



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/87/08/2024

In the matter between:

XIONG CHANGSEN

COMPLAINANT

and

JUDGE DEREK WILLE

RESPONDENT

Date: 2 September 2026

Decision: The appeal is dismissed.

RULING ON APPEAL

**THE JUDICIAL CONDUCT COMMITTEE (JAFTA J, MAJIEDT J AND
SALDULKER JA)**

Introduction

[1] This appeal is being brought under section 15(5) of the Judicial Service Commission Act, 9 of 1994, as amended (the Act). It concerns the dismissal of a complaint by Mr Xiong Changsen, the complainant. The Acting Chairperson of the Judicial Conduct Committee (the JCC) dismissed Mr Changsen's complaint in terms of section 15(2)(c) of the Act.¹ Under the Act, complaints against Judges must be lodged with the JCC. The Chairperson of the JCC is required to determine, at the first stage, the provisions of the Act in terms of which each complaint may be processed.² Lesser complaints may be summarily dismissed under section 15, as has happened here.

Background

[2] The essence of the complaint is one of an alleged unfair trial and what the complainant terms "unfair judicial discretion". It must be noted at the outset that Mr Changsen is a Chinese national, and English is not his first language. Unsurprisingly, as Mr Changsen is a lay person in the law, the averments in his papers are not easy to follow. The papers are unnecessarily prolix, contain repetitive and irrelevant averments and submissions, and include many unnecessary documents.

¹ In relevant part, section 15 reads:

"15(1)(a) If the Chairperson or the Head of Court designated in terms of section 14(2) is of the view that the complaint falls within the parameters of the grounds set out in subsection (2), he or she must dismiss the complaint.

...

(2) A complaint must be dismissed if it-

...

(c) is solely related to the merits of a judgment or order;

...

(5) A complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (1) may, within one month after receiving notice of that decision, appeal to the Committee in writing against that decision, specifying the grounds for the appeal".

² 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".

[3] The genesis of the complaint against the respondent, Judge Derek Wille of the High Court, Cape Town, sitting as an Equality Court, stems from Mr Changsen's encounters with the South African Police Service. The following appears from the case heard before Judge Wille. Mr Changsen was arrested twice in 2008 and once in 2011. According to Mr Changsen, on these occasions, warning statements were taken from him, but no interpreter was present to advise him of his procedural rights.

[4] A further complaint concerns the previous legal representatives who had acted for Mr Changsen during the two criminal matters. In those matters, he was charged in one with the illegal trading in or illegal possession of elephant ivory, and in the other with stealing or receiving stolen electronic goods. The papers indicate that Mr Changsen pleaded guilty to the charges in the two cases. Mr Changsen averred that he did not voluntarily plead guilty to these offences. An interpreter was present during these cases.

[5] The case in the Equality Court appears to have been filed by the South African Human Rights Commission (SAHRC) on Mr Changsen's behalf. At some point, however, the SAHRC withdrew from the case. Mr Changsen was eventually represented by a lawyer appointed by Legal Aid South Africa.

[6] Judge Wille had to decide a limited issue in the case – whether the Court had the requisite jurisdiction to determine Mr Changsen's complaints. The Ministers of Justice and Correctional Services and of Police were the first and second respondents, respectively. The equality challenge brought by Mr Changsen was one of unfair discrimination. The main allegation was that there had been unfair discrimination against him by the criminal justice system on two grounds:

- (a) that he was discriminated against, because he was unable to properly communicate in his language from the time of his arrest until the criminal convictions were returned against him; and
- (b) that this discrimination was based on his nationality.

[7] Mr Changsen sought specific relief, first, that his matter be heard in the Pretoria High Court, because of its proximity to the headquarters of the respondents cited in his application. He also sought 30 million US dollars in compensation for injury to dignity, lost income and unlawful incarceration. He further sought judicial review of the two criminal trials concluded against him and the setting aside of the two convictions returned against him. Finally, he wanted an apology from the respective respondents.

[8] Judge Wille noted that the relief of a judicial review of the criminal convictions and the sentences imposed upon Mr Changsen was difficult to understand, as he had tendered a plea of guilty to the offences upon which he was convicted in the lower courts. The Judge also noted that Mr Changsen was legally represented during these proceedings. Furthermore, during the hearing of the limited jurisdiction issue in the Equality Court, his legal representative informed the Court that Mr Changsen was, in any event, pursuing a condonation application and an appeal against his convictions and sentences.

[9] After considering the applicable law, Judge Wille summarised Mr Changsen's case thus. Mr Changsen's allegations entailed that he:

- (a) was unlawfully assaulted by the police;
- (b) was never informed of the charges preferred against him;
- (c) was unlawfully detained;
- (d) was forced to make certain admissions against his will; and

(e) was tried in a language that he did not understand, as the proceedings were not interpreted into his language.

[10] The respondents advanced the defence that the affidavits supporting Mr Changsen's application did not set out any alleged acts of discrimination, and thus did not establish a cause of action to justify a finding in support of the relief sought. This was because neither the first nor the second respondent played any role in the actual court process regarding the guilty pleas tendered by the applicant. The respondents further argued before Judge Wille that instead of bringing the equality claim, Mr Changsen should have instituted a claim for damages in delict and pursued a judicial review or appeal in respect of his criminal convictions and sentences.

[11] Judge Wille upheld the respondents' main defences. The Judge held that it is trite that this species of equality relief may not be claimed where a clear and compelling alternative remedy was readily available to the applicant. According to the Judge, the relief was being claimed to camouflage the actual cause of action. This was borne out by the recordal during argument that Mr Changsen was pursuing applications for condonation and leave to appeal in respect of his convictions and sentences.

[12] Judge Wille held, further, that the declaratory orders sought would not have any practical effect, because the relief sought was academic. This was because any claim for damages, constitutional or otherwise, had prescribed due to the effluxion of time; and Mr Changsen had, in any event, failed to give the requisite statutory notice to institute claims against the respondents.

[13] With regard to jurisdiction, the Judge noted that, under the applicable equality legislation, the proceedings are meant to be expeditious, and the

remedies are to be corrective, restorative, and deterrent.³ Judge Wille held that the only complaint that may attract the jurisdiction of the Equality Court was the allegation that Mr Changsen was unfairly discriminated against based on race, ethnicity, and language. But, held the Judge, there was no evidential basis at all for these averments. Absent specific allegations, no *prima facie* case had been established against the respondents. Accordingly, held Judge Wille, the alleged acts of unfair discrimination did not attract the Court's jurisdiction. The application was thus dismissed, with no order as to costs.

The complaint

[14] Regarding the proceedings before Judge Wille, the complaint is that no court interpreter was provided, despite Mr Changsen's request. He avers that, as a consequence, he did not understand what was happening in Court. It would appear that on the previous two occasions when the matter was in the High Court, it could not proceed due to the absence of an interpreter. Mr Changsen has attached copies of email exchanges between him and the Registrar concerning his complaint regarding the procurement of an interpreter's services.

[15] The email exchanges indicate that the Registrar took steps to obtain the services of an interpreter, but she also noted in one email that it appeared Mr Changsen had issues with the interpreters the Court had obtained. The Registrar pointed out to him that “the service we offer is to provide an interpreter, [but] unfortunately we cannot look for one that meets your personal requirements”.

[16] Mr Changsen also complains that when Judge Wille had dismissed his application, no mention was made of any of the documentary evidence he and his lawyers had submitted. According to Mr Changsen, the unfairness of the

³ In terms of sections 21 (1) and 4 (1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000.

proceedings in the Equality Court entailed the Judge failing to decide whether “the administrative agency” had:

- (a) made mistakes in applying the laws and regulations;
- (b) insufficient evidence available to it;
- (c) violated statutory procedures;
- (d) exceeded its authority;
- (e) abused its power; and
- (f) “obvious(ly) misconducted (itself)”.

The section 17 dismissal of the complaint

[17] It appears that, in response, Judge Wille simply produced his detailed judgment setting out the reasons for dismissing the application on the ground that the Equality Court lacked the requisite jurisdiction.

[18] As stated, the Acting Chairperson dismissed the complaint in terms of section 15(2)(c) of the Act. He noted that the complaint related to two issues: first, the concern that Mr Changsen did not receive the assistance of an interpreter during the Equality Court proceedings, and, secondly, his dissatisfaction that the Court did not consider the evidence he had placed before it. The Acting Chairperson also noted what was said in Judge Wille’s judgment.

[19] After careful consideration of the submissions, the Acting Chairperson concluded that the issues raised by Mr Changsen related to the manner in which the case was managed and decided. It was concluded further that those were matters that may be pursued through the ordinary appeal or review processes, but they did not constitute judicial misconduct under the Act. Consequently, the complaint was dismissed.

The appeal

[20] Mr Changsen submits that the decision to dismiss his complaint was made without conducting a substantive investigation and evaluation of the evidence submitted by him, and “violates the due process requirements of sections 17(3)(c), 17(4) and 18(3) of [the Act]”. They require that the Commission or its Chairman must fully examine all facts, evidence and written statements submitted by both parties before making a decision.

[21] Mr Changsen repeats his earlier assertions made in his complaint regarding Judge Wille’s alleged misconduct. These comprise the Judge’s alleged failure to afford him interpretation services so that he could understand the proceedings; and the Judge’s failure to consider the documentary evidence. Overall, Mr Changsen contends that these resulted in him not having a fair hearing.

[22] Similar assertions are made in relation to the Acting Chairperson’s dismissal of the complaint. Mr Changsen submits that the Acting Chairperson had failed to provide a substantive explanation of “the evidence” which had been submitted, and that this constitutes “impropriety”. He submits further that there has been a failure to investigate or verify the matter before its dismissal, as required by sections 17(3)(b)-(c) of the Act. This was because the complaint was dismissed on the grounds that it could be resolved through appeal or review proceedings, without the Acting Chairperson “investigating the substantive facts raised by the [complainant]”.

Judge Wille’s response to the appeal

[23] With regard to the complaint about the lack of an interpreter, Judge Wille explains that the record will reflect that he bent over backward to accommodate the complainant and his legal representative, because the complainant was “highly emotional about the matter”. The Judge also records that at all material

times during his appearances the complainant was represented by a very experienced attorney.

[24] In summary, Judge Wille points out that all the pleadings were in English; Mr Changsen was legally represented; the parties' legal representatives requested that the limited interlocutory jurisdiction issue be decided first, and they agreed that this issue would be presented only by way of legal argument; and the Heads of Argument were filed in English. Consequently, according to the Judge, the complaint is difficult to understand, as all the parties had agreed that no evidence would be tendered and that the Court's jurisdiction would be decided first as a discrete issue, without the tendering of any evidence or documentation. Furthermore, in light of this agreement, the parties agreed that no interpreter was necessary. The Judge states that the complainant had not at any stage informed the Judge that he did not follow the legal arguments, or that he was unable to adequately instruct his legal representative.

[25] Judge Wille states further that Mr Changsen's legal representative had placed on record during the hearing that he holds instructions to apply for condonation and to appeal the complainant's convictions and sentences in the lower court based on his no-contest guilty pleas. Thus, contends Judge Wille, it was, in effect, conceded that the High Court, sitting as the Equality Court, did not have the requisite jurisdiction to determine the matter.

Evaluation

[26] The complaint regarding lack of interpretation is misconceived. As appears from Judge Wille's explanation, the issue for adjudication in the Equality Court was a narrow one, limited to determining the Court's jurisdiction. Moreover, the parties had agreed that the issue would be decided purely on legal argument and without recourse to any oral or documentary evidence.

[27] Secondly, as the Acting Chairperson correctly decided, the complaint about the Judge's failure to have regard to the documentary evidence is directed solely against the merits of the matter. There is no allegation, supported by evidence, of any misconduct on the part of Judge Wille, as envisioned in the Act. Consequently, the appeal must be dismissed.

[28] The following order is made:

1. The appeal is dismissed.
2. The dismissal of the complaint in terms of section 15(2)(c) of the Judicial Service Commission Act, 9 of 1994, as amended, is confirmed.

A handwritten signature in black ink, appearing to read 'Rajesh', is written above a horizontal line.

JUDICIAL CONDUCT COMMITTEE