JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/35/04/2026

In the matter between:

MR G J S MONTSHIWA **COMPLAINANT**

and

JUDGE PRESIDENT R D HENDRICKS **RESPONDENT**

Date: 16 October 2026

Decision: The complaint against Judge President Hendricks is dismissed in terms of section 17(4)(*a*) of the Judicial Service Commission Act 9 of 1994.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ)

Introduction

[1] Mr Montshiwa lodged a complaint against Judge President Hendricks of the North West Division of the High Court. The complaint concerns the respondent's administration of the oath of office to Mr Lazarus Mokgosi as Premier of the

North West Province on 14 June 2024, while the respondent was serving as an Acting Justice of the Supreme Court of Appeal. The complaint was directed to be dealt with under section 17 of the Judicial Service Commission Act 9 of 1994 (the Act).[1]

[2] The respondent was invited to answer the complaint and delivered written submissions with supporting documents. The complainant was then invited to comment on that material and delivered a detailed reply.

[3] An inquiry under section 17 is inquisitorial and no person bears an onus to prove or disprove a fact.[2] The determination must nevertheless be made on the information obtained under section 17(3).[3] Where there is no reasonable likelihood that a formal hearing will contribute to determining the merits, section 17(4) requires the matter to be determined on the information obtained under section 17(3).

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

(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

(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."

[2] Section 17(2) of the Act provides, "[a]ny inquiry contemplated in this section must be conducted in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact during such investigation."

[3] Section 17(3) of the Act provides, "[f]or the purpose of an inquiry referred to in subsection (2), the Chairperson or member concerned—

(a) must invite the respondent to respond in writing or in any other manner specified, and within a specified period, to the allegations;

(b) may obtain, in the manner that he or she deems appropriate, any other information which may be relevant to the complaint; and

(c) must invite the complainant to comment on any information so obtained, and on the response of the respondent, within a specified period."

The Complaint

[4] The complainant relies on the respondent's appointment as an Acting Justice of the Supreme Court of Appeal (SCA) from 1 June to 30 September 2024 and on correspondence stating that Deputy Judge President T J Djaje was appointed Acting Judge President of the North West Division for the same period. He contends that the acting SCA appointment deprived the respondent of authority to perform any judicial function in the North West Division and that only Djaje AJP could lawfully administer the oath of office.

[5] On that premise, the complainant characterises the respondent's conduct as impersonation, perjury, self-help and an unlawful usurpation of Djaje AJP's position. He also alleges that the respondent was absent from his duties at the Supreme Court of Appeal, raises the possibility of fraud relating to his remuneration, and attributes the respondent's conduct to an alleged past or continuing association with the African National Congress. He ultimately asks that the matter be referred for investigation by a Tribunal.

The Response and Reply

[6] The respondent denies misconduct and any lack of authority. He relies principally on a written designation issued to him by the then Chief Justice Zondo on 3 June 2024. He also relies on correspondence from the Registrar of the Supreme Court of Appeal stating that appeal hearings enrolled for the third term began on 15 August 2024.

[7] In reply, the complainant addresses the designation but argues that it became moot or invalid when the respondent accepted the acting appointment at the Supreme Court of Appeal. He maintains that Djaje AJP's appointment as Acting Judge President gave her exclusive authority to perform the function, repeats the allegations of political motivation, and compares the respondent's position to the alleged occupation of judicial and non-judicial offices considered in the *Makhubele* matter.

Applicable Legal Framework

[8] Section 14(4)(*a*) of the Act concerns incapacity, gross incompetence or gross misconduct. Section 14(4)(*b*) concerns a wilful or grossly negligent breach of the Code of Judicial Conduct (the Code), and section 14(4)(*e*) concerns other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office.[4] Article 2(3) of the Code repeats the wilful-or-grossly-negligent threshold for a breach of the Code.[5]

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[4] 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".

[5] Article 2(3) of the Code provides, "[a]ny wilful or grossly negligent breach of this Code is a ground upon which a complaint against a judge may be lodged in terms of section 14 (4) (b) of the Act".

[9] The allegations potentially engage Article 4,[6] which requires a Judge to uphold judicial independence and integrity; Article 5,[7] which requires honourable conduct compatible with judicial office; Article 6,[8] which requires compliance with the law; and Article 12,[9] which prohibits political-party membership and, save where necessary for judicial office, involvement in political activity.

[10] Section 128(2) of the Constitution provides that a Judge designated by the Chief Justice must preside over the election of a Premier.[10] Item 5 of Schedule 2 provides that the oath or affirmation is taken before the Chief Justice or a Judge designated by the Chief Justice.[11] Neither provision reserves the function to the Judge President or Acting Judge President of the Division concerned.

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[6] Article 4 of the Code provides, "[a] judge must—
(a) uphold the independence and integrity of the judiciary and the authority of the courts;
(b) maintain an independence of mind in the performance of judicial duties;
(c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; and
(d) not ask for nor accept any special favour or dispensation from the executive or any interest group".

[7] Article 5 of the Code provides,
"(1) A judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.
(2) All activities of a judge must be compatible with the status of judicial office".

[8] Article 6 of the Code provides, "[a] judge must at all times, also in relation to extra-judicial conduct, comply with the law of the land".

[9] Article 12(1) of the Code provides, "[a] judge must not—
(a) belong to any political party or secret organization;
(b) unless it is necessary for the discharge of judicial office, become involved in any political controversy or activity;
(c) take part in any activities that practice discrimination inconsistent with the Constitution; and
(d) use or lend the prestige of the judicial office to advance the private interests of the judge or others."

[10] Section 128(2) of the Constitution of the Republic of South Africa, 1996 provides, "[a] judge designated by the Chief Justice must preside over the election of the Premier. The procedure set out in Part A of Schedule 3 applies to the election of the Premier".

[11] Schedule 2, Item 5 of the Constitution provides, "[t]he Premier or Acting Premier of a province, and each member of the Executive Council of a province, before the Chief Justice or a judge designated by the Chief Justice, must swear/affirm as follows … .".

Evaluation

[11] It is not disputed that the respondent administered the oath of office to the Premier. The central issue is whether he had authority to do so and, viewed against the applicable statutory threshold, whether the information establishes misconduct.

[12] The designation is decisive. It was issued on 3 June 2024, after the respondent's acting term at the Supreme Court of Appeal had begun. It expressly lists the functions of presiding over the election of the Premier and administering the prescribed oath or affirmation to the Premier-elect. The Chief Justice then designated the respondent, in his capacity as Judge President of the North West Division, to perform those functions and stated that the designation replaced any earlier designation.

[13] The complainant's central premise is therefore not sustained by the record or the Constitution. The appointment of Djaje AJP as Acting Judge President did not negate the Chief Justice's separate designation of the respondent. The Constitution permits the Chief Justice to designate a Judge; it does not confer an exclusive entitlement on the Judge then administering the Division. There is no information that the designation was revoked or withdrawn before 14 June 2024, and the contention that it had become moot is inconsistent with the fact that it was issued after the acting term had commenced.

[14] It is accordingly unnecessary to determine whether the respondent could have performed the function solely by virtue of his permanent office as Judge President while acting at the Supreme Court of Appeal. He acted under an express designation by the Chief Justice. Even if there had been room for administrative uncertainty

about the overlapping acting arrangements, the information could not support a finding that the respondent wilfully or with gross negligence usurped an office or acted without authority.

[15] The allegations concerning absence from work and remuneration are likewise unsupported. The fact that the respondent was in Mahikeng on 14 June 2024, or was seen there on other occasions, does not establish that he failed to perform work required of him. The Registrar's letter records that the appeal hearings for the third term commenced on 15 August 2024. The file contains no evidence of abscondment or the dishonest receipt of remuneration.

[16] Nor is there evidence that the respondent acted for a political purpose. The record does not establish that he belonged to a political party at the relevant time, that he acted at the request of a political party or the Premier, or that the designation was obtained for a partisan purpose. Speculation about how the respondent may have voted cannot establish a breach of Article 12. In these circumstances, the respondent's performance of the designated constitutional function did not constitute political activity.

[17] The remaining allegations do not establish misconduct. No false statement made by the respondent under oath is identified. The allegation of impersonation cannot be sustained because the respondent was expressly designated to perform the function. The allegations of interference with or degradation of Djaje AJP rest on the same incorrect premise of exclusive authority and are not supported by separate conduct. The comparison with the *Makhubele* matter does not assist: no simultaneous occupation of a non-judicial office is alleged here.

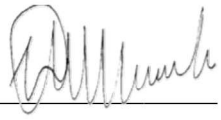
Conclusion

[18] The decisive facts are contained in the official correspondence and the Chief Justice's written designation. The parties have had the opportunity contemplated in section 17(3) to address that material. There is no reasonable likelihood that a formal hearing will contribute to determining the merits of the complaint.

[19] The information does not establish gross misconduct, a wilful or grossly negligent breach of the Code, or other wilful or grossly negligent conduct incompatible with or unbecoming judicial office. There is therefore no basis for remedial action or for a recommendation that the complaint be investigated by a Tribunal.

Order

[20] The complaint is dismissed in terms of section 17(4)(*a*) of the Judicial Service Commission Act 9 of 1994.



THE JUDICIAL CONDUCT COMMITTEE