



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/533/2017

In the matter between:

ADV ANTHONY BRINK

COMPLAINANT

and

JUDGE PRESIDENT BASHEER WAGLAY

RESPONDENT

Date: 2 October 2026

Decision: The complaint is dismissed in terms of section 17(4)(a) of the Judicial Service Commission Act, 9 of 1994.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MAJIEDT J):

Introduction

[1] Advocate Anthony Brink, the complainant, lodged a complaint with the Judicial Conduct Committee (the Committee) against now retired Judge President Basheer Waglay of the Labour Court (the respondent). This is an inquiry into the complaint in terms of section 17(1)(b) of the Judicial Service Commission Act, 9 of 1994, as amended¹ (the Act).

Background and litigation history

[2] The matter has a long litigation history. The complaint concerns the complainant's unsuccessful application for a position as Senior Litigator at Legal Aid South Africa (LASA). Pursuant to his application, the complainant was selected and recommended for the position in November 2009. However, LASA never confirmed his permanent appointment. Protracted litigation ensued, culminating in an application in the Labour Court in which the complainant claimed, amongst others, that he had been discriminated against on political grounds and that his appointment had been irregularly halted. The Labour Court dismissed his application. Dissatisfied with the outcome, the complainant petitioned the Labour Appeal Court (the LAC). His petition was dismissed by the respondent, Davis JA and Sutherland JA. The complainant subsequently lodged a complaint with the Committee.

[3] The then Acting Chairperson, Deputy Chief Justice Zondo, designated Deputy Judge President Goliath in terms of section 17 of the Act to inquire into the complaint. After her inquiry, Deputy Judge President Goliath found that the

¹ Section 17(1) of the Act 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."

crux of the complaint against the respondent related to the circumstances surrounding the determination of the petition by the judges of the LAC. She found no evidence of any irregular or improper conduct by the respondent in handling the complainant's petition. The complaint was accordingly dismissed as lacking substance in terms of section 15(2)(d) of the Act.²

[4] Aggrieved by that decision, the complainant lodged an appeal. The Committee upheld the appeal. In response to the Committee's request for information, Deputy Judge President Goliath stated that, having been designated in terms of section 17 to investigate the complaint, she had dismissed it "at the first instance on one of the grounds stated in section 15(2)(d)", namely that it lacked substance.

[5] On appeal, the Committee outlined the procedure for adjudicating a complaint under subsection 14, to be dealt with in accordance with sections 15, 16 or 17.³ The Committee pointed out that in terms of section 15(1)(a), if the Chairperson or the designated Head of Court considers that the complaint falls within the grounds set out in subsection (2), he or she must dismiss the complaint. Thus, the Committee held that the prerogative to dismiss a complaint summarily under section 15(2) lies with the Chairperson or the designated Head of Court.⁴

² That section reads:

"(2) A complaint must be dismissed if it—

...

(d) is frivolous or lacking in substance..."

³ In relevant part, section 14 reads:

"(1) Any person may lodge a complaint about a judge with the Chairperson of the Committee.

(2) 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."

⁴ Section 15(1) and (2) read:

"(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.
(b) If the Head of Court designated in terms of section 14(2) is of the view that the complaint should not be dismissed under paragraph (a), he or she must refer the complaint to the Chairperson to be dealt with in terms of section 16 or 17.

(2) A complaint must be dismissed if it—

(a) does not fall within the parameters of any of the grounds set out in

[6] The Committee held that, since Deputy Judge President Goliath was at the time of the dismissal of the complaint in terms of section 15(2)(d) not acting in either of these two capacities, she had acted irregularly. This created a difficulty, because she was conducting a section 17 inquiry, but used section 15 as the basis for her decision. The Committee noted that the Acting Chairperson had already considered the complaint and referred it for a section 17 inquiry. Therefore, Judge Goliath's dismissal of the complaint under section 15 was incorrect. By dismissing the complaint under section 15(2)(d), she effectively contradicted the Acting Chairperson's decision. For those reasons, the appeal was upheld.

The complaint

[7] In essence, the three grounds of the complaint are:

(a) The presence of an undated and unsigned memorandum in his LAC petition file, which bears no court stamp (the memorandum). According to the complainant, his retired accountant friend, Mr Christopher Rawlings, discovered this memorandum when he inspected the petition file at the Court at the complainant's request. The complainant avers that a junior law clerk prepared the memorandum, and that it formed the basis on which the petition was decided, also by a junior law clerk, on the respondent's instruction.

(b) The alleged premature decision in refusing his petition while, at the time the decision was communicated to the parties, a condonation application from LASA, the respondent in the Labour Court and in the petition proceedings in the LAC, had not yet been decided. The complainant alleges further that he was not given

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 in substance; or

(e) is hypothetical.”

an opportunity to respond to this condonation application when the LAC decided the petition.

(c) The erroneous refusal of the petition, when the complainant had raised several procedural and evidentiary errors made by the Labour Court, both during the trial and in its judgment, that required adjudication by the LAC.

[8] The complainant makes numerous allegations about the corrupt judiciary in general, and the respondent in particular. Regarding the memorandum, the complainant contends that it contained allegations about him, his character, and the prospects of success in his petition. According to the complainant, the memorandum, wholly or partially, was the basis for the refusal of his petition in the LAC. It is further alleged that, due to corruption on the part of the LAC's administrative staff, the memorandum was "secreted" into the petition file, and that the respondent, as Judge President, directed a junior law clerk to refuse the petition based on the memorandum's contents.

[9] In respect of the second ground, the complaint concerns the decision on the petition for leave to appeal being issued before the complainant filed his answering affidavit in respect of the condonation application prepared by LASA, following the late filing of its answering affidavit in the petition. The complainant cites other condonation applications and argues that his case was not treated with similar diligence or adjudicated with the same rigorous, close attention as the others.

[10] Lastly, the complainant submits that he had raised in his petition numerous reversible fundamental and critical evidentiary and procedural errors committed by the judge in the Labour Court. However, the LAC did not consider these errors in refusing his petition. The complainant contends that the respondent and the other two judges had not read his papers when deciding the petition.

The respondent's response to the complaint

[11] The respondent makes clear at the outset that he is responding from memory only. He deals with the three grounds of the complaint separately. First, regarding the memorandum, he says it is unclear when the memorandum was included in the court file, or by whom. It is also unclear who drafted it, as it is unsigned and was not placed on any specific letterhead.

[12] The respondent provides a detailed explanation of the LAC procedure for petitions. Once the Registrar was satisfied that the pleadings had closed, he would randomly select the judges to whom the petitions were allocated and send copies of the petition documents to their chambers. The documents forwarded to each of the judges who were allocated to consider the petition would be identical and include the application, any answering affidavit, any other document(s) properly filed and relevant to the petition. The original petition file would remain with the Registrar.

[13] According to the respondent, as Judge President, he did not decide which judge would adjudicate which petition, nor could he decide which petitions he would prefer to consider. This method ensured that the process was handled impartially and independently. He says this was particularly important because he was the Judge President of both the Labour Court and the LAC. His role in the petition process was therefore limited to deciding the petitions allocated to him as one of the three panel members.

[14] Once petitions were allocated, and on a scheduled date, the judges selected to adjudicate a particular petition would deliberate the merits of the application and make their findings, which were then communicated to the Registrar. In this instance, the complainant's petition had been allocated to three judges of the LAC in accordance with that Court's Rules – to Sutherland JA, Davis JA and the

respondent. Under Rule 4(7), they unanimously refused the complainant's petition.

[15] The respondent points out that the complainant's averments defy logic, since the respondent could simply have refused the petition instead of involving a junior employee (the junior law clerk) in such a convoluted scheme to refuse it. He says it is unclear on what grounds these spurious allegations are made, particularly as they pertain to the allegation that he delegated judicial functions to a junior employee.

[16] In relation to the second ground, the respondent states that the complainant reads the Rules incorrectly, specifically regarding the procedure litigants must follow in petition proceedings. He sets out the procedure with reference to the Rules.

[17] Finally, on the third ground, the respondent submits that the allegation that the three judges who sat on the petition panel (including him) had not read his papers when deciding the petition is baseless, illogical, and unsubstantiated. The respondent contends that the complainant's references to procedural and evidentiary errors made by the Labour Court which required the attention of the LAC relate purely to the merits of the refusal of the petition and cannot form the basis for a complaint against a judge.

Evaluation

[18] I am satisfied that a formal hearing on the matter is unlikely to help determine the complaint's merits. I can decide it on the strength of the information before me.⁵

⁵ Section 17(4) of the Act.

[19] The complaint rests on three grounds. I deal with them separately. The first one concerns the memorandum, allegedly prepared by a junior law clerk, which allegedly formed the basis on which the petition was decided, also by a junior law clerk, on the respondent's instruction. This is nothing but a bald assertion, with no supporting evidence whatsoever. The respondent's explanation regarding the processing of petitions accords with usual court procedures and must be accepted.⁶ He correctly points out that where documents are not stamped but nevertheless appear in the court file, it indicates that such documents were not properly filed and are thus not in compliance with the Rules of the Court. The Registrar would not include them in the petition bundle forwarded to the judges.

[20] Ordinarily, judges considering a petition will not have unstamped documents in the court file. There is no evidence at all, quite apart from the complainant's bald assertion, that an unsigned, undated and unstamped memorandum was before the judges in this case. Nor is there any evidence at all of who the law clerk was who had prepared the memorandum, or who had refused the petition, as instructed by the respondent.

[21] It is simply astounding that the respondent, a senior jurist and most senior judge in the Labour Court at the time, would concoct such a convoluted scheme to engineer the rejection of a petition, no doubt one of many that find their way to that Court. Why not, as the respondent correctly asks, simply refuse the petition? It makes no sense at all to involve a junior official, a law clerk, in this elaborate, intricate scheme.

[22] The complaint also advances a further, equally bewildering proposition: that the memorandum and/or the respondent (all of this is quite murky in the complaint) swayed the other two judges to refuse the petition. Moreover, these

⁶ This is, to my knowledge, what happens in the Supreme Court of Appeal in respect of petitions, and in the Constitutional Court in respect of applications for leave to appeal.

were senior judges, Davis JA, who became the Judge President of the Labour Court and of the Competition Appeal Court; and Sutherland JA, who became the Deputy Judge President of the country's largest and busiest Division, Gauteng. Most importantly – why, if these two senior judges were part of this corrupt, fraudulent scheme, is the complaint not also directed against them? For, if the complainant is to be believed, the memorandum was also before them, and they agreed to refuse the petition solely on its strength, without reading the papers in the file. The first ground is therefore not only utterly devoid of merit, but it simply defies logic. It must be rejected.

[23] The second ground is that the petition was refused before the complainant filed his answering affidavit in respect of LASA's condonation application for the late filing of its answering affidavit in the petition. The respondent is correct that the complainant misunderstands the applicable Rules.

[24] Rule 4(6) provides that a respondent in a petition application may deliver an answering affidavit within 10 days of delivery of the petition. The language in that rule is not prescriptive. A respondent in such proceedings may choose to file an answering affidavit or not. If a respondent elects to do so, she has 10 days to file after delivery of the petition. If an answering affidavit is filed outside of the 10-day period, Rule 12(1) provides that it may be excused by the court if sufficient cause is shown.

[25] No condonation procedure applies to the late filing of the answering affidavit in a petition, nor does it empower a petitioner to respond to a condonation application by way of an answering affidavit, or to file an exception where the respondent has failed to comply with court rules. This is so because the Rules at the time did not prescribe timeframes for filing further notices and affidavits in relation to the petition or ancillary applications. When deliberating the merits of the petition, the judges have a discretion in deciding whether to

accept or refuse to consider the delayed answering affidavit. The second ground is therefore misconceived and must be rejected.

[26] That brings me to the final ground, that the three judges had not read the papers, and should have granted the petition in order to correct the mistakes by the judge in the Labour Court. This is a quintessential argument relating to the merits of an order. It falls outside the ambit of section 14(4) of the Act, as it relates to the merits of the refusal of the petition and cannot form the basis for a complaint against the respondent.⁷

[27] Where a litigant is aggrieved by the merits of a court order or judgment, the appropriate course is to appeal. In instances of perceived procedural irregularities, a review is available. The Committee is a creature of statute and can only decide complaints falling within the empowering statute, the Act.

[28] For all these reasons, the complaint must be dismissed. I make the following order:

The complaint is dismissed in terms of section 17 (4)(a) of the Judicial Service Commission Act, 9 of 1994, as amended.

⁷ Section 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.”

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

JUDICIAL CONDUCT COMMITTEE