



## **JUDICIAL CONDUCT COMMITTEE**

Ref No: JSC/1157/23

In the matter between:

**MR B L NCONGWANE**

**Complainant**

and

**JUDGE C VAN ZYL**

**Respondent**

**Date: 2 April 2026**

### **Decision:**

- a. Judge Van Zyl must deliver a written apology to the complainant as well as the Judge President of the Free State Division within 30 days of this ruling.
- b. The Judge President of the Free State Division is to issue a written reprimand and warning to Judge Van Zyl within 30 days of this ruling.

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## **RULING**

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### **THE JUDICIAL CONDUCT COMMITTEE (MADLANGA J)**

#### **Introduction**

[1] This complaint was referred to the Judicial Conduct Committee (Committee) by the Deputy Chief Justice in her capacity as the Acting

Chairperson of the Committee (Acting Chairperson) in terms of section 16(1)<sup>1</sup> of the Judicial Service Commission Act 9 of 1994 (JSC Act).

[2] The complaint served before the Committee at its meeting on 24 October 2023. On 26 July 2024 the Committee issued a ruling directing that the matter be referred back to the Chairperson for a formal inquiry in terms of section 17 of the JSC Act. That is how the complaint came before me as the Acting Chairperson of the JCC. In terms of section 17(5)(a) of the JSC Act, the Chairperson or member designated must determine a time and place for a formal hearing and written notice of the hearing must be given to the respondent and complainant. Section 17(5)(c) states:

“Upon the conclusion of a formal hearing the Chairperson or member concerned must record his or her findings of fact, including the cogency and sufficiency of the evidence and the demeanor and credibility of any witness, and his or her finding as to the merits of the complaint, and (i) dismiss the complaint; (ii) 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 (iii) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal.”

[3] If, on a prima facie assessment, the complaint discloses conduct which if established – may constitute conduct unbecoming of a judge, the appropriate remedial action is confined to one or more of the remedial steps contemplated in section 17(8) of the JSC Act, unless the matter warrants a recommendation that it be investigated by a Tribunal.

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<sup>1</sup> (1) 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 Judicial Service Commission (Commission) that the complaint should be investigated and reported on by a Judicial Conduct Tribunal (Tribunal); and (b) in writing, inform the respondent of the complaint.

[4] I next consider the present complaint and the oral submissions presented with a view to evaluating the complaint as envisaged in section 17(5) of the JSC Act. I will deal only with such salient facts as it is necessary to do so.<sup>2</sup>

[5] Mr Ncongwane filed a complaint against Judge Van Zyl of the Free State Division of the High Court, Bloemfontein. The complaint arises from civil proceedings between Mr Ncongwane and his former spouse, in which he pursued a damages claim arising from an allegation that he was not the biological father of the youngest of their three children. The matter was heard by Judge Van Zyl during 2018 in the High Court, and she reserved judgment on 14 June 2018. On 13 December 2018 Judge Van Zyl granted an order dismissing the case with costs, without giving written reasons. It appears from the complaint that this order did not come to the complainant's attention. In December 2019 Mr Ncongwane, was informed by his attorney that an order was granted on 13 December 2018 by Judge Van Zyl and that his case was dismissed with costs, with the written judgment to follow. Judge Van Zyl only delivered the written judgment on 13 June 2023, almost five years after granting the order.

[6] The Acting Chairperson referred Mr Ncongwane's complaint to the Committee in terms of section 16(1)(a) of the JSC Act. The Committee considered the complaint and the parties' representations and concluded that the delay in the delivery of a single judgment did not, *prima facie*, establish incapacity, gross incompetence or gross misconduct as contemplated in section 177 of the Constitution and that there was therefore no basis to recommend that the complaint be investigated by a Tribunal. The Committee nevertheless held that the delay suggested a breach of the Code of Judicial Conduct and, for that reason, recommended that the matter be referred to the

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<sup>2</sup> The factual background was dealt with thoroughly by the JCC when the matter was before it.

Chairperson for an inquiry in terms of section 17(2), read with section 16(4)(a) of the Act, to determine the merits of the complaint.

On 12 March 2025 a notice was issued to the parties informing them that the inquiry was scheduled for 4 April 2025 at the departmental office known as the Office of the Chief Justice. The inquiry did not proceed on that day. That was because Judge Van Zyl requested that it be rescheduled as she did not receive the notice. She explained that her official email account was not functioning and that, by the time she became aware of the date of the inquiry, there was insufficient time to secure counsel and to prepare. The inquiry was rescheduled to 4 June 2025. On that date Judge Van Zyl appeared represented by Adv Snellenburg SC. The advocate conceded that there had been an inordinate delay in the delivery of the judgment and indicated that the complainant, Mr Ncongwane – who appeared in person – would not be cross-examined. In her written submissions, Judge Van Zyl attributed the delay, *inter alia*, to increased work obligations, changes in office support staff, and the novelty of the cause of action, which she stated required extensive research, including comparative material. She also stated that she tends to produce lengthy judgments and that she strives for a high degree of perfection. In addition, she stated that she suffers from an autoimmune condition requiring ongoing medication, and that episodes of acute flare-ups and periods of hospitalisation affected her ability to finalise the judgment. The Judge also said that she suffers from ulcerative colitis, and that she has experienced mental health difficulties since March 2019. Her oral submissions before me were largely to similar effect. In the oral submissions she conceded that there was a need to cut down on the time she devoted to seeking to attain perfection in her judgments.

[7] Judge Van Zyl states that, in August 2022, she addressed a letter to Deputy Judge President Mbhele, setting out the circumstances and health issues which, over the relevant period, impacted on her ability to comply with her judicial

obligations. She further states that, during the September 2022 recess, she attempted – without success – to finalise the editing of the outstanding judgment. The respondent states that in November 2022, Judge President Musi met with her, in the presence of Deputy Judge President Mbhele, and advised that he intended lodging a formal complaint about the delay in delivering the judgment. She states that thereafter her mental health deteriorated and that she sought urgent assistance from a clinical psychologist and a psychiatrist.

[8] Judge Van Zyl stated that her physical and mental health improved and that medication prescribed by her psychiatrist was working effectively, leaving her “overall in a much better condition”. Judge Van Zyl’s full written judgment was made available on 13 June 2023. At the oral hearing before me she profusely apologised to Mr Ncongwane and to the defendant in the civil proceedings for the “unacceptable delay in finalising the full judgment”.

[9] The complaint falls to be determined in terms of section 14(4) of the JSC Act and, properly characterised, concerns an alleged wilful or grossly negligent breach of the Code of Judicial Conduct as contemplated in section 14(4)(b). The Code requires a judge to perform official duties timeously and, specifically, to deliver reserved judgments before the end of the term in which the hearing was completed, subject only to the limited allowance that a reserved judgment may, in defined circumstances and with the consent of the head of court, be delivered during the next term. The Code further recognises that litigants are entitled to judgment as soon as reasonably possible, and that a fair trial includes the duty to give adequate reasons for decisions. On the common cause facts (including the concession that the delay was inordinate), the delivery of the full written judgment only on 13 June 2023, following an order made on 13 December 2018, is inconsistent with these obligations. Judge Van Zyl’s explanation and expression of remorse are not exculpatory. Rather, they are

relevant to the appropriate remedial steps. A breach of the Code has thus been established.

[10] Looking at the totality of the facts and circumstances before me, I take the view that appropriate remedial steps are a written apology to the complainant and a written reprimand in terms of section 17(8)(a), (b) and (c), respectively.

[11] Accordingly, I make the following ruling:

- (a) Judge Van Zyl is found guilty of a grossly negligent breach of the Code of Judicial Conduct, as envisaged in section 14(4)(b) of the Judicial Service Commission Act 9 of 1994, for inordinately delaying the delivering of the judgment that is the subject of this complaint.
- (b) Judge Van Zyl must deliver a written apology to the complainant as well as the Judge President of the Free State Division of the High Court within 30 days of this ruling.<sup>3</sup>
- (c) The Judge President of the Free State Division of the High Court is to issue a written reprimand and warning to Judge Van Zyl within 30 days of this ruling.



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**JUSTICE MBUYISELI MADLANGA**  
**ACTING CHAIRPERSON OF THE JUDICIAL CONDUCT**  
**COMMITTEE**

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<sup>3</sup> Since section 17(8)(a) provides that the apology must be as specified, I want the apology to come from Judge Van Zyl. That is the only way it will look and sound genuine. But, because of the prescript that it must be as specified, what I will specify is that the apology must be genuine and acknowledge the egregiousness of the wrong to which Mr Ncongwane, the complainant, has been subjected.