JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/08/02/2026

In the matter between:

NICHOLAS GOTSELL **COMPLAINANT**

and

JUDGE DANIEL MAFELEU THULARE **RESPONDENT**

Date: 11 November 2026

Decision:

1. Judge Thulare is ordered:

(a) to apologise to the South African public, as envisaged in section 17(8)(g) of the Judicial Service Commission Act, read with section 17(8)(a) thereof, through notices in two nationally circulating newspapers, to be published at his expense, within one month of the date of this order;

(b) under section 17(8)(d) of the Act, to pay to the state the difference between the market rental value of the property and the rental he actually paid, from the date of his appointment as a Judge in 2022, to the date that he vacates or has

vacated the property, with interest under the Prescribed Rate of Interest Act, 55 of 1975; and

(c) under section 17(8)(g) of the Act to vacate the property within one month from the date of this order.

2. The Chief Justice is requested to reprimand Judge Thulare in terms of section 17(8)(b) of the Act.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MAJIEDT J):

Introduction

[1] This is an inquiry into a complaint in terms of section 17(1)(b) of the Judicial Service Commission Act, 9 of 1994, as amended (the Act).[1] Mr Nicholas Gotsell, a member of the National Council of Provinces (NCOP), lodged the complaint against the respondent, Judge Daniel Mafeleu Thulare, of the Western Cape Division of the High Court. It concerns Judge Thulare's alleged continued occupation of a house owned by the state which is situated at 10 Plantanus Street, Kuilsriver, Cape Town (the property), despite the fact that he is not entitled to occupy the property, as it is earmarked for occupation by the Chief Magistrate of the Cape Town Magistrate's Court.

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[1] Section 17(1)(b) provides:
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."

[2] Judge Thulare held the aforementioned position before his appointment as a Judge. The lease agreement for the property terminated in 2018, but Judge Thulare failed to return vacant possession thereof to the state, as required by the lease agreement. He has received at least two notices to vacate the property. This, according to the complainant, constitutes a wilful, or at least a grossly negligent, breach of the Code of Judicial Conduct (the Code),[2] and an appropriate ground for a complaint under section 14(4)(b) of the Act.[3]

Background

[3] The property consists of a four-bedroom house, owned by the national government. The National Department of Public Works and Infrastructure (DPWI) is the custodian of all land owned by the national government under section 4(1)(a) of the Government Immovable Asset Management Act, 19 of 2007.

[4] On 7 October 2016, the DPWI entered into a Memorandum of Agreement with the Department of Justice and Constitutional Development (DoJ) in terms of which the DPWI granted the DoJ an indefinite entitlement to occupy the property, terminable on notice. The respondent was appointed as a Magistrate in 1999. He served as a Senior Magistrate from 2005 to 2016. On 13 October 2016, upon his appointment as Chief Magistrate of Cape Town, the respondent signed a lease agreement with the DoJ (the lease agreement), commencing on 1 October 2016, and terminating on 31 October 2018. The rent payable under the lease was R900 per month. The lease did not renew automatically. The respondent occupied

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[2] Published in GN R865, Government Gazette 35802 of 18 October 2012.

[3] Section 14 (4)(b) reads:

"(4) The grounds upon which any complaint against a judge may be lodged, are any one or more of the following:

. . .

(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) . . .".

the property in terms of the lease. On 31 October 2018, the lease terminated by effluxion of time. It was not renegotiated, and no written renewal or replacement lease was concluded. However, the respondent failed to vacate the premises.

[5] In 2022, the respondent was appointed as a Judge of the Western Cape Division of the High Court, a position he still occupies. The DoJ has no record of extending the lease agreement. It has confirmed that it does not allocate state houses to Judges, except for the Chief Justice, the Deputy Chief Justice and the President of the Supreme Court of Appeal.

The complaint

[6] In support of his complaint, Mr Gotsell outlines the background. He avers that Judge Thulare's continued occupation of the property is in violation of the lease agreement, and that, having been appointed as a Judge, the *causa* for his occupation has fallen away. In relation to the latter, the contention is that, as a consequence, Judge Thulare is receiving a benefit from the state, at taxpayers' expense, to which no other Judge is entitled.

[7] Mr Gotsell states that he brings this complaint in the public interest, because Judge Thulare's alleged misconduct affects public confidence in the Judiciary. Mr Gotsell outlines the parliamentary questions he has posed and his numerous communications with the Minister of Justice and Constitutional Development (the Minister) about Judge Thulare's occupation of the property. In response, the Minister conceded that this continued occupation after Judge Thulare's appointment was an administrative lapse. The Minister also advised that Judge Thulare had been given notice on 24 March 2025 to vacate the property within 30 days, that is, by 24 April 2025. He was given a further final notice to vacate the property by 6 June 2025. According to the Minister, she had also requested the Chief Justice to intervene in the matter. Mr Gotsell states that

several email communications with the Minister followed, but the position remained the same.

[8] The complaint concludes with an allegation that Judge Thulare is in terms of section 14(4)(b) of the Act guilty of a wilful or grossly negligent breach of the Code. Mr Gotsell contends that Judge Thulare is in wilful or grossly negligent breach of Articles 4(d) and 5 of the Code.[4] This breach is due to the receipt of the benefit:

(a) to which he is not entitled, given that he is a Judge and not the Chief Magistrate, which benefit other judges do not receive;

(b) of a sub-market rental;

(c) under a lease which has expired; and

(d) despite having received two 30-day notices to vacate, both of which have expired.

[9] Mr Gotsell submits further that Article 5 of the Code is being violated, because this:

(a) constitutes dishonourable behaviour;

(b) constitutes behaviour which does not befit judicial office;

(c) undermines public trust in and respect for the judiciary and the judicial system;

(d) constitutes behaviour that is improper and which appears improper; and

(e) is prejudicial to the effective and expeditious administration of the business of the court.

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[4] They read:

"4 - **Judicial independence**

A judge must –

. . .

(d) not ask for nor accept any special favour or dispensation from the executive or any interest group".

5 - **To act honourably**

(1) A judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.

(2) All activities of a judge must be compatible with the status of judicial office".

[10] Mr Gotsell points out that Judges routinely hand down orders enforcing contracts, including through orders requiring specific performance and the payment of damages. For Judge Thulare not to have complied with a lease agreement to which he is a party ill-befits the office of a Judge and undermines respect for judicial orders enforcing contracts. Furthermore, Judges also routinely hand down orders evicting people who occupy property unlawfully. As Judge Thulare has not vacated a property he has no right to occupy, and in respect of which he has received at least two notices to vacate, it ill-befits the office of a Judge and undermines respect for eviction orders.

[11] In addition, says Mr Gotsell, Judges must apply the law impartially and without fear, favour or prejudice. In this instance, however, Judge Thulare is acting in a manner that prefers his own interests over the interests of those who have a right to occupy the property, of other Judges who do not enjoy the benefit of cheap state housing, and of the South African taxpayer, which has subsidised Judge Thulare's housing. Judges are also expected to act as a check on unlawful and irregular administrative action, but Judge Thulare benefits from unlawful and irregular administrative action.

[12] Mr Gotsell contends that all of this violates article 4(d) of the Code, in that Judge Thulare continues to accept a special favour from the state to which he is not entitled. It is contended further that Note 5(iv) of the Code provides that "[j]udicial conduct is to be assessed objectively through the eyes of a reasonable person". A reasonable person would conclude that Judge Thulare's conduct falls grossly short of the Code.

[13] With regard to wilfulness, Mr Gotsell submits that Judge Thulare knows exactly what he is doing, and so is acting wilfully, as he signed the lease agreement, must be taken to know its terms, and so must know that the term of

the lease has expired and that he is occupying the property unlawfully. When he initially took occupation of the property, he must have known that he was receiving a benefit intended for the Chief Magistrate, given that he was Chief Magistrate at the time, and would have received occupation for no other reason. As he is no longer Chief Magistrate, he must know that he is no longer a legitimate beneficiary of the right to occupy the property.

[14] It is emphasised that Judge Thulare has received two notices to vacate. He can therefore be in no doubt that he is not permitted to occupy the property. Even if his occupation prior to receiving the first notice to vacate was merely (grossly) negligent, his continued occupation thereafter can only be wilful. This conclusion of wilful conduct, asserts Mr Gotsell, is supported by email correspondence between the office of the Judge President of the Western Cape Division of the High Court and the DPWI, which is attached to the complaint.

[15] In respect of gross negligence, Mr Gotsell submits that a reasonable Judge would familiarise himself with lease agreements that he signs, would inquire as to why he is receiving a lucrative state benefit that other Judges do not receive, and would not refuse to vacate state housing after the state sent him two notices to vacate the property.

[16] Based on all of this, in conclusion, Mr Gotsell contends that, in the circumstances, Judge Thulare has committed a wilful or at least grossly negligent breach of the Code. This misconduct warrants either impeachment or, alternatively, it is serious but non-impeachable. If the latter, Mr Gotsell asks that the following remedial actions be considered under section 17(8) of the Act:[5]

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[5] Section 17(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.

(a) under section 17(8)(g), Judge Thulare should be ordered to vacate the property immediately;
(b) he should be reprimanded in terms of section 17(8)(b));
(c) under section 17(8)(d), Judge Thulare should be ordered to pay to the state the difference between the market rental value of the property and the rental he actually paid, from 31 October 2018 (the date of termination of the 2016 lease) to the date that he vacates/ has vacated the property, with interest under the Prescribed Rate of Interest Act, 55 of 1975; and
(d) Judge Thulare should be ordered to apologise to the public, as envisaged in section 17(8)(g), read with section 17(8)(a).

The response to the complaint

[17] At the outset, it must be stated that Judge Thulare's response is unnecessarily prolix and contains many irrelevancies. The complaint is simple and required a simple answer. The response is anything but simple. I shall attempt to provide a succinct synopsis and reproduce its gist.

[18] Judge Thulare states that the essence of the disputes between him and "some officials in the DoJ relates to, as he puts it, "the claim of a judicial officer… to enjoy the benefit of the use of a state house where the judicial officer accepts an appointment outside their habitual place of residence, and also after a translation in rank in that single judiciary". He says the disputes concern policy and are therefore not susceptible to disciplinary processes against a judicial officer. According to Judge Thulare, this policy must be made by the Chief Justice and the President.

(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".

[19] Then follows an entirely irrelevant narration of his family origins and history, which need not be repeated. Judge Thulare contends that "a judicial officer, just like members of the Executive and Legislature and some public servants, public office bearers and other state agencies, when appointed outside their habitual residence has an election to provide for their own and family residence or to use the benefit of a state house or housing allowance where they render public service at a place separate from their habitual residence". He states that he had accepted appointment first as Chief Magistrate in the Western Cape in 2016, and later as a Judge in the same Province in 2022. According to him, "the use of the state house, a fringe benefit available in [the DoJ] became a necessity and a security tool".

[20] Judge Thulare asserts that an addendum to the lease agreement existed, which covered the lease after its expiry on 31 October 2018. In terms of that addendum, the lease would not end on the specified date but would end "in the other ordinary course of provisions of the lease agreement". However, he attaches no document evidencing this, and instead says he intends to annex a blank pro forma addendum as an example. He refers to a memorandum he submitted to the Chief Justice, dated 19 August 2025. There, Judge Thulare alludes to the fact that, historically, Judges enjoyed the benefit of state housing, where available, before and after 1994. He cites as an example the late Judge MW Friedman, who was appointed a Judge of the then Bophuthatswana in 1988, and later became the Judge President of the North West Division of the High Court of South Africa until his retirement in 2002, as one of the Judges who occupied a state house.

[21] Judge Thulare contends that, like the benefit of the use of a state vehicle, the benefit of state housing, outside the Province of the Division in which a Judge was appointed, "are benefits which Judges historically enjoyed even though there was no express provision thereof in the Judicial Regulatory Instruments". He

contends further that the lease agreement contains no provision linking occupation of the property to the office of Chief Magistrate of Cape Town. He states that, upon being appointed as a Judge, he resigned as a Magistrate, but not from the DoJ.

[21] According to Judge Thulare, the complaint does not have any reference to any law which prohibits a Judge who accepts appointment outside their place of habitual residence, to have the benefit of the use of a state house during their active service. Judge Thulare relies on clause 19 of the lease agreement which provides that he may hold over, until the dispute is resolved. He therefore disputes that he was required by the lease agreement to return vacant possession of the property in 2018 or at any time thereafter to date. Judge Thulare then makes numerous irrelevant references to the positions he holds on national and international judicial bodies.

[22] Judge Thulare disputes the allegation that he is receiving and enjoying a benefit from the state to which he is not entitled. He argues that it is unfair and inequitable that members of two arms of the state, the Executive and the Legislature, enjoy the benefit of state housing, and members of the third arm, the Judiciary, do not. In this regard, he cites the examples of the Minister, Ms Mmamoloko Kubayi, and Mr Soviet Lekganyane MP, who, like him, are also from Limpopo, and who receive state housing when in Cape Town. He questions why Judges in provinces like the North West and the Eastern Cape get state housing, and others in other provinces do not.

[23] After advancing further long-winded and utterly irrelevant facts and arguments, Judge Thulare "implore[s] the Judicial Conduct Committee to find that there is a dispute over policy". He states that this policy of state housing for

Judges must be developed by the Chief Justice and the President, and the complaint must be dismissed.

Comments on Judge Thulare's response

[24] Section 17(3)(c) of the Act makes provision that the Chairperson must invite the complainant to respond to any further information received and to the respondent's response. Mr Gotsell took up this opportunity. He comments, in summary, that Judge Thulare has no right to occupy the property – no contractual right under the 2016 lease, nor any statutory right. Thus, asserts Mr Gotsell, the property is being occupied unlawfully. This is happening despite two official notices to vacate. Mr Gotsell submits that Judge Thulare's conduct is therefore wilful, or at the very least, grossly negligent.

[25] Mr Gotsell states that in a response to a parliamentary question by him, the DoJ confirmed on 8 September 2026 that Judge Thulare remains in occupation of the property; and that the DPWI is in the process of instituting eviction proceedings against him. Mr Gotsell further disputes that Judge Thulare has the right under clause 19 of the lease to hold over. Mr Gotsell points out that Judge Thulare fails to refer to any law that grants him the right to be allocated state housing.

[26] In relation to Judge Thulare's reference to state housing being provided to Judges in other provinces, Mr Gotsell alludes to the DoJ's response to his question on 8 September 2026, that "the Office of the Chief Justice [OCJ] has three official properties, two in Johannesburg and one in Bloemfontein. The OCJ has no knowledge of judges in the North West Province that have enjoyed the benefits of a state house". A similar response was received on 14 April 2026, when the OCJ stated the following in response to a question by the complainant:

"The Office of the Chief Justice does not provide accommodation and/or leases to any judges. The Office of the Chief Justice facilitates official housing through the Department of Public Works and Infrastructure's Prestige Unit to the Chief Justice, the Deputy Chief Justice and the President of the Supreme Court of Appeal".

[27] In addition, it is pointed out that on 21 July 2026, the Provincial Head of the OCJ in the North West Province had responded to a question by Judge Thulare, stating that Judges had been allocated accommodation in the North West in the past, but that the last two Judges had vacated the properties in 2017 and 2019. On this basis, Mr Gotsell submits that there is no evidence that any Judges currently occupy state housing, except Judge Thulare.

[28] Mr Gotsell contends that Judge Thulare's holding over is not a policy dispute. He says the Judge has no right to occupy the property and must vacate it by law. His failure to do so is unlawful conduct, unbecoming of a Judge. Thus, Judge Thulare's opinion on whether the state's election not to allocate state housing to High Court judges constitutes good or bad policy is entirely irrelevant. Mr Gotsell submits that Judge Thulare's response evinces a lack of respect for lawful authority and a partiality towards his own interests. Finally, Mr Gotsell repeats his earlier submissions that Judge Thulare is guilty of wilful, alternatively, grossly negligent judicial misconduct, and he asks that the remedial steps outlined earlier be taken against the Judge.

Evaluation

[29] The complaint is that Judge Thulare breaches Articles 4(d) and 5 of the Code. They require that a Judge must not ask for or accept any special favour or dispensation from the executive or any interest group (Article 4(d); and that a Judge must always, and not only in the discharge of official duties, act

honourably and in a manner befitting judicial office (Article 5(1); and that all activities of a Judge must be compatible with the status of judicial office (Article 5(2)). I am satisfied that a formal hearing on the matter is unlikely to contribute to determining the merits of the complaint. The complaint can thus be decided on the strength of the information obtained from the complainant and the respondent.

[30] The following facts have been established on the information before me. First, the lease agreement under which the respondent occupied the property expired on 31 October 2018. There is no proof that it has been extended. Two notices to vacate the property have been sent to the respondent, but he remains in occupation to this day. Eviction proceedings are being instituted by the DPWI against Judge Thulare.

[31] Secondly, the arrangement under which the respondent, as then Chief Magistrate of Cape Town, was permitted to occupy the property, fell away when he was appointed as a Judge in 2022. Save for the Chief Justice, the Deputy Chief Justice, and the President of the Supreme Court of Appeal, no Judge in South Africa enjoys the benefit of state housing, paid for by the taxpayer.

[32] Thirdly, it is plain from the communications between the complainant and the Minister that the respondent's continued occupation of the property resulted from an administrative lapse, and that at least two notices to vacate had been sent to him. In addition, the Minister has gone so far as to request the Chief Justice's assistance to get the respondent out of the property. All of this has come to naught.

[33] These established facts lead to the inescapable conclusion that the respondent has been occupying the property unlawfully since 2022 and that, despite demand, he continues to refuse to vacate it. Before I address the

implications of these conclusions, it is necessary to consider the respondent's defences.

[34] The main defence is that this is not a disciplinary matter for the JCC under the Act, but a policy question. This can be rejected without more. The simple answer is that Judge Thulare has no statutory or contractual authority to occupy the property. The only Judges who are provided with state housing are the Chief Justice, the Deputy Chief Justice, and the President of the Supreme Court of Appeal. Furthermore, the contractual basis for occupation of the property fell away on 31 October 2018, as the lease agreement terminated by effluxion of time. I accept that, absent evidence to the contrary, the DoJ may have impliedly consented to his continued occupation of the property, notwithstanding the lease having ended.

[35] Short shrift can be given to the respondent's reliance on state housing allegedly being made available to Judges in the Eastern Cape and the North West Provinces. On the proved facts, the only Judge, other than the three senior Judges mentioned, who presently occupies a house belonging to the state, is Judge Thulare. He does so unlawfully.

[36] The reliance on clause 19 of the lease agreement, which permits holding over, is equally unsustainable. That clause reads:

"19. HOLDING OVER

19.1 While for any reason or any grounds the Lessee occupies the leased premises and the Lessor disputes its right to do so, then until the dispute is resolved whether by settlement or litigation, the Lessee shall (notwithstanding that, without prejudice to its rights, the Lessor may contend that this lease is of no force) continue to pay and the Lessor shall be entitled, notwithstanding that the Lessee might categorise any such payment as rental, to accept and

recover such payments, and such payments and the acceptance thereof shall be without prejudice to and shall not in any way whatsoever affect the Lessor's claim then in dispute.
19.2. If the dispute is resolved in favour of the Lessor, the payments made and received in terms of this lease shall be deemed to be amounts paid by the Lessee on account of damages suffered by the Lessor by reason of the unlawful occupation or holding over by the Lessee."

[37] Plainly, therefore, the clause does not, as the respondent argues, grant him a right to hold over. It simply provides that if a lessee holds over, he must continue to make the stipulated payments. This is without prejudice to the lessor's right to regain possession of the property. The clause therefore does not render his unlawful holding over lawful. The defence must be rejected.

[38] Lastly, the respondent's lament about the policy discrepancy between state housing being made available to members of the Executive and the Legislature, but not to members of the Judiciary, is entirely irrelevant. It has no bearing at all on the present inquiry. It is not for him to direct what the state housing policy should be. And his submission that, upon being appointed as a Judge, he resigned as a Magistrate, but not from the DoJ, is not only ill-founded, but also irrelevant to the central issue. Judges are not "employed" by the DoJ. And Judges' "employment" does not entitle them to state housing, save for the three senior Judges referred to.

[39] What, then, are the implications of all of this? Judge Thulare is plainly in unlawful occupation of the property and has ignored two official notices to vacate the property. His defences have bordered on the absurd, or they are, at the very least utterly untenable. But is he guilty of a wilful or grossly negligent breach of the Code?

[40] The complaint relies on a wilful or grossly negligent breach of Articles 4 (d) and 5 of the Code. A finding that the Code has been breached does not

translate automatically into a conclusion of guilt of misconduct. This is despite the obligation that Judges must comply with the Code.[6] The scheme that emerges from reading the Code and section 14(4) of the Act is that a breach of the Code does not trigger action against the transgressing Judge unless the infraction rises to the level of a wilful or grossly negligent breach. The effect is that no action is taken against Judges who breach the Code, as long as the breach is not wilful or grossly negligent.

[41] There is a gap in the relevant legislation. On the one hand, section 12(5) of the Act compels Judges to adhere to the Code, whilst on the other, section 14(4) defines misconduct in restrictive terms. This means a Judge who violates the Code, even negligently, is not guilty of misconduct. He or she does so only if the breach was wilful or grossly negligent. Consequently, some violations of the Code do not attract disciplinary action against an offending Judge.

[42] The concept "wilful" simply means deliberate. It denotes something done intentionally, as opposed to a negligent act. These are well-known concepts, and they need not be elucidated further with reference to case law, of which there is an abundance. On the other hand, "gross negligence" must be understood as a very serious degree of negligence.

[43] In this matter, I am of the view that Judge Thulare's conduct was wilful. He signed the lease and knew its terms and conditions, particularly the lease period and the sole cause of his benefit in occupying the property. He deliberately continued to occupy the property, knowing that he was no longer entitled to do so after 2022, when he ceased being the Chief Magistrate of Cape Town. He was

[6] Section 12(5) of the Act provides:
"The Code shall serve as the prevailing standard of judicial conduct, which judges must adhere to, and the Code and every subsequent amendment must be published in the *Gazette*."

fully aware, on the common cause or at least the uncontested facts, that the sole reason he was granted the benefit of occupying a house belonging to the state was his status in that post. When he became a Judge, that benefit fell away.

[44] Judge Thulare wilfully, that is, with full knowledge of the facts outlined above, ignored the two official notices to vacate the property. He deliberately chose to remain in occupation, when he full well knew that he was not entitled to do so. Wilfulness has been established in this case.

[45] The defences raised to justify occupying the property after 2022 have been discussed and rejected. I reiterate that some of them border on the ludicrous, and others are plainly untenable. Absent any acceptable explanation and cogent justification, I hold that Judge Thulare has acted wilfully.

[46] I hold further that Judge Thulare has breached Article 5 of the Code. He has failed to act honourably and in a manner befitting judicial office. His continued occupation of the property for the past four years, and his failure to vacate the property, even when called upon to do so in terms of two official notices, are not compatible with the status of judicial office.

[47] This wilful breach of Article 5 of the Code undermines confidence in the Judiciary. The Notes to Article 5 provide:

"Note 5(i): A judge behaves in his or her professional and private life in a manner that enhances public trust in, or respect for, the judiciary and the judicial system.
Note 5(ii): A judge avoids impropriety and the appearance of impropriety *in all the judge's activities.*
Note 5(iii): A judge does not engage in conduct that is prejudicial to the effective and expeditious administration of the business of the court.

Note 5(iv): Judicial conduct is to be assessed objectively through the eyes of the reasonable person" (Emphasis added)."

[48] Notes 5(i) and (ii) apply here. Objectively assessed through the eyes of the reasonable person, Judge Thulare's unlawful occupation of the property and his disregard of the two official notices do not enhance public trust in the Judiciary and the judicial system. His conduct is also improper and creates an appearance of impropriety. Judge Thulare's conduct undermines litigants' confidence in the Judiciary, particularly in disputes concerning contract enforcement or the eviction of allegedly unlawful occupiers of property.

[49] Judge Thulare's conduct is not only unbefitting of judicial office, but it also has wide repercussions. It reflects very poorly on the Judiciary and on our judicial system. Those who are tasked with upholding and enforcing the law should be its foremost examples. They should not flagrantly breach it or refuse to comply with lawful orders.

[50] Moreover, Judge Thulare's seemingly ill-considered response exacerbates matters, as it evinces a lack of respect for lawful authority and a partiality towards his own interests. For all these reasons, Judge Thulare is guilty of a wilful breach of Article 5 of the Code. This is not a policy matter at all. The complaint has a proper foundation in the Act and has been duly established. What then, should be the sanction?

[51] This is serious misconduct – a wilful breach of Judge's ethical standards for a prolonged period, since 2022. And, as stated, that serious misconduct is aggravated by the spurious and utterly untenable defences raised by a judicial officer of no less than 27 years' standing (Judge Thulare was appointed as a

Magistrate in 1999). In *Therrien v Canada (Ministry of Justice) and another*,[7] the Canadian Supreme Court stated:

"The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence *and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.*" (Emphasis added).

[52] The sanction should fit the transgression. In the circumstances, the order should contain an apology, vacation of the property as a corrective measure, and a reprimand by the Chief Justice. In addition, section 17(8)(d) makes provision for an order of compensation. In October 2019, the Commission ordered then Judge Nkola John Motata to pay compensation as part of the sanction imposed.[8] In so doing, the Commission overruled the Tribunal which had recommended that impeachment proceedings be commenced against him. In *Freedom Under Law v Judicial Service Commission and Another*[9] the majority in the Supreme Court of Appeal set that decision aside and remitted the matter to the Commission to be dealt with under section 20(4) of the Act.

[53] Since 2022, Judge Thulare has received an undue benefit: state housing at taxpayers' expense. He should compensate the fiscus for that undue benefit by paying to the state the difference between the market rental value of the property and the rental he actually paid, from the date of his appointment as a Judge in 2022, to the date that he vacates or has vacated the property, with interest under the Prescribed Rate of Interest Act, 55 of 1975.

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[7] [2001] 2 SCR 3.
[8] The respondent was ordered to pay the equivalent of his then net annual salary over a period not exceeding 24 months from the date of the Commission's decision.
[9] [2023] 3 All SA 631 (SCA).

[54] The following ruling is made:

1. Judge Thulare is ordered:

(a) to apologise to the South African public, as envisaged in section 17(8)(g) of the Judicial Service Commission Act, read with section 17(8)(a) thereof, through notices in two nationally circulating newspapers, to be published at his expense, within one month of the date of this order;

(b) under section 17(8)(d) of the Act, to pay to the state the difference between the market rental value of the property and the rental he actually paid, from the date of his appointment as a Judge in 2022, to the date that he vacates or has vacated the property, with interest under the Prescribed Rate of Interest Act, 55 of 1975; and

(c) under section 17(8)(g) of the Act to vacate the property within one month from the date of this order.

2. The Chief Justice is requested to reprimand Judge Thulare in terms of section 17(8)(b) of the Act.



JUDICIAL CONDUCT COMMITTEE