



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/61/06/2024

In the matter between:

MR S VAN SCHALKWYK

COMPLAINANT

and

JUDGE CMJ FORTUIN

RESPONDENT

Date: 28 April 2026

Decision: The appeal is dismissed.

RULING

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

[1] This is an appeal in terms of section 18,¹ read with section 15(5),² of the Judicial Service Commission Act 9 of 1994 (“the Act”). It is brought against the decision of the Judge President of the Western Cape Division of the High Court, acting as the Head of Court designated under section 14(2) of the Act,³ to dismiss the complaint lodged by Mr. Schalkwyk against Judge Chantel Fortuin.

[2] The complaint was dismissed on 9 July 2025 in terms of section 15(2)(d) of the Act on the basis that it was frivolous or lacking in substance.⁴ Mr. Schalkwyk now appeals that dismissal and asks that the matter be pursued as a complaint of judicial misconduct.

The Complaint

[3] The complaint arises from the respondent’s alleged conduct during court proceedings in which Mr Schalkwyk appeared without legal representation. In substance, the complainant contends that, after Legal Aid South Africa withdrew, Judge Fortuin proceeded while he remained unrepresented, pressured him to represent himself, afforded him only limited time within which to secure further representation,

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...”.

² Section 15(5) of the Act provides, “[a] complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (1) may, within one month after receiving notice of that decision, appeal to the Committee in writing against that decision, specifying the grounds for the appeal”.

³ Section 14(2) of the Act provides, “[w]hen 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(2) of the Act provides that a complaint must be dismissed if it—

- “(a) does not fall within the parameters of any of the grounds set out in 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”.

threatened him with contempt proceedings or imprisonment, and made orders against him despite his lack of legal representation.

[4] In the appeal, Mr. Schalkwyk repeats those grievances. He contends that the dismissal of the complaint was procedurally unfair, substantively flawed and unreasonable, and that insufficient regard was had to the court transcripts and other material he had submitted. He relies in particular on what he describes as prior assurances that he would receive legal representation, the making of binding orders while he remained unrepresented, and alleged improper threats of contempt proceedings and imprisonment.

[5] In written submissions filed on appeal, Judge Fortuin states that the judgment accurately records what occurred during the hearings; that Legal Aid South Africa confirmed that Mr Van Schalkwyk did not qualify for legal aid and that no appeal against that refusal was pending when the final application for leave to appeal was heard; and that, once it became apparent that Legal Aid was not on brief, she personally approached the Bar for pro bono assistance and also requested Legal Aid to appear in court so that its position could formally be placed on record.

Discussion

[6] The starting point is section 14(4) of the Act.⁵ A complaint against a judge must fall within one or more of the recognised statutory grounds. Relevant for present

⁵ 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;

purposes are section 14(4)(b), which concerns any wilful or grossly negligent breach of the Code of Judicial Conduct, and section 14(4)(e), which concerns other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office, including conduct prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.

[7] Section 15, however, requires summary dismissal where a complaint does not fall within those statutory parameters, where it is solely related to the merits of a judgment or order,⁶ or where it is frivolous or lacking in substance.⁷ On appeal, the Committee must determine whether the dismissal should be confirmed or set aside in terms of section 18(4)(a) of the Act.⁸

[8] The allegations advanced by the complainant engage, at least at a general level, the judicial obligations of courtesy, impartiality and fairness reflected in

-
- (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”.

⁶ Section 15(2)(c).

⁷ Section 15(2)(d).

⁸ Section 18(4) of the Act provides, “[a]fter 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;
 - (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.”

Articles 7⁹ and 9¹⁰ of the Code of Judicial Conduct. But the question is not whether the complainant felt aggrieved by what occurred in court. The question is whether the material before the Committee discloses facts capable of establishing a wilful or grossly negligent breach of the Code, or other wilful or grossly negligent conduct incompatible with judicial office.

[9] In our view, it does not. Properly analysed, the complaint is directed mainly at the way in which the respondent managed the proceedings and at the correctness of decisions taken in the course of those proceedings. The complainant's dissatisfaction centers on whether the matter ought to have proceeded in the absence of his preferred legal representation, whether the respondent should have accepted his position concerning Legal Aid South Africa, and whether the respondent's interventions during the hearing were justified. Those are, in substance, complaints about procedural rulings and courtroom management.

⁹ Article 7 of the Code of Judicial Conduct provides, "[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 Article 9 of the Code of Judicial Conduct provides, "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".

[10] The Code itself makes plain that complaints related to the merits of a judicial decision or to procedural rulings are not to be transformed into disciplinary proceedings. Clause 9(v) of the Code records that judicial errors of fact or law are to be addressed through appeal or review, and that complaints against Judges which are related to the merits of a decision or procedural rulings are to be dismissed at the outset. Clause 9(i) further recognises that the duty to afford a fair hearing does not preclude a Judge from maintaining a firm grip over proceedings or dealing firmly and fairly with applications for postponement.

[11] The present complaint falls squarely within that terrain. The fact that the complainant disagrees with the respondent's handling of the matter, or considers it unfair, does not without more convert the complaint into one of judicial misconduct. There is no objective material before the Committee showing that the respondent acted from bias, prejudice, spite, ill-will, ulterior purpose, or any other improper motive. Nor is there material establishing arbitrariness or abusiveness of the kind contemplated by section 14(4)(b) or section 14(4)(e).

[12] The record before the Committee does not support the complainant's central premise that the respondent acted improperly in relation to the issue of legal representation. What does appear from the material is that, in her written submissions on appeal, the respondent states that when Mr Van Schalkwyk informed the court that a further appeal was allegedly pending within Legal Aid South Africa, she made enquiries at Legal Aid's Malmesbury office and was informed that no such appeal was pending at the time; she further states that a representative of Legal Aid appeared in court on the day of the hearing to place that position on record. The transcript also shows that the issue of legal representation was canvassed in court and that the respondent afforded the complainant an indulgence of two weeks before the matter

was to proceed. In those circumstances, the record does not substantiate the allegation that the respondent acted unfairly or improperly by disregarding an extant Legal Aid appeal. The converse appears from the record – the respondent granted the complainant a further indulgence of two weeks to obtain legal representation.

[13] The complainant's allegations of unfairness, prejudice and improper judicial conduct are unsupported conclusions. The Act requires a complaint to be founded on facts. Subjective dissatisfaction, even strongly felt dissatisfaction, is not enough. On the material before the Committee, those allegations do not cross the threshold from grievance to cognisable judicial misconduct.

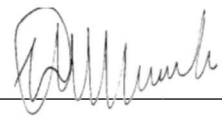
[14] The same applies to the complaint concerning the respondent's courtroom interventions and references to contempt-related consequences. Judges are required by Article 9 of the Code to maintain order and decorum in judicial proceedings. Firm judicial control, or a warning directed at orderly conduct in court, does not without more amount to misconduct. Nothing in the material before the Committee establishes a pattern of intemperate or intimidating conduct, or conduct so improper as to constitute a wilful or grossly negligent breach of the Code.

[15] In all the circumstances, we are satisfied that the Judge President was correct to conclude that the complaint was lacking in substance within the meaning of section 15(2)(d) of the Act. To the extent that parts of the complaint relate to the fairness or correctness of procedural rulings made in the course of the proceedings, those matters properly belong to the ordinary processes of appeal or review, and not to judicial conduct proceedings.

[16] The appeal therefore cannot succeed. The dismissal of the complaint must be confirmed in terms of section 18(4)(a)(i) of the Act.

Order

[17] Given all the above, the appeal is dismissed.

A handwritten signature in black ink, appearing to read 'D. M. M. M.', positioned above a horizontal line.

THE JUDICIAL CONDUCT COMMITTEE