[11] For all these reasons the appeal is dismissed.

A handwritten signature in black ink, appearing to be 'C. J. Smith', is written above a horizontal line.

**THE JUDICIAL CONDUCT COMMITTEE**