



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/96/09/2024

In the matter between:

ADV H S GANIE

COMPLAINANT

and

DEPUTY JUDGE PRESIDENT NKOSI

RESPONDENT

Date: 31 July 2026

- Decision:**
- a. The complaint is established to the limited extent that the delay of approximately nine months in issuing the final written divorce order in case number D988/2020 constituted a grossly negligent breach of Article 10 of the Code and conduct unbecoming of a Judge in terms of section 17(4)(b) of the Act.
 - b. The formal written reprimand already issued to the respondent in respect of the same delay in *Dr IFS Ganie v Deputy Judge President Nkosi* (JSC/105/11/2024) is treated as the remedial step for this established aspect of the complaint. No further remedial step is imposed.
 - c. The remaining allegations are dismissed in terms of section 17(4)(a) of the Act.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ)

Introduction

[1] Adv Ganie lodged a complaint with the Judicial Conduct Committee (the JCC) against Deputy Judge President Nkosi of the KwaZulu-Natal Division of the High Court, Durban. The complaint arises from the divorce action in *Sadia Siddi Ganie v Irshad Faizal Siddi Ganie*.¹

[2] The complaint concerns both the respondent's judgment delivered on 17 October 2023 and the subsequent delay in issuing the final written divorce order. The complainant also relies on the application for leave to appeal heard on 19 June 2024 and alleges, among other things, lack of independent reasoning, unfairness, gender bias, lack of transparency and lack of diligence.

[3] There is related history which must be recorded because both parties refer to it. Dr IFS Ganie, the defendant in the divorce proceedings under case number D988/2020, previously lodged a separate complaint concerning the same delay in issuing the final written divorce order.² That complaint was finalised under section 17 of the Judicial Service Commission Act 9 of 1994 (“the Act”). In that matter, it was determined that the delay of approximately nine months, following the oral delivery of judgment on 17 October 2023 and the issuing of the final order on 18 July 2024, constituted conduct unbecoming of a Judge in terms of section 17(4)(b) of the Act. A formal written reprimand was issued to the respondent in terms of section 17(8)(b) of the Act.

¹ Case number D988/2020.

² *Dr IFS Ganie v Deputy Judge President Nkosi* (JSC/105/11/2024).

[4] Adv Ganie, who has lodged the present complaint, is the mother of Dr IFS Ganie. The present complaint is therefore a separate complaint and must be considered on its own terms. The prior determination is relevant only because it concerns the same underlying delay.

[5] The complaint was considered and directed to be dealt with in terms of section 17 of the Judicial Service Commission Act 9 of 1994 (the Act). The respondent was invited to respond to the allegations and filed written submissions. The complainant was invited to comment on the respondent's response and filed further written submissions. I have considered the complaint, the respondent's response, the complainant's further submissions and the documents placed before me.

The Complaint and Response

[6] The complaint is wide-ranging. The complainant relies on Articles 4, 7, 8, 9 and 10 of the Code of Judicial Conduct (the Code). She alleges that the respondent's judgment and order reflected the plaintiff's heads of argument or proposed order, and that the judgment did not sufficiently engage with the defendant's heads of argument, evidence, expert material and submissions.

[7] The complainant also relies on extracts from the transcript of the application for leave to appeal. She submits that the respondent's questioning of counsel on issues including maintenance, variation or discharge of the maintenance order, and *functus officio* reflected unfairness, inadequate appreciation of the legal issues and gender bias. Finally, she complains about the delay in issuing the final written divorce order after judgment had been delivered.

[8] The respondent denies misconduct. He states that the complaint is related to the complaint previously lodged by Dr IFS Ganie, that the complainant was not a party to the divorce proceedings, and that the complaint contains an extensive analysis of the judgment and the application for leave to appeal which, on his understanding, was still pending before the Supreme Court of Appeal. He denies gender bias and states that any error of fact or law is a matter for the appellate process.

Applicable Legal Framework

[9] A complaint under section 17 must be determined within the framework of the Act and the Code. For present purposes, the relevant statutory grounds are section 14(4)(b), which concerns a wilful or grossly negligent breach of the Code, and section 14(4)(e), which concerns any other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office.³ Article 2(3) of the Code reflects the same threshold.⁴

³ Section 14(4) of the Act provides, “[t]he grounds upon which any complaint against a judge may be lodged, are any one or more of the following:

- (a) Incapacity giving rise to a judge’s inability to perform the functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177 (1) (a) of the Constitution;
- (b) Any wilful or grossly negligent breach of the Code of Judicial Conduct referred to in section 12, including any failure to comply with any regulation referred to in section 13 (5);
- (c) Accepting, holding or performing any office of profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11;
- (d) Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section 17 (8), imposed in terms of this Act; and
- (e) Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraph (a) to (d), that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.”

⁴ Article 2(3) of the Code provides, “[a]ny wilful or grossly negligent breach of this Code is a ground upon which a complaint against a judge may be lodged in terms of section 14 (4) (b) of the Act.”

[10] The threshold is therefore not met by every error, imperfect judgment, robust exchange with counsel, or arguable breach of the Code. The information obtained under section 17 must establish wilful or grossly negligent misconduct. Note 9(v) of the Code also draws a necessary boundary between appeal and discipline by providing that errors of fact or law, including procedural rulings, are to be dealt with through the ordinary appeal and review procedures.

[11] Article 10 of the Code requires a Judge to perform assigned judicial duties diligently, to dispose of the business of the court promptly and in an efficient and businesslike manner, and to perform official duties properly, timeously and in an orderly manner. Delays in finalising and issuing orders may therefore engage the duty of diligence where the delay is substantial and inadequately explained.

Evaluation

[12] I deal first with the delay in issuing the final written divorce order. That delay has already been the subject of a section 17 determination in the related Dr Ganie complaint. The same underlying facts are relied upon here: judgment was delivered orally on 17 October 2023, and the final written divorce order was issued only on 18 July 2024, approximately nine months later. The prior determination found that this delay constituted conduct unbecoming of a Judge in terms of section 17(4)(b) of the Act.

[13] The present complaint raises the same delay. I see no basis to reach a different conclusion on that issue. The complaint is therefore established to the limited extent that the delay in issuing the final written divorce order constituted a grossly negligent breach of Article 10 of the Code and conduct unbecoming of a Judge in terms of

section 17(4)(b) of the Act. I do not find that the respondent acted wilfully, deliberately obstructed the parties, or acted from bias or improper motive. However, the respondent has already been issued with a formal written reprimand in respect of that same delay. That reprimand recorded the lapse in oversight relating to the issuing of the order and required internal processes to be reviewed and strengthened so that post-judgment administrative processes are monitored and delays are escalated.

[14] In those circumstances, no further remedial step should be imposed in this ruling. A second reprimand or further remedial action for the same underlying delay would be duplicative. The appropriate course is to record the same limited finding, recognise the remedial step already imposed, and then determine the remaining allegations in this complaint.

[15] The fact that the complainant was not a party to the divorce proceedings does not, by itself, bar her from lodging a complaint under the Act. The complaint must still be assessed against the statutory requirements and the material placed before me. I therefore consider the remaining allegations on that basis.

[16] The remaining allegations are not established. The complaints concerning the extent to which the judgment reflected the plaintiff's heads of argument or proposed order, the alleged failure to engage with the defendant's evidence and submissions, the treatment of expert evidence, maintenance, costs, and the conclusions reached in the judgment all relate substantially to the content, reasoning and outcome of the judicial decision. Even if those matters were arguable, they are matters for appeal and do not, without more, establish wilful or grossly negligent misconduct.

[17] The complainant also relies on a comparison which she says was generated through artificial intelligence, in which the judgment is compared with the plaintiff's heads of argument and/or draft order. That material does not establish misconduct. A judgment may, depending on the circumstances, adopt submissions, reasoning, formulations or draft wording advanced by a party where the Judge considers them to be correct. Similarity between a judgment or order and material placed before the court may therefore found an appellate complaint about the reasoning or formulation of the order, but it does not, without more, establish judicial misconduct. The material before me does not show that the respondent abdicated his judicial function, acted dishonestly, was improperly influenced by a party, or wilfully or grossly negligently breached the Code.

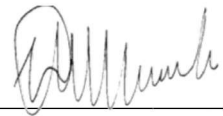
[18] The allegations arising from the application for leave to appeal are also not established as misconduct. The transcript extracts show that the respondent engaged counsel on issues which concerned the court, including maintenance and the legal effect of the order. I accept that the complainant relies, in particular, on the respondent's question to Adv Julyan concerning her experience in maintenance matters, and on the complainant's comparison between the respondent's exchanges with Adv Julyan and Adv de Beer. That material may show that the exchange with Adv Julyan was robust and may have been experienced as dismissive. However, it does not establish that the respondent's questioning was motivated by gender, that he treated counsel unequally on that basis, or that he acted from bias, bad faith or improper motive. Robust questioning of counsel, even if experienced as difficult or if said to disclose legal error, does not by itself establish a wilful or grossly negligent breach of the Code or conduct unbecoming of judicial office.

Ruling

[19] The complaint is established to the limited extent that the delay of approximately nine months in issuing the final written divorce order in case number D988/2020 constituted a grossly negligent breach of Article 10 of the Code and conduct unbecoming of a Judge in terms of section 17(4)(b) of the Act.

[20] The formal written reprimand already issued to the respondent in respect of the same delay in *Dr IFS Ganie v Deputy Judge President Nkosi* (JSC/105/11/2024) is treated as the remedial step for this established aspect of the complaint. No further remedial step is imposed.

[21] The remaining allegations are dismissed in terms of section 17(4)(a) of the Act.

A handwritten signature in black ink, appearing to be 'D. M. M.', is written above a horizontal line.

THE JUDICIAL CONDUCT COMMITTEE