JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/136/02/2025

In the matter between:

MR R D ZIHLANGU **COMPLAINANT**

and

JUDGE D C FISHER **RESPONDENT**

Date: 20 October 2026

Decision: The complaint against Judge Fisher 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 Zihlangu lodged a complaint with the Judicial Conduct Committee (the JCC) against Judge Fisher of the Gauteng Division of the High Court. The complaint concerns the respondent's conduct following a judgment delivered in the

underlying High Court proceedings on 8 December 2022. 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).[1]

[2] The respondent was invited to answer the complaint and filed written submissions. The complainant was invited to comment and delivered a detailed reply, to which he attached the full transcripts of the hearings held on 22 February and 31 May 2023. I have considered all the material placed before me.

[3] Section 17 requires an inquisitorial inquiry into the merits of the complaint. No person bears an onus to prove or disprove any fact.[2] The determination must nevertheless be made on the information obtained under section 17(3).[3]

The Complaint

[4] On 8 December 2022, the respondent granted the complainant's entities leave to intervene in existing litigation and rescinded default orders concerning the transfer of shares that had previously been granted in favour of the Ngonyama parties. The

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[1] Section 17(1) of the Act provides, "[i]f—
(a) the Chairperson is satisfied that, in the event of a valid complaint being established, the appropriate remedial action will be limited to one or more of the steps envisaged in subsection (8); or
(b) a complaint is referred to the Chairperson in terms of section 15 (1) (b) or section 16 (4) (a), or section 18 (4) (*a*) (ii), the Chairperson or a member of the Committee designated by the Chairperson must inquire into the complaint in order to determine the merits of the complaint."

[2] 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."

[3] 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."

Ngonyama parties thereafter applied for leave to appeal and separately applied to rescind the respondent's judgment, alleging that it had been induced by a misrepresentation concerning the Memorandum of Incorporation (MOI) applicable when the disputed nominee shareholding arrangement was said to have been concluded.

[5] The complaint concerns the respondent's conduct when those two applications came before her. The complainant alleges that she was *functus officio*, that the rescission application was not properly before her, and that she nevertheless insisted upon hearing it. He further alleges that she failed to read and apply the relevant corporate documents, prematurely concluded that she had been misled, and pressured his senior counsel into obtaining instructions to consent to rescission. He says that he accepted his counsel's advice because he feared a judgment finding that he had misled the court or acted fraudulently.

[6] The complaint invokes Articles 4, 5, 6 and 9 of the Code of Judicial Conduct (the Code). It also raises, in tentative terms, the possibility that the respondent's conduct was influenced by the political standing of one of the opposing litigants.

The Response and Reply

[7] The respondent denies misconduct. She states that the application for leave to appeal and the rescission application were both formally before her and that the parties had addressed whether she should hear the rescission application. She states that she was ultimately not called upon to determine the merits because the parties subsequently agreed that her judgment should be rescinded. She says that the

complainant's entities were represented by attorneys and experienced senior counsel and that their consent followed counsel's advice.

[8] The respondent explains that her concern arose from the MOI relied upon in the earlier proceedings. Her position is that the argument and her judgment had proceeded on the understanding that Article 15 of that MOI prohibited nominee shareholding at the relevant time. She says that it later became apparent that the MOI containing that provision had been adopted only after the disputed nominee arrangement was said to have been concluded.

[9] In reply, the complainant acknowledges that the transcript initially attached to his complaint was incomplete and relies on the full transcripts. He admits the portions of the respondent's response recording that the rescission application had been filed, that directions were given for affidavits and argument, that both applications were before the respondent, and that his counsel submitted that rescission was the preferable route. He also admits that the matter was later resolved by consent, but maintains that his consent was given under pressure.

[10] The complainant denies that he or his legal representatives misled the respondent. He also relies on Windell J's later finding that the record did not establish an intention to deceive, and expressly denies implying that the respondent favoured the opposing parties because of political proximity.

Applicable Legal Framework

[11] 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*) 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]

[12] Articles 4[6] and 5[7] require a Judge to uphold judicial independence and integrity and to act honourably and in a manner befitting judicial office. Article 6 requires compliance with the law.[8] Article 9 requires a fair hearing, manifest impartiality, accepted decorum, patience and courtesy.[9]

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[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 4 of the Code provides, "[a] judge must—

(a) uphold the independence and integrity of the judiciary and the authority of the courts;

(b) maintain an independence of mind in the performance of judicial duties;

(c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; and

(d) not ask for nor accept any special favour or dispensation from the executive or any interest group".

[7] Article 5 of the Code provides,

"(1) A judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.

(2) All activities of a judge must be compatible with the status of judicial office".

[8] Article 6 of the Code provides, "[a] judge must at all times, also in relation to extra-judicial conduct, comply with the law of the land".

[9] 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;

(b) in conducting judicial proceedings—
  (i) maintain order;
  (ii) act in accordance with commonly accepted decorum; and
  (iii) remain patient and courteous to legal practitioners, parties and the public, and require them to act likewise;

(c) manage legal proceedings in such a way as to—

[13] Article 9(d) provides that a Judge must not exert undue influence in order to promote a settlement or obtain a concession from a party. Note 9 (vi) recognises that a Judge may, in an appropriate case, advise parties to consider settlement or put a provisional view during argument, provided that a party is afforded an opportunity to deal with it.[10]

[14] Note 9(v) distinguishes judicial error from judicial misconduct. Errors of fact or law are dealt with through the ordinary appeal and review procedures. A disagreement about the correct procedure, the interpretation of the record or the legal effect of a document does not automatically establish a wilful or grossly negligent breach of the Code.[11]

[15] The statutory threshold is exacting. It is not sufficient to establish that a Judge may have made an error of fact or law, adopted an incorrect procedure, or expressed a view with which a litigant disagrees. For present purposes, the conduct must constitute a wilful or grossly negligent breach of the Code, or other wilful or grossly negligent conduct incompatible with or unbecoming judicial office. An adjudicative error, even if established, does not meet that threshold by itself.

Evaluation

(i) expedite their conclusion as cost-effectively as possible; and
(ii) not shift the responsibility to hear and decide a matter to another judge; and
(d) not exert undue influence in order to promote a settlement or obtain a concession from any party".

[10] Note 9 (vi) of the Code provides "[a] judge may in appropriate instances advise parties to consider settlement of a case or put a provisional view in the course of argument. Justice may, however, require that a party be afforded the opportunity to deal with such view".

[11] Note 9 (v) of the Code provides "[s]ince judges are fallible and can err in relation to fact or law, such errors are to be dealt with through the normal appeal and review procedures. Such errors, even if made by courts of final instance, cannot give rise to valid complaints. Complaints against judges that are related to the merits of a decision or procedural ruling are to be dismissed at the outset".

[16] The allegation that the rescission application was not before the respondent, or that she unilaterally insisted upon hearing it, is not sustained by the full transcript of 22 February 2023. The respondent recorded that a rescission application had been filed. The complainant's counsel stated that the two applications should be heard simultaneously, although not jointly, and that his clients required an opportunity to answer the allegations made against them.

[17] The order issued on 23 February 2023 postponed the application for leave to appeal, directed the exchange of further papers in the rescission application, and required heads of argument on whether the two applications should be heard separately and whether the same Judge should hear them. It further directed the parties to approach the respondent after the heads had been filed.

[18] At the hearing on 31 May 2023, counsel placed on record that they appeared in both applications. The complainant's counsel proposed dealing with the rescission application first and, depending on its outcome, then addressing the application for leave to appeal. The objective record therefore does not support the contention that the respondent took control of an application which was not before her.

[19] The complaint based on *functus officio* raises a question about the respondent's power to hear and grant rescission of her judgment. The respondent cited *Moraitis Investments (Pty) Ltd v Montic Dairy (Pty) Ltd*,[12] in support of the proposition that the finality of a judgment admits an exception where the judgment was induced by

[12] [2017] ZASCA 54; 2017 (5) SA 508 (SCA) at paras 11-15.

fraud. It is unnecessary in this inquiry to decide the scope of that exception or whether the requirements for rescission were satisfied.

[20] The respondent did not grant a rescission order during the hearing. On 1 June 2023, the complainant's attorneys informed her in writing that they had obtained instructions and that their clients consented to the rescission of the judgment and the proposed costs order. They attached the draft order which they asked the Court to grant. The signed order of 6 June 2023 reflects that relief.

[21] The written consent does not, by itself, answer the allegation that the preceding hearing was pressurising. It does establish that no immediate concession was compelled at the hearing and that consent was subsequently conveyed through the complainant's attorneys after they had obtained instructions.

[22] The extensive dispute about the MOI, the shareholders' agreement, the transaction framework agreement and the applicable company law bears upon whether the respondent's view that she had been misled was legally and factually correct. This disciplinary inquiry is not an appeal from that view. Even if an error in the interpretation of the record or the law were established, it would not automatically amount to bias, dishonesty or a wilful or grossly negligent breach of the Code.

[23] Windell J's judgment of 6 May 2025 records that both applications were enrolled before the respondent, that the respondent's earlier order had proceeded under a misapprehension concerning the date on which the MOI came into effect, and that the order was later rescinded by agreement. Windell J also held that the

record did not establish an intention to deceive and dismissed the objection based on alleged fraud.

[24] That later judgment does not retrospectively determine whether the respondent committed misconduct. Nor do I find in this inquiry that the complainant or his legal representatives acted fraudulently. Its relevance is limited to the objective procedural history and the context in which the respondent expressed the view that she had been misled.

[25] The transcript shows that the respondent expressed that view firmly. She repeatedly said that she had been misled, questioned why the apparent misapprehension had not been corrected, referred to the possibility of obfuscation or fraud, and raised the duties of legal practitioners as officers of the court. Those remarks must be considered in the context of the full exchange.

[26] The respondent also stated that fraud or dishonesty should be put aside while the alleged misconception was considered. The complainant's counsel thereafter continued to advance the complainant’s position by relying on the other corporate documents and the applicable statutory provisions. The respondent engaged with those submissions. She did not make a final finding that the complainant or his legal representatives had acted fraudulently.

[27] The allegation of pressure must be considered under Article 9(d). Before the respondent asked counsel and his attorney to consider the appropriate course, the complainant's counsel had himself submitted that, if the court had been misled and had proceeded on a wrong premise, it would be wrong to take advantage of the resulting judgment. He stated that rescission was probably the preferable route and

later recorded that his instructing attorney agreed that, if the respondent had acted under a misapprehension, rescission should be granted.

[28] When counsel said that he lacked instructions to consent, no rescission order was granted. Counsel proposed that judgment be reserved so that instructions could be obtained and the registrar informed. The respondent accepted that course. Assessed objectively, the exchange was insistent, but it does not establish that the respondent overbore the complainant's choice or exerted undue influence in breach of Article 9(d).

[29] The firmness and insistence reflected in the exchange are not, in themselves, sufficient to establish judicial misconduct. Nor would a judicial error, if established, automatically meet the statutory threshold. What must be established is a wilful or grossly negligent breach of the Code, or other wilful or grossly negligent conduct incompatible with or unbecoming judicial office. The information before me does not establish conduct of that character.

[30] The suggestion of political influence has no evidential basis. It was expressed tentatively in the complaint and expressly disavowed in the reply. Nothing in the material connects the respondent's conduct to political pressure or establishes a breach of Article 4.

Conclusion

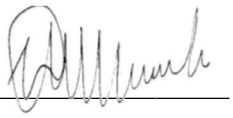
[31] The material issues are recorded in the transcripts and the contemporaneous documents. The procedural history is substantially common cause, and the exchange said to constitute undue pressure can be assessed in its full context. There is no

reasonable likelihood that a formal hearing will contribute to determining the merits of the complaint.

[32] The information obtained under section 17 does not establish gross misconduct, gross incompetence, a wilful or grossly negligent breach of the Code, or any other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office. It provides no basis for remedial action under section 17(8) or for a recommendation that the complaint be investigated by a Tribunal.

Order

[33] The complaint against Judge Fisher is therefore dismissed in terms of section 17(4)(*a*) of the Judicial Service Commission Act 9 of 1994.



THE JUDICIAL CONDUCT COMMITTEE