



## JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/231/08/2025

In the matter between:

**BOUWE WIERSMA**

**COMPLAINANT**

and

**JUDGE M S MAKAMU**

**RESPONDENT**

**Date: 26 May 2026**

**Decision:** It is recommended to the Committee, that it recommend to the Commission that the complaint be investigated by a Tribunal.

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**RULING IN TERMS OF SECTION 17 INQUIRY**

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**THE JUDICIAL CONDUCT COMMITTEE (Saldulker JA)**

## Introduction

[1] The complainant in this matter, Mr Bouwe Wiersma, an attorney and businessman lodged a complaint with the Judicial Conduct Committee (JCC) against the respondent, Judge Mudunwazi Samuel Makamu of the Gauteng Division of the High Court, Johannesburg. The complaint concerns allegations of grossly improper conduct on the part of the respondent, both during and subsequent to the conclusion of eviction proceedings that came before the respondent, which involved the complainant.

[2] Upon receipt of the complaint, the Acting Chairperson of the JCC, considered the matter and determined that it should be processed in accordance with section 16<sup>1</sup> of the Judicial Service Commission Act 9 of 1994 (the Act).

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<sup>1</sup> 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.
- (5) The Committee must inform the complainant, the respondent and the Commission in writing of any decision envisaged in subsection (4) and the reasons therefore.
- (6) A meeting referred to in subsection (2) must be attended by at least three members of the Committee.’

[3] In terms of section 16 of the Act, the complaint against the respondent judge was referred to the members of the JCC, namely, Mlambo DCJ, Mabindla-Boqwana JP and Majiedt J for consideration. The JCC, evaluated the complaint, stating *inter alia* as follows:

*'[24] While there are several troubling apparent inconsistencies, unconfirmed and implausible allegations in Mr Wiersma's complaint, including the fact that Mr Wiersma's averments depart in key respects from what was established in court during the eviction application hearing, due to the gravity of the alleged misconduct, it is proper that a formal investigation be done. The allegations made by Mr Wiersma, particularly those suggesting bribery or corrupt influence by Judge Makamu, are of such gravity that they cannot simply be treated as a trivial, informal matter. A full, impartial investigative process is necessary to establish the facts and to determine the veracity of the claims.'*<sup>2</sup>

[4] The JCC concluded by referring the complaint back to the Acting Chairperson for an inquiry to be conducted in terms of section 17(2)<sup>3</sup> of the Act. This provision empowers the Acting Chairperson himself to conduct such an inquiry or designate a member of the JCC to do so. Here, the Acting Chairperson designated me to determine the merits of the complaint.

[5] It is imperative to outline the legislative backdrop against which this complaint must be evaluated. In terms of section 16 of the Act, the Acting Chairperson must first consider whether, the complaint, if established is likely to

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<sup>2</sup> See: Ref no: JSC/231/08/2025 *Wiersma v Makamu*.

<sup>3</sup> Section 17(2) of the Act provides:

'(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.'

lead to a finding by the Judicial Service Commission (the Commission), that the respondent judge suffers from incapacity, is grossly incompetent or is guilty of gross misconduct as envisaged in section 14(4)(a)<sup>4</sup> of the Act. If there is such a likelihood, the Chairperson is required, in terms of section 16(1)(a) to refer the complaint to the Committee in order to consider whether it should recommend to the Commission that the complaint be investigated and reported on by a Tribunal and inform the respondent of the complaint in writing. If a complaint is referred to the Committee, a meeting must be convened to consider the recommendation envisaged in subsection 16(1)(a). At the meeting convened in terms of section 16(4) of the Act, the Committee must consider whether the complaint, if established, will *prima facie* indicate that the respondent suffers from incapacity, gross incompetence or gross misconduct. If the Committee is satisfied that there is indeed *prima facie* proof of any of the above grounds being established, then it is obliged to either refer the complaint to the Chairperson for an inquiry referred to in section 17(2) of the Act or recommend to the Commission that a Tribunal be appointed to investigate the complaint. In terms of section 16(5) of the Act, the Committee must inform the parties and the Commission in writing of any decision envisaged in section 16 (4) and the reasons therefor.

[6] Having considered the provisions of section 16, it is clear that the Committee must first, determine whether the complaint would, if established constitute *prima facie* proof that the respondent judge is guilty of gross misconduct. This determination is made by exclusively looking at the complaint itself, on the

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<sup>4</sup> Section 14(4)(a) of the Act provides:

‘(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;’

assumption that it would be proved. (See: JCC ref no JSC/209/07/2025 *Semekazi v Hartle J*, para [14] ; and JCC Ref. No: JSC/159/03/2025 *Mlambo JP v Khumalo J and Gillespie v Khumalo J* para [16]).

[7] I turn to consider the essential features of the complaint before determining whether it meets the standard laid down in section 16(4) of the Act. The test is whether the complaint, if established, *prima facie* indicates that the respondent judge is guilty of gross misconduct. Section 16 of the Act deals with impeachable complaints which may result in a judge being removed from judicial office, if it is found that the judge suffers from incapacity, is grossly incompetent or is guilty of gross misconduct. Section 177 of the Constitution lists the grounds upon which a judge may be removed from office.<sup>5</sup>

[8] However, before I set out the allegations made in the complaint , I must point out that should this complaint be based on incapacity, gross incompetence or gross misconduct, it would require that it be dealt with as an impeachable complaint which must be dealt with by a Tribunal. This is because under the Act, only a Tribunal is competent to investigate and determine the merits of an impeachable complaint. Even where, as here, a complaint has been referred to a Section 17 inquiry, if during the course of the inquiry it appears that there are reasonable grounds to suspect that the respondent suffers from incapacity, is grossly incompetent or is guilty of gross

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<sup>5</sup> 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.’

misconduct, the Section 17 inquiry must request the JCC to recommend to the Commission that a Tribunal be appointed.

[9] Section 17(4) of the Act provides :

‘(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.’

### **The complaint**

[10] An urgent eviction application was brought against Mr Wiersma by Lesedi Local Municipality (municipality). This arose out of a protracted dispute between the complainant and the municipality. The genesis of the urgent application stemmed from the complainant undertaking, through his Close Corporation Heidelberg Beer Festival CC (the CC) to revive the Heidelberg Heritage Museum into a functioning community venue. The municipality had previously approved, in principle, a 19-year lease of the property to the CC. As a result of this approval, Mr Wiersma claimed that he invested substantial funds into the improvements of the property. It was common cause that no formal lease agreement was signed between the municipality and the complainant. Despite this, he took occupation of the museum

and commenced business operations. Mr Wiersma paid neither rent to the municipality nor the municipal service charges such as electricity, resulting in arrears exceeding R1.3 million. Even after the municipality discontinued the electricity supply, the complainant continued to occupy the property, and refused to cease operations.

[11] The dispute between the complainant and the municipality resulted in numerous legal skirmishes. However, during July 2025, the municipality brought an urgent eviction application involving the complainant which came before the respondent. The respondent concluded, *inter alia*, that the application for eviction was justified, given the state of the property and the complainant's unlawful occupation of the property with no valid lease.

[12] The complaint against the respondent contained *inter alia*, wide ranging allegations relating to the judgment in the eviction application and the respondent's conduct after the judgment was handed down : Mr Wiersma alleged that, two days after the judgment by the respondent, he received a call from an individual who identified himself as 'Judge Makamu'. He informed Mr Wiersma that his judgment was an 'injustice' which needed to be corrected and encouraged the complainant to lodge an appeal against the eviction order. He was informed by the caller that he would put him in touch with a legal adviser who could ensure a successful outcome of the appeal. Mr Wiersma received a WhatsApp message from the respondent's number containing the contact details of Ndlovu Attorneys, which the respondent recommended to handle the appeal. Additionally, the respondent's secretary also called him to provide the details of Ndlovu Attorneys. Thereafter, the complainant also received a call from the respondent. During this call, the complainant informed the respondent that the fees quoted by Mr Ndlovu was too high, and the respondent

then agreed that the complainant could use his own preferred advocate, a Mr Hollander, to pursue the appeal. The respondent provided assurances that the appeal would be heard and implied that there would be a favourable outcome. According to the complainant, Adv Hollander sent him a WhatsApp message stating that he had received a call from the respondent judge<sup>6</sup>.

[13] Furthermore, according to the complainant, the respondent allegedly asked the complainant to contribute towards the studies of his nephew, one 'G Makamu', who was studying at Rhodes University. The respondent also indicated to the complainant that he had received money from the other party, namely the municipality, in granting the relief sought. The complainant alleged that the respondent requested a contribution from the complainant 'to even the scales', initially suggesting an amount which was later reduced to R5000.

[14] Mr Wiersma stated that he agreed to pay R5000 and made an electronic transfer of that amount into a bank account provided by 'J Makamu,' and also sent the proof of payment. Attached to the complaint were *inter alia* screenshots of the WhatsApp call logs, messages and proof of payment as annexures. A copy of the proof of payment from an FNB account to a Capitec bank account in the sum of R5000 to one 'G Makamu' was attached. The payee's payment reference reads: 'SAVINGS/COUSIN/RHODE' and that of the payer: 'adv/Appeal/hdbmuseum'. After the payment was made, the complainant alleged that the respondent confirmed that the application for leave to appeal had been set down for hearing. The gist of the allegations in the complaint against the respondent, was that he received a bribe

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<sup>6</sup> In response to a request in terms of section 17(3)(b), a confirmatory and a supplementary affidavit deposed to by Adv Hollander was filed with the Committee.

to manipulate the appeal process. In any event, the application for leave to appeal was considered and dismissed.

[15] In response to the complaint, the respondent denied that he had communicated with Mr Wiersma before or after the judgment. The respondent explained, *inter alia*, that the first time he became aware of these allegations was when he read an article in The Citizen newspaper concerning corruption allegations against an unnamed judge. Thereafter, senior colleagues informed him that he was said to be the Judge referred to in that article. The respondent denied all the allegations that he solicited R5000 from the complainant or any other amount for the reasons set out in the complaint. He denied that the bank account into which the complainant is alleged to have paid the sum of R5000 belonged to him. For further clarification, the details of the bank account was provided by both parties pursuant to a request made in terms of section 17(3) of the Act. According to the respondent, the account belonged to a 'Mr Makua'. The complainant conducted his own investigation and was informed at the local Capitec branch that the account holder was a 'Mr G Makuwa'.

[16] I agree with the conclusion by the JCC quoted in para 3 above that the allegations are so serious as to warrant a formal investigation. I add that the investigation must be undertaken by a competent body authorised under the Act to determine the merits of a complaint of this nature. It will be remembered that a section 17 inquiry has the authority to investigate non-impeachable complaints and that the impeachable ones fall within the remit of a Tribunal. In terms of the scheme of the Act, the Commission may only reach a finding that a judge is guilty of gross

misconduct, after consideration of a report by a Tribunal in terms of section 20<sup>7</sup> of the Act.<sup>8</sup>

[17] The allegations set out in paragraphs 12-14 above, if established, would clearly sustain gross misconduct on the part of the respondent. They suggest, among other issues, that the respondent solicited and received a bribe from a litigant whose case he had decided. The bribe was solicited in order to manipulate an appeal process against the decision given by the respondent in favour of the complainant's opponent

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<sup>7</sup> Section 20 of the Act provides:

**'20 Commission to consider report and make findings**

- (1) The Commission must consider the report of a Tribunal at a meeting [d]etermined by the Chairperson, and the Commission must inform the respondent and, if applicable, the complainant, in writing-
  - (a) of the time and place of the meeting; and
  - (b) that he or she may submit written representations within a specified period for consideration by the Commission.
- (2) At the meeting referred to in subsection (1) the Commission must consider-
  - (a) the report concerned; and
  - (b) any representations submitted in terms of subsection (1)(b).
- (3) After consideration of a report and any applicable representations in terms of subsection (2), the Commission must make a finding as to whether the respondent-
  - (a) is suffering from an incapacity;
  - (b) is grossly incompetent; or
  - (c) is guilty of gross misconduct.
- (4) If the Commission finds that the respondent is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct, the Commission must submit that finding, together with the reasons therefore and a copy of the report, including any relevant material, of the Tribunal, to the Speaker of the National Assembly.
- (5) If the Commission, after consideration of a report and any applicable representations in terms of subsection (2) finds that the respondent-
  - (a) is not grossly incompetent, but that there is sufficient cause for the respondent to attend a specific training or counselling course or be subjected to any other appropriate corrective measure, the Commission may make a finding that the respondent must attend such a course or be subjected to such measure; or
  - (b) is guilty of a degree of misconduct not amounting to gross misconduct, the Commission may, subject to section 17 (9), impose any one or a combination of the remedial steps referred to in section 17 (8)
- (6) The Commission must in writing inform the respondent in respect of whom a finding referred to in subsection (4) or (5) is made, and, if applicable, the complainant, of that finding and the reasons therefore.'

in a litigation. It is also alleged that the respondent rendered his decision after taking a bribe from the complainant's opponent.

[18] It may well be that these allegations will not be established at the conclusion of the inquiry by the Tribunal. At this stage, that is however, irrelevant. I am also not required to evaluate these allegations. The test to be applied to them is whether, if established, they would constitute *prima facie* proof that the respondent is guilty of gross misconduct. On a proper consideration of the complaint, I am persuaded that this test is met and that under the Act, the only body authorised to investigate this complaint is a Tribunal.

[19] Accordingly, it is recommended to the Committee, that it recommend to the Commission that the complaint be investigated by a Tribunal.



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**THE JUDICIAL CONDUCT COMMITTEE**