



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/92/09/2024

In the matter between:

EMELDAH NOMHLE NDLOVU

COMPLAINANT

and

JUDGE THOGOMELANI TSHIDADA

RESPONDENT

Date: 6 July 2026

Decision: The appeal is dismissed

SECTION 18 RULING

THE JUDICIAL CONDUCT COMMITTEE (Jafta J, Majiedt J and Mabindla-Boqwana JP)

Introduction

[1] This is an appeal against the decision of the Acting Chairperson of the Judicial Conduct Committee (Committee) in terms of which a complaint was dismissed on the grounds that the complaint was not proved and that the information on record did not show any misconduct committed by the respondent. That complaint was lodged by Ms Emeldah Nomhle Ndlovu (complainant) against Judge Thogomelani Tshidada (respondent) of the Limpopo Division of the High Court.

[2] Having perused the complaint at the first instance, the Acting Chairperson determined that a section 17 inquiry should be held to determine the merits of the complaint.¹ During that inquiry the respondent was afforded an opportunity to respond to the complaint. The Acting Chairperson proceeded to consider the whole information placed on record and concluded that the complaint should be dismissed. He noted that the complaint arose from a hearing of a Rule 43 interlocutory application, pending a divorce trial which was meant to decide the paternity of a minor child and the validity of a customary marriage. The complainant wanted these issues to be decided in the Rule 43 hearing.

[3] The Acting Chairperson pointed out that these issues were rightly deferred for determination by the divorce trial and that the purpose of the Rule 43 hearing was to preserve the *status quo* while the divorce action was pursued. He stated:

“Dissatisfaction with a court’s factual findings, inferences, case-management . . . , or the outcome of an interlocutory order are matters for appeal or review in the ordinary course and, without more, do not constitute judicial misconduct under the Act or the Code of Judicial Conduct.”

¹ Section 17 of the Judicial Service Commission Act 9 of 1994 (Act) governs an inquiry of non-impeachable complaints.

[4] After recording that the delay in furnishing reasons for a judicial decision may, in appropriate cases, amount to misconduct, the Acting Chairperson noted that such delay may constitute misconduct only if it was wilful or grossly negligent. He concluded that in the present matter there was no evidence that sustained wilfulness or gross negligence. Accordingly, the Acting Chairperson dismissed the complaint in terms of section 17(4)(a) of the Act.²

[5] A brief outline of the relevant provisions of the Act is necessary for a proper appreciation of the decision challenged on appeal.

Legislative framework

[6] The Act prescribes that all complaints against Judges be lodged and processed in terms of its provisions. Of relevance are sections 14 and 17 of the Act. Section 14(4) declares that complaints must be based on one or more of the grounds listed in that section. It provides:

“The grounds upon which any complaint against a judge may be lodged, are any one or more of the following:

² Section 17(4) of the Act 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.”

- (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.”

[7] Evidently, if a particular complaint is based on a breach of the Code of Judicial Conduct (Code), for the breach to rise to the level of misconduct, it must either be wilful or grossly negligent. This is what is stipulated in section 14(4)(b) of the Act. It is important to note further that complaints about bias and the failure to give reasons for judgment are regulated by the Code and as such they should meet the standard set in the section. Therefore, for a complaint of this kind to succeed, there must be facts, and not conclusions or inferences drawn by the complainant, which indicate that the conduct of the respondent amounted to a breach of the Code and that such breach was wilful or grossly negligent.

The complaint

[8] It is now convenient to set out the allegations made in support of the complaint. The complainant is married to Mr Hasani Charles Chabalala who was alleged to have been previously married to Ms Esther Nsovo Maluleke with whom

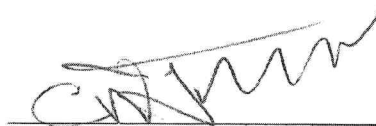
they have a child. While the divorce action between Ms Maluleke and Mr Chabalala was pending before the Limpopo Division, Ms Maluleke instituted a Rule 43 application in that court for payment of maintenance for her and the minor child. She also sought financial contribution towards her legal costs. A different Judge was assigned to hear the matter, but it was postponed and Mr Chabalala was ordered to produce financial statements on the postponement date.

[9] On that day the matter came before the respondent who indicated that the hearing was limited to the issue of payment of maintenance and the contribution to legal costs. Mr Chabalala and the complainant wanted the court to also determine other issues raised in the opposing papers. They included a conflict of interest, whether there was a valid marriage between Ms Maluleke and Mr Chabalala and the disputed paternity. With regard to conflict of interest, the complainant and Mr Chabalala argued that it arose from the fact that the lawyers who represented Ms Maluleke were her siblings. They disputed that Ms Maluleke and Mr Chabalala were married and that Mr Chabalala was capable of fathering a child at the relevant period.

[10] As mentioned, the respondent declined to entertain these issues but proceeded to order that Mr Chabalala should pay R21 000 per month as maintenance. The complainant and Mr Chabalala were unhappy with this outcome. For them the matter was compounded by the fact that no appeal is allowed against a Rule 43 decision which is regarded to be an interim order. They took the view that the order should not have been granted in the first place. They bemoaned the fact that they were ordered to pay maintenance where, according to them, there was no legal obligation on Mr Chabalala to do so and that they may not recover the paid amount, if it was later proved that they were correct.

[11] This is the context in which the decision by the Acting Chairperson must be evaluated. After a careful consideration of the matter, this Committee is not persuaded that the decision by the Acting Chairperson was wrong. There are no facts supporting a wilful or grossly negligent breach of the Code by the respondent. While it may be true that the complainant could not challenge the respondent's decision on appeal, this does not mean that the decision constitutes misconduct under the Act.

[12] For all the foregoing reasons, the appeal is dismissed.



THE JUDICIAL CONDUCT COMMITTEE