



JUDICIAL CONDUCT COMMITTEE

Summary of the Ruling delivered by the Judicial Conduct Committee

The following summary is for the benefit of the public in the reporting of this matter.

Citation : Barnard v Judge van Zyl (Ref No.: JSC/1040/22)

Date issued : 26 July 2024

[1] This matter was referred to the Judicial Conduct Committee for a determination whether a Tribunal should be established to investigate the complaint lodged against Judge van Zyl. A Tribunal is established if a complaint is likely to result in a finding of incapacity or gross incompetence or that a judge is guilty of gross misconduct, for which they should be removed from office under section 177 of the Constitution.

[2] The issue that arose for determination was whether a retired judge who has been discharged from active service by the President may still be removed from office by the President. For a judge to retire he or she must first be discharged from active service under section 176 of the Constitution read with the relevant legislation.

[3] For various reasons, the majority concluded that a retired judge who was discharged from active service cannot be removed from office after the discharge from judicial office. The majority declined to recommend the establishment of a Tribunal.

[4] For differing reasons, the minority held the opposite view. It concluded that section 177 of the Constitution applies even to judges who have been discharged from active service. On this interpretation, the minority concluded that a recommendation to establish a Tribunal ought to have been made.

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