JUDICIAL CONDUCT COMMITTEE

Ref no: JSC//235/08/2025

In the matter between:

DEBORAH THULARE AND SEVEN OTHERS **COMPLAINANTS**

and

JUDGE PRESIDENT PHATUDI **RESPONDENT**

DATE: 18 May 2026

DECISION: The complaint is referred to the Full Committee in terms of section 17(4) for a recommendation that a Tribunal be appointed.

SECTION 17 RULING

THE JUDICIAL CONDUCT COMMITTEE (Jafta J)

Introduction

[1] This complaint was lodged by Ms Deborah Thulare and seven other members of Bapedi Royal House in Limpopo Province who are collectively referred to as complainants. They filed the complaint against Judge President Phatudi (respondent) who is the Judge President of the Limpopo Division of the High Court. The complainants accuse the respondent of mishandling litigation instituted in the Limpopo Division by their opponent in a long running dispute over traditional leadership.

[2] As usual the complaint was considered first by the Acting Chairperson of the Judicial Conduct Committee (Committee) in terms of the Judicial Service Commission Act.[1] At the first phase, section 14 of the Act authorises the Chairperson of the Committee to determine a provision in terms of which a complaint is to be determined.[2] Having considered the matter, the Acting Chairperson decided that the complaint should be processed in terms of section 17 of the Act and designated me to do the inquiry.

[3] Subsequently a copy of the complaint was forwarded to the respondent with a request that he should furnish the Committee with his response to the allegations in the complaint. Having received the response, all documents filed of record were considered with a view to determining whether an oral hearing was necessary to

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[1] 9 of 1994.

[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.

determine the merits of the complaint.[3] In the view I take of the matter, I decided that an oral hearing at this stage is not necessary.

Legislative background

[4] Evidently an inquiry under section 17 is governed by provisions of that section. Of importance for present purposes is section 17(4) which tells us what should be done when a complaint is determined without the oral hearing. It provides:

"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."

[5] This provision plainly tells us that if it appears to the designated member that an oral hearing will not contribute to the determination of the complaint, the designated member must decide the complaint on the strength of information placed before him or her. Furthermore, in resolving the complaint, such member is afforded three options. First, he or she may dismiss the complaint if it is not established. Second, if the complaint is established and the member concerned is satisfied that

[3] Section 17(4) of the Act authorises a designated member to disperse with an oral hearing if such hearing will not contribute to the resolution of the merits.

the remedial action for it will be limited to steps listed in section 17(8) of the Act,[4] he or she may proceed to impose the appropriate remedial steps. Third, if however, the designated member comes to the conclusion that the complaint, if established, is likely to sustain a finding that the respondent suffers from incapacity or is grossly incompetent or is guilty of gross misconduct, he or she must request the Full Committee to recommend to the Judicial Service Commission (JSC) that the complaint should be investigated by a Tribunal.

[6] The scheme of the Act reveals that there is only one body competent to investigate complaints pertaining to incapacity, gross incompetence and gross misconduct. This is a Tribunal appointed by the Chief Justice in terms of section 21 of the Act.[5] This section obliges the Chief Justice to appoint a Tribunal whenever requested to do so by the JSC. In terms of section 19, the JSC may request that a Tribunal be established under two pre-conditions.[6]

[7] First, if it appears from a recommendation by the Full Committee that a particular Judge suffers from incapacity or is grossly incompetent or is guilty of gross misconduct, the JSC may ask for the appointment of a Tribunal. It bears

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[4] Section 17(8) of the Act 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."

[5] Section 21(1) of the Act provides: "The Chief Justice must appoint a Judicial Conduct Tribunal, whenever requested to do so by the Commission."

[6] Section 19(1) of the Act provides: "Whenever it appears to the Commission-
(a) on account of a recommendation by the Committee in terms of section 16 (4) *(b)* or 18 (4) (a) (iii), *(b)* (iii) or (c) (iii); or *(b)* on any other grounds, that there are reasonable grounds to suspect that a judge-
(i) is suffering from an incapacity; (iii) is guilty of gross misconduct, as contemplated in section 177 (1) *(a)* of the Constitution, the Commission must request the Chief Justice to appoint a Tribunal in terms of section 21."

emphasis that the recommendation must be from the Full Committee and nobody else. That this is so is further confirmed by various provisions of the Act. Section 16(1) of the Act requires the Chairperson to refer a matter to the Committee for such recommendation.[7] Also if during the consideration of a section 17 inquiry, as was the case here, it appears that the Judge may be suffering from incapacity or is grossly incompetent or is guilty of gross misconduct, section 17(4) obliges the presiding member to ask the Committee to make a recommendation.[8] Deliberately the Act does not authorise the presiding member himself or herself to make such recommendation. Section 17(5)*(c)* also requires a similar request to be made to the Committee.[9] Lastly, if during a consideration of an appeal by the Full Committee it appears that the affected Judge may be suffering from incapacity or is grossly incompetent or may be guilty of gross misconduct, the Committee must recommend to the JSC that a Tribunal be appointed.[10] Notably, section 18(4) repeats this

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[7] Section 16 (1) of the Act reads: "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."

[8] Section 17(4) is quoted in paragraph 4 above.

[9] Section 17(5) of the Act provides: "*(a)* If, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is of the opinion that a formal hearing is required in order to determine the merits of the complaint, he or she must determine a time and a place for a formal hearing and written notice of the hearing must, within a reasonable period before the date so determined, be given to the respondent and the complainant. *(b)* For purposes of a formal hearing contemplated in paragraph (a) – (i) the Chairperson or member concerned has all the powers of a Tribunal; and (ii) the provisions of sections 24, 26, 27, 28, 29, 30, 31 and 32 are applicable with the changes required by the context. *(c)* Upon the conclusion of a formal hearing the Chairperson or member concerned must record his or her findings of fact, including the cogency and sufficiency of the evidence and the demeanour and credibility of any witness, and his or her finding as to the merits of the complaint, and- (i) dismiss the complaint; (ii) 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 (iii) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal."

[10] Section 18(4) of the Act provides: "After consideration of an appeal in terms of subsection (3), the Committee must-

(a) in the case of an appeal against a dismissal of a complaint as contemplated in section 15 (4) *(a)* –

(i) confirm the dismissal;

statutory requirement three times. This is done in subsections *(a)* (iii), *(b)* (iii) and *(c)* (iii).

[8] Second, where there is no recommendation by the Committee, but it appears to the JSC from whatever source that a Judge may be suffering from incapacity or is grossly incompetent or may be guilty of gross misconduct, the JSC may request the Chief Justice to appoint a Tribunal to investigate the matter. In this regard all that is required by section 19 of the Act is that such request must be based on reasonable grounds.

[9] This is the legislative context in which the current complaint must be considered. It is now apposite to set out in detail the complaint and the response to it by Judge President Phatudi, before outlining reasons for the decision reached.

The complaint

(ii) set aside the dismissal and refer the complaint to the Chairperson for an inquiry in terms of section 17; or (iii) set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19;
(b) in the case of an appeal against a dismissal of a complaint as contemplated in section 17 (7)*(a)*–
(i) confirm the dismissal; (ii) set aside the dismissal, and 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 section 17 (8) on the respondent; or (iii) set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19; or
(c) in the case of an appeal against a finding or remedial steps, or a finding and remedial steps as contemplated in section 17 (7) *(b)* –
(i) set aside the decision concerned; or (ii) confirm the decision or set aside the decision concerned and substitute it with an appropriate decision, with or without any amendment of the remedial steps imposed, if applicable; or (iii) set aside the decision and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19".

[10] In January 2021 the King of the Bapedi Nation passed on without leaving a successor behind. This necessitated that a meeting of the Royal Family be convened for the purpose of identifying the person to be appointed as the Acting King. A meeting was convened on 28 February 2021 where the majority members of the Royal Family identified Mr Morwamohube Thulare, the brother of the late King as Acting King of Bapedi. However, the mother of the late King, Mrs Manyaku Maria Thulare was unhappy with the decision and objected to it. She convened a meeting where she was appointed Acting Queen of the Bapedi Nation. A dispute arose as to who ought to be the acting leader of that nation and that resulted in a protracted litigation.

[11] This litigation was instituted by Mrs Manyaku Thulare in the Limpopo Division of the High Court. She cited as respondents, the Premier of Limpopo Province, the Minister of Cooperative Governance and Traditional Affairs, the President of the Republic; Limpopo House of Traditional Leaders; Mr Morwamohube Thulare and Ms Deborah Thulare. This matter was allocated case No: 5197/2021. In it Mrs Manyaku Thulare sought an order that declared her the Acting Queen. A provisional order to that effect was granted by Acting Judge Ledwaba in the absence of the respondents who later opposed the matter.

[12] Meanwhile Mr Morwamohube Thulare and Ms Deborah Thulare launched their own application against Mrs Manyaku Thulare in the same court. Their application was given Case No: 8767/2021. They in turn sought declaring that the meeting of 28 February 2021 was validly convened and that Mr Morwamohube Thulare was rightly appointed Acting King. It appears that both these matters were later combined under Case No: 8767/2021.

[13] The combined matters served before Judge President Makgoba and on 19 October 2022 the following order was granted:

> "1. The meeting held by the Thulare royal family on 28 February 2021 was a properly constituted meeting of a Royal Family.
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> 2. The decision taken by the Thulare Royal Family of the meeting of 28 February 2021, to appoint Morwamohube as the Acting King of the Bapedi nation end seed raiser in the House of the late King Victor Thulare III, was a lawful decision of a Royal Family.
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> 3. Manyaku [Thulare] shall be liable to pay costs of the application, such costs to include the costs of two counsel.
>
> 4. The counter application brought by Manyaku [Thulare] is dismissed with costs of two counsel.
>
> 5. The interim interdict order dated 5 August 2021 in favour of Manyaku [Thulare] under case number 5197/2021 is discharged and the application by Manyaku [Thulare] under case number 4253/2021 is dismissed with costs."

[14] This order sought to settle all matters relating to the dispute about that traditional leadership. However, Mrs Manyaku Thulare was aggrieved by this outcome. She sought and was granted leave by the Supreme Court of Appeal (SCA). A date was fixed for the hearing of the appeal in that court. On the appointed date, she applied for the postponement of the matter because her lawyers had withdrawn from the matter. The appeal was postponed without fixing a date.

[15] Bizarrely and while the dismissal of Mrs Manyaku Thulare's claim to be the Acting Queen of the Bapedi Nation was pending in the SCA, she went back to Limpopo Division to pursue the same claim once again in that court. She approached

the court by way of urgency and *ex parte* (without giving notice to the complainants). By way of *rule nisi* she sought the following order:

> "3. Pending the final determination of the appeal which is before the SCA under case number 470/2023:
>
> (a) Manyaku Maria Thulare (Queen Manyaku) is hereby declared Acting Queen of Bapedi Kingdom.
>
> (b) The *status quo* that prevailed immediately before and after the granting of the court order by his lordship Ledwaba AJ on five August 2021 and under case number 5797/2021 shall remain as the only legal portion in relation to the leadership of Bapedi Kingdom or traditional community."
>
> (c) The Government parties restore the benefits and allowances attached to the office of Bapedi Kingship for the administration of the traditional affairs for the community.
>
> 4. The order granted in terms of paragraph three above shall be effective immediately pending the return date or the final determination of the appeal which is pending before the Supreme Court of appeal."

[16] In the affidavit filed in support of this relief, Mrs Manyaku Thulare alleged that she was seeking "an interim order clarifying the temporary status of the leadership of our community which appears to be confusing a number of people, more so the officials who are in government". She asserted that because the order of Makgoba JP she was appealing against in the SCA was suspended, she was asking that the order that was earlier granted by Ledwaba AJ in her favour be revived and in the light of that revival she should be declared Acting Queen.

[17] In her own words she articulated her claim in these terms:

"32. In light of the suspension of the order of Makgoba JP, I seek a declarator that the interim order dated 05 August 2021 by Ledwaba AJ which was granted in my favour, as the *status quo ante* is restored. I humbly request that the Court order of 05 August 2021 to be in full operation until the finalization of the appeal. That would mean that the administration of the community affairs shall continue the same way as they have been prior to the order being granted by Makgoba JP which brought to an end the operation of the order by Ledwaba AJ.

33. I humbly request the honourable Court to grant this order in the interest of the ensuring that the traditional community affairs are not left unattended. In terms of the order of Ledwaba AJ, which was obtained through undertakings from the said Morwamohube, he is not entitled to refer to himself as the Acting King of Bapedi Nation nor be bestowed the authority associated with the position in law and as such he is not entitled to administer the affairs of the Bapedi Nation.

34. The result of the situation depicted above is that I have been running the administration affairs of the Bapedi Nation since the death of King Thulare III, amidst great difficulties as the Government has halted its contributions towards the running of the King/Queen's office".

[18] There can be no doubt that effectively what Mrs Manyaku Thulare sought in the urgent and *ex parte* application was the reversal of the order of Makgoba JP, to the effect that it had discharged the earlier order of Ledwaba AJ. She premised this on the outrageous position of the law she held as advised by her lawyers. She claimed that she was advised that the granting of leave to appeal meant that the orders granted by Makgoba JP were suspended in terms of the Superior Court Act 10 of 2013. And from this she contended that she was entitled to the revival of the order that was discharged by Makgoba JP.

[19] While it is true that the operation of those orders was suspended, they remained in existence until set aside by a competent court. The SCA was such a court and when Mrs Manyaku Thulare approached the High Court, the SCA had not pronounced its views on those orders. They were still intact. Consequently, the premise from which Mrs Manyaku Thulare proceeded on the matter was utterly wrong.

[20] Surprisingly despite this obvious defect in her application, the respondent, who is the most senior Judge in that Division, entertained it and granted the relief sought in the absence of the complainants and other parties. In addition, he granted her interim relief which was put into effect immediately.

[21] What happened thereafter was a comedy of errors committed by the High Court and which were highly prejudicial to the complainants. The complainants set the matter down for reconsideration of the order that was granted in their absence. The matter was set down for 14 January 2025. On that day the court refused to hear it on the basis that it was not urgent. This was wrong on two fronts. First, when the matter was heard earlier on 3 December 2024, the court accepted that it was urgent. Second, because the application was brought *ex parte*, the complainants were entitled to set it down for consideration of the order by simply giving notice of not more than 24 hours. Surely the Judge who heard the matter on 14 January 2025 ought to have known this and yet the matter was struck from the roll for lack of urgency.

[22] The *rule nisi* that was issued by Phatudi JP on 3 December 2024 was returnable on 18 March 2025. The matter having been struck off the roll on 14 January 2025, the complainants prepared for hearing and the reconsideration of the order on 18 March. Ordinarily where a *rule nisi* was issued the applicant is expected

to move that the rule be made final on the return date and if the matter is opposed, the court must hear argument. In this matter, opposing papers were filed together with heads of argument, before the return day but on that day the court declined to hear the matter on the basis that it was not enrolled in the opposed motion court's roll.

[23] Meanwhile Mrs Manyaku Thulare continued to exercise power and performed functions as the Acting Queen, as from December 2024. To rub salt to the wound, on 18 March 2025 the matter was not given a short postponement, but it was postponed to 12 September 2026. A request for an earlier date to Phatudi JP elicited no response.

[24] With regard to how the matter was handled in the High Court and the long postponement granted, the complainants state:

> "16. This action to postpone the matter until 02 September, effectively gives the other party unfair advantage. She is effectively appointed as an Acting Queen of Bapedi Nation by abusing the process of court, to the detriment and injustice to us in the matter.
>
> 17. We are concerned by these baseless decisions and believe that fundamental errors of law in terms of both facts and procedure were deliberately committed in a quest to achieve a positive outcome for the applicant for reasons known to Judge President Phatudi and to those he serves.
>
> 18. It must also be noted that after the return date of 18 March 2025 when the matter was postponed to 06 September 2026, we asked our lawyers to write a letter to the judge president for a preferential date to hear the matter as the order which was obtained without hearing the other side and which has huge consequences which are final in nature cannot wait for 06 September 2026. To date, the Judge President has not responded to our letter."

[25] The complainants requested the JSC to hold Judge President Phatudi accountable for his role in what they described as a miscarriage of justice and for bringing the Judiciary into disrepute and thereby diminishing public confidence in the courts. They alleged:

> "It is a generally accepted thought or belief that Judges in any judicial system, are expected to act impartially and without fear, favour or prejudicial by ensuring the integrity of the judicial system.
>
> However, our recent experience with the conduct of Judge President George Phatudi of Limpopo Division of the High Court and proceedings in his handling of our court case leaves much to be desired. Our experience has exposed what appears to be a blatant use of judicial powers to render favours to those in his social circles or for other reasons known to him.
>
> We, as the Royal Family of Bapedi Kingdom, here lodges a formal complaint regarding the conduct, behaviour, attitude or abuse of judicial system by Judge President George Phatudi of Limpopo High Court, Polokwane for the benefit of those close to him."

The response

[26] In his response Phatudi JP advances a number of points. First, he contends that the complaint does not comply with conditions prescribed in section 14(3) of the Act and further that "the said statement does not engage the requirements of section 14(3) *(a) – (e)* of the said Act." Second, with regard to the merits, the Judge President submits that the complainants raise "issues pertaining to the merits of a judgment or court order which was issued upon the hearing of an *ex parte* application

seeking to provisionally preserve as it did, the applicant's (Manyaku) position before and after the order of Ledwaba AJ on 5 August 2021."

[27] To put the issues in context. It will be recalled that before the order of Ledwaba AJ, the position was that one part of the Royal Family had appointed Mr Morwamohube Thulare as Acting King on 28 February 2021. Mrs Manyaku Thulare was dissatisfied, she convened a meeting of another part of the Royal Family which appointed her as Acting Queen on March 2021. Therefore, there were two appointments of different individuals and the dispute was about which of them was correctly made. This is the position that the Judge President says was provisionally preserved by his order. It appears that the order preserved the interests of Mrs Manyaku Thulare to the exclusion of those of Mr Morwamohube Thulare.

[28] The interests of Mrs Manyaku Thulare after the order of Ledwaba AJ were regulated by that order until it was discharged by Makgoba JP on 19 October 2022. After that discharge there could be no rights stemming from that order to preserve. Mrs Manyaku Thulare challenged that order at the SCA. When she later approached Phatudi JP on 3 December 2024 on *ex parte* basis, she was aware that Ledwaba AJ's order did not exist anymore and that there were no rights and interests flowing from it to preserve. In her papers she expressly asked that the discharged order of Ledwaba AJ be revived whilst its discharge was part of the appeal pending before the Supreme Court of Appeal. The Judge President obliged by reviving the order that was discharged by his predecessor and immediately "preserved" the rights flowing from it, pending the return date.

[29] The Judge President concludes the point by arguing that as the complaint relates to the merits of the order issued by him, it should be dismissed in terms of section 15(2) *(c)* of the Act. It will be noted that this provision requires a summary dismissal of a complaint if it is solely related to the merits of a judgment or order. The key word in the provision is "solely".

[30] The Judge President confirms that the complainants anticipated the return date of the *rule nisi* he issued on 3 December 2024, by setting the matter down for reconsideration on 14 January 2025 and that it was struck off the roll for lack of urgency. He also confirms that the *rule nisi* was returnable on 18 March 2025 and that on that day the matter was postponed to 6 September 2026 in the opposed motion court. He alleges that 6 September 2026 was the earliest available date for opposed motion in the Limpopo Division.

[31] The Judge President denies that he abused judicial power for the benefit of those close to him so as to achieve positive results for Mrs Manyaku Thulare. However, the Judge President is silent on the evidently wrong process that was followed in the matter which departed from that prescribed by Rule 6 of the Uniform Rules of the High Court.

Analysis of the complaint

[32] A careful examination of the complaint reveals that the Judge President is accused of various forms of wrongdoing. The complainants allege among other things, that he abused judicial power to advance the interests of individuals close to him. When regard is had to numerous strange features in the matter and which are not explained by the Judge President, it cannot be said that the allegation is fanciful.

[33] Some of those features include the fact that the Judge President entertained and allowed Mrs Manyaku Thulare to start afresh a case that was decided finally at the level of the High Court by Makgoba JP and which at the relevant time was pending before the SCA. It will be recalled that Makgoba JP did not only discharge the order that was issued by Ledwaba AJ but he also dismissed the entire application in which Mrs Manyaku Thulare had claimed that she was rightly appointed Acting Queen. Therefore, the matter appears not only to have been *res judicata* in the High Court but also that the SCA was seized with it.

[34] It cannot be argued that the Judge President did not know at the time he entertained the matter that his predecessor had dealt with it and that his decision was the subject of the appeal. This is because Mrs Manyaku Thulare expressly said so in the affidavit that was placed before the Judge President. She explicitly asked him to revive Ledwaba AJ's order and put it into force on the sole basis that the granting of leave by the SCA suspended Makgoba JP's order.

[35] If the Judge President was persuaded by this argument, something he does not say in his response, he would have been shown to be grossly incompetent. It has never happened that the suspension of an order under appeal is taken to mean that the appellant can go back to the court of first instance and relitigate the same dispute which is the subject of the appeal, while that appeal is pending. This is unprecedented and it is remarkable that it has happened here.

[36] What compounds issues here is the departure from the procedure prescribed by Rule 6, after the *rule nisi* was granted by the Judge President on 3 December 2024. Obstacle after another appears to have been placed in the path of the complainants to prevent the reconsideration of the order of 3 December 2024. First,

it was said there was no urgency and the matter was struck off the roll. On the return day and despite the fact that the matter was ripe for hearing, it was said it should be enrolled in the opposed motion court's roll and was postponed for 17 months, on the basis that no earlier date was available.

[37] It is in this context that the complainant's allegation to the effect that the Judge President used judicial power to advance the rights of those close to him must read. The question that arises is whether, if established, the complaint will *prima facie* indicate that the Judge President is guilty of gross misconduct. This is the test for determining whether a recommendation should be made for the appointment of a Tribunal. As mentioned, this Committee does not have the authority to determine a complaint concerning gross incompetence and gross misconduct.

[38] Helpfully in this matter most of the facts are common cause. And the facts relevant to this issue are the following. After the dispute had arisen between Mrs Manyaku Thulare and the complainants, she approached the High Court on urgent basis and obtained a *rule nisi* from Ledwaba AJ which in effect declared that she was the Acting Queen and was entitled to continue to rule the Bapedi Nation. Meanwhile the complainants had instituted their own application, seeking among other prayers that Mr Morwamohube Thulare be declared Acting King of the same nation. On the return day of the *rule nisi* granted by Ledwaba AJ, the matter came before Makgoba JP who discharged the rule nisi and dismissed the claim by Mrs Manyaku Thulare but upheld the claim by Mr Morwamohube Thulare. Aggrieved by this outcome, Mrs Manyaku Thulare rightly appealed to the SCA.

[39] However, while the appeal was pending, she returned to the High Court to pursue the same claim that was dismissed by Makgoba JP. She boldly stated these

facts in her second application and sought that the High Court should declare that she was the Acting Queen and also revive the order that was granted by Ledwaba AJ. To avoid opposition from the complainants, she instituted an *ex parte* application on urgent basis. she also sought an interim order. Phatudi JP saw nothing wrong in the matter despite the flashing red lights. He granted a *rule nisi* declaring her Acting Queen and revived Ledwaba AJ's order. In addition, he ordered that his order would come into force immediately.

[40] The complainants came to know about that order for the first time from the social media. Their lawyers asked for the order and the application papers. Unhappy with the turn of events, the complainants sought to challenge the order and followed what Rule 6 of the Uniform Rules entitles them to do in the case of an order obtained *ex parte.* They gave notice setting the matter down for the reconsideration of the order on 14 January 2025. But in a strange twist, the matter was struck off the roll for lack of urgency, something which was completely irrelevant to the proceedings. Complainants then waited for the return date of the *rule nisi* which was 18 March 2025. They ripened the matter for hearing on that day. On 18 March they were told that in order for it to be heard, it should first be enrolled in the opposed motion court. When they sought to do that, they were told that the matter will be postponed to 6 September 2026, 17 months later. Therefore, the matter is still pending and Mrs Manyaku Thulare carries on as Acting Queen.

[41] What these facts reveal is nothing but a judicial backsliding that was orchestrated by Mrs Manyaku Thulare. What is most concerning is that she was enabled by Phatudi JP and his colleagues, to undermine the administration of justice in the most serious way. If the enabling was deliberate, these Judges may be guilty of gross misconduct. But if it was inadvertent, then they may well be guilty of gross

incompetence. However, these issues may only be determined by a Tribunal which is the only body mandated to investigate matters of this nature. The defence put forward by Phatudi JP will appropriately be assessed by the Tribunal.

[42] Notably the SCA has delivered judgment on the appeal.[11] It remitted the matter to the High Court for the hearing of oral evidence on certain issues. Of relevant significance is the order issued by that court which disqualifies Judges of the Limpopo Division from hearing the matter. The SCA ordered.

> "2. The matter is remitted to the Limpopo Division of the High Court, Polokwane for the hearing of oral evidence before a different Judge, excluding any Judge who, at any stage considered or adjudicated on the disputes between the parties in this appeal, any consolidated applications, and any other related matter. If necessary or practicable, the Judge President may set the matter down before a Judge from another Division of the high court".

[43] The reasons for this extensive and unusual order are not apparent from the judgment of the SCA. But for present purposes it must be accepted that the SCA could not issue such order if there were no reasons justifying it. Effectively the order denied the affected Judges the exercise of the authority conferred on them by the Constitution. Every Judge is entitled to exercise judicial power and perform judicial functions within the court to which they were appointed. They may not do so only if they are disqualified in a particular matter. Therefore, the order issued by the SCA suggests that the affected Judges are disqualified from hearing the matter. However, the judgment does not tell us the reasons for that disqualification.

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[11] *Thulare v Thulare and Others (470/2023)* ZASCA 100 (7 July 2025)).

[44] What is clear though is that none of the litigants before the SCA had applied for the recusal of any of the affected Judges. In fact, it would have been premature to make such application because no Judge as yet had been assigned to hear oral evidence in the matter. The likelihood is that from the record before it, the SCA was of the opinion that their role in the matter had disqualified those Judges from hearing it further. All of this will appropriately be established by a Tribunal.

[45] Accordingly, in terms of section 17(4) the Full Committee is requested to recommend to the Judicial Service Commission that a Tribunal be appointed to investigate and report on the complaint.

THE JUDICIAL CONDUCT COMMITTEE