



JUDICIAL CONDUCT COMMITTEE

Ref no's:

JSC/181/04/2025;

JSC/226/08/2025 &

JSC/173/04/2025

In the matter between:

THOMAS RICHARD NKOSI

COMPLAINANT

and

JUDGE MNCEDISI KUMALO

RESPONDENT

As well as

KENNETH SKHOSANA

COMPLAINANT

and

JUDGE MNCEDISI KUMALO

RESPONDENT

As well as

CLIFFORD BRIAN LEVIN

COMPLAINANT

and

JUDGE MNCEDISI KUMALO

Date: 6 July 2026

Decision: It is recommended that the Commission requests the Chief Justice to appoint a Tribunal to investigate and report on the merits of the present complaints.

SECTION 16 RULING

THE JUDICIAL CONDUCT COMMITTEE (Jafta J, Saldulker JA and Majiedt J)

Introduction

[1] The present complaints were lodged with the Judicial Conduct Committee (Committee) against Judge Mncedisi Kumalo (respondent). The complaints were lodged by different complainants in April and August 2025. The first one was filed by Mr. Thomas Richard Nkosi and the second was lodged by Mr. Clifford Brian Levin. Both of them were filed in April 2025. The third one was lodged by Mr. Kenneth Skhosana in August 2025. All of them relate to the respondent's alleged failure to deliver judgements within the period prescribed by the Code of Judicial Conduct (Code)¹.

[2] In order to appreciate the approach followed in processing these complaints, it is necessary first to outline the legislative scheme followed.

Legislative background

¹ Article 10(2) of the Code provides: "A judge must deliver all reserved judgments before the end of the term in which the hearing of a matter was completed, but may:

(a) in respect of a matter that was heard within two weeks of the end of that term

(b) where a reserved judgment is of a complex nature or for any other cogent and sound reason and with the consent of the head of the court, deliver that reserved judgment during the course of the next term".

[3] The complaints against judges are governed by the Judicial Service Commission Act (Act)². The Act establishes the Committee as a body to which complaints may be lodged³. The Chairperson of the Committee is required to consider all complaints at the outset and determine which provision of the Act should be applied to a particular complaint⁴. Having considered the present complaints, the Acting Chairperson of the Committee concluded that collectively they warrant to be processed in terms of section 16 of the Act. This provision requires the Chairperson to refer such complaints to this Committee, for it to consider whether the establishment of a Tribunal should be recommended for the purpose of investigating and deciding the aforesaid complaint⁵.

[4] Section 16(4) of the Act fixes a standard applicable to complaints which are referred to the Committee by the Chairperson. It provides:

“At the meeting referred to in subsection (2), the Committee must consider whether the complaint, if established, will *prima facie* indicate incapacity, gross

² 9 of 1994.

³ Section 8(1) of the ACT provides: “(1) The Commission has a Judicial Conduct Committee, comprising-
(a) the Chief Justice, who is the Chairperson of the Committee;

(b) the Deputy Chief Justice; and

(c) four judges, at least two of whom must be women, designated by the Chief Justice in consultation with the Minister, for the period determined at the time of such designation, provided that such period may not exceed two years”.

⁴ Section 14(2) of the ACT provides: “When a complaint is lodged with the Chairperson in terms of subsection (1), the Chairperson must deal with the complaint in accordance with section 15, 16 or 17, but in the event of a complaint falling within the parameters of section 15, the Chairperson may designate a Head of Court to deal with the complaint, unless the complaint is against the Head of Court”.

⁵ Section 16(1) of the Act reads: “If the Chairperson is satisfied that, in the event of a valid complaint being established, it is likely to lead to a finding by the Commission that the respondent suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, as

envisaged in section 14 (4) (a), the Chairperson must-

(a) refer the complaint to the Committee in order to consider whether it should recommend to the Commission that the complaint should be investigated and reported on by a Tribunal; and

(b) in writing, inform the respondent of the complaint.

incompetence or gross misconduct by the respondent, whereupon the Committee may-

(a) refer the complaint to the Chairperson for an inquiry referred to in

section 17 (2); or

(b) recommend to the Commission that the complaint should be investigated by a Tribunal”.

[5] Evidently complaints which warrant the appointment of a Tribunal are those that are based on the grounds justifying the removal of judges from office. A judge may be removed from office only if the Judicial Service Commission (Commission) finds that the judge suffers from incapacity, is grossly incompetent or is guilty of gross misconduct⁶. The Act requires that before such complaint reaches the Commission, it must be placed before the Chairperson to this Committee for determining whether a Tribunal should be appointed. Once a recommendation to that effect is made, the Chief Justice may be requested by the Commission to appoint a Tribunal⁷. The function of the Tribunal is to investigate and report on complaints for which it was established. Upon the conclusion of its investigation, the Tribunal must submit a report to the Commission and it is on the basis of that report that the Commission is able to make its factual findings as envisaged in section 177(1) of the Constitution.

⁶ Section 177(1) Of the constitution provides: “A judge may be removed from office only if
(a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
(b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members.

⁷ Section 19(1) Of the act provides: “Whenever it appears to the Commission-

(a) on account of a recommendation by the Committee in terms of section 16 (4) (b) or 18 (4) (a) (iii), (b) (iii) or (c) (iii); or
(b) on any other grounds, that there are reasonable grounds to suspect that a judge-

(i) is suffering from an incapacity;

(ii) is grossly incompetent; or

(iii) is guilty of gross misconduct,

as contemplated in section 177 (1) (a) of the Constitution, the Commission must request the Chief Justice to appoint a Tribunal in terms of section 21”.

[6] Returning to the Committee, when called upon to consider whether a Tribunal should be appointed, the Committee does not require proof of a complaint. Section 16(4) requires it to assume that the complaint will be established (“if established”). On that assumption, the provision requires the Committee to decide whether the complaint will *prima facie* indicate that the judge against whom it was brought suffers from incapacity, or is grossly incompetent, or is guilty of gross misconduct. If the answer to this question is positive, the Committee must recommend the appointment of a Tribunal. Therefore, the relevant standard is whether, if established, the complaint will indicate the presence of at least one of the grounds mentioned in section 177(1) of the Constitution.

[7] It is now convenient to outline the various complaints before determining whether they meet that standard.

First complaint

[8] The first complaint arose from the matter of *Thomas Richard Nkosi v The Public Protector and Mpumalanga Provincial Legislature*: case number 53356/21. This was an application instituted by Mr Nkosi in the Gauteng Division of the High Court, Pretoria. The matter was heard by the respondent on 19 March 2024. At the conclusion of the hearing judgment was reserved. This judgment remained outstanding for a period in excess of 19 months.

[9] Meanwhile the complainant in this matter lodged a complaint against the respondent during April 2025. The judgment was not delivered, even after the lodging of the complaint. The complainant had to approach the Deputy Judge President of the Division for assistance in August 2020. Subsequently the judgment

was issued on 17 September 2025. On 9 October 2025, the complainant filed an application for leave to appeal. By February 2026, the respondent had not given his decision on that application.

[10] The complainant alleges that he has suffered financially as a result of the respondent's delays. He incurred a debt of R50 000 in legal fees. In addition, his constitutional right of access to court was breached by the delays.

Second complaint

[11] Mr Clifford Brian Levin (complainant) is a practising attorney in Johannesburg. On 26 September 2024 he moved an urgent application before the respondent in the Labour Court. The matter was urgent, because it related to the enforcement of a restraint of trade agreement whose operation was for a limited period. Upon the conclusion of the hearing on that day, the respondent reserved judgment. However, the judgment was not delivered for a long period in the succeeding months despite various inquiries from the complainant's firm. This undermined the urgency with which the matter was brought and prejudiced the applicants who sought to enforce a contract.

[12] In April 2025 the complainant lodged this complaint. The judgment was delivered on 22 May 2025 whilst the complaint was pending. In the complaint, the complainant contended that the delay constituted a breach of the Code and that it brought the administration of justice into disrepute and undermined the applicant's rights as a litigant.

[13] This complaint was referred to an inquiry in terms of section 17 of the Act. During that process the respondent was invited to respond to the complaint but failed

to do so. It was in the course of that inquiry that new facts emerged which persuaded the Acting Chairperson that the matter was so serious as to warrant an investigation by a Tribunal. In this regard the Acting Chairperson concluded:

“The matter is aggravated by the fact that this complaint does not stand alone. By 19 March 2026, the Secretariat had received three further complaints regarding the respondent’s failure to deliver judgments timeously. That development materially altered the character of the matter. What may initially have appeared to be an isolated delay now had to be viewed against the background of an alleged pattern of repeat non-compliance with the standards governing the delivery of judgments.

A pattern of repeat delayed judgments, especially when coupled with a complete refusal to respond to the Committee’s inquiry, is capable of raising issues that exceed the limited remedial scope of section 17. It may, depending on what a full investigation reveals, implicate gross incompetence or gross misconduct, or at the very least conduct so serious and persistent as to warrant investigation by a Tribunal. Put differently, the matter had, by this stage, moved beyond the terrain of an isolated lapse remediable by warning, reprimand or counselling”.

Third complaint

[14] In August 2025 Mr Kenneth Skhosana (complainant) lodged this complaint against the respondent. He alleged that upon the conclusion of the hearing on 24 July 2024, the respondent reserved judgment. He failed to deliver it within the period prescribed by the Code. At the time the complaint was lodged, the judgment was outstanding for a period in excess of 12 months. The complainant argued that the delay amounted to a breach of the Code and it undermined the public's confidence in the judiciary. At a personal level, he contended that the delay caused him emotional distress as the case related to his dismissal from employment.

The response

[15] The respondent did not furnish a response to all these complaints. With regard to the first and third complaints, an invitation was sent to him on 11 March 2026, informing him that the Committee will consider these complaints on 9 April 2026 and requesting him to file written submissions on or before 26 March 2026. He did not respond.

[16] Regarding the second complaint, the respondent was asked to respond on two occasions without avail. In the referral to this Committee the Acting Chairperson disapproved of the failure to respond and remarked:

“That is not what occurred. The respondent was afforded a full and fair opportunity to answer the complaint. He was invited, in writing, on two separate occasions to provide submissions. He ignored both invitations. The respondent’s failure to engage at all with the inquiry is not a neutral consideration. A section 17 inquiry is a statutory process designated to enable a proper assessment of the merits of a complaint. A judge who elects to disregard that process, without explanation, frustrates the very mechanism established by the Act for judicial accountability”.

Should a Tribunal be recommended?

[17] The question that arises for determination is whether, if established, these complaints will *prima facie* indicate one or more of the grounds contained in section 177(1) of the Constitution. Although, when looked at individually, these complaints do not rise to the level of impeachable ones, collectively considered they exhibit a pattern of failures on the part of the respondent to deliver judgments within the prescribed time.

[18] Such pattern may indicate either that the affected judge is grossly incompetent or is guilty of gross misconduct. In the past this Committee has held that the failure by a judge to deliver reserved judgments ordinarily amount to gross misconduct unless there is a valid excuse for it⁸. This is the conclusion reached previously by the Judicial Conduct Tribunal in *Judge President Mlambo v Judge Mngqibisa-Thusi*, JSC/217/2020, where it was stated:

“Without a reasonable explanation or excuse, the failure by a judge to deliver reserved judgments over a long period of time would ordinarily constitute gross misconduct. This is because such failure erodes public confidence in the judiciary and leaves the public with no option but to resort to self help. Moreover, non-delivery of judgments constitutes a breach of the primary duty of judges. Significantly, such conduct is also inconsistent with the Constitution in a number of respects. First, it impacts adversely on the affected litigant’s constitutional right of access to courts. Second, it is a breach of the obligation to respect, protect, promote and fulfill the rights in the Bill of Rights⁹”.

[19] In this matter two judgments were not delivered over a period in excess of 12 months in each case. In regard to the third one, the judgment was delivered after seven months, despite the fact that the application was instituted on an urgent basis and the delay undermined the effectiveness of the relief sought. Of importance is the fact that there is no excuse or explanation furnished for these delays. In these circumstances we are persuaded that, if established, these complaints would constitute *prima facie* proof of gross incompetence or gross misconduct.

[20] Both gross incompetence and gross misconduct are grounds on which a judge may be removed from office, as contemplated in section 177(1) of the Constitution. In *Judge President Mlambo v Judge NP Mngqibisa-Thusi*, the Tribunal observed

⁸ *Judge President Mlambo v Judge Nomsa Khumalo* JSC/279/11/2025 at paras 20-22

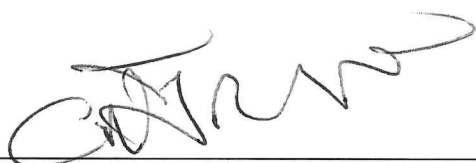
⁹ *Id* at para 107

that a judge who fails to deliver judgments must be removed from judicial office except where there are good mitigating circumstances. The Tribunal said:

“Litigation is instituted to seek resolution of a dispute which the parties themselves failed to resolve. Therefore, it is important that a judge should render a judgment without undue delay. A judge who fails to perform this function ought to be removed from office unless there are good mitigating circumstances for the undue delay”.¹⁰

[21] Evidently the standard for recommending the appointment of a Tribunal has been satisfied here. It is that Tribunal which may competently investigate and determine these complaints. The respondent would be afforded an opportunity to advance whatever defence he may have against these complaints.

[22] In the result it is recommended that the Commission requests the Chief Justice to establish a Judicial Conduct Tribunal to investigate and report on the merits of the current complaints.



THE JUDICIAL CONDUCT COMMITTEE

¹⁰ Id at para 110