



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/194/06/2025

In the matter between:

JUDGE PRESIDENT MOLETJE GEORGE PHATUDI APPELLANT

and

ADV SEKGAME SHADRACK TEBEILE RESPONDENT

Date: 28 April 2026

- Decision:**
1. The appeal is dismissed;
 2. The cross-appeal is dismissed;
 3. The ruling delivered by Jafta J on 31 October 2025, including the remedial steps imposed in terms of section 17(8) of the Judicial Service Commission Act 9 of 1994, is confirmed.

RULING

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

Introduction

[1] This matter serves before the Appeal Committee in terms of section 18 of the Judicial Service Commission Act 9 of 1994 (“the Act”).¹ It concerns an appeal by Judge President Phatudi against a section 17 ruling delivered by Jafta J on 31 October 2025, and a cross-appeal by Adv Tebeile.

Factual Background

[2] In that ruling, Jafta J found that the appellant had acted in breach of the Code of Judicial Conduct by presiding over proceedings notwithstanding his prior involvement, before appointment to the Bench, as legal representative for Mr Mahlagaume Sello Kgolane in litigation concerning a dispute over a particular piece of immovable property, ERF 819-KS (the property), and later sitting as the presiding Judge in proceedings involving the same parties and the same property. Jafta J directed the appellant to tender a written apology to the complainant, to submit himself to a reprimand by the Chief Justice, and that a written warning be issued to him by the Chief Justice.

[3] The complaint was lodged in February 2024. Its gravamen was that the appellant ought not to have presided in proceedings involving Mr Kgolane after disclosing that, before his appointment to the Bench, he had acted as Mr Kgolane’s attorney in earlier litigation concerning the same property. The complaint concerned, in particular, the hearing held on 6 June 2017 and the later proceedings on 11 November 2021, in which the appellant again presided in litigation arising from the same dispute. The complainant’s case was, in essence, that once the appellant’s

¹ Section 18(1) of the Act provides, “[t]he Committee must consider an appeal referred to in section 15 (5) or 17 (7) at a meeting determined by the Chairperson...”.

prior professional involvement with Mr Kgolane became known, he was obliged to recuse himself and not to make rulings in the matter.

[4] Jafta J rejected the appellant's response that no misconduct arose because only procedural rulings were involved. He held, in substance, that the Code required recusal in the circumstances; that the appellant's decision to continue presiding was a deliberate and, at the very least, grossly negligent breach of the Code; and that the matter fell to be dealt with under section 17 of the Act by means of the remedial steps available under section 17(8).

Discussion

[5] The appellant attacks that outcome on a number of grounds. These may be summarised as follows: first, that Jafta J failed to attach proper weight to the delay between the events of 2017 and the lodging of the complaint in 2024; second, that articles 12 and 13 of the Code were wrongly applied because, although the later proceedings involved the same parties and the same property, they were not the same case in which the appellant had previously acted as attorney, because only procedural or interlocutory relief was before him, and because no value judgment on the merits was made; third, that article 13 was not part of the complaint and that the appellant was not afforded a proper opportunity to address it; fourth, that the findings of wilfulness and gross negligence were not justified; fifth, that Jafta J impermissibly treated the matter as involving a constitutional violation and thereby acted outside section 17; sixth, that section 17 was, on the appellant's case, incompatible with the language of gross misconduct used in the ruling; seventh, that Jafta J adopted an inconsistent approach to factual disputes; eighth, that the sanction imposed was disproportionate; and ninth, by way of a supplementary ground, that the absence of

demonstrated prejudice, the interlocutory nature of the rulings, and considerations relating to his office as Judge President rendered recusal unnecessary.

[6] The respondent opposes the appeal. In addition, by way of cross-appeal, he seeks more than the confirmation of the section 17 ruling. He contends that the ruling should not have ended with section 17 remedial steps and that, having regard to Jafta J’s findings and his remarks on the inadequacy of the available sanction, the matter ought instead to be referred for investigation by a Judicial Conduct Tribunal in terms of section 17 (5)(c)(iii) of the Act.²

[7] The point of departure is the statutory framework. In terms of section 14(4)(b) of the Act, a complaint may be based on any wilful or grossly negligent breach of the Code of Judicial Conduct.³ Section 17 applies where, if a valid complaint is established, the appropriate remedial action will be limited to one or more of the steps listed in section 17(8).⁴ On appeal, section 18(4)(c) empowers the Appeal

² Section 17(5)(c) (iii) reads, “...[u]pon 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—

...

(iii) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal.”

³ Section 14(4) of the Act provides, “[t]he 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”.

⁴ Section 17(1) of the Act provides, “[i]f—

Committee either to set aside the decision; to confirm it or set it aside and substitute it with an appropriate decision, with or without amendment of the remedial steps imposed; or to set it aside and recommend to the Commission that the complaint be investigated by a Tribunal in terms of section 19.⁵ Articles 12(3),⁶ 13(a)⁷ and 13(b)⁸ of the Code regulate when a Judge may hear a matter and when recusal is required, including where the Judge previously acted as a legal representative before appointment or where the circumstances create reasonable grounds for disqualification.

Evaluation

[8] In our view, the appeal cannot succeed. The essential factual premise on which Jafta J proceeded was not materially displaced on appeal. It was common cause that,

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- (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)”.

Section 17(8) of the Act provides, “[a]ny 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 18(4)(c) of the Act provides, “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”.

⁶ “A judge previously in private practice must not sit in any case in which he or she, or his or her former firm, is or was involved before the judge’s appointment, and a judge must not sit in any case in which the former firm is involved until all indebtedness between the judge and the firm has been settled”.

⁷ “A judge must recuse him-or herself from a case if there is a—

- (a) real or reasonably perceived conflict of interest”.

⁸ “A judge must recuse him-or herself from a case if there is a—

- ...
(b) reasonable suspicion of bias based upon objective facts, and shall not recuse him-or herself on insubstantial grounds”.

before his appointment as a Judge, the appellant had acted as attorney for Mr Kgolane in litigation relating to the same property. It was also common cause that the appellant later presided in proceedings arising from that same dispute, including the hearing on 6 June 2017 and the later proceedings in November 2021. Those are the facts that mattered to the section 17 inquiry, and they remained intact.

[9] The delay point does not avail the appellant. The complaint was not confined to a single event in June 2017. It also concerned the later proceedings in November 2021. More importantly, the appellant did not demonstrate how the lapse of time prevented a fair adjudication of the complaint. The key facts were drawn from the court record, the relevant orders, and the appellant's own account of his prior professional involvement. Delay, without identified prejudice of a kind affecting the integrity of the process, did not require the dismissal of the complaint.

[10] Nor does the appellant's reliance on the distinction between substantive and procedural rulings carry the matter further. Article 12(3) does not permit a Judge who previously acted as attorney in a matter to continue sitting merely because the issue presently before the court is interlocutory or procedural in character. The mischief addressed by the article is the Judge's participation in a case in which he or she previously acted as legal representative before appointment. On the accepted facts, the 2017 and 2021 proceedings were part of the same dispute over the same land involving the same former client. That the immediate issues before the court may have been framed as procedural applications did not remove the obligation to recuse.

[11] The same is true of the argument based on the absence of a value judgment. The recusal enquiry is not confined to situations where a Judge is required to make

credibility findings or final determinations on the merits. The Constitutional Court has made clear that the relevant enquiry is whether a reasonable, objective and informed person would, on the correct facts, reasonably apprehend that the Judge would not bring an impartial mind to bear on the matter.⁹ The Code is concerned also with the appearance of impartiality and with public confidence in the administration of justice. Once it was known that the appellant had previously represented Mr Kgolane in that dispute, the obligation was to refrain from sitting in the matter, not to continue on the footing that no evaluative ruling would be made.

[12] The contention that Article 13 did not arise from the complaint, or that the appellant was denied an opportunity to meet that case, is likewise without merit. The complaint squarely concerned the propriety of the appellant presiding after his previous attorney-client connection with one of the parties had emerged. The appellant addressed that issue directly in his response. Article 13 was not an extraneous or newly introduced basis of liability. It was the legal consequence of the very facts on which the complaint was founded.

[13] We are also not persuaded that Jafta J acted outside the powers conferred by section 17. The inquiry remained one under section 17 from beginning to end. The order that was ultimately made was an order authorised by section 17(8). The references in the ruling to constitutional obligations of impartiality do not alter that character. They were made in order to explain the normative significance of the Code and the seriousness of its breach. They did not convert the proceedings into a section 19 process or a determination under section 177 of the Constitution.

⁹ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 9; 1999 (4) SA 147; 1999 (7) BCLR 725 at para 48.

[14] The argument that the ruling is internally defective because it uses the language of “gross misconduct” in a section 17 matter is, in the present context, more semantic than substantive. What matters is that the conduct found to have been established was a wilful or grossly negligent breach of the Code within the meaning of section 14(4)(b), and that the order made was confined to section 17 remedial steps. No jurisdictional misdirection is shown by the mere fact that Jafta J described the proven misconduct in emphatic terms.

[15] The findings of wilfulness and gross negligence were, in our view, open to Jafta J on the record. This was not a case in which the appellant was unaware of the possible conflict or forgot about his earlier involvement. His own position was that he knew of the prior representation, but considered recusal unnecessary because only procedural issues arose and because, in his view, the circumstances did not justify stepping aside. That was a conscious decision taken in the face of known facts. Jafta J was entitled to regard that conduct as, at the very least, a wilful or grossly negligent breach of the Code.

[16] The appeal ground based on an allegedly inconsistent factual approach also fails. The decisive findings did not depend on the resolution of every factual dispute raised at the oral hearing. Even if one leaves aside disputed questions concerning the precise courtroom exchanges or who first mentioned the previous professional connection, the admitted and objectively established facts were sufficient to sustain the ruling. No material inconsistency has been shown.

[17] The supplementary contention that there was no demonstrated prejudice to the litigants, and that scarce judicial resources in the Division militated against recusal, cannot excuse the breach. Articles 12 and 13 are prophylactic. They exist not only

to prevent actual unfairness, but also to avoid situations that may objectively undermine confidence in judicial impartiality. Administrative pressure, a heavy roll, or a shortage of available Judges cannot justify a Judge sitting in a matter from which the Code required recusal.

[18] Nor is there any basis to interfere with the remedial steps imposed. Section 17(8) expressly permits a combination of remedial measures. Having regard to the nature of the breach, the fact that it arose more than once, and the senior judicial office held by the appellant, an apology, reprimand, and written warning cannot be said to be disproportionate or otherwise unsustainable. That Jafta J considered the remedial powers available under section 17 to be limited does not render the order he made unsound. Section 17(8) plainly affords Jafta J wide discretion on sanction. Our law is well settled that interference on appeal in respect of the exercise of a discretion is limited. None of the limited grounds for interference exist here.

[19] That leaves the cross-appeal. We are unable to uphold it. The respondent's essential contention is that, because Jafta J described the breach as deliberate and remarked that a firmer sanction would have been warranted, the matter should now be escalated to a Judicial Conduct Tribunal. In our view, that is not a correct reading of the ruling.

[20] The statutory question is not whether stronger language might have been used, nor whether the section 17 remedies may be thought lenient in relation to the seriousness of the conduct. The question is whether this Appeal Committee should now set aside the section 17 outcome and recommend that the complaint be investigated by a Tribunal, that is, whether the record justifies shifting the matter

into the more serious section 16 to section 19 pathway contemplated by the Act. In our view, it does not. Section 17(4)(c) expressly contemplates that, where it appears in the course of a section 17 inquiry that the complaint, if established, may amount to gross misconduct, the matter may be escalated by the submission of the record together with a report and recommendation to the Commission that the matter be investigated by a Tribunal. That course was not taken here.

[21] The matter came before Jafta J as a section 17 inquiry after the Acting Chairperson had already determined that it should be dealt with on that footing. Had Jafta J considered that the complaint should no longer be dealt with under section 17, it was open to him, within the statutory scheme, to trigger the escalation contemplated in section 17(4)(c). He did not do so. Instead, notwithstanding his strong criticism of the appellant's conduct, he disposed of the complaint by means of a combination of section 17 remedial measures. Properly understood, his observation that a firmer sanction may have been warranted was not a finding that the matter required a Tribunal. It was, rather, an acknowledgment that the Act affords no intermediate sanction between the remedial measures available under section 17(8) and the far more serious section 16 to section 19 route, which may ultimately lead to removal from office. Read in that context, the ruling identifies a limitation in the statutory scheme; it does not support the conclusion for which the cross-appeal contends.

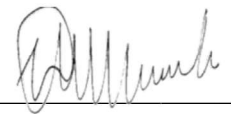
[22] The cross-appeal therefore fails for essentially the same reason that the appeal fails. On the one hand, there is no proper basis to set aside the section 17 ruling in order to exonerate the appellant. On the other, there is also no proper basis on this record to disturb the section 17 character of the matter and replace the ruling with a recommendation for the establishment of a Tribunal.

[23] The appeal and the cross-appeal must accordingly be dismissed. The ruling of Jafta J, including the remedial steps imposed, falls to be confirmed.

Order

[24] The following order is made:

- a. The appeal is dismissed.
- b. The cross-appeal is dismissed.
- c. The ruling delivered by Jafta J on 31 October 2025, including the remedial steps imposed in terms of section 17(8) of the Judicial Service Commission Act 9 of 1994, is confirmed.



THE JUDICIAL CONDUCT COMMITTEE