



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/236/09/2025

In the matter between:

G F ENGELBRECHT

COMPLAINANT

and

JUDGE M E NKOSI

RESPONDENT

Date: 19 May 2026

Decision: The complaint against Judge Nkosi is dismissed in terms of section 17(4)(a) of the Judicial Service Commission Act 9 of 1994.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ)

Introduction

[1] Ms Engelbrecht lodged a complaint with the Judicial Conduct Committee (“the JCC”) against Judge Nkosi of the Kwazulu-Natal Division of the High Court,

Durban. The complaint was considered by me and was directed to be dealt with in terms of section 17 of the Judicial Service Commission Act 9 of 1994 (“the Act”).¹

[2] Section 17 provides for an inquisitorial process. The question is whether, on the information obtained in terms of section 17(3),² the complaint should be dismissed, whether it has been established and remedial steps should be imposed, or whether a recommendation should be made that the complaint be investigated by a Tribunal.³

[3] The respondent was invited to respond to the complaint. He filed a written response dated 29 December 2025. The complainant was thereafter afforded an opportunity to comment on that response and filed further written submissions. I

¹ Section 17(1) and (2) of the Act provides, “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.”

² Section 17(3) of the Act provides, “[f]or 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.”

³ Section 17(4) of the Act provides, “[i]f, 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.”

have considered the complaint, the respondent's response, the complainant's further submissions, and the documents placed before me.

The Complaint

[4] The complaint arises from proceedings in the KwaZulu-Natal Division, Durban, under case number D12439/2023, namely *Cawood Attorneys Inc and Werner Cawood v Gail Faith Engelbrecht*. The underlying matter concerned an interim interdict that had been granted *ex parte* against the complainant in November 2023. By the time the matter served before the respondent on 31 July 2024, there had already been a number of procedural developments concerning the filing of affidavits, heads of argument, practice notes and the preparation of the physical court file.

[5] For present purposes, it is sufficient to record that the complainant says the applicants in that matter had not complied with earlier court orders and filing obligations, and that she and her legal representatives had taken steps to have the file placed in order and the matter set down on the opposed motion roll.

[6] The complaint is directed at the respondent's conduct when the matter came before him on 31 July 2024. The complainant alleges that the respondent was hostile towards her counsel, Adv Shaw, and unfairly required him to produce a Fidelity Fund Certificate while not making a similar request of the applicants' counsel. She further alleges that the respondent failed to deal properly with the applicants' alleged non-compliance, accepted the applicants' version concerning late or missing documents, and failed to require the applicants to bring applications for condonation, postponement or striking out.

[7] The complainant also alleges that the respondent favoured the applicants by entertaining oral requests made by their counsel. In particular, she says the respondent orally directed that she should not have access to the court file, that parts of her evidence should be removed from the file, and that the file should remain in the respondent's chambers so that he could continue to deal with the matter. She says these matters were not properly reflected in the written order, and contends that the respondent's conduct displayed bias, favouritism and disregard for earlier court orders. She also takes issue with the costs order made against her and asks, among other things, that the respondent recuse himself from the underlying litigation.

The Response

[8] The respondent denies that he committed misconduct. He explains that, when he started reading the file shortly before the hearing, he found that the applicants' replying affidavit was not in the court file. His secretary accordingly requested assistance in ensuring that the document was properly filed. The respondent states that this was not intended to require the complainant to file the applicants' papers or to place her in breach of any court order. It was directed at ensuring that the file was complete before the matter was heard.

[9] The respondent states that, when the matter was called on 31 July 2024, the file was not in a proper state for hearing. He says it was lengthy, difficult to follow, and had been altered or rearranged after the complainant's legal representatives had obtained access to it for purposes of putting it in order. He considered that it could not responsibly be heard in that condition and that the matter had to be adjourned *sine die*.

[10] The respondent also explains why he asked Adv Shaw to produce a Fidelity Fund Certificate. His version is that Adv Shaw was appearing without a local correspondent or instructing attorney and appeared to be directly instructed. The request was, on the respondent's account, directed at satisfying himself that counsel was properly entitled to accept and hold instructions in that manner. The respondent denies that the request was made out of hostility or for any improper purpose.

[11] As to access to the file, the respondent denies that he acted to favour the applicants or to prevent the complainant from litigating properly. He states that, in light of the condition of the file and the disputes about what had been placed in it, he considered it necessary to ensure that the file remained intact and that no person should have uncontrolled access to it. His position is that any access to the file would have to occur through proper court channels and under appropriate supervision.

[12] The respondent further states that, because of the state of the file and the fact that the matter could not proceed on 31 July 2024, he made an order adjourning the matter *sine die* and awarding costs occasioned by the adjournment. He denies that he issued the improper oral orders alleged by the complainant, denies that he was hostile or biased, and denies that he engaged in conduct unbecoming of judicial office.

Applicable Legal Framework

[13] Section 14(4)(b) of the Act recognises as a ground of complaint any wilful or grossly negligent breach of the Code of Judicial Conduct ("the Code"). Section 14(4)(e) includes any other wilful or grossly negligent conduct, other than

conduct contemplated in section 14(4)(a) to (d), that is incompatible with or unbecoming the holding of judicial office, including conduct prejudicial to the dignity, accessibility, efficiency or effectiveness of the courts.⁴

[14] The Code requires a judge to act honourably and in a manner befitting judicial office,⁵ to conduct proceedings courteously and with respect for the dignity of others,⁶ to remain manifestly impartial,⁷ to observe the *audi alteram partem* rule,⁸ and to manage legal proceedings in a fair, orderly and efficient manner.⁹ The Code also recognises the importance of open court proceedings and cautions against unnecessary discussion in chambers of matters relevant to the merits of a case.¹⁰

[15] At the same time, Note 9(v) to the Code makes clear that judges may err in relation to fact or law, and that such errors are to be dealt with through the ordinary appeal or review processes. Complaints related to the merits of a decision or procedural ruling do not, without more, constitute valid disciplinary complaints.

⁴ Section 14(4) of the Act provides, “[t]he grounds upon which any complaint against a judge may be lodged, are any one or more of the following:

- (a) Incapacity giving rise to a judge’s inability to perform the functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177 (1) (a) of the Constitution;
- (b) Any wilful or grossly negligent breach of the Code of Judicial Conduct referred to in section 12, including any failure to comply with any regulation referred to in section 13 (5);
- (c) Accepting, holding or performing any office of profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11;
- (d) Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section 17 (8), imposed in terms of this Act; and
- (e) Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraph (a) to (d), that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.”

⁵ Article 5(1).

⁶ Article 7(b) and 9(b)(iii).

⁷ Article 9(a)(ii) and 7(d).

⁸ Article 9(a)(i)

⁹ Article 9(a); 9(b)(i)-(iii); 9(c)(i); 10(1)(c).

¹⁰ Article 8(b)(i)-(ii); Note 8(iii); Note 8(iv); Note 8(v).

Dissatisfaction with a judicial decision is therefore not sufficient to justify disciplinary proceedings.¹¹

[16] The question before me is accordingly a limited one. It is not whether every procedural view taken by the respondent on 31 July 2024 was correct, nor whether the costs order or the management of the court file could have been challenged in the underlying proceedings. The question is whether the material before the JCC establishes a wilful or grossly negligent breach of the Code, or other wilful or grossly negligent conduct unbecoming of judicial office, thereby justifying action under section 17(8) of the Act.¹²

Evaluation

[17] The complaint must be assessed against the distinction drawn in the Act and the Code between judicial decision-making on the one hand and judicial misconduct on the other. Many of the complainant's grievances are, in substance, directed at how the respondent dealt with the matter procedurally. These include whether the applicants' papers were properly before court, whether condonation was required,

¹¹ Article 9(v) of the Code provides, "[s]ince judges are fallible and can err in relation to fact or law, such errors are to be dealt with through the normal appeal and review procedures. Such errors, even if made by courts of final instance, cannot give rise to valid complaints. Complaints against judges that are related to the merits of a decision or procedural ruling are to be dismissed at the outset."

¹² Section 17(8) of the Act provides, "[a]ny one or a combination of the following remedial steps may be imposed in respect of a respondent:

- (a) Apologising to the complainant, in a manner specified.
- (b) A reprimand.
- (c) A written warning.
- (d) Any form of compensation.
- (e) Subject to subsection (9), appropriate counselling.
- (f) Subject to subsection (9), attendance of a specific training course.
- (g) Subject to subsection (9), any other appropriate corrective measure.
- (9) The State shall not be responsible for any expenditure incurred as a result of, or associated with, any remedy referred to in subsection (8) (e), (f) or (g), unless such remedy was selected from a list of approved remedies or services compiled from time to time by the Minister, after consultation with the Chief Justice, and then only to the extent set out in that list."

whether the matter should have proceeded, whether parts of the record were relevant, how access to the physical file should be controlled, and whether costs occasioned by the adjournment should have been awarded against the complainant.

[18] Those are matters arising from the respondent's management of the proceedings and his assessment of the state of the record before him. If they were legally wrong, the remedy lay in the ordinary mechanisms available in the litigation. They do not, without more, establish a disciplinary complaint. On the material before me, there is no objective basis to conclude that the respondent's procedural approach was adopted wilfully or grossly negligently in breach of the Code.

[19] The allegation of bias or favouritism is also not established. The complainant relies principally on the fact that the respondent did not accept her position regarding the applicants' alleged non-compliance and made directions or comments with which she disagreed. An adverse procedural ruling, a costs order, or a judicial view about the state of a court file does not, without more, demonstrate bias. The respondent has provided an explanation for why he considered the file incomplete and unsuitable for hearing. Whether that explanation would have been accepted in the litigation is not the issue. It is sufficient that the material before me does not show that the respondent acted from partiality, favouritism, personal hostility, or an improper motive.

[20] The request that Adv Shaw produce a Fidelity Fund Certificate also does not, on its own, establish misconduct. The respondent's explanation is that the request arose because Adv Shaw appeared to be directly instructed and without a local correspondent or instructing attorney. Even if the complainant and her counsel regarded the request as unnecessary or unfair, the record does not establish that it

was made to intimidate counsel, to disadvantage the complainant, or to favour the applicants.

[21] The same applies to the allegations concerning access to the court file and the respondent's decision to keep the file in chambers. The respondent's version is that the file was in a problematic state and that he was concerned to preserve its integrity. In a physical court file system, a judge may have to give practical directions to ensure that the record remains intact and that access is properly controlled. The complainant disputes the respondent's account and contends that the file had been placed in order under proper supervision. That dispute does not itself establish misconduct by the respondent. At its highest, it shows a disagreement about the state and control of the court file.

[22] I have also considered the complainant's reliance on the applicants' attorneys' later letter, which she says confirms the oral directions allegedly given by the respondent. That letter records the applicants' understanding of what had occurred. It does not, without more, establish that the respondent issued improper court orders, acted in bad faith, or deliberately omitted material directions from the written order. The formal order before me records that the matter was adjourned sine die and that costs occasioned by the adjournment were awarded against the complainant. The propriety of that order is not for determination in these proceedings.

[23] Nor is there sufficient objective material to sustain the complaint that the respondent conducted the matter improperly behind closed doors or in a manner inconsistent with open court proceedings. The complainant says the courtroom door was closed and that only the parties and their legal representatives were present. The respondent denies that he excluded the public or conducted the matter improperly.

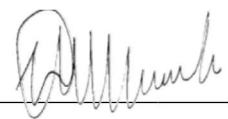
The material before me does not establish a wilful or grossly negligent breach of the Code in this respect.

[24] Finally, the complainant's request that the respondent recuse himself from the underlying matter is not a basis for disciplinary relief in this section 17 inquiry. If a litigant contends that a judge should not continue to sit in pending proceedings, that issue must ordinarily be raised by way of a recusal application in those proceedings, where the judge concerned can determine it on the facts and submissions properly placed before the court.

[25] I am satisfied that the complaint does not establish a wilful or grossly negligent breach of the Code, nor other wilful or grossly negligent conduct unbecoming of judicial office.

Order

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



THE JUDICIAL CONDUCT COMMITTEE