



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/228/08/2025

In the matter between:

MS YOLANDA CHARLOTTE ZANA

COMPLAINANT

and

JUDGE SULET POTTERILL

RESPONDENT

Date: 26 May 2026

Decision: Complaint is dismissed.

SECTION 17 RULING

THE JUDICIAL CONDUCT COMMITTEE (SALDULKER JA)

Introduction

[1] The complainant, Ms Yolanda Zana lodged a complaint with the Judicial Conduct Committee (Committee) against Judge Sulet Potterill (respondent), a judge of the Pretoria High Court, Gauteng Division. The complaint against the respondent arises out of her conduct in an urgent minor child's relocation application in which the complainant was involved. The respondent presided over the application during

June 2025, and the subsequent hearing of the application for leave to appeal in July 2025.

[2] The complaint was lodged in terms of section 14¹ of the Judicial Service Commission Act 9 of 1994 (the Act), read with the Code of Judicial Conduct (the Code). Section 14 prescribes the grounds upon which a valid complaint may be lodged against a judge. Upon receipt of a complaint, the Chairperson must consider whether it should be dealt with under section 15, 16 or 17 of the Act depending on its nature.

[3] Having considered the complaint, the Acting Chairperson was of the view that it should be dealt with in terms of section 17² of the Act, being satisfied that if the

¹ Section 14 provides:

'(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.

(3) A complaint must be-

(a) based on one or more of the grounds referred to in subsection (4); and
(b) lodged by means of an affidavit or affirmed statement, specifying –
(i) the nature of the complaint; and
(ii) the facts on which the complaint is based.

(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 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.'

² Section 17(1) provides:

'(1) If–

(a) the Chairperson is satisfied that, in the event of a valid complaint being established, the appropriate remedial action will be limited to one or more of the steps envisaged in subsection (8); or

complaint is established, the appropriate remedy would fall within section 17(8) of the Act.³ Section 17 governs serious, non-impeachable complaints. The Acting Chairperson designated me to conduct the inquiry. Both the complainant and the respondent were afforded an opportunity to make written submissions and provided sufficient information in terms of section 17(3) of the Act. I am satisfied that there is no reasonable likelihood that a formal hearing would contribute to determining the merits of the complaint.

The Complaint

[4] The complainant alleges that she appeared before the respondent, on 13 June 2025, being represented by Mr Clement Marumoagae of Marumoagae Attorneys in an urgent minor child's relocation application. The minor child's biological father sought an order against the complainant in terms of section 18(iii) and (iv) of the Children's Act 38 of 2000 allowing him to permanently relocate to the United States of America with the minor child. He sought the complainant's consent to be waived with regard to making applications and obtaining the minor child's passport, visas and required travel documentation. The application was opposed by the complainant. The respondent granted an order against the complainant.

[5] In the complaint filed against the respondent, the complainant alleges, in essence, that the respondent engaged in wilful or grossly negligent conduct,

(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.'

³ 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.*
- (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.'*

breached the Code, specifically Articles 7 and 9, acted in a dishonest and racially discriminatory manner, conducted herself in a manner unbecoming of a judicial officer, and relied upon incorrect or non-existent legal authorities in reaching her decision in the relocation application.

[6] The complainant states that she was ‘disgruntled by the judgment itself, but [my] disgruntlement has nothing to do with this complaint and would be addressed through the appeal process to the Supreme Court of Appeal’. Furthermore, the complainant alleges *inter alia* as follows:

‘6 *This complaint has nothing to do with the merit of the application. This complaint exclusively relates to Judge Potterill’s conduct in court and what I view as a potentially racially discriminatory and dishonest conduct to reach her desired conclusion in her judgment, which amounts to a wilful or gross negligent breach of the Code of Judicial Conduct for judges.*

7 *The first ground of the complaint is that Judge Potterill, as a senior judge who I discovered has acted in both the Constitutional Court and the Supreme Court of Appeal, used non-existent law to decide against me. I understand that judges can misinterpret and misapply the law, and they can be corrected on appeal. But this was not a misapplication or misinterpretation of the law, but a deliberate dishonest act to reach a predetermined outcome.*

8 *On 13 June 2025, Judge Potterill delivered her judgment, where she granted an urgent child relocation application. In her quest to entertain the merits of the application, she relied on two cases that are **totally unrelated to the matter before her, and quoted non-existent quotes from the cases** to incorrectly decide that the matter was urgent.*

8.1 *The first case she relied on is the Constitutional Court judgment of AParty and Another v The Minister for Home Affairs and Others, Moloko and Others v The*

Minister for Home Affairs and Another 2009 (3) SA 649 (CC); 2009(6) BCLR 611 (CC) (12 March 2009). In paragraph 10 of her judgment, Judge Potterill incorrectly stated that the Constitutional Court case in para 65 found that:

“ . . . that launching applications on such short notice and at the very latest date should be avoided, as it places undue pressure on the parties and the court.”

8.2 *I have read this case and did not come across any of the stated words in the Constitutional Court’s judgment. Para 65 of the Constitutional Court’s judgment reads:*

“Matters concerning elections should ordinarily be brought at the earliest available opportunity because of their potential impact on the elections. If they are brought too close to the elections, this might result in the postponement of the elections. This is not desirable in a democratic society. There may well be circumstances where bringing a challenge earlier is not possible having regard to the nature of the dispute. These circumstances would be very rare. Where the challenge could and should have been brought earlier, a litigant must put out facts, covering the entire period of delay, explaining why the challenge could not have been brought earlier. Failure to do so may well result in the refusal of the relief.”

8.3 *For context, and without dealing with the merits, the Applicant’s urgent child relocation dispute was brought on 15 May 2025 and enrolled to be heard 20 days later, on 3 June 2025. The words that Judge Potterill incorrectly attributed to the Constitutional Court did not even reflect the facts of the application before here.*

8.4 *As if that was not enough, Judge Potterill also referred to the case of Economic Freedom Fighter and Others v Chairperson of the Powers and Privileges Committee N.O and Others 2024 (10) BCLR 1328 (WCC); 2024 (6) SA 474 (WCC) (26 July 2024). Without indicating the paragraph or page number she relied upon, Judge Potterill incorrectly said that in this case:*

“It was found that one day notice to the respondents with the court to digest the contents thereof so that the matter could be heard and judgment handed in a space of a day or two thereafter, was also wholly unreasonable.”

- 8.5 *I also carefully read this case and established that nowhere in the judgment did the court state any of these words. These words are totally irrelevant because the Applicant did not even give a one-day notice. There was also no complaint about the notice period given. The argument was that the length between the lodging of the urgent application and the hearing thereof indicated that the matter was not urgent. Surely, an urgent court cannot wait for close to three weeks to hear the matter.*
- 8.6 *Judge Potterill used non-existent quotations that she incorrectly attributed to existing cases to conclude that the matter was urgent and decided to entertain the merits of the application. Had she not manufactured legal precedent, the application would have been dismissed with costs.*
- 9 *I instructed my legal representative to apply for leave to appeal, and the matter came before her again. In my application for leave to appeal, the first ground of appeal was that she referred to non-existing law in her main judgment.*
- 10 *The way Judge Potterill dealt with this ground of appeal persuaded me that she deliberately manufactured legal precedent to decide the case against me. Without even acknowledging that she relied on non-existent law or that she was wrong in so doing, she quickly informed my legal representative that she dismisses this ground of appeal out of hand, even before argument was advanced. During the hearing, she indicated that no court would entertain an appeal based on an order relating to an urgent application because it is interim in nature. This is also simply incorrect and disappointing, coming from a senior judge, who gave a final order in the matter.*

- 11 *This demonstrated judicial arrogance of the highest order, where serious issues that raise ethical conduct are highlighted and the judge takes a superior and dismissive posture by dismissing valid points made against her, without any attempt at self-introspection*
- 12 *Judge Potterill denied my legal representative the right to point her in the right direction and demonstrate to her that her view on interim orders is misplaced and incorrect. Had she showed humility, patience and tolerance, my legal representative would have directed her to the Constitutional Court's case of *Forum and Others v City of Johannesburg and Others*; *South African National Traders Retail Association v City of Johannesburg and Others* 2014 (6) BCLR 726 (CC); 2014 (4) SA 371 (CC) at paragraph 20, which clearly illustrates that interim orders can be appealed against.*
- 13 *Judge Potterill's conduct demonstrates that she can manufacture precedent to reach her desired outcomes, which are not in accordance with the law. This is unethical and against the rule of law and the principle of fair resolution of disputes before the court. Her capacity to manufacture precedent illustrates that she is a danger to the public who have trust and confidence that the courts will fairly resolve their disputes. This conduct puts the administration of justice into disrepute and requires a serious investigation into her conduct to send a clear message that such conduct will not be tolerated in any of the South African courts.*
- 14 *Judge Potterill's conduct violated Article 9 of the Code of Judicial Conduct, which provides that:*

"[a] judge must resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, which includes the duty to

- (i) observe the letter and spirit of the audi alteram partem rule;*
- (ii) remain manifestly impartial; and*
- (iii) give adequate reasons for any decision."*

- 15 *An impartial judge who has respect for the rule of law understands that a courtroom is not her house and she is required to apply the appropriate law to reach a just conclusion fairly. An impartial judge does not rely on non-existent law to reach unjust outcomes.*
- 16 *Judge Potterill violated my right to have access to the court and have my case resolved fairly in a court of law in accordance with section 34 of the Constitution. A judge cannot be allowed to act unethically and dishonestly to violate litigants' constitutional rights. If dishonesty is established, this will also amount to gross misconduct.*
- 17 *I often read in the media about lawyers who are accused of using Artificial Intelligence-generated cases to support their arguments. In some of the judgments that I have seen, courts have frowned upon this behaviour and described it as an unethical, misleading, and dishonest (see *Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal and Others 2025 (3) SA 534 (KZP) para 45*). In this case, the court held that the conduct of the legal practitioner concerned merited an investigation by the Legal Practice Council (para 41).*
- 18 *It cannot be denied that relying on non-existent law to influence the decision of the court is dishonest conduct. The dishonesty is reflected by the judge's failure, when this is pointed out, to take the matter seriously and issue an apology for her conduct, if this was a mistake. Instead, she remained relentless and dismissive as if she was entitled to manufacture legal precedence.*
- 19 *The standard for judges, given their immense powers, should be higher than that expected from legal practitioners. If lawyers can be referred to the Legal Practice Council following accusations of dishonesty for relying on non-existent law, surely, judges too should be investigated for this serious, unethical behaviour.*
- 20 *In my case, reliance on non-existent law was not a mistake but a deliberate act by a senior judge who was aware that her conduct was unlawful. Judge Potterill is not an incompetent judge who will merely rely on non-existent law. She used her experience to manufacture a non-existent law to reach an unjust outcome. This was a deliberate act that falls within*

section 14(4) of the Judicial Service Commission Act 9 of 1994, which empowers me to lodge a complaint due to Judge Potterill's wilful or grossly negligent breach of the Code of Judicial Conduct.

21 *The second ground upon which my complaint is based is that my legal representatives, both at the main hearing and the application for leave hearing, were subjected to what I consider unfair racial discrimination, which is difficult to establish if one is not observant.*

21.1 *In the main application, my attorney argued the matter on my behalf. First, Judge Potterill requested him to moderate the pitch of his voice because she viewed him as being too loud in court, which he did. This request was not based on any altercation. It was made when my attorney was arguing a point, which Judge Potterill did not even take issue with. I initially interpreted this request as a harmless request from the presiding judge. The response from my legal representative was also polite.*

21.2 *Later on, during the argument, Judge Potterill seemed to be irritated by the point my attorney was making, and she literally shouted at him in open court. My attorney stood his ground and said that the judge should not shout at him. The judge continued to scream in a way that lowered the dignity of my attorney and uttered the words 'you are not going to do that to me' in a very loud manner. My attorney pointed out that the judge earlier requested that he lower his voice, and he did, but he did not understand why the judge would scream at him.*

21.3 *A white female advocate represented my opponent. The judge did not ask even one question. She allowed her to argue until she finished. She never screamed at her or treated her in any undignified manner.*

21.4 *I thought maybe the judge had a personal problem with my attorney. However, the disrespectful conduct was not restricted to my attorney alone. Because we were preparing to approach the Supreme Court of Appeal, my attorney advised that it would be better to strengthen my team by procuring the services of an Advocate.*

21.5 *My attorney requested Advocate Irene Mpofu to join the team. When Advocate Mpofu argued an application for leave to appeal on 15 July 2025, Judge Potterill showed similar disrespect towards her. She was impatient and asked demeaning questions that sought to discourage her. She did not ask such questions to my opponent's Advocate, a white female.*

21.6 *I watched some of the judges' interviews. I saw some of the candidates who alluded to the fact that certain white judges still harbour racially superior attitudes and practice subtle racism in our courts. This is a serious issue that must be investigated.*

21.7 *It appeared to me that the gender and colour of the person who appeared before Judge Potterill mattered. Judge Potterill was impatient throughout the proceedings against my lawyers while demonstrating absolute tolerance to the white female lawyer, whose arguments were vulnerable to being probed by the judge.*

21.8 *I am of the view that Judge Potterill violated Article 7 of the Code of Judicial Conduct, which states that:*

"A judge must at all times

- (a) personally avoid and dissociate him or herself from comments or conduct by persons subject to his or her control that are racist, sexist or otherwise manifest discrimination in violation of the equality guaranteed by the Constitutional;*
- (b) in court and in chambers act courteously and respect the dignity of others;*
- (c) in the performance of judicial duties refrain from being biased or prejudiced."*

22 *I have reason to believe that Judge Potterill's conduct in court and how she approached her judgment cannot be deemed as innocent mistakes. Judge Potterill's conduct warrants a full investigation, lest it put the judiciary into disrepute. The injustice I suffered at the hands of Judge Potterill and the arrogance she demonstrated must not be experienced by any other litigant or lawyer in the court where she presides.*

23 *I therefore submit this complaint for investigation. I attach hereto Judge Potterill's judgments in the main application for leave to appeal marked Annexures A and B respectively.'*

[7] Upon a request in terms of section 17(3)(a) of the Act to respond in writing to the allegations levelled against her by the complainant, the respondent filed her comments together with the transcript of the proceedings in the urgent application and the application for leave to appeal. She vehemently denied conduct that reflected bias, wilful or gross negligence or breach of her duties or any racial discrimination. She stated *inter alia*:

'I did not use any Artificial Intelligence in getting to any conclusion and if I used non-existent law then the Supreme Court of Appeal will in the appeal address same.

I did not know any of the parties or the legal representatives before me. There is no plausible reason or fact for a conclusion that I had a predetermined outcome; there simply was none. Both legal representatives were competent and knew the facts and case law pertaining to a re-location application well.

I did ask Mr Marumoagae to lower his voice. I did not see his conduct as shouting at the Court, or being disrespectful, but it was so loud that it was distracting, and I had received complaints from the Court next door that it was distracting in that Court. He took no offence and the matter proceeded. My request was not indicative of racial discrimination or a breach of my duties. I did not scream at the attorney, but when he intimated racism I did say that he must please not do that, or resort to that.

If a Court asks questions, then it implies that a representative had said something that triggers food for thought and a Court would then ask a follow-up question to see if the argument is understood because it may sway the Court. It does not reflect a bias or discrimination. Questions are asked to alert the representatives that the court does not agree with that statement and affords

him or her a further opportunity to address it. The record of the transcript for the leave to appeal speaks for itself.

I most certainly had no pre-ordained outcome for this matter. I have not in 16 years made myself guilty of serious misconduct and will not do so now. It was an urgent matter that needed speedy judgments and the Supreme Court of Appeal will look at the matter and render a decision.

I reiterate that I vehemently deny that racism had any role to play in the outcome’.

LEGAL FRAMEWORK

[8] The Code serves as the prevailing standard of judicial conduct. Article 2(3) of the Code states that any wilful or grossly negligent breach of the Code is a ground upon which a complaint may be lodged in terms of section 14(4)(b) of the Act. Section 14 (4)(b) recognises as a ground of complaint any wilful or grossly negligent breach of the Code, while section 14(4)(e) includes any other wilful or grossly negligent conduct which is incompatible with or unbecoming the holding of judicial office, including conduct prejudicial to the dignity, efficiency or effectiveness of the courts. Of particular relevance here are Articles 7 and 9 of the Code.

[9] In terms of article 7 of the Code:

“A judge must at all times –

- (a) personally avoid and dissociate him-or herself from comments or conduct by persons subject to his or her control that are racist, sexist, or otherwise manifest discrimination in violation of the equality guaranteed by the Constitution;*
- (b) in court and in chambers act courteously and respect the dignity of others;*
- (c) in conducting judicial proceedings, give special attention to the right to equality before the law and the right of equal protection and benefit of the law; and*
- (d) in the performance of judicial duties refrain from being biased or prejudiced.”*

[10] In terms of article 9 of the Code:

“A judge must-

- (a) *resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, which includes the duty to-*
 - (i) *observe the letter and spirit of the audi alteram partem rule;*
 - (ii) *remain manifestly impartial; and*
 - (iii) *give adequate reasons for any decision;*
- (b) *in conducting judicial proceedings-*
 - (i) *maintain order;*
 - (ii) *act in accordance with commonly accepted decorum; and*
 - (iii) *remain patient and courteous to legal practitioners, parties and the public, and require them to act likewise;*
- (c) *manage legal proceedings in such a way as to –*
 - (i) *expedite their conclusion as cost-effectively as possible; and*
 - (ii) *not shift the responsibility to hear and decide a matter to another judge;*
and
- (d) *not exert undue influence in order to promote a settlement or obtain a concession from any party.’*

EVALUATION

[11] The issue that arises before me is whether the conduct of the respondent as outlined in the complaint was wilful or grossly negligent and supports a breach of the relevant articles of the Code. It is important to note that under the Act a mere breach of the Code is not punishable, even if it is a negligent one. It is only a wilful or grossly negligent violation of the Code which accounts for misconduct. This means that a judge who violates the Code, even negligently does not commit misconduct or gross misconduct.

[12] The complainant alleges that the respondent has breached articles 7 and 9 of the Code. These articles require judges to act *inter alia* impartially, to uphold the dignity of the courts, to apply the law correctly, manage legal proceedings in such a way as to expedite their conclusion as cost-effectively as possible, to ensure fairness in judicial proceedings and a degree of decorum. Judges are expected to conduct proceedings with fairness, patience, courtesy and impartiality. They are entitled to manage the proceedings actively, which may include interrupting counsel, asking questions for the sake of clarity and maintaining an element of firmness. This requires court management. A judge must avoid conduct or comments that are racist and manifest discrimination in violation of the equality guaranteed by the Constitution. These provisions are foundational to the administration of justice and must be scrupulously observed.

[13] The respondent has denied that her conduct was influenced by bias, wilful or gross negligence or breach of her duties or racial considerations. She explained that the matter was urgent in nature and required expeditious determination, and racism had no role to play in the outcome. She stated that her request to the complainant's legal representative to lower his voice was motivated solely to maintain decorum in the courtroom, particularly in light of complaints regarding the disruptive volume of the proceedings, and not by any discriminatory intent.

[14] The allegations of racial discrimination are serious. However, they are based primarily on the perception that the respondent treated the legal representatives differently during the hearing, particularly in relation to interruptions and the manner in which questions were posed. Allegations of this nature require clear and objective evidence demonstrating that differential treatment was motivated by race or other prohibited grounds. There is no evidence before me that supports the conclusion that

her conduct was motivated by race. The respondent has provided a plausible explanation for her conduct, indicating that her interventions in court were an ordinary and necessary judicial function directed at maintaining order and clarity in the proceedings. The mere fact of differing interactions with counsel, without more, does not establish discrimination. Furthermore, the respondent stated that she had no prior relationship with any of the parties or their representatives and rejected the suggestion that the outcome of the matter was predetermined. The allegations of racial discrimination has not been established.

[15] A significant part of the complaint concerns the correctness of the respondent's reasoning and the suggestion that the respondent deliberately used non-existent law to decide the matter against the complainant, which included relying on fabricated authority to reach a particular predetermined outcome. While such allegations are serious, they relate directly to the correctness of the judgment and the merits of the case. This raises an important jurisdictional point. Axiomatically, judges are required to interpret complex legal principles, and it is not uncommon for their decisions to be challenged on appeal. However, the Judicial Conduct Committee is not an appeal body and is not tasked with deciding whether a judgment is right or wrong. That function lies with the appellate courts. Where a party believes that a judge has made errors in law, the proper course is to pursue an appeal. Thus, the issues raised by the complainant in this regard fall squarely within the domain of appellate courts, and fall outside the ambit of this committee's jurisdiction.

[16] The complainant has also contended that the respondent's conduct was unbecoming and inconsistent with the standards expected of a judicial officer. It is accepted that judges must conduct the proceedings in a manner that inspires public confidence in the administration of justice. There is no indication that the respondent's conduct in both the proceedings in the relocation application and the

application for leave to appeal, was such as to amount to a breach of Articles 7 and 9 or was inappropriate or excessive as to amount to conduct unbecoming of a judicial officer. All the questions put by the respondent during the two proceedings were done in the course and scope of her judicial functions. There is no indication that the respondent departed from the standards of impartiality and propriety required by the Code during both the hearings.

[17] Firmness in the conduct of proceedings does not, without more, amount to impropriety. Having regard to the respondent's explanation and the absence of objective evidence demonstrating a breach of the relevant Codes, discourtesy or misconduct of a serious nature, I am satisfied that the conduct complained of falls within the bounds of acceptable judicial behaviour. The allegation of conduct unbecoming has not been sustained on the present facts.

[18] In view of all the foregoing, the allegations raised by the complainant against the respondent are devoid of merit and do not amount to a wilful or grossly negligent breach of the Code. There has also not been any other wilful or negligent conduct 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.

[19] Accordingly, the complaint is dismissed.



THE JUDICIAL CONDUCT COMMITTEE