

## **JUDICIAL CONDUCT COMMITTEE**

Ref no: JSC/903/21

**In the matter between:**

**Mr Brian Thabo Nyezi**

**Complainant**

**and**

**Judge Cassim Ismael Moosa**

**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)**

[1] This is an appeal against the decision of Mlambo JP in terms of which a complaint that was lodged by Mr Brian Thabo Nyezi (complainant) against Judge Cassim Moosa (respondent) was dismissed. The complaint was dismissed on the

ground that it was 'frivolous and lacked substance' as envisaged in section 15(2)(d) of the Judicial Service Commission Act (JSC Act).<sup>1</sup>

[2] In April 2018 Mr Ryan Sean Price was involved in litigation against the complainant in the Gauteng Division of the High Court. The parties settled the matter and concluded an agreement to that effect. Their agreement was made an order of court on 26 April 2018. However, the complainant and other respondents in that matter failed to honour their obligation under the court order. Mr Price approached the court again seeking to enforce the court order in his favour.

[3] The present complainant opposed the relief sought. Initially he and his co-respondents were represented by an attorney. The matter was set down for 27 January 2020 but on that day the complainant appeared in person because their attorney was not available. By agreement the matter was postponed to 30 January 2020 to enable the respondents to secure legal representation. However their attorney filed a notice of withdrawal and on the day to which the case was postponed, the current complainant informed the court that he would represent himself and the other respondents.

[4] The court heard argument from the applicant's counsel and the present complainant. At the conclusion of the hearing, judgment was reserved and the court was adjourned. The present complainant left the court room, leaving behind

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<sup>1</sup> Section 15(2) of the JSC Act provides:

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.

the applicants counsel and attorney who were busy collecting their files and books. The presiding Judge too was still in the court room when the complainant stepped out. After a while the complainant observed the applicant's legal team leaving the court building.

[5] On 20 March 2020 the court delivered its judgment in favour of the applicant and directed the respondents, including the present complainant to pay a sum of R7.2 million with interest to the applicant. Respondents were also ordered to pay costs on the punitive scale of attorney and own client. The court concluded that the defences raised were spurious, ill-conceived and unsubstantiated. An application for leave to appeal was dismissed.

[6] More than a year later, the complainant lodged a complaint with the Judicial Conduct Committee against Judge Moosa. In summary his complaint was that this Judge had a meeting with the applicant's legal team in his absence, after the court had adjourned. He asserted that they enjoyed tea together. He argued that this conduct by the Judge was in breach of article 10 (f) and (i) of the Code of Judicial Conduct (Code).<sup>2</sup>

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<sup>2</sup> Article 10 of the Code states:

- (1) A judge must –
  - (a) perform all assigned judicial duties diligently;
  - (b) investigate the matter at hand thoroughly
  - (c) dispose of the business of the court promptly and in an efficient and businesslike manner;
  - (d) give judgment or any ruling in a case promptly and without undue delay;
  - (e) not engage in conduct that is prejudicial to the effective and expeditious administration of justice or the business of the court;
  - (f) attend chambers during normal office hours and attend court during normal court hours, unless such attendance is not reasonably required in order to perform any official duties;
  - (g) perform all official duties properly, timeously, and in an orderly manner;
  - (h) respect and comply with the administrative requests of the head of court or the relevant senior judge;
  - (i) take reasonable steps to maintain the necessary level of professional competence in the law; and
  - (j) upon resignation, discharge from active service, or the expiry of an acting appointment, complete all part-head cases and deliver all reserved judgments as soon as possible.
- (2) A judge must deliver all reserved judgments before the end of the term in which the hearing of a matter was completed, but may –
  - (a) in respect of a matter that was heard within two weeks of the end of that term; or

[7] Responding to these allegations Judge Moosa confirmed having heard a matter involving Mr Price and the complainant and that he gave judgment in favour of Mr Price. That judgment criticised the complainant for, inter alia, raising spurious and ill-conceived defences and held that this conduct on the part of the complainant warranted censure from the court. Judge Moosa denied that he had a meeting with Mr Price's legal team after hearing the matter and that they shared tea. He also attached statements by Mr Price's legal team to his papers. They confirmed that they had no meeting with the Judge after the hearing was concluded.

[8] However, they also confirmed that as soon as the hearing was concluded, the complainant walked out of the court room whilst they were still collecting their files and books and the Judge was talking to his registrar. Once they had collected all their stuff, they too left the court room. They later saw the complainant on the street nearby to courthouse. They denied that they spoke to the Judge or that the Judge spoke to them after the hearing had concluded.

[9] In an affidavit dated 16 February 2022 filed on appeal by the complainant for the purpose of setting out grounds of appeal, the complainant confirmed that he was not present when the Judge allegedly met the legal team but alleges that 'the meeting happened at court GF and not at the Judge's chambers.' Since he has alleged that the Judge met the legal team over tea, on his version this means that the Judge drank the tea with the legal team in the courtroom. As he was not

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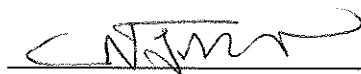
(b) where a reserved judgment is of a complex nature or for any other cogent and sound reason and with the consent of the head of the court, deliver that reserved judgment during the course of the next term.

present in the courtroom at the relevant time, the complainant does not explain how the facts he alleges came to his personal knowledge.

[10] In the appeal papers the complainant failed to address the decision of Mlambo JP against which he was appealing. Nor does he deal with the ground upon which his complaint was dismissed. But apart from this shortcoming, the complainant was unable to place credible facts before this Committee which support the allegations he advanced. There is no evidence which shows that the alleged meeting took place.

[11] However, even if a meeting of sorts had occurred, it would not in and of itself have been ethically objectionable, let alone a breach of article 10 of the Code. What is impermissible is for a Judge to meet and discuss a case with one litigant, in the absence of its opponent. The complainant does not allege that such a discussion happened here.

[12] In the circumstances the appeal must be dismissed.

A handwritten signature in black ink, appearing to be 'C. N. Mlambo', is written over a horizontal line.

**THE JUDICIAL CONDUCT COMMITTEE**