



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/1098/23

In the matter between:

Mr R Ndou

Complainant

And

Judge Tlhotlhemaje

Respondent

Date: 15 February 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 by Mr Ndou (the complainant) against Judge Tlhotlhemaje (the respondent) of the Labour Court.

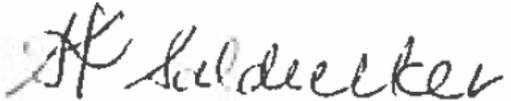
- [2] Briefly, the facts relating to the complaint were as follows: Mr Ndou was a former employee of Polokwane Local Municipality, who was dismissed following an internal disciplinary hearing on allegations of misconduct for which he was found guilty. Aggrieved, Mr Ndou referred the alleged dismissal to the South African Local Government Bargaining Council (SALGBC). However, all attempts at conciliation failed, and the matter came before the arbitrator, Commissioner M Phooko N.O. who found that the municipality had not discharged its onus in regard to the allegations. He found that the dismissal was substantively unfair but procedurally fair, and made an award for Mr Ndou's reinstatement together with backpay in the amount of R1 353 532.00. The municipality thereafter sought an order to review and set aside the arbitration award issued by Commissioner Phooko N.O. and the matter came before Judge Tlhotlhalemaje who reviewed and set aside the arbitrator's award, and substituted it with an order that Mr Ndou's dismissal by the municipality was fair.
- [3] As a result of the decision by Judge Tlhotlhalemaje, the complainant lodged a complaint with the Judicial Conduct Committee. The complaint was duly considered by the Acting Chairperson of the committee who dismissed the complaint in terms of section 15(2)(d) on the grounds that it is solely related to the merits of a judgment or order and did not fall within the parameters of any grounds set out in section 14(4) of the Act.
- [4] Dissatisfied with the decision of the Acting Chairperson, the complainant appealed in terms of section 15(5)¹ of the Act on several grounds, but the essence of his complaint was, inter alia, that:

¹ Section 15 (5) - 'A complainant who is dissatisfied with a decision to dismiss a complainant 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.'

“ . . . And, the essence of the matter is not about removal of a Judge as per section 177 of the Constitution. It is not my plea or my wish that Judge ET Thlotlhalemaje should be removed. Judges are human beings and like everyone else make mistakes in decision making, but my plea is justice should be saved . . . Judge ET Thlotlhalemaje acted in a manner that could be regarded as biasness, he accepted evidence that was not proven. Instead of following the requirements as per the Unauthorised, Irregular, fruitless and wasteful expenditure policy, they(municipality) lied under oath, trying to justify their criminal acts. Judge ET Thlotlhalemaje is biased by accepting lies under oath. . .(sic).”

[5] Having considered the grounds of appeal, it is clear that the complaint is directed at the merits of the judgment by the Judge, in that he accepted the evidence of the municipality’s witnesses, whom the complainant alleged lied under oath, and that the Judge was biased in accepting their lies, and the evidence that was not proved. All of these grounds are solely related to the merits of the judgment or order and are not directed at the Judge’s actual conduct or behavior, but at the Judge’s decision-making. The Acting Chairperson correctly dismissed the complaint.

[6] In the circumstances, the appeal must be dismissed.



— JF Saldemeyer —

THE JUDICIAL CONDUCT COMMITTEE

