



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/194/05/2025

In the matter between:

ADV SEKGAME SHADRACK TEBEILE

COMPLAINANT

and

JUDGE PRESIDENT MOLETJE GEORGE PHATUDI

RESPONDENT

Date: 07 July 2026

- Decision:**
- a. The complaint is established to the limited extent that Judge President Phatudi's sitting in the review application on 18 February 2020 constituted a grossly negligent breach of Article 12(3), read with Article 13(a) and (b), of the Code of Judicial Conduct and conduct unbecoming of a Judge in terms of section 17(4)(b) of the Judicial Service Commission Act 9 of 1994.
 - b. Judge President Phatudi is directed to submit a written apology to Adv Tebeile within 30 business days from the date of this ruling.
 - c. Judge President Phatudi must submit himself to a reprimand by the Chief Justice within 30 business days from the date of this ruling.
 - d. The Chief Justice must issue a written warning to Judge President Phatudi within the period mentioned in paragraph (c) above.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ)

Introduction

[1] Adv Tebeile lodged a complaint with the Judicial Conduct Committee (the JCC) against Judge President Phatudi of the Limpopo Division of the High Court. The complaint concerns the respondent's alleged failure to recuse himself from a review application under case number 4638/2019 on 18 February 2020.

[2] It was directed that the complaint 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 complaint and filed written submissions. The complainant was invited to comment on the respondent's response and filed a reply. I have considered the complaint, the respondent's response, the complainant's reply, and the documents placed before me.

[3] Section 17 provides for an inquisitorial inquiry into the merits of the complaint. The question is whether, on the information obtained in terms of section 17(3),¹ the complaint should be dismissed, whether it has been established

¹ Section 17(3) of the Act provides, "[f]or the purpose of an inquiry referred to in subsection (2), the Chairperson or member concerned—

- (a) must invite the respondent to respond in writing or in any other manner specified, and within a specified period, to the allegations;
- (b) may obtain, in the manner that he or she deems appropriate, any other information which may be relevant to the complaint; and
- (c) must invite the complainant to comment on any information so obtained, and on the response of the respondent, within a specified period."

and remedial steps should be imposed, or whether a recommendation should be made that the complaint be investigated by a Tribunal.²

The Complaint

[4] The complaint arises from a traditional leadership dispute concerning Mr Ntoshang Jack Mahlokoane. The complainant alleges that, in or about May 2006, before his appointment to the Bench, the respondent acted as attorney for Mr Mahlokoane and filed a submission on his behalf in respect of a senior traditional leadership claim. The complainant attaches the relevant submission to the complaint.

[5] The complainant further alleges that the respondent later served as a member of the Limpopo Provincial Committee of the Commission on Traditional Leadership Disputes and Claims, which he describes as the committee that dealt with Mr Mahlokoane's claim. On the complainant's version, Mr Mahlokoane later approached the High Court to review the outcome of that process under case number 4638/2019, and the complainant acted for Mr Mahlokoane in that review application.

[6] The material fact for present purposes is what occurred on 18 February 2020. On that date, the review application under case number 4638/2019 served before the respondent. The order records that the matter was removed from the roll and the

² Section 17(4) of the Act provides, "[i]f, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is satisfied that there is no reasonable likelihood that a formal hearing on the matter will contribute to determining the merits of the complaint, he or she must, on the strength of the information obtained by him or her in terms of subsection (3)—

- (a) dismiss the complaint;
- (b) find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in subsection (8) on the respondent; or
- (c) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal."

respondent in that review application was ordered to pay the costs occasioned by the removal.

[7] The complainant contends that the respondent was disqualified from sitting in the review application because he had previously acted for Mr Mahlokoane in the traditional leadership claim which formed the subject of the review. He submits that the respondent should not have presided over the matter even for the limited purpose of removing it from the roll and dealing with costs. He alleges that the respondent wilfully, alternatively grossly negligently, breached the Code of Judicial Conduct (the Code).

The Response

[8] The respondent denies misconduct. He accepts that the senior traditional leadership claim filed on behalf of Mr Mahlokoane was launched with the then “Nhlapo Commission”, then operating in Pretoria. He states that the submission was made by mail on 22 May 2006 and received by that office on 12 June 2006. He emphasises that this occurred several years before the establishment of the later Limpopo Provincial Committee, which he refers to as the “Kgatla Commission”.

[9] In relation to the allegation that he participated in the committee’s determination of Mr Mahlokoane’s claim, the respondent states that his term as a member of the Kgatla Commission had ended before the committee chairperson made the recommendation declining Mr Mahlokoane’s recognition as a senior traditional leader. He relies on General Notice 156 of 2012, which he says established the Limpopo Committee for the period 14 May 2012 to 31 December

2015. He states that the recommendation relied upon by the complainant was issued on 1 June 2016, after his tenure had ended.

[10] In relation to recusal, the respondent states that the complainant, who was counsel for Mr Mahlokoane in the review application, did not bring an application for recusal in open court or in chambers. He also states that the matter did not proceed to the merits and that no facts or evidence were determined. According to the respondent, the matter was merely removed from the roll and the respondents in the review application tendered the wasted costs.

[11] The respondent's position is that, in those circumstances, there was no real or reasonably perceived conflict of interest and no reasonable suspicion of bias requiring self-recusal. He submits that the removal of the matter from the roll with costs did not amount to the adjudication of the dispute. He also points to the fact that the complainant and Mr Mahlokoane's attorneys later sought taxation of the bill of costs flowing from the order.

[12] The complainant's reply maintains that the respondent was disqualified from making any order in the review application, including an order for removal and costs. The complainant submits that the costs order itself shows that the respondent considered the matter and decided who should bear the costs occasioned by the removal.

Applicable Legal Framework

[13] A complaint under section 17 must be determined within the statutory framework created by the Act and the Code. Section 14(4)(b) of the Act permits a

complaint based on a wilful or grossly negligent breach of the Code. Section 14(4)(e) also permits a complaint based on any other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office.³

[14] Article 2(3) of the Code mirrors that threshold by providing that any wilful or grossly negligent breach of the Code is a ground upon which a complaint against a judge may be lodged in terms of section 14(4)(b) of the Act.⁴ It follows that not every error, ordinary negligence, or arguable breach of the Code constitutes disciplinary misconduct. The question is whether the material establishes a wilful or grossly negligent breach of the Code, or other wilful or grossly negligent conduct unbecoming of judicial office.

[15] Article 12(3) of the Code is directly relevant. It provides that a Judge previously in private practice must not sit in any case in which he or she, or his or her former firm, is or was involved before the Judge's appointment.⁵ Article 13

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."

⁵ Article 12(3) provides, "[a] judge previously in private practice must not sit in any case in which he or she, or his or her former firm, is or was involved before the judge's appointment, and a judge must not sit in any case in which the former firm is involved until all indebtedness between the judge and the firm has been settled."

requires recusal where there is a real or reasonably perceived conflict of interest or a reasonable suspicion of bias based upon objective facts.⁶

[16] The purpose of these provisions is not confined to actual bias. They protect the appearance of impartiality and public confidence in judicial decision-making. A Judge who previously acted for a party in a matter must not later sit in that matter after appointment to judicial office. That obligation is not dependent on whether a party applies for recusal.

Evaluation

[17] I deal first with the allegation that the respondent participated in the Limpopo Provincial Committee's determination of Mr Mahlokoane's claim. The complainant relies principally on the fact that the respondent's name appears among the members of the Committee in the report relating to that claim. The respondent's answer is that his tenure on the Committee ended on 31 December 2015, whereas the recommendation relied upon by the complainant was issued on 1 June 2016.

[18] I accept that the date of the recommendation is not necessarily, in every case, the only date relevant to participation in a committee process. If there was material showing that the respondent attended the hearing of the claim, participated in deliberations, voted on the outcome, or otherwise contributed to the recommendation before his tenure ended, that would require consideration. But the material before me does not identify any such participation. It does not show when the claim was

⁶ Article 13 provides, "[a] judge must recuse him-or herself from a case if there is a—

(a) real or reasonably perceived conflict of interest; or

(b) reasonable suspicion of bias based upon objective facts, and shall not recuse him-or herself on insubstantial grounds."

heard, when any deliberations took place, who attended those deliberations, or whether the respondent expressed any view on the claim.

[19] In those circumstances, the allegation is not established. The complainant's case rests on the respondent's name appearing among the members of the Committee in the report. That fact, without more, does not establish that the respondent participated in the deliberation or recommendation of Mr Mahlokoane's claim. The respondent has provided a date-specific answer, supported by a document evidencing his tenure during the relevant period, which is not displaced by the material placed before me. I therefore do not find that this aspect of the complaint has been established.

[20] That finding does not dispose of the complaint. The remaining issue is whether, having regard to the respondent's prior involvement in the traditional leadership claim while in private practice, he ought to have presided over the review application on 18 February 2020. The respondent does not dispute that a submission was made on behalf of Mr Mahlokoane in 2006. Nor does he dispute that the matter which served before him on 18 February 2020 was a review application brought by Mr Mahlokoane in relation to the process concerning that traditional leadership claim.

[21] The order of 18 February 2020 also establishes that the respondent sat in the review application. The order records that the Court considered the documents filed of record and heard counsel. The order then removed the matter from the roll and ordered the respondent in the review application to pay the costs occasioned by removal. That was a judicial act in the review application, even though the merits of the review were not determined.

[22] As already set out in the applicable legal framework above, Articles 12 and 13 of the Code govern the present enquiry. In particular, Article 12(3) prohibits a judge who was previously in private practice from sitting in a matter in which he or she, or his or her former firm, was involved prior to appointment. The provision is directed at safeguarding both the actuality and the appearance of impartial adjudication.

[23] Article 13, likewise discussed above, requires recusal where there is a real or reasonably perceived conflict of interest, or a reasonable apprehension of bias based on objective facts. The Constitutional Court has stated the test for recusal in the following terms:

“The test for recusal which this court has adopted is whether there is a reasonable apprehension of bias in the mind of a reasonable litigant in possession of all the relevant facts, that a judicial officer might not bring an impartial and unprejudiced mind to bear on the resolution of the dispute before the court.”⁷

[24] The Constitutional Court has also emphasised the foundational importance of impartiality. *In President of the Republic of South Africa and Others v SARFU*, the Court stated:

“It must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are

⁷ *Bernert v Absa Bank Ltd* [2010] ZACC 28; 2011 (4) BCLR 329 (CC); 2011 (3) SA 92 (CC) at para 29.

reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.”⁸

[25] The standard is therefore objective. The question is not whether actual bias has been proved, or whether the respondent in fact intended to favour Mr Mahlokoane. The question is whether, viewed objectively and with knowledge of the relevant facts, the respondent’s prior professional involvement in the same traditional leadership claim gave rise to a conflict or appearance of partiality which required him not to sit in the review application.

[26] I accept that the order was limited. It did not determine the merits of Mr Mahlokoane’s traditional leadership claim. It did not decide the review. It removed the matter from the roll and dealt with costs. Those features are relevant to the seriousness of the breach and to the appropriate remedial step. They do not, however, answer the Article 12(3) concern.

[27] Article 12(3) is not confined to cases in which a judge decides the merits, makes credibility findings, or grants final relief. The word “sit” is broad. It refers to presiding in the matter, and is not avoided because the immediate issue before the court is procedural, interlocutory, or confined to removal and costs. The review application was the judicial proceeding in which Mr Mahlokoane sought to challenge the process concerning the same traditional leadership claim in relation to which the respondent had previously acted. On those facts, the respondent ought not to have sat in the review application on 18 February 2020, even for the limited purpose of removal and costs.

⁸ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others - Judgment on recusal application* [1999] ZACC 9; 1999 (4) SA 147; 1999 (7) BCLR 725 at para 48.

[28] The absence of a recusal application by the complainant does not cure the difficulty. A party may bring a recusal application where the basis for recusal is known, but Article 12(3) imposes an independent duty on the Judge. Similarly, Article 13 does not make recusal dependent on a formal application in every case. Where the facts giving rise to the conflict or reasonable apprehension are known to the Judge, the duty is not merely reactive. The respondent's answer is not that he was unaware of the prior professional involvement. His answer is that recusal was unnecessary because the matter was removed from the roll, no evidence was heard, and the merits were not determined. For the reasons already given, that approach is inconsistent with the duties imposed by Articles 12(3) and 13.

[29] I do not find that the respondent acted with actual bias, bad faith, or a deliberate intention to favour Mr Mahlokoane. The material before me does not establish actual partiality, improper motive or ulterior purpose. But actual bias is not required. The Code protects not only against actual partiality, but also against circumstances which objectively undermine confidence in judicial impartiality. A reasonable, objective and informed person, knowing that the respondent had previously made a submission on behalf of Mr Mahlokoane in the same traditional leadership claim, would reasonably apprehend that the respondent should not preside over the review application concerning that claim.

[30] I also do not treat the complainant's delay in lodging the complaint as a complete answer. The complaint was made approximately five years after the order of 18 February 2020. That delay is relevant. However, the key facts are documentary: the 2006 submission, the review application, and the order of 18 February 2020. The respondent has answered the complaint on the merits and has

not identified prejudice that prevents the fair determination of the section 17 inquiry. In those circumstances, the delay does not require the dismissal of the complaint.

[31] A breach of the Code does not, without more, establish disciplinary misconduct. Section 14(4)(b) of the Act, read with Article 2(3) of the Code, requires a wilful or grossly negligent breach of the Code. The question is therefore whether the respondent's sitting in the review application, despite his prior professional involvement in the same traditional leadership claim, meets that statutory threshold.

[32] In my view, it does. The respondent's answer proceeds on the basis that recusal was unnecessary because the matter was removed from the roll, no evidence was heard, and the merits were not determined. That explanation misunderstands the breadth and purpose of Article 12(3). A Judge previously in private practice is required to recognise that he or she must not sit in a matter in which he or she was previously involved. That duty is central to the appearance of impartiality and to public confidence in the courts. The respondent's failure to appreciate and act on that duty, in circumstances where the review application concerned the same traditional leadership claim in relation to which he had previously acted, was at least grossly negligent.

[33] I am accordingly satisfied that the complaint has been established to a limited extent. The respondent's sitting in the review application on 18 February 2020, despite his prior professional involvement in the same traditional leadership claim, constituted a grossly negligent breach of Article 12(3), read with Article 13(a) and (b), of the Code and conduct unbecoming of a Judge.

[34] I am not satisfied that a recommendation for a Tribunal is warranted. The misconduct established on the material before me is serious because it concerns the appearance of judicial impartiality. However, the order made on 18 February 2020 was confined to removal from the roll and costs. The merits of the review application were not determined, no oral evidence was heard, and the respondent's participation was limited to the order reflected in the record. There is also no finding of actual bias, bad faith or ulterior purpose. In those circumstances, the complaint can properly be dealt with under section 17 by proportionate remedial steps.

[35] The appropriate remedial steps are a written apology to the complainant, a reprimand by the Chief Justice, and a written warning. An apology is appropriate because the complainant was counsel in the review application and lodged the complaint concerning the respondent's failure to recuse himself. A reprimand and written warning are also appropriate because the duty not to sit in a matter in which the Judge was previously involved before appointment is central to the appearance of impartiality and public confidence in the courts. The respondent is the Judge President of a Division, and the obligation to observe and give effect to the Code is especially important in that office.

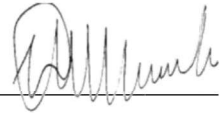
Ruling

[36] The following ruling is made:

- a. The complaint is established to the limited extent that Judge President Phatudi's sitting in the review application on 18 February 2020 constituted a grossly negligent breach of Article 12(3), read with Article 13(a) and (b), of the Code of Judicial Conduct and conduct unbecoming of a Judge

in terms of section 17(4)(b) of the Judicial Service Commission Act 9 of 1994.

- b. Judge President Phatudi is directed to submit a written apology to Adv Tebeile within 30 business days from the date of this ruling.
- c. Judge President Phatudi must submit himself to a reprimand by the Chief Justice within 30 business days from the date of this ruling.
- d. The Chief Justice must issue a written warning to Judge President Phatudi within the period mentioned in paragraph (c) above.



THE JUDICIAL CONDUCT COMMITTEE