JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/139/02/2025

In the matter between:

WILLAH JOSEPH MUDOLO **COMPLAINT**

and

JUDGE HOLLAND-MÜTER **RESPONDENT**

Date: 18 May 2026

Decision: The complaint is not established and as a result it is dismissed in terms of section 17(4) of the Act.

RULING

JUDICIAL CONDUCT COMMITTEE (Jafta J)

[1] Mr Willah Joseph Mudolo (complainant) stood trial before Judge Holland-Müter (respondent) of the Gauteng Division of the High Court on various charges, together with his wife and other parties. In February 2025 and while the trial was

still in process, he lodged this complaint with the Acting Chairperson of the Judicial Conduct Committee (Committee). The complaint was against the respondent's conduct during the trial in question.

[2] Having perused the complaint, the Acting Chairperson reached the conclusion that the complaint must be dealt with in terms of section 17 of the Judicial Service Commission Act,[1]. Section 14 (2) of the Act authorises the Chairperson of the Committee to determine first which provision of the Act is applicable to a particular complaint and direct that the complaint be dealt with in terms of that provision.[2] Having identified Section 17 as the applicable provision, the Acting Chairperson designated me to determine the merits of the complaint.

Legislative scheme

[3] For a proper understanding of the process followed in this complaint, it is necessary to outline the terms of Section 17 of the Act. The section commences by mandating the Chairperson to consider whether the appropriate remedial action for a complaint will be limited to steps envisaged in section 7(8)[3]. If so satisfied, section 17(1) authorises him either himself to determine the merits of a complaint or designate a member of the Committee to do so.[4] In section 17(2) the Act remind us that the process is not adversarial but that it is inquisitorial.

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[1] 9 of 1994

[2] S14(2) 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.

[3] S17(8) provides: Any one or a combination of the following remedial steps may be imposed in respect of a respondent: *(a)* Apologising to the complainant, in a manner specified. *(b)* A reprimand. *(c)* A written warning. *(d)* Any form of compensation. *(e)* Subject to subsection (9), appropriate counselling. *(f)* Subject to subsection (9), attendance of a specific training course. *(g)* Subject to subsection (9), any other appropriate corrective measure.

[4] (1) If *(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.

This means that neither the complainant nor the respondent has any onus to discharge.

[4] Section 17(3) defines the steps to be followed in conducting an inquiry into the merits of a complaint. It provides:

> "(3) For 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".

[5] Evidently the first step contemplated in section 17(3) is to submit the complaint to the respondent, inviting him or her to respond in writing to the allegations in the complaint. This was done in the current matter, and the respondent has furnished the written response. If there is additional information required by the designated member, he or she may obtain it in any manner deemed appropriate, provided that the parties would be afforded an opportunity to comment on such information. No such information was obtained here. Once a response is received from the respondent, it must be forwarded to the complainant and he or she be invited to comment on the response within a specified period. This too was done in this matter.

[6] Once the information referred to above has been furnished or the time prescribed for furnishing it has lapsed, the designated member must examine the complaint and other information available on record with a view to determine the next step to be undertaken. This is regulated by section 17 (4) which provides:

"(4) If, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is satisfied that there is no reasonable likelihood that a formal hearing on the matter will contribute to determining the merits of the complaint, he or she must, on the strength of the information obtained by him or her in terms of subsection (3) -

a) dismiss the complaint;

b) 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

c) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal."

[7] In plain language, this provision authorises the designated member to summarily dispose of the complaint with reference to the documents on record if the member in question is satisfied that an oral hearing is not necessary. Having perused the record and considered all documents filed, I have concluded that an oral hearing is not necessary and that this complaint will be decided on the papers filed.

[8] Notably section 17 (4) authorises three different outcomes to a complaint. The first is the dismissal of the complaint, if it has not been established. If the complaint is proved, the second one is to find the respondent guilty of misconduct and impose the remedial steps listed in section 17(8). Thirdly, if it appears from information filed that the respondent may be suffering from incapacity or is grossly incompetent or may be guilty of gross misconduct, the designated member must request the full Committee to recommend to the Judicial Service Commission that a Tribunal be appointed to investigate the complaint in question.

[9] It is now necessary to set out in detail the complaint and the response to it, before an analysis is given. It is this analysis which will determine the outcome to this complaint.

The complaint

[10] As mentioned, the complaint is based on what allegedly occurred during a criminal trial. It is contained in a comprehensive affidavit of no less than 20 pages and to which various annexures are attached. The complaint alleges that on various occasions, the respondent breached articles 5 and 9 of the Code of Judicial Conduct (Code). First, it is stated that the respondent treated the complainant, his wife and their legal representative with disrespect. Second, it is alleged that the respondent did not preside over the trial impartially and showed bias towards the prosecution. To substantiate the accusation of impartiality, the complainant mentions a number of utterances allegedly made by the respondent. First, he says the respondent at some point expressed a view that the defence wanted to delay the commencement of the trial by engaging in "Stalingrad tactics". Second, on another occasion the respondent is alleged to have said the accused were trying to "avoid the penalty". Third, on a different occasion the respondent is alleged to have said the criminal trial will go ahead "by hook or by crook". Fourth, on a later occasion the respondent allegedly stated that the accused were "avoiding facing the music". Fifth, on another occasion the respondent allegedly described a junior advocate who was part of the defence team as a "messenger".

[11] The complainant contends that the utterances are proof of lack of impartiality and respect which are required of Judges by the various articles of the Code. In addition, the complaint also raises a number of issues which fall outside the competence of this Committee. These include a misdirection on the application for a separation of trial, failure to acknowledge the review application challenging

the indictment, indifference towards prosecutorial misconduct and suppression of evidence on financial constraints. Since these matters do not form part of the breach of the articles of the Code relied on and are beyond the authority of this Committee, they will not be determined in this ruling.

The response

[12] The response is equally comprehensive and attached to it are various annexures, some of which are extracts of records relating to the same trial before a number of Judges, before the matter was assigned to the respondent. The criminal matter served before few other Judges in different times before the respondent was assigned to it. The trial, the response alleges, did not commence on those previous occasions because the complainant and his co-accused raised all manner of objections in respect of all of which rulings had to be made.

Stalingrad tactics

[13] The respondent set out the context in which the phrase was used. He states that on 14 October 2024 the defence did not want the actual trial to commence. The accused's advocate raised afresh the issues which had been decided previously by Munzhelele J in April 2024. It was during the debate with the legal representatives on those issues that the respondent stated that it seemed the trial was heading in the Stalingrad road.

By hook or by crook

[14] The respondent says he employed this idiom to underscore that "despite the delays caused by the accused, the trial will commence at long last". The respondent further states that the remark that the accused should come to trial to face the music was made in the same context which was evidently frustrating for him.

Avoiding the penalty

[15] The respondent denies ever using the expression that the accused were trying to "avoid the penalty". He says his judgment simply states that the accused were intending to "evade liability".

Calling junior counsel, a messenger

[16] The respondent admits that he did refer to the advocate as a messenger in the context of him having passed a message. He said:

> "I did refer to advocate Cassim as the "messenger" when he appeared on 11 October in the absence of [Advocate] Mnisi. [Advocate] Cassim informed me that [Advocate] Mnisi was attending a meeting at the Director of the Public Prosecutions' office (DPP's office) (in the absence of the two prosecutors in the matter) to discuss this same matter with someone at the DPP's office. There is nothing derogative to refer to the person who brings a massage as the "messenger". The transcript is clear and I challenge Mudolo to prove any derogatory instances in my reference".

Disrespectful conduct

[17] The respondent reputed that he disrespected the complainant and his legal team and that he used derogatory language on them. He stated:

> 21. "I did refer to Advocate Ccassim as the "Messenger" when he appeared on 31 October 2024 in the absence of Mnisi. Cassim informed me that Mnisi was attending a meeting at the DPP's office (in the absence of two prosecutors in this matter) to discuss this same matter with someone at the DPP's office. There is nothing derogative to refer to the person who brings a message as the "messenger". The transcript is clear and I challenge Mudolo to prove any derogatory instances in my reference. What Mudolo remains secretive about is that on the following day when I requested Mnisi about this visit and to whom it was, his reply was that he does not have to disclose it to the court. When referring Mnisi that the two prosecutors were in court he still refused to disclose

whom and why he attended a meeting with the DPP's office or what the outcome of such meeting was. He did not inform the court or the prosecutors about this sudden visit. This is again indicative of the conduct of Mnisi and Mudolo to delay the trial.

22. Mudolo again selectively tries to use the transcript to his advantage. Mnisi informed me that his clients' perspective was that I treated him different when compared with the prosecutors. Mnisi ventured onto dangerous grounds with his "example" on black and white judges and prosecutors and I confronted him and inquired whether he was accusing me of being racist. He backtracked and accused me of aggressiveness and that my body language was different when addressing advocate Rosenblatt (prosecutor). He however did not elaborate on what he referred to aggressive body language. He indirectly accused me of shouting to everyone but retracted when confronted. It is indictive that Mnisi tested the borders at all times and when confronted, subdued retracted it. I never accused Mnisi that he called me a racist but required if that was his inference. The transcript of what happened is annexed.

Unjust delay in recusal petition

[18] The respondent rejected the allegation that he was the cause of the delay in the filing of a petition by the complainant to the Supreme Court of Appeal. In this regard he stated:

> 25. "The financial plight prompted the later application by Mnisi and Malungana to withdraw. When refused, they went on a late petition to SCA but this petition was refused. Mudolo in his complaint failed to mention this refusal by the SCA. The SCA again vindicated me for refusing their application to withdraw. Instead, he accuses me of stalling his petition by not signing documents needed. He fails to name the alleged documents I wilfully failed to sign timeously. This is not true because once an application for leave to appeal is refused, the aggrieved party may petition the matter. There are no further documents to be signed by the judge. Again, this is a projection of the responsibility away from themselves to hide their own failure to act timeously. This complaint has no merit. The petition failed. The SCA orders are annexed".

[19] However, it appears that the complainant having been refused leave by the Supreme Court of Appeal (SCA), they sought the reconsideration of the petition which was also dismissed by the SCA. With regard to the recommendation the respondent state:

> 27. "I dealt in detail with the complaint in his par 25 in my judgment and the refusal of the leave to appeal. The second petition was refused by the SCA. Malungana however refuses to accept the decision of the SCA and addressed a letter to the President of the SCA. In this letter Malungana lodges a scandalous by the letter on 31 July 2025 on the SCA Judges who dealt with the petition requesting that the order be *revived, varied, withdrawn and/or reconsidered to reflect the correct position.* The letter continues *that the Judges made a mistake and that it was inconsistent on the matter or a case of copy and paste, which on the face of it amounts to administration of justice being brought into disrepute*. A copy of the letter is annexed. This is indicative of the disrespect the complainant and his legal team have for the courts in general. The way in which he addresses the SCA judges is unbecoming, and the Legal Practitioner Council (LPC) should attend hereto. This is again indicative that every decision going against Mudolo in his view is wrong bringing the justice system into disrepute".

Complaint analysis

[20] I have carefully considered the allegations made in this complaint and the response furnished by the respondent together with the annextures attached to the complaint and the response. This exercise was undertaken to determine the merits of the complaint. An examination of the extracts from the record of proceedings reveal that the remarks which were made by the respondent do not carry the meaning assigned to them by the complainant. Read in their proper context, those remarks do not exhibit bias or disrespect.

[21] Therefore to the extent that the complaint is based on those remarks, it does not sustain impartiality or lack of respect on the part of the respondent. The balance of the allegations too does not prove the breach of the Code, let alone its

wilful or grossly negligent breach. It will be noted that in terms of section 14(4) of the Act[5], not all violations of the Code amount to misconduct under the Act, not even negligent violations of the Code are misconduct. Rather it is only breaches which are wilful or grossly negligent that constitutes misconduct. The information furnished here in support of the complaint falls short of this standard.

[22] Therefore, the complaint is not established and as a result it is dismissed in terms of section 17(4) of the Act.

THE JUDICIAL CONDUCT COMMITTEE

[5] 14(4) of the Act provides: (4) The 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.