



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/118/01/2025

In the matter between:

GAONE JACK SIAMISANG MONTSHIWA

COMPLAINANT

and

JUDGE LEEUW

RESPONDENT

Date: 18 May 2026

**Decision: In the result the complaint is dismissed in terms of 17(4) of the
Judicial Service Commission Act**

**RULING IN TERMS OF SECTION 17 OF THE JUDICIAL SERVICE
COMMISSION ACT 9 OF 1994**

THE JUDICIAL CONDUCT COMMITTEE (Jafta J)

Introduction

[1] This complaint was lodged in January 2025 by Mr Gaone Jack Siamisang Montshiwa (complainant) against Judge Leeuw (respondent) and formerly the Judge President of the North West Division of the High Court. The complaint was filed with the Judicial Conduct Committee (Committee) in terms of section 14 of the Judicial Service Commission Act.¹ This provision requires that all complaints against Judges be submitted to the Chairperson of the Committee.² Even the complaints which may be investigated by a Tribunal only must first be submitted to the Committee for it to determine if a Tribunal should be appointed to investigate and process the complaint.

[2] Section 14 requires that every complaint must be in the form of an affidavit or affirmed statement which should specify the nature of the complaint and set out the facts supporting the complaint. Section 14 (3) also requires that such complaint be based only on the grounds listed in section 14 (4). The latter provision mentions five grounds which includes incapacity, gross incompetence and gross misconduct. A complaint based on these grounds may be determined by only a Tribunal. The Committee has no competence to decide the merits of such complaint.

[3] Once a complainant is received by the Chairperson, he or she must determine whether it may appropriately be dealt with in terms of section 15, section 16 or section 17. Section 15 authorises the summary dismissal of a complaint by the Chairperson or the designated Head of Court. The section contains a list of bases on

¹ Judicial Service Commission Act 9 of 1994.

² Section 14 of the Act provides: "Any person may lodge a complaint about a judge with the Chairperson of the Committee".

which a complaint may be dismissed summarily³. Once a complaint is dismissed under section 15, the complainant must be informed in writing of such dismissal and the reasons for it.

[4] A valid complaint which does not suffer from the defects in section 15(2) may depending on its nature, be dealt with in terms of either section 16 or section 17. Section 17 regulates the processing and determination by the Committee of complaints which may not result in the removal of a Judge from Judicial Office. These include any complaint other than those which are based on incapacity, gross incompetence and gross misconduct. A complaint based on the latter grounds must be referred by the Chairperson to the Committee for it to recommend the appointment of a Tribunal. However, before making such referral, the Chairperson must hold the opinion that, if established, the complaint is likely to lead to a finding by the Judicial Service Commission (Commission) that the respondent Judge suffers from incapacity, is grossly incompetent or is guilty of gross misconduct⁴. If the Chairperson cannot reach such conclusion, the complaint may not be referred. In that event, the Chairperson may refer the complaint to a section 17 inquiry which may be chaired by him or a designated member of the Committee. This is the context in which the current complaint must be read and understood.

³ Section 15(2) of the JSC Act provides: "A complaint must be dismissed if it –

- (a) does not fall within the parameters of any of the grounds set out in section 14(4)
- (b) does not comply substantially with the provisions of section 14(3)
- (c) is solely related to the merits of a judgment or order
- (d) is frivolous or lacking substance
- (e) is hypothetical.

⁴ Section 16(1) of the JSC Act provides: "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.

The Complaint

[5] The complainant described his complaint as gross misconduct committed by the respondent in court proceedings pertaining to the admission of Mr John Nkomo as an attorney on 26 July 2001. He alleged that the respondent “ignored the rule of law regarding the discrepancies, dishonesty, perjury and fraud committed by John Nkomo”. He concluded by stating that he reasonably believes that the respondent has committed an offence in granting the admission and this unlawful act was planned by her and Mr John Nkomo.

[6] Having considered the complaint, the Acting Chairperson was not satisfied that if established, the complaint is likely to lead to a finding by the Commission that the respondent is guilty of gross misconduct. But the Acting Chairperson was of the view that the complaint, if established, may sustain ordinary misconduct, hence its referral to a section 17 inquiry. He designated me to conduct such inquiry. And when the file in the matter was handed to me, it contained amongst other documents, the complaint, the response to it by the respondent and comments on that response by the complainant.

The Response

[7] The respondent admits that she granted an order admitting Mr Nkomo as an attorney. She says the order was granted after considering the papers filed by Mr Nkomo which made out a proper case for the relief sought and she points out that there was no opposition to that application. She also informs the Committee that the complainant has instituted an application in the North West Division against her and other parties, including the Director of Public Prosecutions, where various forms of

relief are sought. Among the prayers sought is the review of the decision declining to prosecute by the Director of Public Prosecutions. The order sought against the Minister of Police and the policemen cited is that a criminal investigation must be instituted against Mr John Nkomo. The respondent denies that she was involved in any criminality.

[8] Having perused the file and read all documents in it, I issued directions which called upon the parties to file written submissions on specified issues. These included the issue whether the Judicial Code of Conduct (Code) referred to in the complaint applies to the matter and if it did not apply, the legal provisions on which the complaint was based. The third point was whether this Committee has the mandate to invoke section 205 of the Criminal Procedure Act.⁵

[9] The parties have since filed the written submissions. Upon consideration of all documents filed of record in this matter, I am satisfied that an oral hearing will add no value to the determination of the merits and consequently it is not necessary. The merits of the complaint will be determined on the papers filed on record.

[10] The issues raised in this complaint are whether section 205 of the Criminal Procedure Act and the Code apply. The other issue is whether on the papers placed

⁵ Section 205 of the Act provides: “Judge, regional court magistrate or magistrate may take evidence as to alleged offence (1) A judge of a High Court, a regional court magistrate or a magistrate may, subject to the provisions of subsection (4) and section 15 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, upon the request of a Director of Public Prosecutions or a public prosecutor authorized thereto in writing by the Director of Public Prosecutions, require the attendance before him or her or any other judge, regional court magistrate or magistrate, for examination by the Director of Public Prosecutions or the public prosecutor authorized thereto in writing by the Director of Public Prosecutions, of any person who is likely to give material or relevant information as to any a leged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the Director of Public Prosecutions or public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she sha l be under no further obligation to appear before a judge, regional court magistrate or magistrate.

before the Committee, the complainant has established misconduct of the kind envisaged in section 14(4) of the Act.

Applicability of section 205

[11] The purpose of this provision is to obtain information from a person about an offence and that information must be sought by a prosecutor through a Judge or Magistrate of a court.⁶ The process of obtaining such information is initiated by a prosecutor who requests the judicial officer to require the relevant person to appear before him or her for examination by the prosecutor. This ordinarily occurs where the information is identified and the person is reasonably believed to have it but refuses to give such information to the police who are investigating a crime. Here the request is made by the complainant who is not a Director of Public Prosecutions or a prosecutor authorised by such Director and it is made to the Committee and not a Judge of the High Court. The Committee's mandate is limited to processing complaints of judicial misconduct and not facilitating investigation of crime. Therefore section 205 does not apply to this complaint.

⁶ Section 205 of the Act provides: “Judge, regional court magistrate or magistrate may take evidence as to alleged offence (1) A judge of a High Court, a regional court magistrate or a magistrate may, subject to the provisions of subsection (4) and section 15 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, upon the request of a Director of Public Prosecutions or a public prosecutor authorized thereto in writing by the Director of Public Prosecutions, require the attendance before him or her or any other judge, regional court magistrate or magistrate, for examination by the Director of Public Prosecutions or the public prosecutor authorized thereto in writing by the Director of Public Prosecutions, of any person who is likely to give material or relevant information as to any a leged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the Director of Public Prosecutions or public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.

Whether the Code applies

[12] The context in which this issue arises is that the conduct complained of occurred in 2001, more than 20 years before this complaint was lodged. At that time there was no Code. The Code came into existence after 2008 and was introduced by Act 20 of 2008 which amended the Judicial Service Commission Act 9 of 1994 by inserting section 12. It is section 12 which required the Chief Justice to compile the Code. In 2001 even this Committee did not exist.

[13] Therefore when the respondent admitted Mr John Nkomo as an attorney, she could not have violated the Code which was not in existence then. The rule of law forbids retrospective application of the substantive laws. A person cannot be charged for conduct which was not prohibited by a particular law at the time the conduct occurred. Consequently, the Code does not apply to this complaint which arose before the Code was compiled and put into operation.

[14] However this is not the end of the matter. Conduct by a Judge which was incompatible with the holding of judicial office in 2001 constituted misconduct. The question that arises here is whether the complaint has been established in the sense that a proper case has been made out for a finding that the respondent is guilty of misconduct. This requires consideration of the complaint with a view to determining whether evidence indicating misconduct has been placed before this Committee.

[15] The complaint is based on the application for admission of Mr John Nkomo as an attorney. The complainant perused the affidavits filed in support of that admission and noticed some discrepancies. For example, that the main affidavit

deposed to by Mr John Nkomo reflects 29 June 2001 as the date on which it was commissioned. Yet three other affidavits annexed to it and deposed to by attorneys who were his principals reflect 26 June 2001 as the date on which they were commissioned. From this discrepancy the complainant draws the inference that the latter affidavits were commissioned before Mr Nkomo's affidavit came into existence. There is no evidence in support of this conclusion. The dates of the various affidavits are inserted with a pen while the affidavits themselves are typed. It is possible that the affidavits were prepared and typed at about the same period but were commissioned on different dates. The earlier dates do not mean that Mr Nkomo's affidavit was not in existence.

[16] But even if this was the case, the non-existence of Mr Nkomo's affidavit when affidavits by attorneys Herman Scholtz, Abdul Kader Ahmed and Jaco du Plessis were signed could not have given rise to an irregularity. All these affidavits were not confirming the contents of Mr Nkomo's affidavit. Instead, they indicated that Mr Nkomo has undergone articles of clerkship and has received the necessary training.

[17] Without any substantiation, the complainant makes serious allegations against the respondent. All these allegations are based on the complainant's personal belief. In paragraph 14 – 16 of his complaint affidavit, the complainant alleges:

"14. I reasonably believe that the unlawful admission of John Nkomo was planned between him (John Nkomo) and Leeuw J. It was apparent and common knowledge that John Nkomo was never a candidate attorney. They planned that John Nkomo draft his admission application, and make fraudulent certificates, affidavits, forge signatures, he (they) both stole the Registrar's Court Stamp and stamped it outside the High Court and back dated

the court stamp, opened a Court File and registered the admission in the Index and on the 26th July 2001, admitted John Nkomo without any interference from the planned fraud.

15. I submit that this is a serious crime which the complaint should be fully investigated to include applying for Section 205 of the Criminal Procedure Act to have access to the telephone conversations between John Nkomo and Mashangu Monica Leeuw J.

16. I reasonably believe that Leeuw J has been financially benefitting from John Nkomo's practice as an attorney and she has indirectly been holding an office as a silent partner while appointed as a judge".

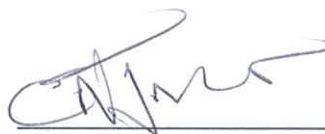
[18] It is apparent from what is quoted above that the complainant suspects wrongdoing on the part of the respondent and Mr John Nkomo, hence the suggestion that this Committee should invoke section 205 of the Criminal Procedure Act to have access to telephone conversations between the respondent and Mr Nkomo. This is based on the assumption that such conversations exist and that this Committee may invoke section 205 to obtain access to them. As mentioned earlier this provision does not apply to complaints lodged with this Committee.

[19] While it is true that there were discrepancies in the papers filed in support of Mr Nkomo's admission, those discrepancies do not sustain the finding that the respondent was involved in a conspiracy to have Mr Nkomo unlawfully admitted as an attorney. Moreover, there is no evidence or facts supporting the complainant's belief that the respondent benefitted financially in Mr Nkomo's practice as an attorney and that the respondent was his silent partner. All of this is nothing but wild speculation on the part of the complainant which is dressed up as facts. The complainant's conclusions and beliefs based on the discrepancies do not constitute facts. Furthermore, whatever opinion he may hold after reading Mr Nkomo's application papers cannot amount to evidence. Such opinion is of no value to the

determination of this complaint because: (a) it is not an opinion of an expert and (b) it was not based on established facts.

[20] The complainant has failed to establish that the respondent was guilty of conduct which is incompatible with or unbecoming the holding of judicial office. Moreover, it is not in the interests of justice to permit a complainant to lodge a complaint more than 20 years from the date on which the alleged incident occurred. For all these reasons, the complaint must be dismissed.

[21] In the result the complaint is dismissed in terms of 17(4) of the Judicial Service Commission Act.

A handwritten signature in black ink, appearing to be 'C. M. M.', written over a horizontal line.

JUDICIAL CONDUCT COMMITTEE