



## JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/261/10/2025

In the matter between:

**MRS TE LIBADA**

**COMPLAINANT**

and

**JUDGE TSHIDADA**

**RESPONDENT**

**Date:** 06 May 2026

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

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### RULING

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#### THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ)

##### Introduction

[1] Mrs T E Libada lodged a complaint with the Judicial Conduct Committee (“the JCC”) against Judge Tshidada of the Limpopo Division of the High Court, Thohoyandou. The complaint was considered by me in my capacity as

Acting Chairperson of the JCC and I directed that it be dealt with in terms of section 17 of the Judicial Service Commission Act 9 of 1994 (“the Act”). Pursuant to that direction, the respondent was invited to respond in writing to the allegations. He did so on 23 March 2026. The complainant was thereafter invited to comment on the respondent’s written response, and she furnished written comments. The matter now falls to be finally determined on the material placed before the JCC.

[2] Under section 17, the question is whether the material placed before me establishes a serious, non-impeachable complaint warranting a finding and remedial steps, or whether the complaint should be dismissed.<sup>1</sup> By virtue of section 14(4)(b) and (e),<sup>2</sup> read with article 2(3) of the Code of Judicial Conduct (“the Code”),<sup>3</sup> the complaint must disclose a wilful or grossly negligent breach of the Code, or other wilful or grossly negligent conduct incompatible with or unbecoming the holding of

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<sup>1</sup> 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.”

<sup>2</sup> 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.”

<sup>3</sup> 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.”

judicial office. If, after the exchange of written material, there is no reasonable likelihood that a formal hearing will contribute to determining the merits of the complaint, section 17(4) obliges me to decide the matter on the information so obtained.

[3] The present process is therefore not an appeal against the conduct of the underlying litigation. Nor is it designed to reconsider whether each procedural or substantive step taken by the respondent was correct in law. The question is whether the material before me establishes that, in his handling of the contempt proceedings complained of, the respondent committed a wilful or grossly negligent breach of the Code, or otherwise engaged in wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office, thereby justifying action under section 17 of the Act.

### **The Complaint**

[4] The complaint arose against the background of a judgment delivered by Deputy Judge President Semanya on 8 August 2024 in case number 1314/2021. In that matter the complainant, as applicant, obtained final interdictory relief against certain respondents, including Amos Masia and Phalandwa Robert Nevari, in relation to the farm or orchard known as Ha-Matola. The complainant's case is that those respondents did not comply with that order thereafter.

[5] The complainant then launched contempt proceedings against Mr Masia and Mr Phalandwa Robert Nevari. Those proceedings came before the respondent on 19 August 2025. According to the complainant, Mr Masia addressed the court in Tshivenda without the assistance of an interpreter and explained that his attorney

was not present. The respondent postponed the matter to 26 August 2025 so that the respondent could obtain legal representation.

[6] The complainant's further complaint is directed at what occurred on 26 August 2025. She says the respondents again appeared without an attorney; that the respondent asked whether any attorney present in court could assist them; and that an attorney then volunteered to do so. She alleges that the respondent then said the contempt application would not proceed, suggested that the respondents should pursue rescission, and effectively allowed them to continue working on the disputed property notwithstanding the order she had previously obtained. She further contends that the respondent acted unjustly and unfairly, aided the respondents, and thereby prejudiced her ability to obtain effective relief.

[7] The complaint also refers to the complainant's difficulty in obtaining court records or a quotation for the record. She says that requests were made more than once, but that she was not furnished with the requested material. In her later written comments on the respondent's response, the complainant persisted in saying that the matter before the respondent was one of contempt, not rescission; that the respondent was unwilling to hear the contempt application; that he kept interjecting; and that he favoured a matter that was not before him. She also suggested that what transpired in court was not fully reflected in the transcribed record and requested that the Commission obtain the audio recordings.

### **The Response**

[8] The respondent denies misconduct. He states that the complainant has levelled distorted accusations against him. He explains that the contempt application served

before him after the interdict order granted on 8 August 2024 and that the underlying dispute concerned occupation and use of a piece of land which both the complainant and Mr Masia claimed to occupy by virtue of a permission to occupy granted by traditional leadership in the area.

[9] In relation to 19 August 2025, the respondent states that before allowing Mr Masia to address the court in Tshivenda, he personally asked the complainant's counsel, who is also a Tshivenda-speaking advocate, whether he had any objection to that course. According to the respondent, no objection was raised. He says Tshivenda and English were thereafter used interchangeably during the proceedings and that the court, counsel and the complainant understood one another. The respondent further says that Mr Masia indicated that he was legally represented but that his attorney was not present in court, and that he sought an opportunity to contact his representative or to explain the absence. The matter was then postponed to 26 August 2025, with the consent of the complainant's counsel.

[10] In relation to 26 August 2025, the respondent states that Mr Masia appeared and indicated that he had parted ways with his legal representative. The respondent says Mr Masia reiterated his wish to oppose the contempt application but sought an opportunity to secure legal representation. The respondent further explains that one of the legal practitioners present in court volunteered to assist Mr Masia on a pro bono basis, and that the complainant did not oppose that development.

[11] The respondent's case is that, after hearing the parties and considering the practical and legal position, he was of the view that the pending rescission application in respect of the interdict should first be set down and heard before adjudication of the contempt application. He says he adopted that course because

there appeared to be an arguable case and because the order sought to be enforced by contempt was interim in nature. The respondent accordingly says that he regarded the contempt application as misconceived and dismissed it. He further states that the complainant had failed to disclose that a rescission application had already been filed and that the rescission application had in fact been attached to her founding papers in the contempt application.

[12] The respondent denies that he assisted or defended the respondents, or that he acted with bias. He says every step he took regarding the matter occurred in open court and with the involvement and approval of the complainant's counsel. He also states that he never denied the complainant a hearing, and that he is unaware of the reasons why the complainant could not obtain court records or why her legal representative could not obtain a quotation from the Registrar. He points out, further, that the complainant did not furnish a supporting affidavit from her legal representative, despite counsel having been present throughout the relevant events.

## **Evaluation**

[13] The complaint must be decided on the record. The central question is not whether the respondent's handling of the contempt application was correct as a matter of law, but whether the material before me establishes judicial misconduct within the meaning of section 14(4)(b) or (e) of the Act. That distinction is important. A section 17 inquiry is not a mechanism for relitigating procedural or substantive rulings simply because a litigant is dissatisfied with them.

[14] In my view, the complaint does not meet the statutory threshold. The core of the complaint is directed at the way in which the respondent handled the

contempt application on 19 and 26 August 2025: first by postponing it when Mr Masia appeared without his attorney, and later by considering the position created by the pending rescission application and dismissing the contempt proceedings. Whether those were correct decisions, whether the rescission application should have been regarded as relevant at all, and whether the contempt application should instead have been heard and determined on its own footing are, in substance, matters going to the respondent's management and determination of the proceedings. Note 9(v) of the Code makes plain that errors of fact or law are to be dealt with through the ordinary appeal and review processes, and that complaints related to the merits of a decision or a procedural ruling do not, without more, constitute valid complaints of judicial misconduct.<sup>4</sup> On the material before me, the respondent's actions are not shown to amount to wilful or grossly negligent misconduct.

[15] Nor am I persuaded that the respondent improperly assisted the respondent or acted with bias. His explanation for the first postponement is clear and is not materially displaced by the record. The transcribed proceedings of 19 August 2025 show that the court was attempting to understand who had appeared in the main application, whether Mr Masia had been personally served, and whether he had been notified of the hearing before Deputy Judge President Semenya. The transcript also records that the matter was stood down and then postponed to 26 August 2025. The respondent's explanation that he first established whether the complainant's counsel objected to the use of Tshivenda, and that no objection was taken, is not contradicted by any objective material before me.

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<sup>4</sup> Note 9(v) of the Code provides, "[s]ince judges are fallible and can err in relation to fact or law, such errors are to be dealt with through the normal appeal and review procedures. Such errors, even if made by courts of final instance, cannot give rise to valid complaints. Complaints against judges that are related to the merits of a decision or procedural ruling are to be dismissed at the outset."

[16] It is true that the transcription bears a note that another language was spoken and was not translated throughout. That feature is unsatisfactory. But on this record, it does not establish judicial misconduct. The respondent's uncontradicted explanation is that the complainant's counsel was a Tshivenda-speaking advocate, that he personally checked whether there was any objection to Mr Masia addressing the court in that language, and that the parties understood one another. There is no affidavit from the complainant's legal representative disputing that account or suggesting that the complainant was prejudiced because the proceedings were not understood.

[17] The same applies to the complainant's allegation that, on 26 August 2025, the respondent effectively preferred the contemplated rescission application over the contempt application and thereby enabled the respondents to continue working on the land. On the transcript extract relied upon by the complainant, the respondent questioned her legal representative about the practical prejudice that would be suffered if anything had already been planted on the farm, and counsel's answer was essentially that there was a court order which the court ought to protect. That exchange suggests that the respondent was engaging with what he regarded as the practical consequences of the relief sought, rather than simply permitting the respondent to continue his activities without judicial scrutiny. If that approach was wrong in law, or if the contempt application ought to have been determined differently notwithstanding the contemplated rescission, that would still go to the correctness of the ruling rather than, without more, to misconduct. That is the kind of issue which Note 9(v) of the Code indicates is to be addressed through the ordinary appeal and review processes. More importantly, the objective material

before me does not support the further allegation that the respondent directed that the complainant should stay away from the field.

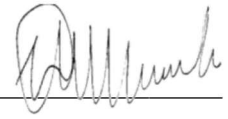
[18] The complainant's broader allegations of personal interest, favouritism and an intention to undermine Deputy Judge President Semanya's judgment are serious. But they remain speculative. On the material presently before me, there is simply no evidential basis for a finding that the respondent had a personal interest in the matter, knew Mr Masia beforehand, or deliberately set out to subvert the judgment of another court.

[19] As for the complainant's difficulties in obtaining court records or a quotation for the record, the material does show that requests for quotations were made. But there is no basis on which to attribute the non-provision of those materials to misconduct on the part of the respondent. His response is that he is unaware of the reason why those requests were not fulfilled and that such matters fall outside his personal knowledge. Nothing before me displaces that explanation.

[20] I am accordingly not persuaded that the respondent committed any wilful or grossly negligent breach of the Code, or any other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office.

### **Order**

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

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

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**THE JUDICIAL CONDUCT COMMITTEE**