



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/18/02/24

In the matter between:

THEMBILE NOMSHUVE

COMPLAINANT

and

JUSTICES OF THE CONSTITUTIONAL COURT

RESPONDENT

Date: 05 February 2026

Decision: The complaint is dismissed.

RULING

THE JUDICIAL CONDUCT COMMITTEE (SHONGWE J)

Introduction

[1] The genesis of this matter arose from the dismissal of the complainant from his employment. He escalated his grievance to the Commission for Conciliation Mediation and Arbitration (CCMA), which found against him. He proceeded to the Labour Court which also dismissed his grievance. He then proceeded to the

Constitutional Court seeking a variation/clarification of the order of the Labour Court. The Constitutional Court was constituted and presided over by the respondents (the 8 Judges mentioned in the complaint). The court heard the matter and granted the condonation for the late filing of the application but refused the variation/clarification with no order as to costs.

[2] It does appear that the complainant wrote a letter to the then Chief Justice Zondo, it is not clear from the papers whether he received a reply from the Chief Justice. On 7 February 2024, the complainant filed a complaint to the Judicial Service Commission (JSC), which was referred to the Judicial Conduct Committee (JCC) for consideration. On 15 June 2024 the Acting Chairperson of the JCC responded to the complaint by dismissing it in terms of section 15(2)(c) of the Judicial Service Commission Act 9 of 1994 as amended (the Act) in that it is solely related to the merits of a judgment or order.

The complaint

[3] The complainant alleges that 'It is the handling of the application for variation by the Justices (the respondents) that is alleged to be inconsistent with the Code of Judicial Conduct. Specific articles of the code, governing judicial conduct, were purportedly not adhered to in dealing with the variation application before them and such non-adherence to the code of judicial conduct is a ground for the lodging of this complaint'. He continues, and cites a contravention of articles 5,6,7,8, and 9 of the Code of Judicial Conduct (the Code). In a nutshell article 5 deals with a Judge acting with honour, article 6 deals with compliance with the law, article 7 deals with equality, article 8 deals with transparency and article 9 deals with a fair trial.

[4] In dealing with the specifics, he alleges that the respondents contravened article 5 by failing to respond to the letters which were duly addressed to the court regarding his case, additionally they neglected his plea to have the matter heard in an open court, demonstrating a lack of honourable conduct in their actions. With regard to article 6 he contends that the respondents contravened Rule 11 of the rules of the Constitutional Court by failing to send the file to the Chief Justice for directions. Regarding article 7 the complainant alleges that ‘the Justices exhibited prejudicial bias by disregarding my plea for a fair hearing and by treating my case disparately compared to others’. Regarding article 8 he alleges that the respondents deliberately neglected to conduct his case transparently. He says that the respondents dismissed his case without even looking at it properly and assessing what are the grounds of his application, therefore contravening the principles laid down by the provisions of article 8 of the Code. He contends that the respondents deliberately and completely overlooked the imperative of affording him a fair trial, as stipulated by the article in question.

The appeal

[5] As indicated earlier, the Acting Chairperson of the JCC dismissed the complaint, and the complainant filed an appeal in terms of section 15(5) of the Act. His main ground of appeal is that the Acting Chairperson erred and misdirected herself in finding that the complaint is dismissed in terms of section 15(2)(c) of the Act. He further submitted that the respondents did not adhere to the Code and that the non-adherence is a ground for lodging this complaint. The respondents were individually informed of the appeal and were requested to file their written submissions. It is appropriate to note that none of the respondents filed any written submissions. At this stage I am not quite certain why the respondents were cited individually and not the Constitutional Court. They acted as officers of the court and

not in their personal capacities. This issue was not raised by any party and therefore I don't think that it is up for discussion and a ruling by me. The complainant was also requested to file written submissions, which he did. Basically, in his submissions he repeated his grounds of appeal and asked for the setting aside of the decision of the Acting Chairperson.

[6] The JCC (Appeal) found in favour of the complainant by setting aside the decision of the Acting Chairperson, mainly on the ground that the complaint is not solely related to the merits of the relevant orders and therefore could not confirm the dismissal. (See Ref no: JSC/18/02/24 dated 12 February 2025). The JCC found that the allegation on bias and lack of honour required a determination of the merits of the complaint. That section 15(2)(c) could not be relied upon, however, that the Acting Chairperson should have referred the matter to be dealt with in terms of section 17 of the Act to determine the merits of the complaint.

Discussion

[7] The secretariat of the JCC informed the respondents of the outcome of the appeal and also that I have been designated by the Acting Chairperson (Acting Deputy Chief Justice Madlanga) in terms of section 17 (1)(b) of the Act to deal with the complaint. In September the respondents were informed of the provisions of section 17(3)(c) of the Act and no response was forthcoming. On 23 September 2025, the complainant's attention was drawn to the provisions of section 17(3)(c) of the Act which requires him to make further submissions, if any, and was made aware that the respondents did not make any submissions. The secretariat further reminded the respondents to respond to the letters drawing their attention to the provisions of section 17(3)(c) of the Act, but no response was received. However, it does appear from the correspondence by email between the secretariat and the respondents that

Justice Theron and Justice Tshiqi responded by saying that they have no submissions to make, the rest of the respondents elected not to respond at all, even after they were advised that I was going to proceed anyway, if they do not respond, (which conduct I find disturbing). The complainant filed his written submissions contending that the respondents failed to comply with Rule 11 of the rules of the Constitutional Court.

[8] It is indeed correct that the complainant did mention and elaborated on the provisions of articles 5,6,7,8 and 9 of the Code in his complaint. I am therefore in agreement with the setting aside of the decision of the then Acting Chairperson of the JCC. I am therefore in support of the ruling of the appeal panel of the JCC. The setting aside of the decision does not bring the matter to finality. The Acting Chairperson should have referred the matter in terms of section 17 of the Act to enable the Acting Chairperson or a designated member of the JCC to deal the merits of the complaint. The complainant's submissions are that the respondents did not respond to his request to have an oral hearing and failed to act in accordance with Rule 11(4) of the rules of the Constitutional Court. The letters the complainant wrote were addressed to the Registrar/Chief Justice and not to the respondents. I am certain that the complainant does not know whether the respondents saw/received those letters. The complainant does not know who set the matter down or whether the Chief Justice did set it down and he advances no tangible proof whether the Chief Justice gave directions or not.

[9] The complainant fails to advance one single reason to allege negligence/misconduct against the respondents. Apparently, the case was dealt with in chambers and most probably it was the direction of the Chief Justice that it be so handled. The variation or clarification was refused because it is said that the complainant failed to make out a case for it. The mere mention of the articles of the

Code without furnishing evidence showing in what way did the respondents fail to comply with the provisions of the articles, is insufficient to infer negligence let alone a misconduct. Before I can find that there is no reasonable likelihood that a formal hearing on the matter will contribute to determining the merits of the complaint, I need to base such finding or satisfaction on the strength of the information I obtained in terms of subsection (3) of the Act.

Conclusion

[10] The complainant has made wild allegations of misconduct without substantiating the allegations by presenting cogent evidence to prove the allegations. Therefore, I am not satisfied that there is a reasonable likelihood that a formal hearing on the matter will contribute to determining the merits of the complaint. This is despite the failure by the respondents to file their written submissions. The complaint cannot stand.

[11] The complaint is dismissed.

