



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/98/09/2024

In the matter between:

J HARIBHAI

COMPLAINANT

and

JUDGE D FISHER

RESPONDENT

Date: 19 May 2026

Decision: The complaint against Judge Fisher 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 Haribhai lodged a complaint with the Judicial Conduct Committee (“the JCC”) against Judge Fisher of the Gauteng Local Division of the High Court, Johannesburg, sitting as a judge of the Equality Court. The complaint concerns the

manner in which the respondent dealt with Equality Court proceedings instituted by the complainant against Oppenheimer Partners African Advisors and others.

[2] The complaint was initially dismissed by the then Acting Chairperson, Madlanga ADCJ, in terms of section 15(2)(c) of the Judicial Service Commission Act 9 of 1994 (“the Act”), on the basis that it related to the merits of a judgment or order and did not fall within section 14(4) of the Act.¹ The complainant appealed against that dismissal.

[3] On 27 June 2025, the Appeal Committee upheld the appeal and referred the matter back to the Acting Chairperson for an inquiry in terms of section 17 of the Act. The Appeal Committee held that the complaint was not solely directed at the merits of the respondent’s order because it also included allegations of judicial misconduct, including an alleged failure to report professional misconduct by legal practitioners. The Appeal Committee was, however, not satisfied that the complaint, if established, would *prima facie* justify a recommendation that a Tribunal be established.

[4] The matter accordingly comes before me for determination under section 17.² The respondent was invited to respond to the complaint and filed written

¹ Section 15(2) of the Act provides, “[a] complaint must be dismissed if it—

- (a) does not fall within the parameters of any of the grounds set out in section 14 (4);
- (b) does not comply substantially with the provisions of section 14 (3);
- (c) is solely related to the merits of a judgment or order;
- (d) is frivolous or lacking in substance; or
- (e) is hypothetical.”

² 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.

submissions dated 5 December 2025. The complainant was thereafter invited to comment and filed further written submissions dated 15 December 2025. I have considered the original complaint, the appeal ruling, the respondent's response, the complainant's further submissions, and the material placed before the JCC.

[5] Section 17 provides for an inquisitorial process. The question is whether, on the information obtained in terms of section 17(3),³ 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.⁴ This inquiry does not determine the merits of the underlying Equality Court proceedings, nor does it sit as a court of appeal over the respondent's referral decision or accompanying reasons.

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 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.”

⁴ 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.”

[6] The underlying matter was instituted in the Equality Court during June 2023. In broad terms, the complainant alleged that she had been subjected to harassment, sexual harassment, discrimination, retaliation and other unlawful conduct arising from, and extending beyond, the termination of her employment. The matter came before the respondent, who convened a virtual case management meeting on 11 September 2023 and later referred the matter, in part, to the Labour Court in terms of section 20(5) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (“PEPUDA”).

[7] The complaint is wide-ranging. For purposes of this ruling, it may be grouped into four main categories. First, the complainant takes issue with the respondent’s management of the proceedings. She alleges that numerous persons were permitted to attend the virtual case management meeting, that the respondent did not ensure that all attendees identified themselves, that respondents in the Equality Court matter were permitted to file late or inadequate papers, that she was not afforded a further opportunity to be heard or to file heads of argument as allegedly promised, and that the respondent refused to permit the complainant’s husband to represent her.

[8] Second, the complainant attacks the respondent’s referral of the matter to the Labour Court and the remarks attached to that referral. She says that the respondent mischaracterised the matter as a labour dispute, ignored allegations of gender-based violence and continuing harassment, made adverse and degrading comments about her, exonerated the respondents in the Equality Court matter, and treated her unfairly as an unrepresented litigant.

[9] Third, the complainant alleges that, after the referral order was made, the respondent failed to exercise proper oversight over the matter. She complains that

she had difficulty obtaining information from the respondent's chambers, that the file was not properly monitored after the referral, and that the respondent failed to ensure that the referral process protected her from what she describes as ongoing abuse and prejudice.

[10] Fourth, the complainant alleges that the respondent failed to report serious wrongdoing. This includes the alleged failure to report legal practitioners to the Legal Practice Council, the alleged failure to report conduct to the South African Police Service or other authorities, and the alleged failure to act on what the complainant says were clear instances of fraud, harassment and other unlawful conduct placed before the Equality Court.

[11] The complaint is also framed in strong terms as involving bias, corruption, dishonesty, collusion with the Oppenheimer parties, discrimination and gross misconduct. The complainant seeks, among other things, that the matter be referred to a Tribunal and that the respondent be removed from any further involvement in the underlying Equality Court matter.

The Response

[12] The respondent denies that she committed judicial misconduct. She states that the Equality Court proceedings were, in substance, an attempt to revive disputes that had earlier been referred to the Labour Court and settled by written settlement agreements. Her position is that the Equality Court lacked jurisdiction because the disputes were labour-related and had already been resolved through agreements that the complainant's former employer had implemented.

[13] As to the complaint that she failed to report legal practitioners or criminal conduct, the respondent states that there was no duty on her to report practitioners to the Legal Practice Council or to report conduct to the South African Police Service. She also records that the complainant had, in any event, already reported the practitioners concerned.

[14] The respondent also answers the complainant's allegations that, after referring the matter to the Labour Court, she failed to follow up, failed to provide feedback, and effectively abandoned the matter. She denies that she had any continuing supervisory duty after the referral order had been made. Her position is that no such supervisory role existed after judgment. She also denies that she took leave in a manner that affected the matter, stating that she did not take leave save for the usual recess periods. As to the virtual case management meeting, the respondent denies any irregularity and states that the persons who attended were parties and legal representatives.

[15] In relation to the complainant's husband, the respondent states that she exercised a discretion not to permit him to represent the complainant because of a conflict of interest. She denies bias, corruption or collusion with any party. Her position is that the judgment speaks for itself and that no accusations of lying or incompetence were made against the complainant.

Applicable Legal Framework

[16] 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.⁵

[17] The Code requires a judge to act honourably and in a manner befitting judicial office,⁶ to conduct proceedings courteously and with respect for the dignity of others,⁷ to remain manifestly impartial,⁸ to observe the *audi alteram partem* rule,⁹ to manage legal proceedings in a fairly and efficiently,¹⁰ and to perform judicial duties diligently.¹¹ Article 16(1) further provides that a judge with clear and reliable evidence of serious professional misconduct or gross incompetence on the part of a legal practitioner or public prosecutor must inform the relevant professional body or a Director of Public Prosecutions.

[18] 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. Disagreement with a judicial decision, including a

⁵ 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.”

⁶ Article 5(1).

⁷ Article 7(b) and 9(b)(iii).

⁸ Article 9(a)(ii) and 7(d).

⁹ Article 9(a)(i)

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

¹¹ Article 10(1)(a).

procedural ruling, does not by itself constitute misconduct.¹² The question in this section 17 inquiry is therefore not whether the respondent's referral decision was correct, but whether the material establishes wilful or grossly negligent misconduct unbecoming of judicial office, thereby justifying action under section 17(8) of the Act.¹³

Evaluation

[19] The complaint must be assessed against the distinction between judicial decision-making and judicial misconduct. The respondent was required to decide whether the Equality Court was the appropriate forum and, if not, whether the matter should be referred elsewhere. Section 20(5) of the Equality Act expressly permits a presiding officer to refer a matter to an alternative forum and to attach comments considered necessary for the attention of that forum. The respondent's conclusion that the Labour Court was the appropriate forum, and the comments she made when referring the matter, were therefore judicial decisions made in the exercise of a statutory power. They may be right or wrong in law, but that is not enough for purposes of section 17. The relevant question is whether the material shows that the

¹² 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."

¹³ 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."

respondent acted wilfully or with gross negligence, breached the Code, denied the complainant a fair hearing, acted for an improper purpose, or otherwise conducted herself in a manner incompatible with judicial office. The material before me does not establish that. It shows a strong disagreement with the respondent's decision and reasons, but not misconduct.

[20] The same applies to the allegations that the respondent mischaracterised the dispute, exonerated certain respondents, ignored evidence, used unfair language, or reached conclusions which the complainant regards as false. When the referral is read as a whole, the respondent was addressing the nature of the dispute, the relief sought, the prior employment-related processes, and the basis on which she considered the Labour Court to be the appropriate forum. Those conclusions may be strongly disputed by the complainant, and may even be contended to be wrong in law or fact, but they were reached in the course of a judicial determination under section 20(5) of the Equality Act. The material before me does not show that the respondent was acting dishonestly, for an improper purpose, with bias, or in wilful or grossly negligent disregard of her judicial duties. In the absence of such material, the complaint remains directed principally at the correctness of the respondent's reasoning and comments, and does not establish misconduct under section 14(4) of the Act.

[21] The complaints about case management must be approached in the same way. They concern the filing of affidavits, the acceptance of late heads of argument, whether further written or oral submissions were required, the conduct of a virtual case management meeting, and the complainant's request that her husband be permitted to represent her. These were matters arising from the respondent's management of the proceedings before her. The question is not whether every

procedural decision was correct, but whether the record shows that the respondent deliberately denied the complainant a fair hearing, acted with bias, or managed the proceedings in a manner that was wilfully or grossly negligently incompatible with judicial office.

[22] The allegation concerning the complainant's husband requires no different conclusion. The complainant says that she wished to be represented by him and that a power of attorney was provided after the case management meeting. The respondent's judgment records, however, that the complainant was representing herself because she did not trust lawyers, that she had initially sought to have her husband represent her, and that the respondent refused that request because he was not legally trained, there had been emotional altercations between him and some of the legal representatives involved in the earlier proceedings, and the record generally led the respondent to conclude that he would not be an appropriate representative. In her response to the complaint, the respondent similarly states that she exercised a discretion because she considered him to have a conflict of interest. The complainant plainly disagrees with that decision. But disagreement with the respondent's assessment of the suitability of the proposed representative does not, without more, establish bad faith, bias, improper purpose, or a wilful or grossly negligent breach of the Code.

[23] The Article 16 issue requires separate consideration because it concerns the respondent's alleged failure to report the conduct of legal practitioners. Article 16(1) is not engaged merely because a litigant makes serious allegations against attorneys or counsel in contested proceedings. It applies where a judge has clear and reliable evidence of serious professional misconduct or gross incompetence on the part of a legal practitioner or public prosecutor. The material relied upon by the complainant

consisted, in substance, of her allegations that certain attorneys and counsel had harassed her, colluded with her former employer, acted improperly in relation to mediation and settlement discussions, and that one practitioner had acted as an advocate when he was not entitled to do so. She also stated that she had reported attorneys to the Legal Practice Council and an advocate to the Bar. Those allegations were plainly serious. But seriousness of allegation is not the same as clear and reliable proof. On the material before me, it has not been shown that the respondent had before her established, uncontested, or objectively reliable evidence of serious professional misconduct which obliged her to make a referral under Article 16(1).

[24] Whether any complaint against those practitioners should be investigated by the relevant professional bodies is not for determination in this ruling. The question is narrower: whether the respondent's failure to make a referral under Article 16 constituted wilful or grossly negligent misconduct. On the record before me, that threshold is not met.

[25] Nor does the record establish misconduct in relation to the alleged failure to report criminal conduct. The seriousness of an allegation does not, by itself, establish that a judge had reliable evidence of criminality requiring further action. The complaint would require objective material showing that the respondent knew of facts which made a report legally or ethically required, and deliberately or grossly negligently failed to act. The material before me does not establish that.

[26] The allegations of bias, corruption, dishonesty and collusion are similarly not established. These are grave allegations. They require a proper evidentiary foundation. The record does not show that the respondent had a personal interest in the matter, acted in concert with any litigant or practitioner, received any benefit, or

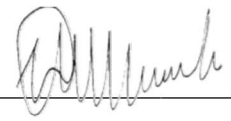
intentionally conducted the matter to favour one side. An adverse referral decision, adverse comments, or reasoning with which the complainant strongly disagrees cannot, without more, sustain allegations of corruption, dishonesty or collusion.

[27] The complaint that the respondent abandoned her duties after the referral is also not established. Section 20 of the Equality Act permits a presiding officer to refer a matter to an alternative forum and to attach comments considered necessary for that forum. Once such an order is made, the statutory scheme provides for the clerk of the Equality Court to transfer the matter, for the alternative forum to deal with it expeditiously, and for that forum to refer the matter back if it is not dealt with within a reasonable period or is not resolved to the satisfaction of one or both parties and a party so requests. That scheme does not support the proposition that the respondent retained the broad continuing supervisory duty alleged by the complainant. Even if the referral contemplated a report back to the Equality Court, the material before me does not show that the respondent personally abandoned a judicial duty, failed to act on a matter properly returned to her, or acted wilfully or grossly negligently in relation to the post-referral process.

[28] For these reasons, I am not satisfied that the material establishes that the respondent behaved in a manner unbecoming of a judge, committed a wilful or grossly negligent breach of the Code, or engaged in any other wilful or grossly negligent conduct incompatible with judicial office.

Order

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

A handwritten signature in black ink, appearing to read "D. M. ...", positioned above a horizontal line.

THE JUDICIAL CONDUCT COMMITTEE