



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/99/09/2024

In the matter between:

Mr Odysseus Motlatjo Thetjeng

Complainant

and

Judge Marisa Naude-Odendaal

Respondent

Date: 1 May 2026

Decision: The complaint is dismissed

RULING

JUDICIAL CONDUCT COMMITTEE (MAJIEDT J):

Introduction

[1] This is a complaint in terms of section 17(1) of the Judicial Service Commission Act, 9 of 1994, as amended ('the Act').¹ The complaint is brought

¹ Section 17(1) provides:

“(1) 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

by Mr Mr Odysseus Motlatjo Thetjeng, ('the Complainant') against Judge Marisa Naude-Odendaal of the Limpopo Division of the High Court ('the Respondent').

[2] The essence of the complaint is that the Respondent presided as an Acting Judge in a matter in which she was on brief as an advocate for one of the parties, prior to her acting position. It is alleged further in the complaint that the Respondent failed to ensure that her court order was implemented, and that she continued on brief in the matter after her stint as an Acting Judge had ended.

Background to the complaint

[3] The matter has a long litigation history, and, for contextual background, it is necessary to narrate that history in some detail. The Complainant states that he had been employed by a political party, Congress of the People (COPE) as a researcher/manager in the Limpopo Provincial Legislature (the Legislature), from 1 May 2009. His salary, as well as that of other COPE staff members, was paid by COPE and the Legislature, and the latter was authorised by COPE to administer that staff salaries until the end of the term of the Legislature. According to the Complainant, at the commencement of the Legislature's term in 2009 after that year's national general elections, COPE opted to administer staff salaries itself. Consequently, the Legislature transferred the salaries of staff directly into the staff's individual bank accounts.

[4] COPE was required to account for the monies paid to staff through the submission of audited financial statements, as required by legislation. According to the Complainant, COPE failed to comply with applicable labour laws² and other legislative prescripts in the administration of the staff salaries. COPE also

member of the Committee designated by the Chairperson must inquire into the complaint in order to determine the merits of the complaint."

² It was alleged that COPE failed to deduct UIF and PAYE and to provide pay slips and salary advices.

unilaterally reduced the Complainant's salary. Litigation followed in the Labour Court and the Court (Whitcher J) ruled in favour of the Complainant.

[5] Further problems arose in 2017 when internal disputes arose amongst COPE party officials over control of the party's Absa bank account. This caused delays in the payment of staff salaries. Further litigation followed in the High Court on an urgent basis, and that Court (Kgomo J) ordered COPE to make payment of the staff salaries. COPE failed to comply with the court order and a writ of execution was issued. Salaries were eventually paid to the affected staff members.

[6] COPE started experiencing cash flow problems and yet further litigation resulted. The staff were successful in obtaining an order in the High Court (Mokgohloa DJP) that the Legislature, instead of COPE, make payment of their salaries. This order, too, was not complied with by the Legislature and contempt of court proceedings followed. The contempt application was opposed by the Legislature, and the Respondent was briefed as its counsel.

[7] On 29 July 2019, in the second contempt proceedings, with the Respondent appearing as counsel for the Legislature, the High Court (Madhava AJ) made an order in the form of a statement and debatement of account. The Court ordered the parties to submit to each other their respective calculations of the outstanding amounts in respect of salaries; to debate these calculations and, thereafter, that the Legislature make payment of the final amounts to the staff within a stipulated period.

[8] The contempt proceedings continued before Kganyago J on 8 June 2020, but the matter was removed from the roll as the court file was not in order. Costs were reserved for later determination. The Respondent continued representing the Legislature.

[9] Then followed the High Court proceedings, which are at the centre of the complaint. On 11 November 2020, the Respondent presided as Acting Judge in the High Court when the contempt proceedings continued. She made an order that the matter be postponed to 20 January 2021; that the Legislature (her client in preceding litigation until that point) must appoint an expert to do calculations regarding the outstanding salaries of two members of the COPE staff, who were the applicants before the Court (the Complainant and one Ms Maphuma Damalia Mothomela); and that the parties had to file a joint minute by 12 January 2021. It bears mention that, at this juncture, the Legislature was not disputing that monies were due and payable to the two applicants, but the amount payable was disputed.

[10] The Complainant alleges that, after this, the Respondent continued to act for the Legislature in the matter concerning the disputed amount of outstanding salaries. He states further that, as counsel, the Respondent failed to ensure that her own order as Acting Judge was implemented by the Legislature. The main complaint is that the Respondent was conflicted when she presided as the Acting Judge in the matter in which she had acted as counsel for one of the parties.

Response from Judge Naude-Odendaal

[11] The Respondent attaches a transcript of the record of the proceedings of 11 November 2020, when she presided as Acting Judge in the matter, and which forms the crux of the complaint. Based on the transcript, the Respondent explains that, at the commencement of the proceedings, she placed on record that she was conflicted and was thus unable to hear the matter. It appears from the record that the Respondent did not address the merits of the matter at all. She also conveyed to the parties that she had informed the Judge-President of her inability to sit in the case due to a conflict of interest. During those proceedings, the only topic

discussed was a postponement of the case and ancillary orders for the further conduct of the litigation.

[12] The record indicates that the parties' legal representatives approached the Judge-President in Chambers, obtained a date for further hearing and handed up a draft agreement by consent. The matter was then postponed by agreement to 20 January 2021 (the record erroneously reads 20 January 2020). As part of the response by the Respondent, the attorneys who had previously briefed the Respondent on behalf of the Legislature, Zikalala Attorneys, as well as the Complainant's erstwhile attorneys, RJL Attorneys, confirmed in writing that on the date of the hearing, the merits had not been dealt with and that the Respondent had placed on record her conflicted position. They also confirmed that the matter had merely been postponed and that an order was made by agreement. These firms of attorneys continued acting for the parties, the Complainant and the Legislature, respectively, after the hearing of 11 November 2020.

[13] The consent order made by the Respondent contained timeframes for the further conduct of the matter and case management directives, as agreed between the parties.³ There was no order as to costs. After the hearing of 11 November 2020, the Respondent ceased acting for the Legislature in the case and Adv Schnehage took over the matter from her. The Respondent played no further role in the case, and she does not feature at all in the further litigation.

[14] The Complainant was afforded an opportunity to reply to the Judge's response, but failed to do so within the time allocated to him. The complainant was afforded a further extension by the Judicial Conduct Committee, even though there was no request for an extension. He failed to take up this further opportunity.

³ As set out in para 9 above.

Evaluation

[15] In terms of section 14(4) of the Act, a complaint against a Judge must fall within one or more of the recognised statutory grounds.⁴ Relevant for present purposes is section 14(4)(b), which concerns any wilful or grossly negligent breach of the Code of Judicial Conduct (the Code), and section 14(4)(e), which concerns other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office, including conduct prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts. Section 15 requires summary dismissal where a complaint does not fall within those statutory parameters, where it is solely related to the merits of a judgment or order,⁵ or where it is frivolous or lacking in substance.⁶

[16] Article 13 of the Code requires a Judge to recuse him- or herself from proceedings if there is a well-grounded real or reasonably perceived conflict of interest, but the Judge may not do so on insubstantial grounds. Where a Judge is disqualified on this basis, she must withdraw in the interests of justice, and to maintain the integrity of the administration of justice generally, and of the courts

⁴ Section 14(4) of the Act provides:

“The 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”.

⁵ Section 15(2)(c).

⁶ Section 15(2)(d).

in particular. A litigant's right to seek recusal of a judicial officer is a rule of natural justice and derives from the right to a fair trial.⁷

[17] In *President of the Republic of South Africa v South African Rugby Football Union*, the Court held:

“A judge who sits in a case in which she or he is disqualified from sitting because, seen objectively, there exists a reasonable apprehension that such judge might be biased, acts in a manner that is inconsistent with section 34 of the Constitution, and in breach of the requirements of section 165(2) and the prescribed oath of office. We have no doubt, therefore, that the application for recusal raised a “constitutional matter” within the meaning of section 167(3), and that it was the duty of this Court to give collective consideration to the question whether the judges concerned should recuse themselves.”⁸

[18] Plainly, on the face of it, the Respondent was disqualified from sitting in the case where she had previously acted for one of the parties, the Legislature. But, she was aware of that fact and, according to the transcript of the proceedings, declared her conflicted position right at the outset. The Respondent also informed the parties in open court that she had informed the Judge-President of her predicament. Ultimately, the matter was postponed and an order was made by agreement between the parties. There was clearly no prejudice at all to the Complainant in the order made by the Respondent.

[19] Save for the mere fact that the Respondent was conflicted, a point which the Respondent herself had immediately acknowledged, the Complainant does not allege any prejudice by virtue of the Respondent's presiding in the matter. And the fact that the Complainant's legal representatives were prepared to

⁷ See: *Council of Review, South African Defence Force, and Others v Mönning and Others* 1992 (3) SA 482 (A) at 491 E-F.

⁸ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 9; 1999 (4) SA 147; 1999 (7) BCLR 725 at para 30.

continue and to have the draft order, reached by agreement, made an order of court, implies their acquiescence in the Respondent's sitting in the case for purposes only of the postponement. Moreover, as stated, the Complainant's legal representatives confirmed these events in a letter annexed to the Respondent's response.

[20] The state of affairs that prevailed at the hearing of 11 November 2020 was unfortunate, and ought to have been avoided. It is of some concern that there is no indication on the record why another Judge did not sit in place of the Respondent on that day to avoid this unacceptable situation. There is no indication that no other Judge was available to do so. Here, however, no prejudice ensued, and the Respondent found herself in a challenging situation. She, however, acted properly and the parties had no difficulty with the matter proceeding.

[21] On the objective facts, there was no prejudice at all to the Complainant. Most importantly, the Complainant's erstwhile legal representatives' implied acquiescence in the hearing continuing before the Respondent. This was evidenced by their consent to the agreement being made an order of Court, which controverts the Complainant's allegation that, due to her conflicted position, the Respondent should not have presided and, in failing to recuse herself, she was both player and referee in the case.

[22] The second and third parts of the complaint are devoid of merit. As to the second part - the Complainant states that the Respondent failed to ensure that her order as Acting Judge was implemented. But, the Respondent ceased to act, both as a Judge and as the Legislature's counsel, after 11 November 2020. She could, therefore, not play any part, nor do anything, to attend to the implementation of the order in any of those two capacities, as an Acting Judge or as counsel.

[23] In respect of the third part of the complaint, it is alleged that the Respondent continued acting for the Legislature in the case after 11 November 2020. The Respondent denies this and the history of the litigation supports that denial. As stated, Adv Schnehage took over the matter from her, and the Respondent played no further part in it at all.

[24] As can be gleaned from the narration about the litigation history, the case between the Complainant and the Legislature dragged on for quite some time, and there were a number of hearings before different Judges. The Legislature conceded its indebtedness to the Complainant in respect of his salary, but what was in dispute was the extent of that indebtedness. There were a number of postponements and, it must be said, on the available facts, the Legislature appears to have dragged its feet in getting the necessary calculations to finalise the case. At some point, on two occasions, the Complainant had to resort to contempt of court proceedings to get the Legislature to carry out the Court's order in respect of an expert report regarding the calculations. All of this no doubt caused the Complainant a great deal of frustration. It appears to me that it is this frustration with the litigation that may have motivated this complaint against the Respondent.

[25] The Complainant's frustration is understandable. However, the view I take of the matter is that, while regrettable, the Respondent's presiding in the case does not amount to a wilful or grossly negligent breach of the Code, and that she acted correctly in a difficult situation. There has also not been any other wilful or grossly negligent conduct 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. In the premises, the complaint must be dismissed in terms of section 17(4)(a) of the Act.

Order

[26] The complaint is dismissed.

A handwritten signature in black ink, appearing to read "Rajesh", is written in a cursive style. The signature is positioned above a horizontal line.

JUDICIAL CONDUCT COMMITTEE