



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/1053/22

In the matter between:

David Mtunzi

Complainant

and

Justice P G Malindi

Respondent

Date: 08 May 2024

Decision: The appeal is dismissed

RULING

THE JUDICIAL CONDUCT COMMITTEE: (Shongwe JA, Saldulker JA and Mabindla-Boqwana JA)

[1] This is an appeal lodged in terms of section 15(5) of the Judicial Service Commission Amendment Act 20 of 2008 (the Act). The appeal is against the decision of the Acting Chairperson who dismissed a complaint lodged by Mr

Mtunzi (complainant) against Judge P G Malindi (respondent) of the Gauteng Division of the High Court (high court).

[2] Briefly, the facts pertaining to the complaint are as follows: During 22 November 2022, Mr Mtunzi lodged a complaint with the Judicial Conduct Committee against Judge Malindi. The gravamen of his complaint is that the file concerning a case that the complainant was involved in got lost through the court's negligence. The complainant alleges that Judge Malindi was aware of this. From what could be discerned from the complainant's papers, it appeared to concern the procedure in regard to a duplicate file in respect of the case, and that as a result of the due processes that were not followed, his case was compromised. The complainant described the problem, *inter alia*, as 'the undisputed weakening of the justice system which if it had not existed, I would not have been in the situation that I find myself in today'.

[3] Having considered the complaint, the Acting Chairperson summarily dismissed it on the basis that it was frivolous or lacking in substance and did not fall within the parameters of any grounds in section 14(4) of the Act.

[4] The complainant stated that he had applied for a default judgment on a summons, which was not granted by Judge Malindi. The case file had been lost and the duplicate file which had been prepared was incomplete. He had written to the Judge President and the Public Protector about the lost file but to no avail.

[5] The crux of the grounds of the complainant's appeal were directed at the new procedure employed at the high court for the opening of a duplicate file, which he described as unconstitutional. He also referred the Committee to paragraph 2 of his complaint which reads as follows:

‘The presiding judge going through my court case file seemingly had unfortunately didn’t feel that the weakening of the justice system is regarded as one of the most serious criminal offence and it had to take precedence and not like something willfully grossly neglected in breach of the code of judicial conduct (sic).’

[6] This Committee has had great difficulty in discerning what the actual complaint against Judge Malindi is. The above extract from the complaint is difficult to understand. Having considered the grounds of appeal raised by the complainant, it is clear that none are directed at Judge Malindi’s conduct. Importantly, the complainant is unable to articulate the actual misconduct on the part of Judge Malindi or the grounds upon which he is appealing, save to state that Judge Malindi should have had oversight over his file. A close and careful consideration of the complaint does not reveal any wrongdoing on the part of Judge Malindi. There is accordingly no reason to interfere with the decision of the Acting Chairperson to summarily dismiss the complaint.

[7] In the circumstances, the appeal is dismissed.



THE JUDICIAL CONDUCT COMMITTEE