JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/196/06/2025

In the matter between:

HENRY EMOMOTIMI OKAH **COMPLAINANT**

and

JUSTICE HARSHILA KHOOSAL KOOVERJIE **RESPONDENT**

Date: 3 November 2026

Decision: The complaint is dismissed.

SECTION 17 RULING

THE JUDICIAL CONDUCT COMMITTEE (Saldulker JA)

Introduction

[1] The complainant, Mr Henry Emomotimi Okah, lodged a complaint with the Judicial Conduct Committee (the Committee) against Justice Harshila Khoosal Kooverjie of the Gauteng Division of the High Court, Pretoria.

[2] Section 14[1] of the Judicial Service Commission Act 9 of 1994 (the Act) authorises any person to lodge a complaint against a judge with the Chairperson of the Committee. The provision prescribes the grounds upon which a valid complaint must be based. The Chairperson of the Committee is required to peruse the complaint and determine whether it should be dealt with in accordance with section 15, 16, or 17 of the Act.

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[1] Section 14 of the Act provides:

'14. **Lodging of complaints**

(1) Any person may lodge a complaint about a judge with the Chairperson of the Committee: Provided that the Chairperson may refer the complaint to the Deputy Chief Justice to deal with in terms of the provisions of the Act, and the Deputy Chief Justice assumes the role of the Chairperson in respect of that complaint.

(2) When a complaint is lodged with the Chairperson in terms of subsection (1), the Chairperson must deal with the complaint in accordance with section 15, 16 or 17, but in the event of a complaint falling within the parameters of section 15, the Chairperson may designate a Head of Court to deal with the complaint, unless the complaint is against the Head of Court.

(3) A complaint must be—

(a) based on one or more of the grounds referred to in subsection (4); and

(b) lodged by means of an affidavit or affirmed statement, specifying—

(i) the nature of the complaint; and

(ii) the facts on which the complaint is based.

(4) 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.'

[3] In terms of section 15(1)[2], if the Chairperson is of the view that the complaint falls within the parameters of the grounds set out in subsection (2), the complaint must be dismissed. Section 16[3] regulates complaints based on the grounds mentioned in section 177(1)[4] of the Constitution, which provides for the removal of a judge from office, where the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, and the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members. However, if the Chairperson is not satisfied that the complaint, if established, would indicate incapacity or gross

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[2] Section 15(1) of the Act provides:

'**15. Lesser complaints may be summarily dismissed**

(1) *(a)* If the Chairperson or the Head of Court designated in terms of section 14(2) is of the view that the complaint falls within the parameters of the grounds set out in subsection (2), he or she must dismiss the complaint.

(b) If the Head of Court designated in terms of section 14(2) is of the view that the complaint should not be dismissed under paragraph *(a)*, he or she must refer the complaint to the Chairperson to be dealt with in terms of section 16 or 17.'

[3] Section 16 of the Act provides:

'**16. Committee may recommend appointment of Tribunal in respect of impeachable complaints**

(1) 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—

(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.

(2) If a complaint is referred to the Committee in terms of subsection (1) or section 15(1)*(b)* or section 17(4)*(c)* or 17(5)*(c)*(iii), the Chairperson must determine a time and a place for the Committee to meet in order to consider a recommendation envisaged in subsection (1)(a), and must inform the complainant and the respondent in writing that he or she may—

(a) submit a written representation for consideration by the Committee at that meeting; and

(b) with the leave of the Chairperson, address the Committee at that meeting.

(3) For the purpose of a meeting referred to in subsection (2), the Committee may request such further information from the complainant or any other person as it deems fit.

(4) 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.'

[4] Section 177(1) of the Constitution provides:

'(1) A judge may be removed from office only if-

(a) The Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and

(b) The National Assembly calls for that judge to be removed by a resolution adopted with a supporting vote of at least two thirds of its members.'

incompetence or gross misconduct envisaged in section 177 of the Constitution, she may direct that the complaint be dealt with in terms of section 17 of the Act, provided a valid complaint is made out.

[4] Section 17[5] deals with an inquiry into serious, non-impeachable complaints by the Chairperson or a member of the Committee, and prescribes remedial steps for

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[5] Section 17 of the Act provides:

'**17. Inquiry into serious, non-impeachable complaints by Chairperson or member of Committee**

(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 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.

(3) For 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.

(4) If, 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.

(5)

(a) If, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is of the opinion that a formal hearing is required in order to determine the merits of the complaint, he or she must determine a time and a place for a formal hearing and written notice of the hearing must, within a reasonable period before the date so determined, be given to the respondent and the complainant.

(b) For purposes of a formal hearing contemplated in paragraph (a)—

(i) the Chairperson or member concerned has all the powers of a Tribunal; and

(ii) the provisions of sections 24, 26, 27, 28, 29, 30, 31 and 32 are applicable with the changes required by the context.

(c) Upon the conclusion of a formal hearing the Chairperson or member concerned must record his or her findings of fact, including the cogency and sufficiency of the evidence and the demeanour and credibility of any witness, and his or her finding as to the merits of the complaint, and—

(i) dismiss the complaint;

misconduct. Having considered the complaint, the Acting Chairperson was of the view that it should be dealt with in terms of section 17 of the Act, being 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 section 17(8) of the Act. The Acting Chairperson designated me to conduct the inquiry. Both the complainant and the respondent were afforded an opportunity to make written submissions and provided sufficient information in terms of section 17(3) of the Act. I am satisfied that there is no reasonable likelihood that a formal hearing would contribute to determining the merits of the complaint.

(ii) 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

(iii) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal.

(6) The Chairperson or member concerned must in writing inform the Committee, the complainant and the respondent of—

(a) a dismissal contemplated in subsection (4)(a) or (5)(c)(i); or

(b) any finding and remedial steps contemplated in subsection (4)(b) or (5)(c)(ii); or

(c) any recommendation contemplated in subsection 4(c) or (5)(c)(iii), and the reasons therefor.

(7)

(a) A complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (4)(a) or (5)(c)(i) may, within one month after receiving notice of that decision, appeal to the Committee in writing against that decision, specifying the grounds for the appeal.

(b) A respondent who is dissatisfied with any finding or remedial steps contemplated in subsection (4)(b) or (5)(c)(ii) may, within one month after receiving notice of that finding and remedial steps, appeal to the Committee in writing against that finding or remedial steps or both such finding and remedial steps, specifying the grounds for the appeal.

(8) Any 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.

The Complaint

[5] The complainant is a Nigerian National serving a twenty-four year sentence of imprisonment at Zonderwater Maximum Correctional Centre, Cullinan Pretoria. The complaint arises from urgent court proceedings involving the complainant which came before the respondent on 17 April 2025, in the Gauteng Division of the High Court, Pretoria.

[6] The complainant, who was the applicant in an urgent application, sought, *inter alia*, 'an order interdicting the Respondents, separately or jointly from effecting or assisting to effect my removal from the Republic to any foreign state whatsoever, except pursuant to an order of a court resultant upon the finalisation of extradition proceedings and, on the finalisation of all matters contemplated in paragraph 4 of the Notice of Motion'. The respondents in that application included, *inter alia*, the Director-General of the Department of Home Affairs, the Minister of Home Affairs, the National Director of Public Prosecutions, the Minister of Justice and Constitutional Development, the Minister of Correctional Services, the Minister of Police and the Zonderwater Parole Board.

[7] The complaint arises principally from the manner in which the urgent application was conducted before the respondent. The complainant contends, *inter alia*, that the respondent 'made a ruling on the merits of a matter that was not heard by the court', tampered with the recording of the proceedings, and fabricated a judgment. The complainant alleges that his rights under section 34 of the Constitution[6], to a fair hearing were violated. In substance, the complainant alleges,

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[6] **'Access to courts**

34 Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.'

inter alia, that the respondent improperly dealt with the question of urgency; was not properly acquainted with his application, and displayed a lack of knowledge of the matter before her. The complainant alleges that the matter had been removed from the Judge who was allocated to hear it, Justice Nyathi, who had issued a requisition for 15 and 17 April 2025, and allocated to the respondent, who, he contends, had not read the papers. He further contends that the respondent relied upon the submissions of the other parties in the urgent proceedings, and determined substantive issues without affording him a proper hearing. The complainant alleges that the transcript of the proceedings does not 'faithfully reflect' what transpired in court. According to the complainant, he informed the respondent that he was ill and unable to argue the matter and asked that it be removed from the roll. However, in appreciation of his condition, the respondent proceeded to make a ruling on the merits of the application in favour of the respondents. The complainant also raises concerns regarding the presence of a judge intern in court during the proceedings.

[8] In her response to the allegations, the respondent explained *inter alia*, that the matter was allocated to her in the ordinary course, that she had read the papers, and that, she had engaged with both the complainant and the counsel for the respondents during the hearing. The complainant had sought relief against various state role-players, including orders interdicting them from releasing him on parole; deporting him to Nigeria and declaring him to be an illegal foreigner. These issues the respondent stated, formed the basis of the complainant's application, and were not dealt with at all, and no finding was made on the merits. Furthermore, the respondent stated that the judge intern was present in court, and did not participate in the proceedings. She disputed the allegations that portions of the record had been deliberately omitted or that she and the transcribers had tampered with the proceedings. According to the respondent, the transcript that was furnished to the

complainant was the same transcript that was forwarded to her secretary, by the senior administration officer. She revised her judgment, but the substance of the judgment and the order remained unchanged. She maintained that the transcript did not omit any material utterances made by her and that her engagement with the complainant was fully reflected in the record.

[9] During her engagement with the complainant, he informed her that he was ill and unable to argue the urgent application. The respondent, accordingly removed the matter from the urgent roll and made no order as to costs.

The respondent explained, *inter alia*, that :

'Mr Okah received a fair hearing where I had pronounced that the matter will not proceed. Not only was the matter not struck off the roll due to non-urgency, but I had not ordered Mr Okah to pay the costs of the application. I further took the time to explain to Mr Okah that he could utilise urgent court proceedings in the future if the matter warranted urgent attention'.

Evaluation

[10] The grounds upon which any complaint against a judge may be lodged, are on any one or more of the grounds set out in section 14(4) of the Act. They are the following: Section 14(4)*(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; Section 14(4)*(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); Section 14(4)*(c)*: Accepting, holding or

performing any office of profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11; Section 14(4)*(d)*: Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section17(8), imposed in terms of this Act; and Section 14(4)*(e)*: Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraphs *(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. The Code of Judicial Conduct[7] (Code) serves as the prevailing standard of judicial conduct. For conduct to amount to judicial misconduct, there must be facts capable of establishing gross incompetence, incapacity or gross misconduct, wilful or gross negligence, or conduct otherwise incompatible with judicial office. However, the findings on the breach of the Code does not mean that the judge is automatically guilty of misconduct. Article 2(3) of the Code reads: 'Any 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.' The effect of this is that a judge who violates the Code even negligently, does not commit an ethical misconduct. He or she does so only if the breach was wilful or grossly negligent.

[11] The central issue is whether the respondent committed judicial misconduct. The complainant seeks to characterise the conduct of the respondent as demonstrating bias, dishonesty, unfairness, collusion and an improper exercise of judicial authority. The transcript of the proceedings reflects that, when the matter before the respondent commenced, the complainant informed the respondent that he

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[7] Code of Judicial Conduct adopted in terms of Section 12 of the JSC Act, 1994. Section 12(5) of the Act provides: The Code shall serve as the prevailing standard of judicial conduct, which judges must adhere to, and the Code and every subsequent amendment must be published in the Gazette'.

had a problem, which he described as 'A very big problem'. He explained that he was very ill and had been unable to prepare his reply. When questioned by the respondent, he reiterated that he was unwell and did not want to proceed with the hearing. He stated, *inter alia,* 'I respectfully ask the Court to remove the matter from the roll. I am very, very, very ill.' The order ultimately granted by the respondent was consistent with the relief sought by the complainant in consequence of his stated inability to proceed.

[12] It appears from the transcript that there was no determination on the substantive merits of the complainant's underlying application concerning parole, deportation or his immigration status. The complainant's contention that the respondent nevertheless decided the merits is not supported by the material before me. He was expressly informed that he was not precluded from pursuing his application in the ordinary course or, should circumstances warrant it, from seeking a further urgent allocation. The consideration of urgency, and the explanation as to why the matter could not proceed as an urgent application, did not constitute a determination of the merits of the underlying application.

[13] The complainant makes serious allegations concerning the transcript and the subsequent judgment. He alleges that portions of the proceedings were deliberately omitted, that the respondent colluded with the transcribers, and that a judgment was subsequently fabricated to conceal the alleged tampering. These are grave allegations and require a cogent factual foundation. No such foundation has been established, and the complainant has provided no evidence capable of substantiating the alleged misconduct. The respondent's explanation is that the transcript furnished to the complainant was identical to the transcript supplied to her office. She further

explained that the subsequent revision of the judgment did not alter its substance or the order pronounced in court.

[14] There is no objective material demonstrating that the respondent altered the transcript, instructed another person to do so, or participated in any fabrication. The respondent explained that transcription is an administrative process and is not controlled by the presiding judge or the judge's secretary. The fact that the complainant's recollection of certain exchanges differs from the transcript does not establish that the respondent tampered with the record.

[15] The complainant also takes issue with the presence of a judicial intern in court. The respondent explained that the person concerned was a trainee judge whom she had elected to mentor and who was present for purposes of obtaining exposure to urgent court proceedings. The mere presence of a judicial intern in an open court, particularly for legitimate training and observational purposes, does not establish impropriety. There is no evidence that the intern participated in the adjudication of the matter or improperly influenced the respondent.

[16] Much of the complainant's submissions concerns his conviction and his incarceration, his immigration status, his relationship with the Nigerian authorities, his fears concerning deportation and the merits of his underlying litigation. Whatever relevance these matters may have in other proceedings, they do not establish misconduct by the respondent in the proceedings of 17 April 2025.

[17] Having considered the material before me, I am unable to find a factual basis for the allegation that the respondent acted improperly or unfairly in the conduct of

the proceedings before her. To the extent that the complainant disputes the respondent's approach to urgency or contends that she ought to have approached the application differently, those complaints concern the exercise of judicial discretion and the conduct of the proceedings. His dissatisfaction with the manner in which the urgent application was handled, or with what he believes should have occurred, does not in itself establish judicial misconduct. The judicial complaints process is not an appeal or review procedure and cannot be employed to reconsider the correctness of judicial decisions.

[18] On the material before me, the respondent's conduct falls within the bounds of acceptable judicial behaviour in the circumstances of the urgent application, which ultimately did not proceed. The specific allegations of bias, impropriety, unfairness, dishonesty, collusion, deliberate alteration of a court transcript, fabrication of a judgment and intentional interference with the complainant's constitutional rights are unsupported by objective evidence. Suspicion, inference or assertion alone cannot sustain allegations of this gravity. The record does not establish that she acted with an improper motive or that her conduct was actuated by malice or bias. In the absence of facts capable of substantiating the alleged misconduct, these allegations cannot be upheld.

[19] I am accordingly satisfied that the material before me does not establish judicial misconduct, a wilful or grossly negligent breach of the Code, or other conduct unbecoming of a judge as contemplated in section 14(4) of the Act.

Order

[20] Accordingly, the complaint is dismissed.



JUDICIAL CONDUCT COMMITTEE
DESIGNATED JUDGE
SALDULKER JA