



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/1029/22

In the matter between:

Hans Du Plessis

Complainant

and

Judge Norman Davis

Respondent

RULING

JUDICIAL CONDUCT COMMITTEE (Jafta J. Shongwe JA and Saldulker JA)

- [1] This complaint was referred to this Committee for it to determine whether a recommendation to the Judicial Service Commission (Commission) should be made. This recommendation must require that a Tribunal be established for purposes of investigating and reporting on the complaint. A complaint warrants the establishment of a Tribunal only if it raises one or more of the grounds of removal from office listed in section 177(1) of the Constitution.¹
- [2] For this Committee to recommend the establishment of a Tribunal, it is not sufficient for the complainant in question to raise a ground of removal.² In addition, the

¹ Section 177(1) of the Constitution provides: A Judge may be removed from office only if:

- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
- (b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members."

²Section 16(4) of the JSC Act states: "At the meeting referred to in subsection (2), the Committee must consider whether the complaint, if established, will *prima facie* indicate incapacity, gross incompetence or gross misconduct by the respondent, whereupon the Committee may:

Committee must be satisfied that if established, the complaint will constitute a *prima facie* proof of one or more of those grounds.

- [3] Therefore, this Committee is required to evaluate the complaint to determine if it raises incapacity, gross incompetence or gross misconduct. If it does, the next question would be whether, if established, the complaint will amount to *prima facie* proof of those matters.
- [4] In September 2022, Mr Hans du Plessis (complainant), filed a complaint with the Commission against Judge Norman Davis (respondent) of the Gauteng Division of the High Court. The complainant alleges that a company called Topaz Sky Trading 146 (Pty) Ltd (Topaz) was involved in litigation in the Gauteng Division against Dr Johan Van Wyk and his wife. Topaz was awarded costs at the conclusion of that litigation. Dr Van Wyk and his wife were the in-laws of the respondent.
- [5] Before his appointment as a Judge, the respondent practised as an advocate and had acted as counsel for his in-laws in the litigation between the parties. When Topaz sought to execute the costs order in its favour, it was surprised that the respondent who was now a permanent Judge was still involved in the matter as if he was still an advocate.
- [6] The complainant describes the respondent's role in the execution of the costs order in these terms:

"On 12 February 2019 an email correspondence was received by our attorneys' offices in which correspondence is drafted from ndavis@law.co.za and properly refers to Adv. Norman Davis and who was also now a sitting Judge at the Gauteng Division of the High Court since January 2018 and who was so sitting at the time of the email

(a) refer the complaint to the Chairperson for an inquiry referred to in section 17(2); or
(b) recommend to the Commission that the complaint should be investigated by a Tribunal."

correspondence received from his offices but portrayed by the [Norman Davis family's] lawyers as their correspondence.

It does also indicate yet again that [Norman Davis] was involved in the case even while he was a sitting Judge. Writing emails and formal correspondence in his own name."

- [7] Another conduct of the respondent complained of was that at the time of the execution of the costs order, he was alleged to be a trustee in a trust that was formed by his in-laws and in which most of their assets were held.
- [8] The third allegation raised against the respondent was that in September 2021, the respondent was designated to preside over one of the cases he was involved in as an advocate. One of litigants in that matter had to request the respondent's removal from the case.
- [9] In his response, the respondent confirms that he acted as an advocate for his in-laws from 2012 to 2017. He was then succeeded by Adv H S Jacobs SC and, later, by Adv M Coetzee. The respondent proceeds to say that in February 2019 Dr Van Wyk was admitted to hospital in Pretoria where he had had a heart surgery and his wife was also in Pretoria. Meanwhile, Topaz's attorneys had sent the sheriff to their residence in Matlosana in an attempt to execute the costs order. The Van Wyks' attorney sought to have that execution held abeyance but Topaz's attorney rejected the suggestion.
- [10] The respondent goes further to say that the Van Wyks' attorney who was handling the matter "contacted me as a friend of both himself and my erstwhile client and in-laws". He concludes by stating:

"I gave informal advice as I was permitted to do in the circumstances as contemplated in article 14(2)(c) of the code of Judicial conduct. That informal advice (expressly stated as such) was what appears on the first page of the complainant's Annexure B1. It is unfortunate that the advice was inadvertently forwarded to a secretary in the employ

of Messrs Prinsloo Bekkes Attorneys and this caused them to object thereto in a letter which features as Annexure B2 to the complainant's complaint"

- [11] With regard to acting as a trustee, the respondent confirms that he was a trustee but that he resigned when he was appointed as a permanent Judge. He says currently the principal trustee in that trust is the attorney of his former in-laws.
- [12] With regard to presiding over a matter in which he was formerly involved as an advocate, he says the allocation was not done by him but by the relevant Head of Court whom he later informed that he (the respondent) was disqualified from hearing matter. The matter was then allocated to another Judge.
- [13] As mentioned, what we need to determine first is whether the present complaint, if established, would support incapacity, gross incompetence or gross misconduct. Beginning with the allegation in paragraph 8 above, if established, it will not sustain that the respondent suffers from incapacity or is grossly incompetent or is guilty of gross misconduct. While it is true that the case was allocated to him, he did not hear it, regardless of whether it was removed from him on account of an objection by one of the parties in that litigation.
- [14] Regarding the allegation that the respondent was a trustee in a trust formed by the Van Wyks, if established, it too will not support any of the grounds for removal from office. In fact, article 14(4) of the Code of Judicial Conduct permits Judges to act as trustees of certain trusts, including family trusts.
- [15] With regard to the allegation that the respondent acted as an advocate when he was already a permanent Judge, the facts are, in the main, not in dispute. The respondent agrees that he gave advice to an attorney who was a friend of his and that advice was contained in a draft letter that he emailed to that attorney. But his defence is that the giving of that advice was permitted by article 14(3)(b) of the Code of Judicial Conduct.

- [16] Article 14(3)(b) of the Code prohibits a Judge from acting as an advocate. It declares that a Judge must not act as an advocate, attorney, or legal advisor. However, the article also permits Judges to give advice without compensation to a listed group of persons. These include family members, friends and charitable organisations. Here the respondent says the attorney to whom the advice was given was his friend.
- [17] However, it does not appear from the language of article 14 that permission is given to advise friends who are legal practitioners, acting in their professional capacity to advance causes of their clients.³ This is because clients pay for those services and those practitioners can solicit legal advice freely in the market. It seems that the article is directed at a situation where a friend who seeks advice is doing so in his personal capacity and without the intervention of a legal representative.
- [18] Therefore, it appears from the papers that if the complaint is established, the respondent would have committed a misconduct. What remains for consideration is whether the present facts would support a *prima facie* proof of a gross misconduct as envisaged in section 177 of the Constitution.
- [19] A gross misconduct contemplated in that section of the Constitution is conduct that is completely opposite to the impartiality, integrity and independence of the judiciary. It is conduct that is so serious as to diminish, in the eyes of the public, the capacity of a Judge to perform his or her judicial functions with integrity or conduct that is likely to reduce public confidence in the administration of justice if the errant Judge continues to perform judicial functions. In other words, it must be misconduct that is so serious as to warrant the immediate removal from office of the Judge concerned.

³ Article 14(3) provides: A judge must not-
(a) accept any appointment that is inconsistent with or which is likely to be seen to be inconsistent with an independent judiciary, or that could undermine the separation of powers or the status of the judiciary; (b) act as an advocate, attorney, or legal advisor but may give informal legal advice to family members, friends, charitable organisations and the like without compensation.

[20] Here, there are features which are troubling and may be considered as aggravating the seriousness of the misconduct. First, it is not clear why the respondent was approached by the Van Wyk's attorney for professional advice when he was no longer an advocate and had ceased to be their advocate in 2017. The respondent had been replaced by another advocate who could have been approached for assistance and if they were not available, other advocates could have been approached.

[21] What is more concerning is the fact that as a Judge, the respondent gave advice in a matter in which he previously acted as an advocate or where he had previously been the advocate of the same litigants. His previous professional relationship to the Van Wyks must have triggered red lights when he was approached.

[22] The position was compounded by the fact that he was so immersed in the matter that he himself drafted a response to Topaz's attorneys who were not willing to halt the execution. The response drafted by the respondent reads:

"Suspension of the execution of the writ in case no 50235/2015 has become *sub judice* when the action in case no 85823/2018 was instituted and issued (see prayers 4 hereof). You have not yet even delivered your client's plea and your proposed exception is out of time and, without an application for condonation therefore irregular.

Any attempt at execution in these circumstances will be vexatious and should yet another application have to be launched to bring the conduct of you and your client to the attention of the court, punitive costs orders as well as costs *de bonis propriis* will be sought.

Execution should be held over and, if not this letter will also be placed before a court on an urgent basis as proof of vexatious conduct referred to above".

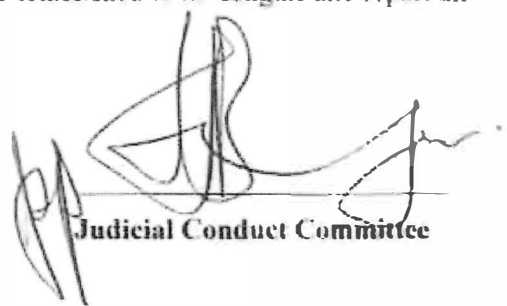
[23] This draft was then adopted as is by the Van Wyks' attorney and was forwarded to the attorneys of Topaz, and the respondent was copied. What is gravely concerning is the fact that the respondent's draft contains apparent falsehoods. To say suspension of execution of a writ became *sub judice* when the action in a different matter was instituted was not true. First, the execution of the writ in question was not suspended.

Second, it could not be *sub judice* by the mere fact that the action in case no. 85823/2018 was instituted and served. The truth is that execution of that writ was not suspended and the respondent knew this hence the misleading statement that the non-existent suspension had become *sub judice*.

[24] It is also not true to say that execution of the writ in those circumstances would be vexatious. These falsehoods were employed as a basis for threatening Topaz and its attorneys with litigation and punitive costs should they go ahead with the execution. It is worrisome that the originator of this stratagem was a Judge in the same Division that had issued the order on which the writ was based. The conduct we are concerned with here is also in conflict with section 165 of the Constitution which requires that the independence, impartiality and effectiveness of the courts be ensured.

[25] In these circumstances we are satisfied that if the complaint is established, it will show that the respondent has exhibited a severely compromised integrity and that his conduct diminishes, in the public eye, the capacity to perform judicial functions with the necessary integrity. Therefore, we are convinced that, if proved, the complaint will *prima facie* indicate gross misconduct by the respondent.

[26] Accordingly we recommend that a Tribunal be established to investigate and report on this complaint.



Judicial Conduct Committee