JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/245/09/2025

In the matter between:

SHIRLEY THEMBELA TILANA-MABECE **COMPLAINANT**

and

ACTING JUDGE-PRESIDENT ZAMANI MSWAZI NHLANGULELA **RESPONDENT**

Date: 23 October 2026

Decision: **In terms of section 16(4)*(b)* of the Judicial Service Commission Act, 9 of 1994, as amended, it is recommended to the Judicial Service Commission that the complaint should be investigated by a Tribunal.**

RULING

THE JUDICIAL CONDUCT COMMITTEE (MAJIEDT J, SALDULKER J AND MABINDLA-BOQWANA JP)

Introduction

[1] This matter is before us in terms of section 16(1)*(a)* of the Judicial Service Commission Act, 9 of 1994, as amended (the Act).[1] What bears consideration is whether we should recommend to the Judicial Service Commission (JSC) that a complaint laid by Ms Shirley Thembela Tilana-Mabece (the Complainant) against Acting Judge-President Zamani Mswazi Nhlangulela of the Eastern Cape Division of the High Court (the Respondent) should be investigated and reported on by a Tribunal. Having considered the complaint, it was referred to the Judicial Conduct Committee (JCC) by the Acting Chairperson in terms of section 16(1)*(a)* of the Act.

[2] In essence, the complaint concerns certain remarks made by the Respondent at a meeting to deliberate on the shortlisting of candidates for interviews for judicial appointment to three vacant positions on the Bench of the Eastern Cape Division of the High Court, in Makhanda and Mthatha. The complaint is that the Respondent made false statements about the complainant to discredit her candidature.

Background

[3] The Complainant is a practising attorney at the firm of Mabece Tilana Inc in Westcliff, Johannesburg. Ms Tilana-Mabece applied, but was not shortlisted, for one of the vacant High Court Judge positions. On 28 July 2025, she requested from the JSC the reasons for her non-shortlisting and the relevant documents.[2] In response, she received a letter setting out the reasons, an audio recording of the

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[1] Section 16(*a*) of the Act reads:
"16. (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 Commission that the complaint should be investigated and reported on by a Tribunal…"

[2] The request was made in terms of the provisions contained in the Promotion of Access to Information Act 2 of 2000.

deliberations, a copy of her application, and copies of the applications of the five shortlisted candidates.

[4] The reasons set out in the letter were that the JSC's Screening Committee (the Committee) took the view that the Complainant had potential to be appointed as a Judge, but required more acting experience; that other candidates possessed more acting experience, which was immediately required for the posts; and that the Complainant's limited acting experience was insufficient to meet the needs of the Division.

The complaint

[5] Having received the letter and transcript, the Complainant compared her acting experience with that of the other shortlisted candidates, and formed the opinion that she had more experience than some of them. According to the Complainant, there is a clear contrast between the reasons provided in the letter and the contents of the deliberations, as depicted in the transcript. She took exception to some of the Respondent's remarks about her at the meeting. These remarks entailed that the Complainant had disappeared repeatedly from her acting position so that she could care for her child, who suffered from cerebral palsy. It was also stated by the Respondent that this had caused the Complainant to cease practising as an attorney, and that she needed more acting experience.

[6] The Complainant denies ever having a child afflicted with cerebral palsy, or that she had ever taken a break from practice. According to her, she has been practising law consistently since 2007 and had last acted as a Judge in 2023. During this last acting stint, she had sat with the Respondent on appeals. Consequently, there were no gaps in her CV. The Complainant avers that the claims made against her are false and fabricated to discredit her. She demands an investigation into the Respondent's conduct.

[7] According to the Complainant, irreproachable conduct is expected from anyone performing judicial functions, and the manner in which the Respondent conducted himself is manifestly contrary to impartiality, independence and integrity. She states that it is in the interests of justice that the matter be investigated so as to avoid the future victimisation of candidates, particularly female candidates, who might find themselves in a similar situation. She avers that this type of conduct will deter deserving candidates from making themselves available for acting, particularly in the Eastern Cape Division.

The response to the complaint

[8] The Respondent explains that the matter originated in the shortlisting process, as described. The Complainant and 13 others did not make it to the shortlist. She and another candidate objected to the decision of the Committee, of which the Respondent was a member, in his capacity as the Acting Judge-President. The Respondent explains further that, in light of these objections, the Committee decided to cancel the process so that both the Complainant and the other objector could be reconsidered for shortlisting.

[9] The Respondent contends that, absent an appeal or review of the Committee's final decision, this complaint amounts to an abuse of the adjudication process for the appointment of Judges to the three vacant positions. For this reason alone, contends the Respondent, the complaint should be dismissed.

[10] The Respondent repeats, by incorporation, the statements he had made in his email of 9 August 2025 to the JCC, in which he stated that, based on the transcript of proceedings of the Committee, the dominant factor that disqualified the Complainant) from being shortlisted was her lack of acting experience.

According to the Respondent, the five shortlisted candidates had longer acting stints than the Complainant. He said in the email that the Complainant's acting stints fell short of the shortlisting criteria. In summary, he says that, in comparative terms, the Complainant did not meet the threshold criteria for the five shortlisted candidates. According to the Respondent, the most important consideration was that the Complainant had ineffective short acting stints, with none of the benefits enjoyed by the shortlisted candidates through rigorous acting stints.

[11] The Respondent also referred in his email to the shortlisted candidates' qualifications, the Division's needs, and the criteria used for shortlisting. He denies that he ever sought to discredit the Complainant, and that he has ever in fact done so. The Respondent confirms that, in 2023, while he was away on an acting stint in the SCA, the Judge-President gave the Complainant another acting stint in the Division. Upon the Respondent's return to the Division during the fourth term of 2023, he sat with the Complainant in some cases.

[12] Based on these facts and contentions, the Respondent asks that the complaint be dismissed. As stated, the matter was then referred to the JCC by the Acting Chairperson in terms of section 16(1)*(a)* of the Act.

The Complainant's submissions:

[13] In her written submissions to the JCC, the Complainant contends that the comparison with other candidates on its own is unfair, unreasonable, inappropriate and uncalled for. She submits that the picture painted of her by the Respondent's comments during the Committee's deliberations is that of an irresponsible and unreliable person. According to her, the upshot of the comments is that she is:

(a) not fit and proper to practise as a legal practitioner; and
(b) not fit and proper to ascend to the Bench.

[14] The Complainant expresses the view that the alleged unfair and prejudicial treatment meted out to her by the Respondent had its genesis in a dissenting judgment she wrote in the Full Court in which the Respondent had penned the majority judgment.[3] She submits that the Respondent's conduct was actuated by his "desire to place his favoured candidates in a better and a favourable position for selection and to eliminate any kind of competition".

[15] According to the Complainant, the interests of justice dictate that the matter be investigated, so as to avoid future recurrence. The damaging picture the Respondent painted of her will persist and have significant consequences for her career and future prospects in the judiciary. According to her, failure to challenge the false statements will allow them to stand, remain in the JSC's records, and be used against her in future applications for appointment as a judicial officer. The Complainant submits further that the statements complained about are not trivial. They fundamentally misrepresent her professional career and character, and create a perception that she is an irresponsible and unreliable person who is not fit and proper for judicial office.

[16] In conclusion, the Complainant submits that the Respondent has contravened Articles 4*(a)*[4], 5[5] and 6[6] of the Judicial Code of Conduct (Code). She

[3] *Ndongeni v Ndongeni and others*, Case no CA28/23, handed down on 30 January 2024.
[4] Article 4*(a)* provides that a Judge must "uphold the independence and integrity of the judiciary and authority of the courts".
[5] In terms of Article 5:" a Judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.
[6] Article 6 provides that: "a Judge must at all times, also in relation to extrajudicial conduct, comply with the law of the land".

contends that the Respondent's conduct falls short of these principles and, in order to prevent recurrence of similar incidents, to promote transparency, accountability and independence; to protect the integrity of the judiciary; and to uphold the constitutional values and the rule of law, the matter should be investigated by the JCC.

The Respondent's submissions

[17] In his submissions, the Respondent asks that his previous response to the complaint be incorporated. He says that when he asked his secretary in 2017 and 2018 to contact the Complainant to offer her an acting position, he was informed that she was unavailable due to her domestic situation. According to the Respondent, this was the main relevant factor. The references he made to her absence being the result of her child suffering from cerebral palsy, which is said to be false, were of lesser importance, because central to any acting stint is the candidate's availability.

[18] The Respondent submits further that, while the Complainant's omission from the shortlist may have caused her some inconvenience, there was no irreparable damage as the JSC had cancelled the process, causing the vacancies to be re-advertised for interviews that took place between 13 and 17 April 2026. He points out that the Complainant participated in that round of the interview process following further acting stints by her.[7]

[19] The Respondent rejects the assertions that he is a liar, and says that they have not been substantiated. He says mere reliance on his statement made during the screening process is inadequate. The conduct complained of does not,

[7] After these interviews, the Complainant was not one of the three successful candidates.

according to the Respondent, amount to misconduct or a contravention of the Code.

Evaluation

[20] It is necessary to reproduce the relevant extracts from the letter sent to the Complainant containing the reasons for her non-shortlisting, as well as the relevant passages from the transcript of the deliberations of the Committee. In relevant part, the letter of 28 August 2025 from the JSC Secretariat reads:

"2. The Committee received seventeen (17) applications that were considered for the vacancies in the Eastern Cape Division of the High Court, competing for the three (3) positions. During the evaluation process, each application was carefully assessed based on the qualifications, experience, skills set, and the potential of every nominee. The Committee also took into account the needs of the Division as articulated by the Acting Judge President and noted that your limited acting experience, particularly within the Division, will not meet the immediate needs of the Division. The Committee shortlisted candidates who were found to have the potential to advance the immediate needs of the Division based on their track record and experience.

3. Upon careful consideration, the Committee is of the view that you have potential and you will benefit from more acting experience. The Committee found that there were other candidates who possessed more acting experience than you do, which the Division needs immediately.

4. The Committee is of the view that it is not in a position to shortlist you at this stage."

[21] The relevant passages in the transcript read:

"That much is what I am able to say; Shirley Thembela Tilana-Mabece. . . a pleasant woman, she is female and his. . . her case, is. . . would be pretty much like that of. . . Collett, but something more sad about her unique circumstances; this candidate has been acting every now and then, . . . acting now and then, disappearing, acting, disappearing, acting, acting, disappearing, you know, that kind of thing. And I thought that her. . . and at some stage she disappeared for many years, reason being that she had a

sickly child, a CP-afflicted child, who had to be taken care of at close range; and that caused her to even stop practising, to take care of that. And that is a situation that confounds all of us.

But somehow the situation has gotten better; when was it. . . last year. . . yes, she came back and she acted, and so on. . .
So, her presence. . . she's an attorney. . . she's experienced, an experienced attorney; she has been running a practice as sole director in a company in Makanda, and so on. But I thought that she's here to then found that foundation that was lost when she was younger.

She's not very, not as old as Collett, but she's around 50-something years of age. She would, if she had had a full swing, non-stop acting stints. . . I think the long and the short of the point I'm making is that she's a candidate who requires to - and I have no doubt that I can commit her to acting stints even repeatedly, because she can work, she's a hard worker and so on - but I did not, President, I did not have an opportunity to focus on her when I returned to the division in December 2023. Female 1: Yes. But do you think you'll give her more acting stints in the future. . . you think she requires more? Acting Judge President: Oh, definitely. . .".[8]

[22] The transcript was certified by the transcriber as a true reflection of the audio recording, which was further certified to be clearly audible. It is plain from the letter that the primary consideration that counted against the Complainant's shortlisting was her acting experience. The Committee noted pertinently that the Complainant's "limited acting experience, particularly within the Division, will not meet the immediate needs of the Division".

[23] As I have said, the thrust of the complaint is the remarks made by the Respondent during the Committee's deliberations. There he made mention of the Complainant's child suffering from cerebral palsy, which he understood to be the cause for her regular absence from her acting duties. According to the Respondent, this even caused the Complainant to cease practising. The

[8] The name of one of the other candidates referred to during these deliberations has been omitted for reasons of privacy and confidentiality.

Complainant vehemently denies both of these statements: that she has a child with cerebral palsy, or that she had stopped practising as a consequence.

[24] Although the Respondent does not expressly make such a concession, it is to be inferred from his response to the complaint that he accepts that he was wrong in both of these assertions. Importantly, the Respondent does not provide any explanation at all for his remarks. We will return to this aspect presently. We must thus accept that the complaint has been established to this extent. But does this fall within the ambit of section 16(4) of the Act? A comprehensive overview of the relevant legislative provisions is necessary.

[25] If the Chairperson decides that the complaint must be dealt with in terms of section 16 of the Act, he or she must first consider whether, if established, the complaint is likely to lead to a finding by the JSC that the respondent Judge suffers from incapacity or is grossly incompetent or is guilty of gross misconduct. If there is a likelihood of the JSC making a positive finding on any of these grounds, the Chairperson is obliged to refer such complaint to the JCC. In the referral, the Chairperson must request the JCC to consider recommending to the JSC that a Tribunal be appointed to investigate the complaint.[9]

[26] Having taken the decision referred to, the Chairperson is required to inform the respondent Judge about his decision and afford him or her an opportunity to make written representations to the JCC to be considered together with the complaint. At the meeting convened for considering the complaint, the JCC is called upon to determine whether the complaint would, if established, constitute *prima facie* proof that the respondent suffers from incapacity or is grossly

[9] Section 16(1) of the Act.

incompetent or is guilty of gross misconduct. At this juncture, the JCC assumes the complaint will be established.[10]

[27] If the JCC is satisfied that *prima facie* proof of any of the grounds mentioned above would be established, it must recommend to the JSC that a Tribunal be appointed to investigate the complaint. The JCC must inform the complainant, the respondent and the JCC about its recommendation and the reasons for it.[11] After considering the recommendation, the JSC must request the Chief Justice to appoint a Tribunal.[12] The JSC must also inform the President forthwith of that request. If it considers it necessary, the JSC should also advise the President to suspend the respondent Judge in terms of section 177(3) of the Constitution.[13]

[28] Section 16(4) requires us to consider whether the complaint, if established, will *prima facie* indicate incapacity, gross incompetence or gross misconduct by

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[10] Section 16(4) of the Act provides:
"(4) At the meeting referred to in subsection (2), the Committee must consider whether the complaint, if established, will *prima facie* indicate incapacity, gross 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."

[11] In terms of section 16(5):
"(5) The Committee must inform the complainant, the respondent and the Commission in writing of any decision envisaged in subsection (4) and the reasons therefore."

[12] In terms of section 19(1), which reads:
"(1) 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."

[13] Section 19(4) of the Act provides:
"(4) Whenever the Commission requests the appointment of a Tribunal in terms of subsection (1), the Commission must forthwith in writing-
(a) inform the President that it has so requested; and
(b) advise the President as to-
(i) the desirability of suspending the respondent in terms of section 177 (3) of the Constitution; and
(ii) if applicable, any conditions that should be applicable in respect of such suspension."

Acting Judge-President Nhlangulela. If we find this, we must either refer the complaint to the Acting Chairperson for a section 17(2) inquiry or recommend to the JCC that a Tribunal investigate the complaint.[14]

[29] It is important to note that we are not required to determine the merits of the complaint, or the veracity of the claims made in the complaint or the response by the Respondent. We need only consider whether, *if established*, the allegations in the complaint are a *prima facie* indication of incapacity, gross incompetence, or gross misconduct by Acting Judge-President Nhlangulela. This means that we must proceed from the premise of an established complaint, and ask the question whether that complaint indicates proof of incapacity or gross incompetence or gross misconduct, as the case may be. The nature of proof contemplated is *prima facie*. It does not need to be sufficient or conclusive proof, because the respondent's defence when considered later by a Tribunal may displace the *prima facie* proof of the complaint. In this instance, the inquiry relates to a *prima facie* indication of gross misconduct by the Acting JudgePresident.

[30] In our view, the remarks made by the Respondent were improper and cast the Complainant in a bad light as both a person and as an attorney. However, the remarks did not prevent the Complainant from being considered for shortlisting. The main reason why she did not make the shortlist was undoubtedly her lack of adequate acting experience. Moreover, the initial shortlisting was cancelled, and, after reconsideration, the Complainant was shortlisted and interviewed during the April 2026 round of interviews. She was unsuccessful.

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[14] That section reads:
"At the meeting referred to in subsection (2), the Committee must consider whether the complaint, if established, will *prima facie* indicate incapacity, gross 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."

[31] The Respondent's incorrect assertions could potentially damage the Complainant's personal and professional stature. Even if they did not, it is suggested that they were not true. Are they a *prima facie* indication of gross misconduct? As we have said, the Respondent does not explain his remarks at all. That leaves us with nothing from his side, save for the inference of a concession, as we have alluded to. Assuming, *without deciding*, that we are entitled to have regard to a respondent's explanation in assessing whether, *if established*, the allegations in the complaint are a *prima facie* indication of incapacity, gross incompetence, or gross misconduct, we have no such explanation here. This has adverse consequences for the Respondent.

[32] What weighs heavily is the Respondent's position as Acting Judge-President at the time, and taking into account that the remarks were made during deliberations for shortlisting. The remarks *prima facie* indicate conduct unbecoming of judicial office. Moreover, absent any reasonable explanation, they may also *prima facie* indicate gross misconduct. Here we have not been given any explanation at all. This is because the unexplained remarks could damage the Complainant's professional and personal standing. This is less about the Complainant having a sickly child, because if it were true, it could not damage her reputation. It is about the allegation that she kept 'disappearing' for many years, which was caused by having to look after the child, to the point of closing her practice. At its heart is the contention that the Respondent's statement was untrue. A tribunal may, after hearing evidence and considering documentary and other evidence, conclude that the complaint has been established, and that the Respondent's remarks constitute gross misconduct.

[33] For these reasons, this complaint warrants a recommendation to the JSC to establish a Tribunal.

Order

[34] The following order is made:

In terms of section 16(4)*(b)* of the Judicial Service Commission Act, 9 of 1994, as amended, it is recommended to the Judicial Service Commission that the complaint should be investigated by a Tribunal.



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JUDICIAL CONDUCT COMMITTEE