JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/231/08/2025

In the matter between:

BOUWE WIERSMA **COMPLAINANT**

and

JUDGE M S MAKAMU **RESPONDENT**

Date: **19 October 2026**

Decision: **Accordingly, the matter is postponed to a date to be fixed by the Chairperson of the Committee.**

RULING

JUDICIAL CONDUCT COMMITTEE (Mlambo DCJ, Jafta J, Majiedt J, Saldulker JA and Mabindla-Boqwana JP)

[1] This is a complaint by Mr Bouwe Wiersma (the complainant) which was lodged in terms of section 14 of the Judicial Service Commission Act.[1] The complaint was lodged with the Acting Chairperson of the Judicial Conduct Committee (the Committee) against Judge M S Makamu (the respondent) in August 2025. Having perused the complaint, the Acting Chairperson was satisfied that, in the event a valid complaint was established, it was likely to lead to a finding of gross misconduct and referred the complaint to the Committee for a recommendation to the Judicial Service Commission (the Commission) that a Tribunal should be appointed.

[2] The Acting Chairperson followed that course because under the Act complaints of gross misconduct, gross incompetence and incapacity can only be investigated by a Tribunal. These are complaints which may, if established, lead to the impeachment and removal of a Judge from judicial office, as contemplated in section 177 of the Constitution.[2] The investigation and report from a Tribunal form the basis of a finding by the Commission on whether the respondent Judge suffers from incapacity or is grossly incompetent or is guilty of gross misconduct, as the case may be.

[3] The complaint was considered by the Committee in October 2025 and on 18 December 2025 a ruling (the first ruling) was issued. Acting in terms of section 16 of the Act, the Committee did not recommend the establishment of a Tribunal, as earlier requested by the Acting Chairperson but remitted the complaint to him for an inquiry in terms of section 17 of the Act. Subsequently, the Acting

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1 9 of 1994.

2 Section 177(1) of the Constitution provides: ''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.''

Chairperson designated a member of the Committee, who was not involved in the decision to remit, to conduct the section 17 inquiry. Such inquiry was duly conducted and during the course of that inquiry, the designated member came to the opinion that the complaint, by its nature fell outside her competence and that it ought to be investigated by a Tribunal. Acting in terms of section 17, the designated member issued on 26 May 2026 a ruling (the second ruling) in terms of which she asked the Committee to recommend to the Commission that the complaint be investigated by a Tribunal.

[4] The matter was again placed before the Committee, for it to consider whether this time around a recommendation to the Commission should be made. On 10 July 2026, a meeting of the Committee was convened to consider the matter. The complainant and the respondent were allowed to orally address the meeting, in addition to their written submissions.

[5] For a fuller understanding of the twists and turns in the processing of this complaint up to this stage, it is necessary to outline in greater detail the relevant legal framework.

Legislative framework

[6] The filing of a complaint against any Judge is governed by section 14 of the Act. This provision prescribes the form which must be followed in lodging a complaint and that every complaint must be submitted to the Chairperson of the Committee.[3] During the first phase, the Chairperson must determine which

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[3] Section 14(1) of the Act provides- (1) Any person may lodge a complaint about a judge with the Chairperson of the Committee.

provision of the Act is applicable to the processing of the complaint.[4] Once he or she has determined the relevant section, he or she must deal with the complaint in terms of that section.

[7] If the Chairperson concludes that section 16, as was the position here, is the applicable provision, he must deal with the complaint in terms of this section. The Chairperson must first determine whether the complaint, if established, is likely to lead the Commission to a finding that the respondent Judge suffers from incapacity or is grossly incompetent or is guilty of gross misconduct. Logically, the complaint in question must be capable of supporting anyone of those grounds. Once the Chairperson is satisfied on the finding likely to be reached by the Commission, he may refer the complaint to the Committee, for it to consider recommending the establishment of a Tribunal. In other words, the Chairperson's opinion on such finding is a juristic fact which must exist before a referral to the Committee is made. Absent such fact, a referral cannot properly be made.

[8] This interpretation emerges from the language employed in section 16(1) of the Act. It provides -

> "(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-
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> *(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
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> *(b)* in writing, inform the respondent of the complaint."

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[4] Section 14(2) of the Act provides- (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.

[9] Once the Chairperson has decided to refer a complaint to the Committee in terms of section 16(1), he or she is required to inform the respondent Judge about the complaint. The structure of section 16, as a whole, reveals that the respondent Judge is informed of the complaint after the referral decision is reached. The notice to the respondent Judge is made at about the same time as the referral to the Committee.

[10] Thereafter, the Chairperson must convene a meeting of the Committee, for purposes of considering the request for a recommendation.[5] Both the complainant and the respondent must be informed about the date and venue of the meeting. In addition, they should be invited to make written representations to the Committee, before the date of the meeting. The complainant and respondent may address the meeting orally only with the permission of the Chairperson. Ordinarily such permission is not granted for repeating written representations but where oral argument would help the Committee to decide the issues placed before it.

[11] The provision relevant to the meeting of the Committee is section 16 (4) of the Act. It provides:

> "(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-
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> *(a)* refer the complaint to the Chairperson for an inquiry referred to in section 17 (2); or
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> *(b)* recommend to the Commission that the complaint should be investigated by a Tribunal."

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5 Section 16(2) provides- 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.

[12] Evidently this provision fixes a standard applicable to the referral before the Committee. This standard guides the Committee in determining whether the recommendation requested is justified in a particular complaint. The standard is whether the complaint, if established, will *prima facie* indicate incapacity or gross incompetence or gross misconduct by the respondent. The words "if established" are central to this test. They suggest that no assessment of the complaint is required nor is the Committee expected to consider the respondent's defence. The standard is not whether the complaint is likely to be established, in which event some kind of assessment would be necessary. The words "if established" suggest that in applying section 16(4), one proceeds from the premise of an established complaint and asks the question whether that complaint indicates proof of incapacity or gross incompetence or gross misconduct, as the case may be. The nature of proof contemplated is *prima facie*. It does not need to be sufficient or conclusive proof because the respondent's defence when considered later by a Tribunal may displace the *prima facie* proof of the complaint.

[13] It may also happen that the complaint itself is not established eventually. All these possibilities may appropriately be investigated by the Tribunal. For now, the Committee is called upon to determine whether the Tribunal is the right forum to investigate a particular complaint. This exercise requires determining whether the complaint is of the kind that warrants an investigation by a Tribunal and the exercise does not entail an inquiry into the merits or demerits of the complaint.

[14] If the Committee is convinced that the complaint, if established, will *prima facie* show, for example, that the respondent is guilty of gross misconduct, the Committee may recommend that a Tribunal be appointed to investigate the complaint. But if the Committee is convinced that the complaint will show that

simple misconduct was committed, it may refer the complaint to the Chairperson for an inquiry in terms of section 17 of the Act.

[15] Section 17 empowers the Chairperson and a designated member of the Committee to individually determine the merits of complaints, including a complaint referred to the Chairperson by the Committee under section 16(4)*(a)*. If upon processing a complaint, the Chairperson is satisfied, that if established, the complaint will warrant the remedial steps listed in section 17(8) of the Act,[6] the Chairperson must inquire into the merits of the complaint in terms of section 17 or designate a member to do so. Under section 17 an inquiry may take one of the two prescribed forms. It may be done on paper only or it may be a combination of paper and an oral hearing. An oral hearing may be dispensed with if there is no reasonable likelihood of it contributing to the determination of the merits. However, the Chairperson or the designated member is required to invite the respondent to respond to the complaint and may also obtain in any manner deemed appropriate, information relevant to the complaint. The complainant must be afforded an opportunity to comment on such information and also on the response by the respondent.

[16] Having collected all the information necessary to determine the merits, the Chairperson or the designated member is required to consider whether an oral hearing is necessary. If it is not, he or she may proceed to decide the complaint on papers.

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6 Section 17(1) of the Act 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 member of the Committee designated by the Chairperson must inquire into the complaint in order to determine the merits of the complaint.

[17] Section 17(4) defines the powers of the Chairperson or designated member, at the conclusion of the inquiry. It 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."

[18] This provision explicitly sets out three powers that may be exercised separately, at the end of an inquiry. First, if the complaint was not established, the Chairperson or the designated member is authorised to dismiss it. Secondly, if it was proved, then the Chairperson or designated member must find the respondent guilty of misconduct and impose any of the remedial steps in section 17(8). Thirdly, if it transpired during the inquiry that the complaint may reasonably sustain gross misconduct, the Chairperson or designated member must refer the matter to the Committee, asking it to recommend to the Commission that a Tribunal be established to investigate the complaint. This is because under the Act only the Committee may make a recommendation to the Commission. The Chairperson or designated member cannot do so. Nor are they competent to investigate gross misconduct.

[19] It is now convenient to set out the complaint which must be determined in terms of section 16(4), even though it had been referred to an inquiry under section 17 of the Act. It does not matter that the complaint reaches the Committee through the section 17 pathway. This is so because section 16(2) acknowledges that complaints referred for a recommendation may be submitted to the Committee through section 16 or 17.

The complaint

[20] The details of the allegations made by the complainant in support of the complaint are set out fully in the first and second rulings which are published on the Committee's website. Therefore, no purpose will be served by repeating those details here. It suffices to set out the summary of the complaint. In sum, the complainant was the losing party in litigation that was adjudicated by the respondent. According to the complainant, a day after the delivery of the judgment, he received a telephone call from a person who identified himself as the respondent. That person suggested to him that the judgment in which the complainant had lost, was an injustice which needed to be corrected and he encouraged the complainant to appeal. He further alleges that the respondent furnished him with contact details of a specific firm of attorneys whom he recommended for the proposed appeal.

[21] The complainant further alleges that the respondent called again the following day and the complainant informed him that he could not afford the fee quoted by the recommended attorneys. They agreed that the complainant could use his own advocate. However, the respondent assured him that the outcome of the appeal would favour the complainant. On the same day, the complainant received a message from the advocate who represented him in the relevant

litigation, confirming that he had received a call from the respondent who talked about the proposed appeal.

[22] The complainant further stated that during the telephone conversation, the respondent asked him if he could contribute towards his nephew's fees at Rhodes University and informed him that his opponent in the litigation had already paid the Judge. When the complainant indicated that the amount requested was too high, the respondent reduced it to R5 000 which was deposited into the bank account that was provided by the respondent. Attached to the complaint are several annexures, consisting of screenshots of WhatsApp messages allegedly from the respondent, a copy of proof of payment from an FNB account to a Capitec bank account in the amount of R5 000 to G Makamu and a photograph of the respondent's secretary busy on the phone which was taken by the complainant when he visited the respondent's chambers.

The response

[23] The respondent denied that he solicited a bribe from the complainant and that he has ever communicated with him either before or after the judgment was handed down. He disputed that the cellphone number from which the complainant received messages and calls belongs to him. He stated that an investigation revealed that those numbers were registered to entities called MT Energy and Given Towing with which he had no link. He further denied knowing G Makamu to whom payment was made and pointed out that no nephew of his was a student at Rhodes University. Attached to the response are statements obtained from court officials who interacted with the complainant and informed him that he may have been scammed.

First ruling

[24] The material question before the Committee, when it considered the referral by the Acting Chairperson was whether the complaint, if established, would *prima facie* indicate that the respondent was guilty of gross misconduct. It will be remembered that the Acting Chairperson had requested the Committee to consider recommending the establishment of a Tribunal, after he was satisfied that the complaint, if established, would lead to a finding by the Commission that the respondent was guilty of gross misconduct.

[25] The first ruling held:

> "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."

Second ruling

[26] After setting out the complaints, the second ruling agrees with the paragraph quoted above from the first ruling but goes further to suggest that the investigation contemplated in the first ruling may competently be undertaken by a Tribunal and not a section 17 inquiry. The second ruling proceeds to hold that the complaint, if established, will sustain gross misconduct on the part of the respondent. The

ruling points out that the complaint suggests that the respondent solicited a bribe to revise a judgment he had given against the complainant.[7]

[27] The issue before the Committee now is still whether the complaint, if established, will *prima facie* indicate that the respondent is guilty of gross misconduct. It is not whether on the information present on record, the complaint is likely to be established. In an inquiry in terms of section 16(4) the weakness of the complaint does not enter the equation. The determination of the question proceeds from a pre-determined premise of an established complaint, albeit for purposes of deciding the gravity of the misconduct.

[28] However, at present the Committee did not reach the point of grappling with the question that arose because during its deliberations, an anterior issue emerged. It became plain to the Committee that in the process of answering that question, the first and second rulings would necessarily be scrutinised. It would be necessary to consider whether the first ruling was correct in holding that the complaint must be determined by a section 17 inquiry or that the second ruling was right to conclude that only a Tribunal can investigate the complaint. The issue then became whether colleagues who were involved in producing those rulings would be perceived to be impartial by the parties.

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7 Second ruling reads: 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 of the Act.

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

[29] Impartiality is foundational to the decision-making process of the Committee. It is also embedded in the relevant provisions of the Act. Section 8(4) of the Act disqualifies a member of the Committee from participating in the determination of a complaint against that member.[8] Also section 18(2) prohibits a member whose decision is the subject of an appeal, from participating in the consideration of such appeal.[9] An appeal involves the reconsideration of the decision appealed against. In a similar manner, the Committee here would have been required to reconsider the rulings referred to above to determine which one was correct, especially on whether the complaint reasonably supports a finding of gross misconduct and which must be investigated only by a Tribunal.

[30] The issue before us is whether the members who made those rulings would reasonably be viewed as having brought an open mind to the consideration of the relevant issues. In our law a decision-maker is disqualified if there is a reasonable apprehension that they may not be impartial. That is why a member whose decision is the subject of an appeal is disqualified. There need not be proof of actual bias, it is enough to have a reasonable apprehension of bias.

[31] Having carefully considered the matter, the Committee unanimously came to the conclusion that members who made the first and second rulings are disqualified from the reconsideration of this matter. The legal consequence of this decision was that the affected members should withdraw from the matter. Their withdrawal meant that only one member at the meeting on 10 July 2026 could participate in the consideration of the matter. A bigger challenge that arose

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8 Section 8(4) When considering a complaint relating to the conduct of a judge who is a member of the Committee, the Committee must sit without that member.

9 Section 18(2)*(a)* A meeting referred to in subsection (1) must, subject to paragraph *(c)*, be attended by at least three members of the Committee and be presided over by the Chairperson, but no member who made any decision or finding, or imposed any remedial step, that is the subject of the appeal, may participate in the consideration of the appeal.

was that only two members of the Committee, the Chief Justice and the aforesaid member, qualify to decide the matter. The problem being that they do not meet the prescribed quorum of at least three members.

[32] In the case of an appeal, if qualifying members fall short of the quorum, the Chief Justice is expressly empowered to appoint any Judge as a temporary member of the Committee.[10] Section 16 does not have an equivalent provision. However, members of the Committee are designated by the Chief Justice, in consultation with the Minister of Justice and Constitutional Development. But this section too is silent on the designation of temporary members, despite the fact that it disqualifies members against whom a complaint was lodged from determining that complaint. This would notionally mean that if a complaint is filed against all members of the Committee, no one would qualify to entertain such complaint. This outcome, if it were to happen would be so absurd that it could never have been contemplated. The omission of the express power to appoint temporary members in section 8 appears to have been an oversight on the part of the drafters.

[33] The power to appoint temporary members is without question necessary in instances where members are momentarily unable to perform their functions. Therefore, this power is implied in section 8, which confers the express power to appoint members of the Committee. In our law, a power is taken to be implied if it is necessary for purposes of attaining the objective for which the express power was conferred.[11] This principle was affirmed by the Constitutional Court in a number of decisions.[12]

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10 Section 18(2)(*c*).

11 *GNH Office Automation CC and Another v Provincial Tender Board, Eastern Cape* 1998 (3) SA 45 (SCA).

12 *Matatiele Municipality v President of RSA* 2006 (5) SA 566 (CC).

[34] In *Masetlha* the question was whether section 209 of the Constitution which empowers the President to appoint the head of the Intelligence Agency includes the power dismiss such head.[13] This section is silent on the dismissal of such head. Holding that the power to dismiss was implied, the Court stated:

> "The power to dismiss is necessary in order to exercise the power to appoint. Without the competence to dismiss, the President would not be able to remove the head of the Agency without his or her consent before the end of the term of office, whatever the circumstances might be. That would indeed lead to an absurdity and severely undermine the constitutional pursuit of the security of this country and its people. That is why the power to dismiss is an essential corollary of the power to appoint and the power to dismiss must be read into section 209(2) of the Constitution.[14]

[35] Recently in *Amabhungane Centre for Investigative Journalism v Minister of Justice and Correctional Services*,[15] the Constitutional Court expanded the principle to cover even a situation where no express power was conferred. The relevant legislation in that matter had omitted to confer on the Minister the power to designate a Judge responsible for authorising the interception of communications. But in the definition section, the designated Judge was defined to mean the Judge who was designated by the Minister. In that matter the majority held that the Minister's power to designate was implied in the definition of a designated Judge. And to address the absence of an express power, it was said that the Minister's power was "an implied primary power".[16] Therefore, the implied power in that instance was not a corollary of an express power. Instead, it was a power that stood by itself and not adjunct to another power.

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13 Section 209(2) of the Constitution provides- The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of subsection (1), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility.

14 *Masetlha v the President of the Republic of South Africa* ZACC 20 at para 68.

15 *Amabhungane Centre for Investigative Journalism v Minister of Justice and Correctional Services* (2021) ZACC 3; 2021(3) SA 246 (CC).

16 Id at para 79.

[36] On the authority of the decisions cited above, section 8(1) of the Act must be read as conferring on the Chief Justice the power to appoint temporary members of the Committee, whenever the need for such appointment arises. This construction of the section would enable the Chairperson to convene a properly constituted meeting of the Committee.

[37] The current complaint must be postponed to a date to be fixed once the appointment referred to above is made. Accordingly, the matter is postponed to a date to be fixed by the Chairperson of the Committee.



THE JUDICIAL CONDUCT COMMITTEE