JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/272/11/2025

In the matter between:

TLOUYATIBA MOETI KANYANE **COMPLAINANT**

and

JUDGE GCINA MALINDI **RESPONDENT**

Date: 14 October 2026

Decision: The Committee recommends to the Judicial Service Commission that a Tribunal be appointed to investigate both complaints.

SECTION 16 RULING

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

Introduction

[1] This is a complaint by Ms Tlouyatiba Moeti Kanyane (the complainant). It was lodged against Judge Gcina Malindi (the respondent). Having perused the

complaint, the Acting Chairperson concluded that it must be processed in terms of section 16 of the Judicial Service Commission Act.[1] This section requires the Chairperson of the Judicial Conduct Committee (the Committee) to refer certain complaints to the Committee for determination whether a Tribunal should be established to investigate them and report to the Judicial Service Commission (the Commission).

[2] A Tribunal can be established by the Chief Justice and upon request by the Commission. Such request by the Commission may be based on a recommendation from the Committee. The Committee in turn can make the recommendation if requested to do so by the Chairperson. But before making such request, the Chairperson must hold the opinion that if the complaint is established, the Commission is likely to find that the respondent Judge is guilty of misconduct or that he or she suffers from incapacity or that he or she is grossly incompetent.

[3] Although the letter advising the respondent of the Acting Chairperson's decision to refer the complaint to this Committee does not explicitly state grounds likely to be established, it is evident from the allegations in the complaint that gross misconduct is the relevant ground. A reading of the record of the complaint indicates that the Acting Chairperson was satisfied that the Commission is likely to find that gross misconduct was committed, if the complaint is eventually established. Otherwise without that jurisdictional fact, the Acting Chairperson could not have referred the complaint to this Committee in terms of section 16(1)(a) of the Act.[2] He had considered this provision and was aware of its

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[1] 9 of 1994.

[2] Section 16(1) of the Act provides:
"If the Chairperson is satisfied that, in the event of a valid complaint being established, it is likely to lead to a finding by the Commission that the respondent suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, as envisaged in section 14(4)(a), the Chairperson must—

jurisdictional requirement. Therefore, this Committee must approach the matter on that understanding while applying the relevant provision.

Legislative framework

[4] The Act requires the Committee to properly assess a complaint referred to it and determine whether it will likely support any of the grounds mentioned in section 14(4)(a) of the Act. These are incapacity, gross incompetence and gross misconduct. This assessment is regulated by section 16(4) of the Act which provides:

"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—
(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."

[5] This section directs the Committee to determine whether the complaint, if established, will establish a *prima facie* proof of incapacity or gross incompetence or gross misconduct by the respondent. If the answer to this question is in the affirmative, the Committee may recommend to the Commission that a Tribunal be established to investigate the complaint. A perusal of the scheme created by the Act reveals that a complaint based on incapacity, gross incompetence and gross misconduct may be investigated by a Tribunal only. This reading of the Act is fortified by section 17(5)(c)(iii), which obliges the functionary presiding over a section 17 inquiry to request the Committee to recommend the establishment of a Tribunal if the information before such functionary may reasonably support

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(a) refer the complaint to the Committee in order to consider whether it should recommend to the Commission that the complaint should be investigated and reported on by a Tribunal; and
(b) in writing, inform the respondent of the complaint."

incapacity or gross incompetence or gross misconduct. In addition, the Commission may base its finding for the removal of a Judge from office only on the report of a Tribunal. Such report may be compiled following an investigation by the Tribunal itself and no other body.

[6] It is now convenient to determine the complaint and evaluate it in terms of section 16(4) of the Act.

The complaint

[7] The allegations made in the complaint are the following. The complainant is a practising attorney. In April 2021 he instituted an application in the Gauteng Division of the High Court, Pretoria on behalf of four clients, in the matter of *Marismo BEE Professional Services (Pty) Ltd and Others v Broad Based Black Economic Employment Commission and the Minister of Trade and Industry*. The matter was heard by the respondent on 22 May 2023 and judgment was reserved at the conclusion of the hearing on that day.

[8] In February 2024, the judgment was still outstanding and, concerned by the delay, the complainant addressed a letter to the respondent enquiring about the judgment. Receipt of that letter was acknowledged by the office of the respondent and his secretary promised that it will be handed to him. But no response was forthcoming from the respondent and the judgment remained outstanding. In April 2024, the complainant addressed a second letter about the judgment to the office of the Deputy Judge President and delivered it by hand. This letter elicited no response. In October 2024, a reminder was sent to the office of the Deputy Judge President and on the following day, the complainant was informed that the Deputy Judge President was on leave. He was advised to refer his query to the office of the Judge President. He did so by email on 16 October 2024. Again,

there was no response. On 14 January 2025, he delivered copies of his previous correspondence at the office of the Judge President. The judgment was not delivered and no explanation was given for the delay.

[9] Out of frustration, the complainant decided to lodge a complaint against the respondent on 29 April 2025. By then the judgment was outstanding for almost 24 months.

The response

[10] In December 2025, the complaint was delivered to the respondent for his response. He furnished it on 16 January 2026. He confirmed that the judgment was reserved on 22 May 2023 and that it remained outstanding to that date but promised to deliver it before end of January 2026. At that stage the judgment had been outstanding for 32 months. The respondent accepted that the complainant had sent numerous queries to the court in relation to the judgment. He disclosed that some of that correspondence was forwarded to him by the Deputy Judge President in April 2024. He stated that the Deputy Judge President had asked him to respond to the complainant's query within 10 days. With regard to this, the respondent surprisingly stated: "I do not have confirmation that I responded to the DJP". About the delay, his comment was as follows:

"When I received correspondence of 23 December 2025 [from the Judicial Conduct Committee] I realised to my shame, that this matter fell through the cracks in my endeavours to clear outstanding judgments over the past two years.

I can advance no reason to excuse that this judgment remains outstanding. I apologise for my neglect in ensuring that all my outstanding judgments are finalised and handed down within a reasonable time. I will ensure that this judgment is finalised by the end of January 2026."

[11] Thereafter the respondent recorded a long list of judgments he delivered between September 2023 and December 2025, to illustrate that he was not "slothful" during the relevant period. He also stated that at some point he fell sick and on a different occasion there was bereavement in his family.

Analysis of the complaint

[12] Delivering judgments within a reasonable period is the core function of a Judge. Litigants institute litigation to obtain judgments which resolve their disputes. When a Judge fails to perform this function, the administration of justice is brought into disrepute and the public loses confidence in the courts as the arbiter of disputes. Therefore, the failure to deliver a reserved judgment over an extended period amounts to a serious transgression which may, in appropriate circumstances, constitute gross incompetence or gross misconduct.

[13] In *Judge President Mlambo v Judge N G Mgqibisa-Thusi*, JSC/217/2020 and with regard to the failure to deliver reserved judgments, the Judicial Conduct Tribunal stated:

"Without a reasonable explanation or excuse, the failure by a Judge to deliver reserved judgments over a long period of time would ordinarily constitute gross misconduct. This is because such failure erodes public confidence in the Judiciary and leaves the public with no option but to resort to self-help."

[14] In this matter the judgment remained outstanding for a period in excess of 32 months. The respondent concedes that he has no excuse for the delay but goes further to demonstrate that during the relevant period he had delivered approximately 58 reserved judgments, and that in 2024 he was sick for about six months. Lastly that during December 2024, a member of his family passed on

and he had to focus on that issue. He stated that when reviewing reserved judgments requiring to be prepared, he did not pick up the matter raised in this complaint which, according to him, had fallen through the cracks. He concluded by stating that the delay was not deliberate.

[15] The question whether the explanation advanced for the inordinate delay is reasonable in the context of this matter, is an issue falling pre-eminently within the remit of the Tribunal, the only body mandated by the Act to investigate complaints of gross incompetence and gross misconduct. That issue is beyond the competence of this Committee. As stated earlier the mandate of this Committee is located in section 16(4) of the Act. It is to determine whether the complaint, if established, will *prima facie* show gross incompetence or gross misconduct. If the answer to this question is positive, the Committee is required to recommend that a Tribunal be established.

[16] There can be no doubt that the complaint, if established is likely to *prima facie* sustain gross misconduct, as defined in the *Mgqibisa-Thusi* matter referred to above. That is enough for triggering the exercise of power by this Committee to recommend the establishment of a Tribunal. However, this does not mean that this *prima facie* proof of gross misconduct cannot be displaced by a reasonable explanation for the delay. That exercise will take place before the right forum, the Tribunal.

A further complaint

[17] While this complaint was pending before this Committee, there was another complaint with reference number JSC/263/10/2025 which was lodged by Adv Tladi Jacob Mokoena against the respondent. The delay in that complaint was shorter and it had been referred to an inquiry in terms of section 17. Following an

earlier ruling in *Clifford Brian Levin v Judge Kumalo*, JSC/173/04/2025, the member designated to determine that matter requested the Committee to recommend to the Commission that a Tribunal be appointed to investigate both complaints. It is prudent to have both complaints investigated by a single body.

[18] Accordingly, the Committee recommends to the Judicial Service Commission that a Tribunal be appointed to investigate both complaints.



THE JUDICIAL CONDUCT COMMITTEE