



JUDICIAL CONDUCT COMMITTEE

Ref No: JSC/18/02/2024

In the matter between:

THEMBILE NOMSHUVE

APPELLANT/COMPLAINANT

and

JUSTICE KOLLAPEN

FIRST RESPONDENT

JUSTICE MATHOPO

SECOND RESPONDENT

JUSTICE ROGERS

THIRD RESPONDENT

JUSTICE MHLANTLA

FOURTH RESPONDENT

JUSTICE THERON

FIFTH RESPONDENT

JUSTICE TSHIQI

SIXTH RESPONDENT

ACTING JUSTICE SCHIPPERS

SEVENTH RESPONDENT

ACTING JUSTICE VAN ZYL

EIGHTH RESPONDENT

Date: 09 June 2026

Decision: The appeal is dismissed and the ruling delivered by Shongwe J on 5 February 2026 is confirmed.

RULING

THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ, GAMBLE J, RANCHOD J)

Introduction

[1] This is an appeal in terms of section 18 of the Judicial Service Commission Act 9 of 1994 (the Act) against the ruling of Shongwe J dated 5 February 2026. In that ruling, Shongwe J dismissed the appellant's complaint against eight Justices of the Constitutional Court after an inquiry conducted under section 17 of the Act.¹

[2] The complaint arose from the Constitutional Court's handling of the appellant's application for variation or clarification of its order, which followed his unsuccessful attempts to challenge his dismissal through the CCMA, the Labour Court, the Labour Appeal Court and ultimately the Constitutional Court. The appellant alleges that the respondent Justices acted inconsistently with the Code of Judicial Conduct by failing to respond to correspondence addressed to the Court, failing to have the matter heard in open court, failing to provide reasons, failing to comply with Rule 11 of the Constitutional Court Rules, and thereby infringing his rights to equal treatment, transparency and a fair hearing.

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."

[3] The appeal must be determined on the material before the Judicial Conduct Committee (the JCC). It is not the function of the Committee, in a section 18 appeal, to reconsider the correctness of the Constitutional Court's order or the procedure by which that Court disposed of the application. The question is whether Shongwe J was wrong to dismiss the complaint under section 17(4)(a) because the material established judicial misconduct by the respondent Justices.²

Procedural History

[4] The appellant lodged his complaint with the JCC after the Constitutional Court refused the relief he sought. The complaint was initially dismissed by the then Acting Chairperson of the JCC on the basis that it was solely related to the merits of a judgment or order and therefore fell to be dismissed under section 15(2)(c) of the Act.³ The appellant appealed against that dismissal.

[5] On 12 February 2025, an Appeal Committee set aside the summary dismissal and referred the complaint to the Acting Chairperson of the JCC for an inquiry under section 17(1) of the Act. The Appeal Committee held that the complaint was not solely directed at the merits of the Constitutional Court order because it also alleged

² Section 18(4)(b) of the Act provides, “in the case of an appeal against a dismissal of a complaint as contemplated in section 17 (7) (a)—

- (i) confirm the dismissal;
- (ii) set aside the dismissal, and 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 section 17 (8) on the respondent; or
- (iii) set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19.”

³ 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.”

lack of honour and bias. The Appeal Committee was careful to add that the referral had nothing to do with whether the complaint had merit; it meant only that the matter ought to have been considered under section 17.

[6] Shongwe J was then designated to conduct the section 17 inquiry. In his ruling, Shongwe J agreed with the Appeal Committee's conclusion that the complaint should not have been summarily dismissed under section 15(2)(c) of the Act, because the appellant's allegations were not confined to dissatisfaction with the outcome of the Constitutional Court proceedings. On that basis, Shongwe J accepted that the complaint was to be considered under section 17 of the Act. He nevertheless dismissed the complaint. The material reasons were these: the appellant's letters were addressed to the Registrar or the Chief Justice, not to the respondent Justices personally; there was no tangible proof that the respondent Justices had seen or received those letters; there was no tangible proof as to who set the matter down or whether the Chief Justice had given directions; the appellant did not identify a factual basis for negligence or misconduct by the respondent Justices; and the mere citation of articles 5, 6, 7, 8 and 9 of the Code, without evidence showing how the respondents breached those articles, was insufficient.

[7] The appellant now appeals against Shongwe J's section 17 ruling. His central contention is that Shongwe J misdirected himself in concluding that the allegations of misconduct were unsupported by cogent evidence. He submits that the ruling is irrational, unlawful and unconstitutional because, on his case, the complaint disclosed substantial evidence that the respondent Justices failed to respond to his written request for an oral hearing, failed to comply with Rule 11(4) of the Constitutional Court Rules, failed to afford him equal treatment and the benefit of the law, and failed to provide reasons for the dismissal of his variation or rescission

application. He further contends that Shongwe J committed a gross irregularity by making findings in favour of the respondent Justices despite their failure to file written submissions, and by failing properly to consider the alleged breaches of articles 6, 7, 8 and 9 of the Code. He accordingly seeks the setting aside of the section 17 ruling and a finding complaint establishes judicial misconduct.

Applicable Legal Framework

[8] The present appeal is governed by section 18 of the Act. The Committee must consider the reasons for the section 17 dismissal, the grounds of appeal, any written representations, and any further argument requested by the Committee. Because the appeal is against a dismissal of a complaint under section 17(4)(a), the operative provision is section 18(4)(b). The Committee may confirm the dismissal; set it aside and find that the complaint has been established, with appropriate remedial steps under section 17(8) being imposed; or set it aside and recommend that the complaint be investigated by a Tribunal.

[9] A disciplinary complaint against a judge must first satisfy the requirements of section 14. It must specify the nature of the complaint and the facts on which it is based.⁴ The relevant statutory threshold is not mere error, ordinary negligence, dissatisfaction with judicial reasoning, or an adverse outcome. For present purposes, the complaint had to disclose material capable of establishing a wilful or grossly

⁴ Section 14(3) of the Act provides, “[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.”

negligent breach of the Code, or other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office.⁵

[10] The statutory language is important. Section 14(4)(b) of the Act does not make every breach of the Code disciplinary misconduct; it is only a wilful or grossly negligent breach of the Code that constitutes a ground of complaint. The same threshold is reflected in Article 2(3) of the Code. In addition, section 14(4)(e) requires any other conduct relied upon to be wilful or grossly negligent and incompatible with, or unbecoming of, judicial office. This distinction was emphasised by Jafta J in *Tebeile v Phatudi JP*,⁶ where he held that a breach of the Code does not automatically translate into misconduct, because the Act defines misconduct restrictively: a Judge commits misconduct only where the breach is wilful or grossly negligent. It follows that ordinary error, misjudgment, or even a negligent breach of the Code is not enough. That approach is reinforced by Note 9(v) to the Code, which recognises that Judges may err in relation to fact or law, and provides that errors, including those relating to procedural rulings, are to be dealt with through ordinary appeal or review processes and not through disciplinary proceedings.⁷

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 JSC/194/06/2025.

⁷ 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,

[11] The disciplinary process is therefore not engaged merely because a litigant alleges that a court should have issued directions differently, convened an oral hearing, or provided fuller reasons. The question is whether the material establishes a deliberate or grossly negligent failure to comply with the Code or other conduct incompatible with judicial office.

[12] Section 17 inquiries are inquisitorial. The Act expressly provides that there is no onus on any person to prove or disprove any fact. That means that the designated member is not confined to deciding the matter as an adversarial contest between the complainant and the respondent Judges. The member may consider the complaint, invite responses, request further information where appropriate, and assess the material as a whole. But the absence of an onus does not mean that a complaint may be established on assertion, suspicion or conclusion alone. Nor does the absence of a denial by the respondent Judges permit the Committee to make factual or inferential leaps that are not supported by the material before it. There must still be information capable of supporting a finding of misconduct. In particular, where the complaint alleges a wilful or grossly negligent breach of the Code, the material must do more than show dissatisfaction with the outcome or procedure adopted by a court. It must be sufficiently cogent and particularised to connect the alleged misconduct to the respondent Judge or Judges, and to support the conclusion that the conduct was wilful or grossly negligent.

[13] The Code provisions relied upon by the appellant are weighty. They require honourable conduct, compliance with law, equality and impartiality, transparency,

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.”

open justice, observance of *audi alteram partem*, and adequate reasons. The importance of those principles cannot be doubted. But the question in a disciplinary process is whether the facts show a wilful or grossly negligent breach of those duties by the named respondents.

[14] The Code itself also guards against converting appellate or procedural grievances into misconduct. Note 9(ii) recognises that adequate reasons are ordinarily required, but also that some decisions do not necessarily require reasons and that reasons may, where reasonably required, be given later. More directly, Note 9(v) provides that errors of fact or law are to be dealt with through ordinary appeal or review procedures, and that even errors by courts of final instance cannot give rise to valid complaints. Complaints related to the merits of a decision or a procedural ruling are to be dismissed at the outset.

[15] It follows that a complaint may not be rescued from the “merits-procedure bar” simply by attaching the labels of bias, lack of honour, irrationality, unfairness or want of transparency. Those labels may describe genuine misconduct in an appropriate case, but only where they are supported by facts. The Committee must look at the substance of the complaint and ask whether it demonstrates judicial misconduct, or whether it remains a challenge to how a court dealt with litigation.

[16] The same applies to the respondent Justices’ failure to file written responses. That failure may be relevant where the complaint itself contains factual allegations that call for an answer. But it cannot cure gaps in the complaint. In particular, it cannot establish that correspondence addressed to the Court, the Registrar or the Chief Justice was in fact seen by each respondent Justice; that any respondent Justice

deliberately ignored it; or that the appellant's inferences amount to established misconduct.

Evaluation

[17] The appellant is correct that the complaint was previously referred to section 17 because it was not solely related to the merits of the Constitutional Court order. That referral, however, did not determine the merits. It merely required a section 17 inquiry into whether the allegations of lack of honour, bias, unfairness and non-transparency were supported by material sufficient to establish misconduct.

[18] On the record before Shongwe J, the core factual difficulty remained. The appellant relied on correspondence addressed to the Court, the Registrar or the Chief Justice. The complaint did not establish that each of the eight respondent Justices personally received that correspondence, read it, decided to ignore it, or bore personal responsibility for responding to it. Without that factual link, the failure of the Court or its administrative structures to respond to the appellant's letters cannot, by itself, establish wilful or grossly negligent misconduct by each of the respondent Justices.

[19] This is not to say that correspondence addressed to a court can never form part of a judicial conduct complaint. It can, in an appropriate case, where there is material connecting the correspondence and the alleged non-response to a judge's personal conduct or judicial duties. The difficulty here is that the appellant's material does not provide that connection. Shongwe J was therefore entitled to find that the letters did not, without more, establish misconduct by the respondent Justices.

[20] The appellant also relied on Rule 11 of the Constitutional Court Rules and contended that his matter proceeded without the file being presented to the Chief Justice for directions. The section 17 ruling should not be understood as making a positive factual finding that the Chief Justice did give directions. The decisive point is narrower. The appellant did not place before the section 17 inquiry tangible material establishing that no directions were given, that the respondent Justices knew that no directions had been given, or that they nevertheless wilfully or grossly negligently proceeded in breach of the applicable procedure. At most, the complaint asserted a procedural irregularity in the handling of the Constitutional Court application. That is not enough to establish judicial misconduct on the part of all the Justices cited.

[21] The complaint concerning the absence of an open-court hearing must be approached in the same way. Article 8 is an important statement of open justice and transparency. But the appellant did not establish that the absence of an oral hearing was the product of wilful or grossly negligent misconduct by any respondent Justice, as opposed to the manner in which the Constitutional Court ordinarily manages and determines applications placed before it. Whether the Court ought to have convened an oral hearing, or ought to have issued different procedural directions, is not the disciplinary question. The disciplinary question is whether the material shows misconduct by the named Justices. It does not.

[22] The complaint based on the absence or inadequacy of reasons also does not carry the appeal. Article 9 requires adequate reasons, but Note 9(ii) recognises that the requirement operates contextually. More importantly, even if the appellant were correct that fuller reasons ought to have been provided, that contention would concern the correctness or adequacy of the Constitutional Court's order or procedure.

The material does not show that any respondent Justice deliberately denied reasons for an improper purpose, acted with bias, or grossly disregarded a known duty in a manner amounting to judicial misconduct.

[23] The appellant's allegation that the respondent Justices did not look at his matter properly, acted arbitrarily, or dismissed his application capriciously is also unsupported by objective facts. It is an inference drawn from the adverse outcome and from the appellant's dissatisfaction with the manner in which the application was disposed of. A disciplinary finding cannot rest on speculation about the internal consideration of a matter by a multi-member court. Nor can it rest on the fact that a litigant strongly believes that the Court failed to appreciate the merits of his application.

[24] The allegations under Article 7 fare no better. The appellant asserts that he was treated disparately compared to “others” and that the respondent Justices displayed bias or prejudice. The material does not identify a comparator, an objective basis for differential treatment, a statement or act evidencing bias, or any fact from which a reasonable inference of prejudicial conduct by the respondent Justices could be drawn. The complaint therefore does not establish a breach of Article 7.

[25] The fact that some of the respondent Justices did not file written submissions does not alter this conclusion. Section 17 expressly provides for an inquisitorial inquiry without an onus on any person to prove or disprove a fact. Shongwe J was required to consider whether the information before him was sufficient. He was not required to treat the absence of respondent submissions as an admission of misconduct, particularly where the alleged misconduct depended on inferences that were not supported by objective material.

[26] It is also not a gross irregularity for a section 17 decision-maker to examine whether the complaint contains facts connecting the respondent judges to the alleged misconduct. That is precisely the function contemplated by section 17. Asking whether the appellant had shown that the respondent Justices received the letters, whether they were personally responsible for responding, and whether there was material showing non-compliance with Rule 11, was not making a case for the respondents. It was assessing the sufficiency of the complaint.

[27] The appellant is correct that Shongwe J used strong language when he described the allegations as “wild”. However, the appeal is concerned with whether the dismissal was wrong, not with whether every expression used in the ruling was ideal. The substance of the ruling was that the complaint lacked cogent material capable of establishing a wilful or grossly negligent breach of the Code. That conclusion was open to Shongwe J on the record.

[28] The first appeal correctly ensured that the complaint was considered under section 17 rather than rejected as solely merits-based. Once the matter was considered under section 17, however, the appellant still had to identify material capable of sustaining a finding that the respondent Justices had committed a wilful or grossly negligent breach of the Code. For the reasons already given, the material before Shongwe J did not do so. The complaint rested substantially on the appellant’s dissatisfaction with the manner in which the Constitutional Court dealt with his application and on inferences which were not supported by cogent evidence connecting the alleged failures to misconduct by each respondent Justice.

Conclusion

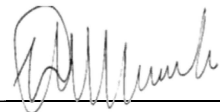
[29] The appeal cannot succeed. The appellant's complaint is framed as one concerning judicial conduct, but its factual foundation remains dissatisfaction with the way in which the Constitutional Court dealt with his application: the absence of a response to correspondence, the absence of an oral hearing, the alleged failure to follow the directions procedure under Rule 11 of the Constitutional Court Rules, and the absence or inadequacy of reasons. The material before the Committee does not establish wilful or grossly negligent misconduct by the respondent Justices, nor does it disclose a reasonable likelihood that a formal hearing would contribute to determining the merits of the complaint.

[30] The section 17 dismissal must accordingly be confirmed.

Ruling

[31] The following order is made:

- a. The appeal is dismissed.
- b. The ruling delivered by Shongwe J on 5 February 2026 dismissing the complaint in terms of section 17(4)(a) of the Judicial Service Commission Act 9 of 1994 is confirmed.



THE JUDICIAL CONDUCT COMMITTEE