



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/176/04/2025

In the matter between:

MR F KOBJANE

COMPLAINANT

and

JUDGE PRESIDENT M G PHATUDI

FIRST RESPONDENT

JUDGE NAUDE-ODENDAAL

SECOND RESPONDENT

Date: 31 July 2026

Decision: The complaint against Judge President Phatudi and Judge Naude-Odendaal is dismissed in terms of section 17(4)(a) of the Judicial Service Commission Act 9 of 1994.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ)

Introduction

[1] Mr Frans Kobjane lodged a complaint with the Judicial Conduct Committee (the JCC) against Judge President Phatudi, Judge Naude-Odendaal and Acting Judge Deane of the Limpopo Division of the High Court. The complaint arises from litigation concerning the Mamphoku Makgoba Community Trust, Makgoba Asset Management Company (Pty) Ltd and related disputes concerning the Makgoba community.

[2] The complaint was considered by me. I directed that the complaint against Judge President Phatudi and Judge Naude-Odendaal be dealt with in terms of section 17 of the Judicial Service Commission Act 9 of 1994 (the Act). Although the complainant also referred to Acting Judge Deane in the complaint, that aspect of the complaint was not referred to a section 17 inquiry, as the Judicial Conduct Committee lacks jurisdiction to deal with complaints against Acting Judges. This ruling is therefore confined to the complaint against Judge President Phatudi and Judge Naude-Odendaal.

[3] The respondents were invited to respond to the complaint and filed written submissions. The complainant was thereafter invited to comment on those submissions and filed further written submissions in response to both respondents. I have considered the complaint, the respondents' submissions, the complainant's further submissions, and the documents placed before me.

[4] Section 17 provides for an inquisitorial process.¹ The question is not whether the orders granted in the underlying litigation were correct, nor whether the complainant or other members of the Makgoba community have meritorious claims

¹ Section 17(2) of the Act provides, "[a]ny inquiry contemplated in this section must be conducted in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact during such investigation."

in those proceedings. The question is whether the information obtained in terms of section 17(3) establishes judicial misconduct under the Act and the Code of Judicial Conduct (the Code).²

The Complaint

[5] The complainant states that he is a resident of Sapekoe Tea Estate and that he represents approximately 200 concerned members of the Makgoba community who reside there. He alleges that those community members lack financial resources and that, in Makgoba-related litigation, the Limpopo Judiciary favours parties with financial resources, including Makgoba Asset Management and the Makgoba Community Trust Committee. He further alleges that their matters are not prioritised, that their cases are dismissed without a proper opportunity to present them, and that the Limpopo Judiciary is biased against them.

[6] In relation to Judge President Phatudi, the complainant relies principally on an order dated 19 October 2023 under case number 11901/2022. That order records that the matter was removed from the roll because the presiding officers were conflicted, that the applicants were directed to apply to the AJP or DJP for the matter to be heard as a special motion, and that costs were reserved. The complainant appears to contend that Judge President Phatudi was conflicted in Makgoba-related

² 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.”

matters because, while in practice, he was allegedly involved in the drafting of the trust deed.

[7] In relation to Judge Naude-Odendaal, the complainant alleges bias and unfair treatment in Makgoba-related litigation. The material placed before me includes Judge Naude-Odendaal's reasons in case number 8863/2024, in which an urgent application was brought against the complainant concerning an alleged breach of an order granted by Deane AJ on 26 March 2024 under case number 2414/2024.

The Responses

[8] Judge President Phatudi denies misconduct. He states that the complaint does not disclose facts showing unprofessional conduct, bias or misconduct by him. He explains that the order of 19 October 2023 did not determine the merits of the Makgoba dispute. On his version, the matter was removed from the roll because a possible conflict was identified, the applicants were directed to approach the AJP or DJP for the matter to be allocated as a special motion before another judge, and costs were reserved.

[9] Judge Naude-Odendaal also denies misconduct. She states that she has no direct or indirect interest in the Mamphoku Makgoba Community Trust and that she is not, and has never been, a beneficiary of that trust. She further states that her written reasons show that she considered the submissions before her, and that there is no merit in the allegation that the complainant was not allowed to present his case.

[10] In response to Judge Naude-Odendaal's submissions, the complainant maintains that he was not afforded a fair opportunity to present his case, that

Judge Naude-Odendaal's response is biased and unsupported by evidence, and that she made untruthful statements. He also relies on the disputed authority and *locus standi* of Makgoba Asset Management and the Mamphoku Makgoba Community Trust Committee, and contends that Judge Naude-Odendaal's handling of Makgoba-related matters favoured the opposing parties.

[11] In response to Judge President Phatudi's submissions, the complainant maintains that the complaint concerns a reasonably perceived conflict of interest arising from Judge President Phatudi's alleged prior professional involvement in the drafting of the Mamphoku Makgoba Community Trust Deed. He relies on the fact that Judge President Phatudi previously removed or recused himself from a Makgoba-related matter, and also refers to later Makgoba-related proceedings in which Judge President Phatudi exercised judicial authority. The complainant submits that these issues require further examination of the Trust Deed, the relevant court files, the recusal record, and the records of the later proceedings.

Applicable Legal Framework

[12] A complaint under section 17 must be determined within the framework of the Act and the Code. Section 17(2) provides that a section 17 inquiry is inquisitorial and that there is no onus on any person to prove or disprove any fact. On the information obtained under section 17(3), the Acting Chairperson must determine whether the complaint should be dismissed, whether it has been established and remedial action under section 17(8) should be imposed, or whether a recommendation should be made that the complaint be investigated by a Tribunal.³

³ 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

[13] 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.⁴ Article 2(3) of the Code reflects the same threshold.⁵ The material must therefore establish wilful or grossly negligent misconduct. A broad allegation of bias, or dissatisfaction with the outcome of litigation, is not enough.

[14] Article 13 of the Code deals with recusal where there is a real or reasonably perceived conflict of interest, or a reasonable suspicion of bias based on objective facts.⁶ Article 9 concerns fairness, impartiality, the *audi alteram partem* rule and

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.”

⁴ 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.”

⁵ 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.”

⁶ Article 13 of the Code 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.”

reasons.⁷ Note 9(v) of the Code, however, makes clear that errors of fact or law, including procedural rulings, are to be dealt with through the ordinary appeal and review procedures and do not, without more, found a valid complaint of judicial misconduct.

Evaluation

[15] The complaint against Judge President Phatudi is not established. The order of 19 October 2023 relied upon by the complainant does not show that Judge President Phatudi improperly sat in a matter despite a conflict. It records that the matter was removed from the roll because the presiding officers were conflicted, that the applicants were directed to approach the AJP or DJP for the matter to be heard as a special motion, and that costs were reserved. A judge who refrains from deciding a matter because a conflict or perceived conflict may arise does not, for that reason, commit misconduct.

[16] The complainant's further submissions do not alter that conclusion. I accept that the complainant now places greater emphasis on perceived conflict, prior professional involvement, the Trust Deed, and later Makgoba-related proceedings. However, the material before me does not establish that Judge President Phatudi acted with bias, improper motive, or personal interest, or that he wilfully or grossly negligently breached the Code. The fact that Makgoba-related litigation has continued, and that later orders may have had serious consequences for the

⁷ Article 9 of the Code provides, "[a] judge must—

- (a) resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, which includes the duty to—
 - (i) observe the letter and spirit of the *audi alteram partem* rule;
 - (ii) remain manifestly impartial; and
 - (iii) give adequate reasons for any decision."

complainant or other community members, does not itself establish misconduct by Judge President Phatudi. To the extent that the complainant contends that Judge President Phatudi should have recused himself in any later proceedings, or that any order granted by him was procedurally or substantively wrong, those are matters for recusal, appeal, rescission or other ordinary legal remedies.

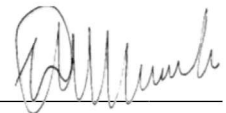
[17] The complaint against Judge Naude-Odendaal is also not established. Her response denies any direct or indirect interest in the trust, and no material before me establishes such an interest. Her written reasons in case number 8863/2024 show that she dealt with the urgent application, the prior orders, the applicants' submissions, and the respondent's opposition. The complaint does not establish that she was biased, had a personal interest in the matter, acted from improper motive, or refused to hear the party before her. The complainant's further submissions do not place objective material before me establishing such interest, bias or improper motive.

[18] The complainant's further submissions concerning Judge Naude-Odendaal remain directed, in substance, at the manner in which she dealt with the litigation before her. The allegations concerning lack of *locus standi*, alleged misleading conduct by attorneys, the effect of earlier orders, the alleged breach of the order granted by Deane AJ, costs, leave to appeal, and the fairness of the proceedings all concern the correctness or procedural regularity of the judicial decisions. Those issues may be raised through appeal, rescission or other ordinary legal remedies. They do not, without more, establish wilful or grossly negligent misconduct under the Act and the Code.

[19] The complaint raises broad concerns about the handling of Makgoba-related litigation in the Limpopo Division. Those concerns may be sincerely held. However, the section 17 inquiry must be determined on the material placed before me and within the limits of the JCC's disciplinary jurisdiction. The material does not establish that either respondent committed judicial misconduct.

Ruling

[20] The complaint against Judge President Phatudi and Judge Naude-Odendaal is dismissed in terms of section 17(4)(a) of the Judicial Service Commission Act 9 of 1994.



THE JUDICIAL CONDUCT COMMITTEE