



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/214/08/2025

In the matter between:

R J A KATISI

COMPLAINANT

and

JUDGE M N KUMALO

RESPONDENT

Date: 06 May 2026

Decision: It is recommended to the Judicial Conduct Committee that it recommend to the Judicial Service Commission that the complaint against Judge Kumalo be investigated by a Tribunal in terms of section 17(4)(c) of the Judicial Service Commission Act 9 of 1994.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ)

Introduction

[1] Mr Katisi lodged a complaint with the Judicial Conduct Committee (“the JCC”) against Judge Kumalo in terms of section 14 of the Judicial Service

Commission Act 9 of 1994 (“the Act”).¹ The complaint arose from the respondent’s failure to deliver judgment timeously in a Labour Court matter, namely *Ekurhuleni Metropolitan Municipality v South African Local Government Bargaining Council and 4 Others*, case number J850/2024.

[2] At the time the complaint was lodged, judgment had not been delivered. The complaint was, at first instance, considered suitable for determination under section 17 of the Act² That was so because the complaint, viewed in isolation, appeared to concern a serious but non-impeachable instance of delay in the delivery of a reserved judgment, for which the remedial action contemplated in section 17(8) of the Act might have been appropriate.³

¹ 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.”

² Section 17(4) of the Act provides, “[i]f, 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.”

³ Section 17(8) of the Act provides, “[a]ny one or a combination of the following remedial steps may be imposed in respect of a respondent:

- (a) Apologising to the complainant, in a manner specified.
- (b) A reprimand.
- (c) A written warning.
- (d) Any form of compensation.
- (e) Subject to subsection (9), appropriate counselling.
- (f) Subject to subsection (9), attendance of a specific training course.

[3] The position changed materially during the section 17 inquiry. The judgment has since been delivered, but that development does not dispose of the complaint; it changes the focus of the inquiry from non-delivery to late delivery, and to whether the delay has been explained. Despite being afforded more than one opportunity to respond to the allegations, the respondent failed to answer the correspondence from the JCC Secretariat (“the Secretariat”). In addition, it emerged that this complaint was not an isolated one, but formed part of a broader pattern of complaints relating to the respondent’s failure to deliver judgments timeously. Those features rendered it necessary to reconsider whether the matter could properly remain within the limited remedial framework of section 17.

The Complaint and Procedural History

[4] The Labour Court judgment subsequently delivered by the respondent clarifies the procedural background to the complaint. The underlying matter concerned an application by Ekurhuleni Metropolitan Municipality to retrieve its review application from the archives. The review application had itself followed an arbitration award issued by the South African Local Government Bargaining Council. In that award, dated 15 November 2019, the dismissal of 286 employees was found to be procedurally and substantively unfair, and reinstatement and compensation were ordered.

(g) Subject to subsection (9), any other appropriate corrective measure.

(9) The State shall not be responsible for any expenditure incurred as a result of, or associated with, any remedy referred to in subsection (8) (e), (f) or (g), unless such remedy was selected from a list of approved remedies or services compiled from time to time by the Minister, after consultation with the Chief Justice, and then only to the extent set out in that list.”

[5] Ekurhuleni launched the Labour Court review application on 17 December 2019. The review was later archived after Ekurhuleni failed to comply with the prescribed timeframes for its prosecution. The matter that came before the respondent on 18 June 2024 was therefore not the original arbitration dispute itself, but Ekurhuleni's application to retrieve the archived review application, which was opposed by Mr Katisi and the other erstwhile employees.

[6] The complainants attached correspondence dated 18 June 2024. In that correspondence, their attorneys recorded that the parties had attended court for purposes of the review application, that Kumalo AJ had advised the parties that the matter was ripe to be decided on the papers, and that the attorneys would follow up with the Court over the ensuing weeks regarding judgment.

[7] The complaint was signed on 30 July 2025 and acknowledged by the Secretariat on 6 August 2025. By then, approximately thirteen months had passed since the hearing on 18 June 2024, and the complainants' case was that no judgment had been delivered.

[8] The judgment in the Labour Court matter was ultimately delivered on 26 November 2025. It records that the matter was heard on 18 June 2024 and delivered on 26 November 2025. On those objective dates, judgment was delivered approximately seventeen months after the matter was heard. The judgment dismissed the application to retrieve the review from the archives, made the arbitration award dated 15 November 2019 an order of court, and ordered Ekurhuleni to pay the costs of both the retrieval application and the section 158 application.

[9] After considering the complaint, I directed that an inquiry be conducted in terms of section 17 of the Act. On 1 December 2025, the Secretariat wrote to the respondent, provided a copy of the complaint, drew the respondent's attention to section 17(3)(a) of the Act, and invited written submissions by 15 December 2025. No response was received.

[10] On 1 April 2026, the Secretariat again wrote to the respondent. The letter recorded that the written submissions were then seventeen weeks overdue, granted a final extension of seven working days until 14 April 2026, and stated that, should no submissions be received within the extended period, the matter would be placed before the Committee for consideration and a decision would be taken on the information then available. The respondent again did not respond.

Applicable Legal Framework

[11] The Act requires every complaint against a judge to be dealt with under section 15, 16 or 17, depending on its nature. Section 17 governs serious, non-impeachable complaints. It empowers the Chairperson or a designated member to inquire into the merits of the complaint in an inquisitorial manner, to invite a response from the respondent, and to obtain any other relevant information.⁴

⁴ 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.”

[12] If, after taking the steps contemplated in section 17(3), the Chairperson or member concerned is satisfied that there is no reasonable likelihood that a formal hearing will contribute to determining the merits of the complaint, he or she must, on the strength of the information obtained, either dismiss the complaint, uphold it and impose one or more remedial steps under section 17(8), or recommend to the Committee, to recommend to the Commission, that the complaint should be investigated by a Tribunal.

[13] The Code of Judicial Conduct serves as the prevailing standard of judicial conduct. Any wilful or grossly negligent breach of the Code is a ground upon which a complaint may be lodged.⁵

[14] Of particular relevance here are the provisions of the Code that require a judge to uphold the independence and integrity of the judiciary and the authority of the courts (Article 4); to act honourably and in a manner befitting judicial office (Article 5); to perform official duties properly and with due diligence (Article 10(1)(a)); to dispose of all judicial matters promptly and efficiently (Article 10(1)(c)); and to perform all judicial duties, including the delivery of reserved judgments, efficiently, fairly and with reasonable promptness(Article 10(1)(g)).

[15] In addition, section 14(4)(b) of the Act recognises as a ground of complaint any wilful or grossly negligent breach of the Code, while section 14(4)(e) includes any other wilful or grossly negligent conduct incompatible with or unbecoming the

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.”

holding of judicial office, including conduct prejudicial to the dignity, efficiency or effectiveness of the courts.

Evaluation

[16] The question is whether the delay in delivering judgment, together with the respondent's failure to provide any explanation when invited to do so, discloses conduct warranting the course contemplated in section 17(4)(c).

[17] The objective chronology is clear. The matter was heard on 18 June 2024. The complaint was lodged in July 2025, at a stage when judgment had still not been delivered. Judgment was eventually delivered on 26 November 2025, approximately seventeen months after the hearing. That period is substantial. This is particularly relevant in the context of Labour Court review proceedings, where section 145(6) of the Labour Relations Act⁶ requires judgment to be handed down as soon as reasonably possible.

[18] The eventual delivery of judgment does not cure the issue. It may reduce the immediate practical prejudice caused by non-delivery, but it does not explain why the judgment took approximately seventeen months to deliver. Nor does it answer whether the delay was justified by the complexity of the matter, the state of the record, the respondent's acting appointment, administrative circumstances, or any other cogent reason. Those were matters specifically within the respondent's knowledge.

⁶ 66 of 1995.

[19] That is why the section 17 process mattered. By the time the Secretariat wrote to the respondent on 1 December 2025, the judgment had already been delivered. The respondent therefore had an opportunity to place before the JCC the circumstances in which the judgment came to be delivered when it was, to correct any factual misunderstanding, and to explain why the delay should not attract any adverse conclusion. No such explanation was provided.

[20] The respondent's silence is not a neutral feature of the matter. A section 17 inquiry is a statutory process through which the JCC seeks to determine whether a complaint is established and, if so, what statutory consequence should follow. A judge who does not engage with that process deprives the Committee of the information needed to decide whether the delay was justified and whether the limited remedial measures in section 17(8) would be adequate.

[21] On the information presently before me, there is an unexplained delay of approximately seventeen months in the delivery of a reserved Labour Court judgment. The delay implicates the duties of diligence, promptness and efficient performance imposed by article 10 of the Code. I do not make a final finding that the respondent acted wilfully or with gross negligence. But in the absence of any explanation from the respondent, I am unable to treat the matter as an ordinary delay capable of being adequately addressed by a warning, reprimand, counselling or other remedial step under section 17(8).

[22] The matter also cannot be viewed in isolation from the fact that the JCC has received three other complaints concerning the respondent's alleged failure to deliver judgments timeously. I make no finding on those matters in this ruling. Their relevance is more limited: they reinforce the need for the complaint to be

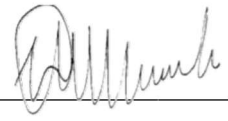
investigated in a forum capable of considering the broader circumstances, including whether the present complaint forms part of a pattern of delayed judgments and whether any such pattern is adequately explained.

[23] I am satisfied that there is no reasonable likelihood that a formal hearing under section 17 will contribute to determining the merits of the complaint. The material facts relevant to this decision are documentary and objective: the hearing date, the date of the complaint, the date on which judgment was delivered, the section 17 correspondence, the final reminder, and the absence of any response from the respondent. The proper course is not to impose a section 17(8) remedy on an incomplete record, but to recommend that the complaint be investigated by a Tribunal.

[24] It bears emphasis that this ruling does not constitute a finding that the respondent is guilty of gross misconduct, gross incompetence, or any other misconduct. Those are matters for investigation and determination in the forum contemplated by the Act. The present question is whether the information obtained during the section 17 inquiry justifies the recommendation contemplated in section 17(4)(c). In my view, it does.

Recommendation

[25] I accordingly recommend to the Judicial Conduct Committee that it recommend to the Judicial Service Commission that the complaint against Judge Kumalo be investigated by a Tribunal. In doing so, it will be open to the Committee to direct that this complaint be considered together with the other complaints relating to the respondent's failure to deliver judgments timeously.

A handwritten signature in black ink, appearing to read "D. Munk", is positioned above a horizontal line.

THE JUDICIAL CONDUCT COMMITTEE