



## **JUDICIAL CONDUCT COMMITTEE**

Ref no: JSC/32/04/24

In the matter between:

**MR MOHAMED IDRIS OSMAN**

**COMPLAINANT**

and

**JUDGE NAUDE-ODENDAAL**

**RESPONDENT**

Date: 27 February 2025

Decision: The matter is referred back to the Acting Chairperson for an inquiry to be held in terms of section 17(1) of the Act.

---

### **RULING**

---

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

[1] Mr Mohamed Idris Osman (complainant) lodged a complaint against Judge Naude-Odendaal of the Limpopo Division of the High Court (high court). The complaint was lodged in September 2023.

[2] The complainant alleged that at the time the complaint arose he was a final year law student at the University of South Africa and that he was intending to undergo pupillage training under Adv Van Eeden. But at that time he was already assisting this advocate by filing documents with the registrar of the high court and ensuring that court files were in order before hearings.

[3] In August 2023 an application for leave to appeal was set down for hearing before the respondent. The applicant in that matter was Adv Van Eeden himself. He allegedly requested the complainant to go to court and apply for the recusal of the respondent and the postponement of the matter. The recusal was to be based on the fact that previously and in May 2023, Adv Van Eeden had lodged a complaint with the Judicial Conduct Committee (Committee) against the respondent. The complainant was requested to argue that the respondent could not be impartial in a matter involving Adv Van Eeden.

[4] However, it allegedly came to the attention of the respondent before the hearing that the complainant was not a legal practitioner and had no right to represent litigants. At the hearing the respondent raised this issue with the complainant and when it became apparent that the complainant was not as yet permitted to appear in court and represent litigants, the respondent declined to give him audience. Having heard the other party in the application for leave, the respondent dismissed the application.

[5] Subsequently Adv Van Eeden sought leave to appeal from the Supreme Court of Appeal (SCA) but the difficulty was that he could not attach the respondent's judgment to his SCA papers because the respondent failed to furnish him with a copy.

[6] Meanwhile the respondent had indicated that she intended to refer the complainant's conduct to the Legal Practice Council (Council). She wanted the Council to investigate whether the complainant was entitled to represent Adv Van Eeden in legal proceedings. The complainant was granted an opportunity to make representations pertaining to the proposed referral.

[7] It is not apparent from the present papers whether the complainant made any representations. What is clear though is that during the following month, the complainant lodged this complaint against the respondent. He complained that he was unfairly attacked by the respondent at the relevant hearing and that the respondent's conduct amounted to misconduct envisaged in section 14(4) of the Judicial Service Commission Act<sup>1</sup>.

[8] In December 2023 the Acting Chairperson of the Committee took the decision that the complaint be inquired into in terms of section 17 of the Act. However this inquiry was not held. Instead the Acting Chairperson took a second decision in the matter in June 2024. The second decision was at variance with the first one. It referred the same complaint to the Committee to be dealt with in terms of 16 of the Act<sup>2</sup>. In terms of this provision, the Committee was requested to determine whether a recommendation should be made to the Judicial Service Commission that a Tribunal be established to investigate the complaint.

---

<sup>1</sup> 9 of 1994

<sup>2</sup> Section 16(1) of the Act provides:

(1) If the Chairperson is satisfied that, in the event of a valid complaint being established, it is likely to lead to a finding by the Commission that the respondent suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, as envisaged in section 14 (4) (a), the Chairperson must –

(a) refer the complaint to the Committee in order to consider whether it should recommend to the Commission that the complaint should be investigated and reported on by a Tribunal; and  
(b) in writing, inform the respondent of the complaint.

[9] The matter was placed before the Committee for consideration on 25 July 2024. In view of the first decision taken in the matter, the Committee had to determine whether it could be entertained in terms of section 16 of the Act. It concluded that the second decision was taken in error.

[10] It is a principle of our law that an administrative decision which is not *invalid ab initio* continues to have legal effect until it is set aside by a competent court (*Oudekraal*)<sup>3</sup>. In accordance with this principle, the first decision remains valid and binding for as long as it has not been set aside on review. Consequently the second decision ought not to have been taken and as a result it has no legal force. This Committee was bound to carry out the first decision and hold an inquiry under section 17 of the Act. The Acting Chairperson must have either conducted such inquiry herself or designated a member of the Committee to do so.

[11] In the circumstances the matter is referred back to the Acting Chairperson for an inquiry to be held in terms of section 17(1) of the Act.



---

**THE JUDICIAL CONDUCT COMMITTEE**

---

<sup>3</sup> *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [2004] ZASCA 48; [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA).