



## JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/153/02/2025

In the matter between:

**K P L MALAO**

**COMPLAINANT**

and

**JUDGE A BASSON**

**RESPONDENT**

**Date:** 15 May 2026

**Decision:** The complaint against Judge Basson 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] This is a complaint lodged by Mr Malao against Judge Basson of the Gauteng Division of the High Court, Pretoria. The complaint was directed to be dealt with in terms of section 17 of the Judicial Service Commission Act 9 of 1994

(“the Act”). Judge Basson was invited to respond to the complaint and did so. The complainant was thereafter invited to comment on the respondent’s response and filed further written submissions. The matter now falls to be determined on the information placed before the Committee.

[2] Section 17 provides for an inquisitorial process in respect of serious, non-impeachable complaints.<sup>1</sup> The question is not whether the respondent’s judgments in the underlying litigation were correct in law, nor whether an appellate court might take a different view of any order granted by her. The question is whether the material before me establishes that the respondent committed a wilful or grossly negligent breach of the Code of Judicial Conduct (“the Code”) as contemplated in section 14(4)(b) of the Act, or otherwise engaged in wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial

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<sup>1</sup> Section 17(1) and (2) provide, “If—

- (a) the Chairperson is satisfied that, in the event of a valid complaint being established, the appropriate remedial action will be limited to one or more of the steps envisaged in subsection (8); or
  - (b) a complaint is referred to the Chairperson in terms of section 15 (1) (b) or section 16 (4) (a), or section 18 (4) (a) (ii), the Chairperson or a member of the Committee designated by the Chairperson must inquire into the complaint in order to determine the merits of the complaint.
- (2) Any inquiry contemplated in this section must be conducted in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact during such investigation.”

office as contemplated in section 14(4)(e),<sup>2</sup> thereby justifying action under section 17(8).<sup>3</sup>

[3] Article 9 of the Code requires a judge to resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, including by observing the letter and spirit of the *audi alteram partem* rule, remaining manifestly impartial, and giving adequate reasons.<sup>4</sup> Article 10 requires a judge to perform assigned judicial duties diligently and to dispose of court business promptly and efficiently.<sup>5</sup> At the

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<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> 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.
- (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.”

<sup>4</sup> Article 9(a) of the Code provides, “[a] judge must—

- (a) resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, which includes the duty to—
  - (i) observe the letter and spirit of the *audi alteram partem* rule;
  - (ii) remain manifestly impartial; and
  - (iii) give adequate reasons for any decision.”

<sup>5</sup> Article 10(1) provides, “[a] judge must—

- (a) perform all assigned judicial duties diligently;
- (b) ...;
- (c) dispose of the business of the court promptly and in an efficient and businesslike manner.
- ...

same time, Note 9(v) to the Code emphasises 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 procedural ruling are to be dismissed.<sup>6</sup>

## **The Complaint**

[4] The complaint arises from proceedings in the Gauteng Division, Pretoria, under case number 60617/2020, namely *K Malao Inc v Investec Bank Limited, the Road Accident Fund, the Sheriff for Sandton South and the City of Johannesburg*. For present purposes, it is not necessary to traverse the underlying commercial dispute in detail. It is sufficient to record that the application was brought by K Malao Inc, that the complainant was the firm's director, instructing attorney and deponent to the founding affidavit, and that the respondent made an adverse costs order against him personally, *de bonis propriis*.

[5] The complainant's central grievance is the costs order made against him personally. He alleges that the respondent grossly misconducted herself by condemning him without affording him a hearing; refusing to allow him to address the court in his personal capacity; denying him legal representation; and, as he puts it, deferring her discretion on costs to the respondents (in the matter) by asking them what scale of costs they sought. He further alleges that the respondent made false factual findings against him, disregarded information which, on his version, revealed

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<sup>6</sup> Article 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."

suspicious financial conduct by other parties, and, by doing so, became complicit in that alleged wrongdoing.

[6] The complaint is expressed in strong terms. It invokes the Constitution, the *audi alteram partem* rule, the complainant's right to legal representation, and allegations of gross incompetence, bias, corruption and complicity. The complainant also relies on the fact that leave to appeal was later granted to a Full Court. He maintains that he is not complaining about the merits of the judgment, but about the respondent's conduct as a judge.

### **The Response**

[7] The respondent denies that she committed misconduct. Her answer is, in substance, that the complaint takes issue with judicial findings and costs orders made in proceedings in which the complainant, through the applicant firm and later in his personal capacity, had opportunities to place his position before the court. She states that the matter served before her on three occasions and that the judgments delivered in those proceedings set out the basis on which the impugned findings and orders were made.

[8] In relation to the urgent application, the respondent states that the complainant was not an uninvolved third party. He was the director of the applicant firm, its instructing attorney, and the deponent to the founding affidavit. The applicant firm was legally represented. The respondent states that the opposing parties placed serious allegations concerning the complainant's conduct before the court and that personal costs against him were expressly sought. According to her, neither the

applicant firm nor the complainant filed a replying affidavit to answer those allegations.

[9] Against that background, the respondent denies that the *audi alteram partem* principle was infringed. Her position is that the personal costs order was made in proceedings in which the applicant firm was legally represented, and in which the complainant's own role in the matter was squarely before the court. She further states that, after written reasons were furnished, K Malao Inc first brought an application for leave to appeal and was afforded a full opportunity to respond. Thereafter, the complainant brought a further application for leave to appeal in his personal capacity. In order to afford him a further opportunity to address the order made against him personally, she convened a further hearing at which he was represented by senior counsel and was afforded an opportunity to make submissions on the *de bonis propriis* costs order.

[10] As to the allegations that the respondent made false findings, deferred her costs discretion to the opposing parties, or became complicit in alleged wrongdoing by others, the respondent denies that there was any misconduct. Her position is that the findings and orders complained of were judicial determinations made on the papers and submissions before her, and that any challenge to their correctness lay through the ordinary appellate process.

[11] The respondent also addresses the complainant's reliance on the fact that leave to appeal was granted by the Supreme Court of Appeal. She points out that the appeal thereafter served before the Full Court, which removed the matter from the roll with costs reserved. The Full Court's observations are relevant, not because they determine this complaint, but because they place the complainant's allegations in

context. The Full Court recorded that the court file was “replete with confusing documents submitted by Mr Malao”, referred to the fact that he had reported several judges of the Division to the JSC, and remarked that litigation is not advanced by making broad allegations against judges and others. That context supports the respondent’s denial that the complaint discloses misconduct on her part. It also demonstrates that the complainant’s reliance on the grant of leave to appeal is incomplete: the appeal was not determined in his favour, but was removed from the roll because of difficulties with the state of the matter before the Full Court.

## **Evaluation**

[12] The complaint must be approached with care because it raises two categories of issues. Some allegations are framed as misconduct: denial of the *audi alteram partem* right, bias, complicity and corruption. Other aspects are, in substance, challenges to the correctness of the respondent’s findings, reasons and orders: whether the matter was urgent, whether the personal costs order was justified, and whether the respondent ought to have accepted or rejected particular factual allegations. The latter category is ordinarily for appeal or review, not judicial discipline.

[13] On the material before me, the allegation that the respondent denied the complainant an opportunity to be heard is not established. The urgent application was brought by K Malao Inc and argued by counsel. The complainant was not a stranger to those proceedings: he was the director of the applicant firm and its instructing attorney. The respondent’s answer is that serious allegations concerning his personal conduct were placed before the court, that personal costs against him were expressly sought, and that neither the applicant firm nor the complainant filed

a replying affidavit to answer those allegations. Those facts are inconsistent with the contention that the respondent simply made the order without any procedural basis for doing so.

[14] The *audi* complaint is also not borne out by the procedural history. The complainant had more than one opportunity to address the personal costs order, was legally represented, and, in the later application brought in his own name, was represented by senior counsel. On the material before me, that is inconsistent with the allegation that the respondent denied him an opportunity to be heard.

[15] If the complainant's point is that, as a matter of law, the respondent should have given him a separate opportunity to address the personal costs order before it was made, that is a challenge to the correctness of the order and the procedure adopted in the proceedings. That issue is capable of being pursued through the ordinary appellate process. It does not, without more, establish a wilful or grossly negligent breach of the Code.

[16] Nor does the allegation that the respondent "deferred" her discretion on costs to the opposing parties establish misconduct. The record shows that opposing parties sought a *de bonis propriis* costs order against the complainant. A judge is entitled to receive and consider submissions on the appropriate costs order. The respondent's reasons reflect that she made the order on the basis of her own assessment of the papers, the procedural history, the absence of replying affidavits, and what she considered to be an abuse of process. Whether those reasons were right or wrong is not the issue before me. The issue is whether the respondent abdicated her judicial function or acted for an improper purpose. The material does not show that she did.

[17] The same applies to the allegation that the respondent made false factual findings against the complainant or failed to engage with information which, on his version, revealed suspicious financial conduct by other parties. Those findings formed part of the respondent's judgment and were based on the material that had been placed before her in those proceedings. The complainant plainly disputes them. But a factual finding in a judgment does not become judicial misconduct because a litigant considers it wrong. 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.

[18] The allegations of criminal complicity, bias and corruption stand on a still weaker footing. They are serious allegations, but they are not supported by primary facts or evidence showing that the respondent had any personal interest in the matter, received any benefit, acted in concert with any litigant, or knowingly assisted unlawful conduct. The complainant's reliance on broader material concerning alleged irregularities by other parties does not establish misconduct by the respondent. She was required to decide the application before her on the papers filed in that case. The fact that the complainant believes those papers or the opposing versions were false does not, on its own, establish that the respondent acted dishonestly, corruptly or in bad faith.

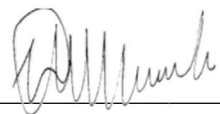
[19] The subsequent grant of leave to appeal by the Supreme Court of Appeal does not alter the disciplinary character of the complaint. It means that the matter was considered suitable for appellate consideration; it does not constitute a finding of misconduct by the respondent. Nor does it assist the complainant to rely on that development without the later context. When the appeal served before the Full Court, it was removed from the roll with costs reserved. The Full Court recorded serious difficulties with the state of the papers, including the confusing nature of the material

before it and the breadth of the allegations advanced. This later procedural history therefore places the complainant's reliance on the grant of leave to appeal in proper context and reinforces the conclusion that the complaint remains, in substance, directed at the litigation process and its outcomes rather than at misconduct by the respondent.

[20] Having considered the complaint, the respondent's response, the complainant's further submissions and the judgments placed before me, I am not satisfied that the material establishes that the respondent committed a wilful or grossly negligent breach of the Code, or that she engaged in wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office. The complaint is, in substance, an attempt to pursue through the disciplinary process grievances concerning judicial findings, procedural rulings and a costs order made in litigation. That is not the function of section 17.

### **Order**

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



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**THE JUDICIAL CONDUCT COMMITTEE**