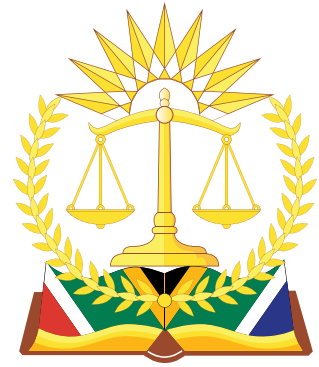


**JUDICIAL SERVICE
COMMISSION
ANNUAL REPORT
2023/24**



**OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA**





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The Honourable Speaker of the National Assembly, Ms Thoko Didiza, MP, and the Honourable Chairperson of the National Council of Provinces, Ms Refilwe Mtshweni-Tsipane, MP.

In accordance with section 6 of the Judicial Service Commission Act, 1994, as amended (JSC Act), I am pleased to present to you the Annual Report of the Judicial Service Commission (JSC) on its activities during the Financial Year ending 31 March 2024. This Annual Report was prepared pursuant to section 6(1) and (2) of the JSC Act, which requires the Commission to submit, within 6 months after the end of every financial year, a written report to Parliament for tabling.

The Annual Report is required to include information relating to the activities of the Commission during the year in question. This includes matters that the Judicial Conduct Committee (JCC) dealt with, all matters relating to the Register of Judges' Registrable Interests as reported by the Registrar of Judges' Registrable Interests and all matters considered by the Commission emanating from the JCC and Judicial Conduct Tribunals.

M M L MAYA

CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA
CHAIRPERSON OF THE JUDICIAL SERVICE COMMISSION
DATE: 30 SEPTEMBER 2024



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FOREWORD

BY CHIEF JUSTICE

This Annual Report relates to the Financial Year 1 April 2023 to 31 March 2024. During the period under review, the Judicial Service Commission (Commission) continued to make strides in the transformation of the Judiciary in terms of section 174(2) of the Constitution.

From a total of thirty-five (35) vacancies in the Superior Courts, the Commission advised the President of the Republic of South Africa to appoint twenty-five (25) candidates - inclusive of the President of the Supreme Court of Appeal (SCA). The President of the Republic appointed twenty-five (25) Judges. Of the twenty-five (25) new appointments made, 51% were women and 49% men. Therefore, at the end of the reporting period, the Judiciary comprised a total of two hundred and fifty-two (252) Judges in all Superior Courts. Of these, 49% are African, 11% Coloured, 9% Indian and 31% White. Noteworthy is that in the spirit of transformation of the Judiciary, one hundred and eighteen (118 or 53%) Judges are women, which is an increase from one hundred and thirteen Judges (113 or 46%) at the end of the previous reporting period.

During the April 2023 sitting of the Commission, a candidate nominated by the President of the Republic for the position of the President of the Supreme Court of Appeal (SCA), Justice M B Molemela, was interviewed. The President of

the Republic subsequently appointed Justice Molemela to the position of the President of the SCA with effect from 01 June 2023. Before her appointment to the SCA in June 2018, she was the first woman Judge-President of the Free State Division of the High Court and served in this position from 2015 to 2018.

Despite the above milestones, the Commission acknowledges that more still needs to be done to fulfil the constitutional imperative of the transformation of the Judiciary.

The Commission is also tasked with dealing with complaints against Judges. The complaint processes are, however, not immune to legal challenges, which, unfortunately, negatively impacts the speed with which the complaints are finalised. During the period under review, measures were put in place to capacitate the Judicial Conduct Committee (JCC) with a retired Justice of the Constitutional Court and two retired Justices of the SCA. This initiative has improved the efficiency of the JCC and has ensured that complaints are disposed of timeously.

During the period under review, the Commission bade farewell to Commissioner Mr E Barnard and further expressed its gratitude to him for his valuable contribution to the work of the Commission. The Commission welcomed Mr M Mangena, following his nomination by the Law Society of South Africa, as an alternate member. Mr Mangena replaced Mr J P Stemmett who was an alternate to Commissioner M Notyesi and Commissioner Barnard.

I hereby convey my gratitude to my fellow Commissioners and the Secretariat for their dedication and diligence in ensuring that the Commission continued to carry out its mandate efficiently and effectively during the Financial Year under review.

I, therefore, have pleasure in presenting this Annual Report to Parliament on the activities of the Judicial Service Commission for the 2023/24 Financial Year.



M M L MAYA

CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA
CHAIRPERSON OF THE JUDICIAL SERVICE COMMISSION
DATE: 30 SEPTEMBER 2024



FUNCTIONS AND LEGAL MANDATES OF THE COMMISSION

The Commission is a constitutional body established in terms of section 178 of the Constitution of the Republic of South Africa, 1996. The primary functions of the Commission are to:

- (a) interview candidates for appointment as Judges and advise the President as to which candidates to appoint as Judges or, in the case of Judges of the Constitutional Court, to provide the President with a list of candidates from whom the President will make appointments;
- (b) to deal with certain complaints against Judges through the Judicial Conduct Committee or Judicial Conduct Tribunals established in terms of the Judicial Service Commission Act of 1994 (JSC Act). The Commission deals with matters referred to by the Judicial Conduct Committee and also with others that are referred to by the Judicial Conduct Tribunals;
- (c) advise National Government on any matter relating to the Judiciary or the administration of justice but when it considers any matter except the appointment of a judge, it must sit without the members designated in terms of section 178(1)(h) and (i) of the Constitution.

COMPOSITION OF THE COMMISSION

The Commission is made up of 23 members. It consists of:

Table 1: Composition of the Commission

Section of the Constitution under which designated	Name of Commissioner
Section 178(1)(a) of the Constitution, the Chief Justice who presides at meetings of the Commission	<ul style="list-style-type: none"> Chief Justice R M M Zondo
Section 178(1)(b) of the Constitution, the President of the Supreme Court of Appeal	<ul style="list-style-type: none"> Justice X M Petse as Acting President of the Supreme Court of Appeal from 01 September 2022 - 31 May 2023 Justice M B Molemela President of the Supreme Court of Appeal from 01 June 2023 to date.
Section 178(1)(c) of the Constitution, one Judge-President designated by the Judges President	<ul style="list-style-type: none"> Judge President D Mlambo
Section 178(1)(d) of the Constitution, the Cabinet member responsible for the administration of justice, or an alternate designated by the Cabinet member	<ul style="list-style-type: none"> Mr R O Lamola in his capacity as Minister of Justice and Correctional Services
Section 178(1)(e) of the Constitution, two practising advocates nominated from within the advocates' profession to represent the profession as a whole, and appointed by the President	<ul style="list-style-type: none"> Adv K Pillay SC Adv J Cane SC
Section 178(1)(f) of the Constitution, two practising attorneys nominated from within the attorneys' profession to represent the profession as a whole, and appointed by the President	<ul style="list-style-type: none"> Mr M Notyesi Mr E Barnard 16 March 2021 - 31 December 2023 Mr M Mangena alternate member since 23 May 2023 to date
Section 178(1)(g) of the Constitution, one teacher of law designated by teachers of law at South African universities	<ul style="list-style-type: none"> Prof C Marumoagae
Section 178(1)(h) of the Constitution, six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly	<ul style="list-style-type: none"> Ms N Mapisa-Nqakula Ms G Breytenbach Mr G Magwanishe Mr J S Malema Mr V C Xaba Mr N Singh

Section of the Constitution under which designated	Name of Commissioner
Section 178(1)(i) of the Constitution, four permanent delegates to the National Council of Provinces	<ul style="list-style-type: none"> • Ms S E Lucas • Mr T S C Dodovu • Mr K E Mmoiemang • Mr A J Nyambi
Section 178(1)(j) of the Constitution, four persons designated by the President as head of the national executive, after consulting the leaders of all the parties in the National Assembly	<ul style="list-style-type: none"> • Ms S Matolo-Dlepu • Adv T Ngcukaitobi SC • Ms N Shabangu-Mndawe • Adv S Baloyi SC

3.1 COMMITTEES OF THE COMMISSION

The Commission has, in accordance with section 178(6) of the Constitution, established the following Committees to enable it to efficiently discharge its constitutional and statutory mandate:

3.1.1 SCREENING COMMITTEE

The Screening Committee is responsible for compiling a shortlist of candidates to be interviewed by the Commission at its sittings. It is composed of the following members of the Commission:

- (i) Acting President X M Petse, Convenor of the Committee (01 September 2022 to 31 May 2023);
- (ii) President M B Molemela, Convenor of the Committee (01 June 2023 to date);
- (iii) Adv K Pillay SC;
- (iv) Ms H Matolo-Dlepu;
- (v) Adv M S Baloyi SC;
- (vi) Mr M Notyesi;
- (vii) Mr A J Nyambi; and
- (viii) Prof C Marumoagae.

3.1.2 LITIGATION COMMITTEE

The Litigation Committee is responsible for ensuring that all litigation pursued by and against the Commission is handled properly. Its members are:

- (i) Adv K Pillay SC (Convenor of the Committee);
- (ii) Adv T Ngcukaitobi SC;
- (iii) Ms H Matolo-Dlepu; and
- (iv) Mr E Barnard (16 March 2021 to 31 December 2023).

3.1.3 RULES COMMITTEE

The Rules Committee is responsible for ensuring that the rules and procedures of the Commission are up to date. The following are its members:

- (i) Adv J Cane SC (Convenor of the Committee);
- (ii) Adv K Pillay SC;
- (iii) Mr G M Magwanishe;
- (iv) Prof C Marumoagae; and
- (v) Ms H Matolo-Dlepu.

3.1.4 COMPLAINTS COMMITTEE

The Complaints Committee is responsible for ensuring that objections that are received after the closing date for the submission of comments and objections are placed before the Commission and considered. The Committee also advises the Commission if there are any complaints lodged with the JCC against candidates to be interviewed for judicial appointment. The following are its members:

- (i) Adv T Ngcukaitobi SC (Convenor of the Committee);

- (ii) Adv M S Baloyi SC;
- (iii) Ms H Matolo-Dlepu; and
- (iv) Ms N Shabangu-Mndawe.

3.2 SPOKESPERSONS FOR THE COMMISSION

The Spokespersons for the Commission are Adv M S Baloyi SC and Mr M Notyesi.

3.3 SECRETARIAT OF THE COMMISSION

Section 37 of the JSC Act makes provision for the assignment by the Secretary General (SG) of the Office of the Chief Justice (OCJ) of an appropriate number of personnel, one of whom must be designated as the Secretary of the Commission, from the staff in the OCJ to provide administrative support to the Commission.

In accordance with section 37(2) of the JSC Act, the Secretary of the Commission, under the supervision, control and direction of the Executive Secretary, must:

- (a) *provide secretarial and administrative services to the Commission, the Committee and any Tribunal;*
- (b) *cause all records of matters dealt with by the Commission in terms of the JSC Act to be safeguarded;*
- (c) *maintain a register of all complaints dealt with by the JCC;*
- (d) *perform such functions as may from time to time be prescribed; and*
- (e) *generally, perform such secretarial and administrative tasks related to the work of the Commission, Committee or any Tribunal, as may from time to time be directed by the Chief Justice.*

The Secretariat is made up of the following officials:

- (i) Ms K Moretlwe: Acting Secretary of the Commission (01 June 2022 to 31 May 2023);
- (ii) Ms M Mondlane: Secretary of the Commission (01 June 2023 to date);

- (iii) Ms D Ramaisa: State Law Advisor (01 October 2023 to date)
- (iv) Ms N Tshubwana: Law Researcher;
- (v) Ms T Phaahlamohlaka: Senior Administrative Officer;
- (vi) Ms T Ramonyai: Personal Assistant (01 May 2016 to 01 February 2024); and
- (vii) Ms S Boke: Intern (01 June 2023 to date).



REPORTS ON ACTIVITIES OF THE COMMISSION

4.1. MEETINGS OF THE COMMISSION

During 2023, the full Commission met on two occasions, from 17 April 2023 until 21 April 2023 and from 02 October 2023 until 06 October 2023. Both meetings were held in Johannesburg. These meetings were convened as part of the Commission's bi-annual sittings to receive a briefing from both the Chief Justice and the Minister about matters that affect the courts, to address issues that affect the Commission and to interview and recommend candidates for vacancies that arose in the various Divisions of the Superior Courts.

The Commission, constituted as contemplated by section 178(5) of the Constitution, sitting without persons designated by the National Assembly from among its members and also without permanent delegates to the National Council of Provinces designated together by the Council, held the following meetings during the period under review:

COMPLAINT LODGED BY DEPUTY JUDGE-PRESIDENT P GOLIATH AGAINST JUDGE-PRESIDENT J M HLOPHE AND COUNTER COMPLAINT BY JUDGE- PRESIDENT HLOPHE AGAINST DEPUTY JUDGE-PRESIDENT GOLIATH

In its appeal decision dated 20 September 2022, the JCC made recommendations to the Commission that the complaint lodged by Deputy Judge-President P Goliath (Goliath DJP) against Judge- President J M Hlophe (Hlophe JP), and the counter-complaint lodged by Hlophe JP against Goliath DJP, be referred to a Judicial Conduct Tribunal (Tribunal) for investigation.

On 30 November 2023, the Commission constituted in terms of section 178(5) of the Constitution, met and decided, in respect of the complaint against Hlophe JP, to accept the recommendation of the JCC to refer the complaint to a Tribunal for investigation and decided to request the Chief Justice to appoint a Tribunal to investigate the complaint. The Commission also decided to advise the President that it is desirable that Hlophe JP be suspended pending finalisation of the Tribunal process with the condition that Hlophe JP must finalise any outstanding matters during the period of suspension.

In respect of the complaint against Goliath DJP, the Commission decided that the complaint did not constitute impeachable gross misconduct and declined the recommendation of the JCC to refer the complaint against Goliath DJP for investigation by a Tribunal.

COMPLAINT LODGED BY MS A MENGU AGAINST JUDGE-PRESIDENT S M MBENENGE

On 01 December 2023, the Commission, constituted in terms of section 178(5) of the Constitution, met to deliberate on the recommendation of the JCC dated 14 September 2023, and decided to accept the recommendation of the JCC. As a result, the Commission, acting in terms of section 19(1)(a) of the JSC Act, requested the Chief Justice to appoint a Tribunal in terms of section 21 of the JSC Act.

Following the decision of the meeting held on 01 December 2023, the Commission met on 02 February 2024 to decide whether to advise the President to request in terms of section 19

of the JSC Act, that the Chief Justice appoint a Tribunal to consider the complaint lodged by Ms A Mengo against Judge-President S Mbenenge (Mbenenge JP).

4.2. APPOINTMENT OF JUDGES

Section 174(3) and (4)(a) to (c) of the Constitution provides as follows:

“(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the Chief Justice and the Deputy Chief Justice and, after consulting the Judicial Service Commission, appoints the President and Deputy President of the Supreme Court of Appeal.

(4) The other judges of the Constitutional Court are appointed by the President, as head of the national executive, after consulting the Chief Justice and the leaders of parties represented in the National Assembly, in accordance with the following procedure:

- (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.

- (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made.

- (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.”¹

4.3 JUDGES APPOINTED DURING THE PERIOD 01 APRIL 2023 - 31 MARCH 2024

During the period under review, thirty-five (35) vacancies were recorded in the Superior Courts in respect of which the Commission had to interview candidates and advise the President on candidates to appoint as Judges. Of these vacancies, the Commission advised the President to appoint twenty-four (24) candidates. Following the Commission’s recommendations, the President, acting in terms of section 174(6) appointed all twenty-four (24) recommended candidates as Judges. Furthermore, the Commission was unable to recommend candidates to fill the other eleven (11) vacancies.

The candidates appointed by the President on the advice of the Commission during the reporting year are reflected in the table below:

Table 2: Judges appointed during the period 01 April 2022 to 31 March 2023

Court	The names of candidates the Commission advised the President to appoint	Judges appointed by the President
SUPREME COURT OF APPEAL (Four vacancies)	<ul style="list-style-type: none"> • Judge F Kathree-Setiloane • Judge A M Kgoele 	<ul style="list-style-type: none"> • Judge F Kathree-Setiloane • Judge A M Kgoele
EASTERN CAPE DIVISION OF THE HIGH COURT, GQEBERHA (One vacancy)	<ul style="list-style-type: none"> • Adv I Bands 	<ul style="list-style-type: none"> • Adv I Bands

¹ Section 174(3) and (4) of the Constitution.

Court	The names of candidates the Commission advised the President to appoint	Judges appointed by the President
GAUTENG DIVISION OF THE HIGH COURT (Five vacancy)	<ul style="list-style-type: none"> • Adv J Holland-Müter SC • Ms M M D Lenyai • Mr M P Motha • Mr M V Noko • Adv L Ann Retief 	<ul style="list-style-type: none"> • Adv J Holland-Müter SC • Ms M M D Lenyai • Mr M P Motha • Mr M V Noko • Adv L Ann Retief
GAUTENG DIVISION OF THE HIGH COURT (Four vacancy)	<ul style="list-style-type: none"> • Adv S K Hassim SC • Adv O Mooki SC • Adv J J Strijdom SC • Adv B C Wanless SC 	<ul style="list-style-type: none"> • Adv S K Hassim SC • Adv O Mooki SC • Adv J J Strijdom SC • Adv B C Wanless SC
KWAZULU-NATAL DIVISION OF THE HIGH COURT (Two vacancies, Durban)	<ul style="list-style-type: none"> • Prof M J Mathenjwa 	<ul style="list-style-type: none"> • Prof M J Mathenjwa
LIMPOPO DIVISION OF THE HIGH COURT (One vacancy)	<ul style="list-style-type: none"> • The Commission advised that no appointment be made with regard to this vacancy at this stage. 	<ul style="list-style-type: none"> • The Commission advised that no appointment be made with regard to this vacancy at this stage.
MPUMALANGA DIVISION OF THE HIGH COURT (One vacancy for the Judge-President of the Mpumalanga Division)	<ul style="list-style-type: none"> • Deputy Judge-President S S Mphahlele 	<ul style="list-style-type: none"> • Deputy Judge-President S S Mphahlele
NORTHERN CAPE DIVISION OF THE HIGH COURT (One vacancy)	<ul style="list-style-type: none"> • Adv A Stanton 	<ul style="list-style-type: none"> • Adv A Stanton
NORTH WEST DIVISION OF THE HIGH COURT (One vacancy)	<ul style="list-style-type: none"> • Ms S Mfenyana 	<ul style="list-style-type: none"> • Ms S Mfenyana
COMPETITION APPEAL COURT (Five vacancies)	<ul style="list-style-type: none"> • Judge J L G Nuku 	<ul style="list-style-type: none"> • Judge J L G Nuku
ELECTORAL COURT (One vacancy Judge-Member)	<ul style="list-style-type: none"> • The Commission advised that no appointment be made with regard to this vacancy at this stage. 	<ul style="list-style-type: none"> • The Commission advised that no appointment be made with regard to this vacancy at this stage.
LABOUR APPEAL COURT AND LABOUR COURT (One vacancy for the Deputy Judge-President)	<ul style="list-style-type: none"> • Judge E M Molahlehi 	<ul style="list-style-type: none"> • Judge E M Molahlehi
LABOUR APPEAL COURT (Four vacancies)	<ul style="list-style-type: none"> • Judge M P N Nkutha-Nkontwana • Adv K M Savage • Judge A Van Niekerk 	<ul style="list-style-type: none"> • Judge M P N Nkutha-Nkontwana • Adv K M Savage • Judge A Van Niekerk
LABOUR COURT (Three vacancies)	<ul style="list-style-type: none"> • Adv K Allen-Yaman • Mr R N Daniels • Mr M R Makhura 	<ul style="list-style-type: none"> • Adv K Allen-Yaman • Mr R N Daniels • Mr M R Makhura

During the period under review, the Commission further interviewed Justice M B Molemela for the position of the President of the SCA. Following her interview, the Commission resolved that Justice Molemela was suitable for appointment as the

President of the SCA. The President of the Republic subsequently appointed Justice Molemela, with effect from 01 June 2023 as the President of the SCA, after consulting the Commission.

Figure 1: Graph illustrating the Judges that the Commission advised the President to appoint in terms of Section 174(6) inclusive of the President of the SCA.

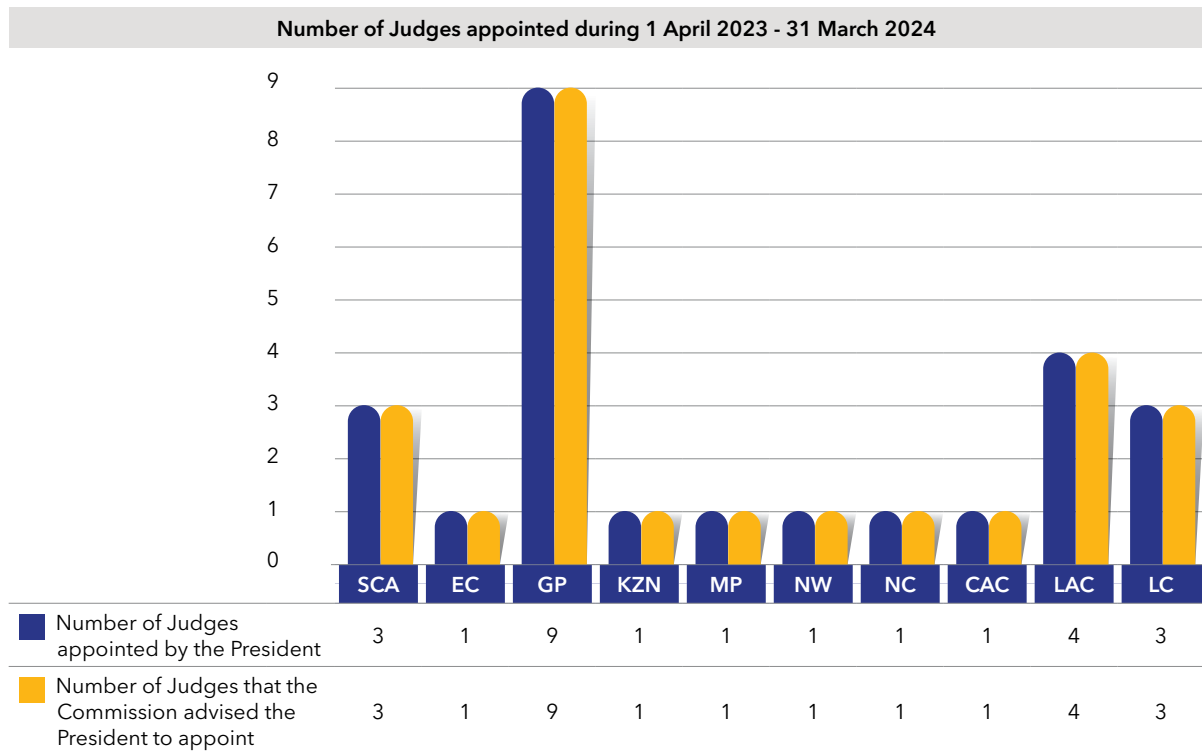


Figure 2: Gender Overview of the appointed Judges during reporting period

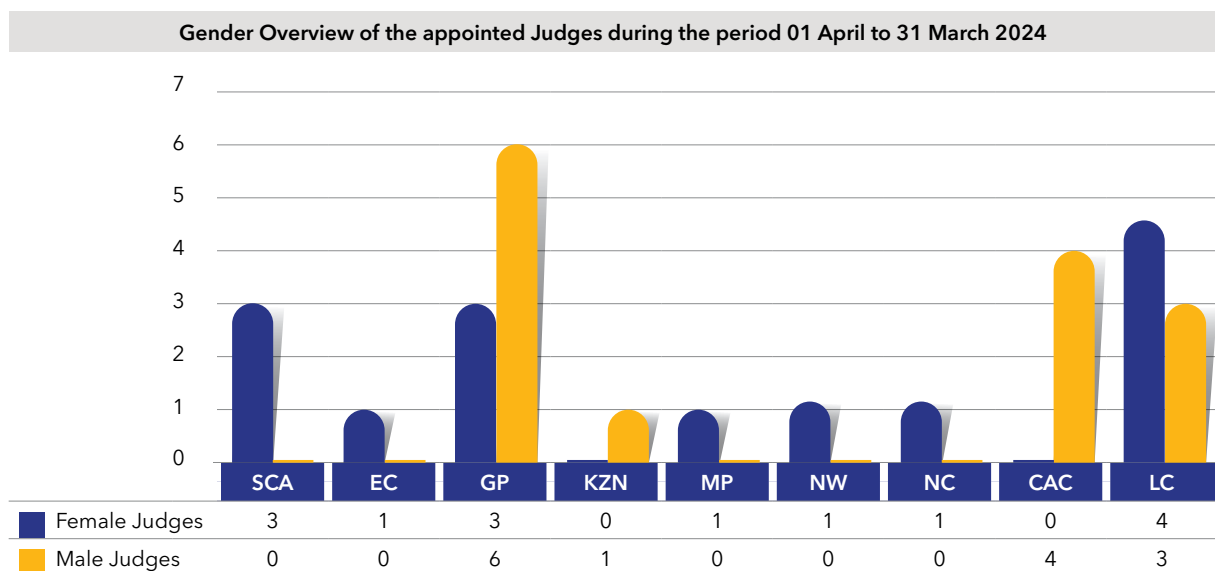


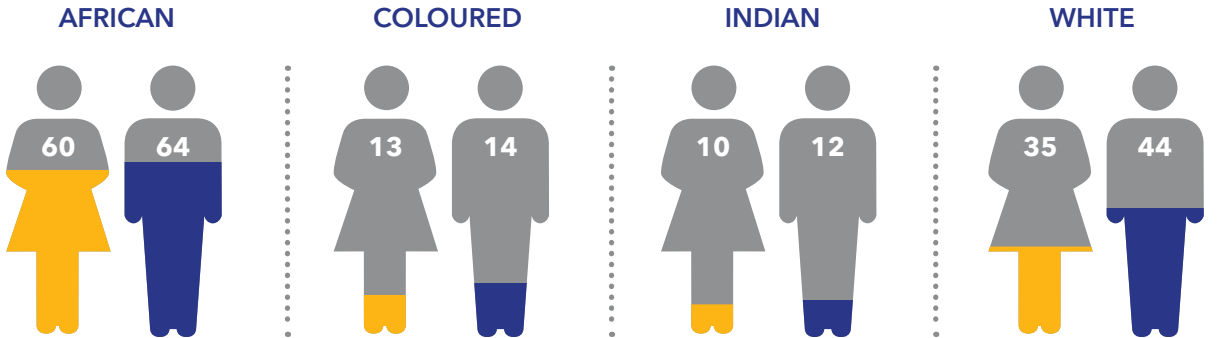
Table 3: Number of Judges appointed during the period 01 April 2023 to 31 March 2024 specifying gender and race

COURT	Number of candidates the jSC advised the president to appoint	Number of judges appointed by the president	Number of females & race	Number of males & race
Supreme Court of Appeal	3	3	2A 1I	0
Competition Appeal Court	1	1	0	1A
Eastern Cape Division of the High Court	1	1	1W	0
Gauteng Division of the High Court	9	9	1A 1W 1I	3A 3W
KwaZulu-Natal Division of the High Court	1	1	0	1A
Labour Court and Labour Appeal Court	7	7	1A 2W	2A 1W 1I
Mpumalanga Division of the High Court	1	1	1A	0
North West Division of the High Court	1	1	1A	0
Northern Cape Division of the High Court	1	1	1W	0
TOTAL	25	25	14	11

A = African, C = Coloured, I = Indian, W = White

Following the two sittings of the Commission during the reporting period and the subsequent appointments made by the President, the Judiciary, as at 31 March 2024, was made up of a total of two hundred and fifty-two (252) Judges. The racial overview of all permanent Judges is illustrated in the figure below:

Figure 3: The racial and gender overview of permanent Judges during the period under review



The table below illustrates the racial overview of permanent Judges during the period under review:


Table 4: The racial overview of permanent Judges per Superior Court:

DIVISIONS	AFRICAN		COLOURED		INDIAN		WHITE		TOTAL
	M	F	M	F	M	F	M	F	
Constitutional Court	3	3	1	1	1	0	1	0	10
Supreme Court of Appeal	6	7	1	2	1	1	3	2	23
Eastern Cape Local Division, Bhisho	2	0	0	0	0	0	0	2	4
Eastern Cape Local Division, Gqeberha	2	2	0	0	0	0	3	1	8
Eastern Cape Division, Makhanda	2	2	1	0	2	0	3	0	10
Eastern Cape Local Division, Mthatha	2	3	0	0	0	1	2	0	8
Free State Division, Bloemfontein	4	3	1	0	0	1	2	4	15
Gauteng Division, Pretoria	11	13	0	0	0	2	10	8	44
Gauteng Local Division, Johannesburg	9	5	2	1	3	2	8	7	37
KwaZulu-Natal Division, Pietermaritzburg	3	4	0	0	2	0	3	1	13
KwaZulu-Natal Local Division, Durban	3	2	1	1	1	2	1	1	12
Limpopo Division, Polokwane	2	1	0	0	0	0	1	1	5
Limpopo Local Division, Thohoyandou	2	0	0	0	0	0	0	0	2
Mpumalanga Division, Mbombela	3	1	0	0	0	0	0	0	4
Mpumalanga Local Division, Middelburg	0	2	0	0	0	0	0	0	2
North West Division, Mahikeng	0	2	1	0	0	0	1	1	5
Northern Cape Division, Kimberley	2	2	0	1	0	0	1	1	7
Western Cape Division, Cape Town	5	4	6	6	1	1	3	3	29
Labour Appeal Court ²	-	1	-	-	-	-	1	1	3
Labour Court ³	3	4	0	1	1	0	2	3	12
Competition Appeal Court ⁴³	-	-	-	-	-	-	1	-	1
TOTAL	64	60	14	13	12	10	44	35	252
%	25%	24%	6%	5%	5%	4%	17%	14%	100%
TOTAL	124		27		22		79		252
%	49%		11%		9%		31%		100%

2 Counted at other courts

3 JP and DJP counted at other courts

4 Counted at other courts



At the end of the reporting period, the Judiciary was made up of a total of 252 Judges in all Superior Courts of which 25% (64) were African male, 24% (60) were African female, 6% (14) were Coloured male, 5% (13) were Coloured female, 5% (12) were Indian male, 4% (10) were Indian female, 18% (44) were White male and 14% (35) were White female.

A racial breakdown indicated that from the total of 252, 49% (124) of Judges were African, 11% (27) Coloured, 9% (22) Indian and 31% (79) White.

A gender breakdown of the Judiciary reflected that at the end of the period under review the Judiciary comprised 53% (134) males and 47% (118) females. Noteworthy is the transformation in the following Divisions with female representation in the Judiciary of 50% or more:

- Supreme Court of Appeal 52%,
- Eastern Cape Local Division, Bhisho (50%),
- Eastern Cape Local Division, Makhanda (50%),
- Eastern Cape Local Division, Mthatha (50%),
- Free State Division, Bloemfontein (53%),
- Gauteng Division, Pretoria (52%);
- KwaZulu-Natal Local Division, Durban (50%),
- Mpumalanga Local Division, Middelburg (100%),
- Northern Cape Division, Kimberley (57%),
- North West Division, Mahikeng (60%), and
- Labour Court (57%).

4.4 APPOINTMENT OF THE CHAIRPERSON OF THE NATIONAL WATER TRIBUNAL

The Commission conducted interviews, sitting without members designated by the National Assembly and National Council of Provinces as provided in section 178(5) of the Constitution, on 21 April 2023 and interviewed the following candidates for the position of Chairperson of the National Water Tribunal in terms section 146 (5) of the National Water Act, 1998:

- a. Adv P Loselo;
- b. Mr T A Nkele;
- c. Adv Z Hoosen; and
- d. Adv D Welgemoed.

Following the interviews, the Commission decided to recommend to the Minister of Water and Sanitation to appoint one of the following candidates:

- Adv P Loselo; or
- Mr T A Nkele.

REPORT ON THE ACTIVITIES OF THE JUDICIAL CONDUCT COMMITTEE

Section 8 of the JSC Act provides for the establishment of the JCC to receive, consider and deal with complaints against Judges.

5.1 COMPOSITION OF THE JUDICIAL CONDUCT COMMITTEE

The JCC consisted of the Chief Justice, the Deputy Chief Justice and four other Judges, two of whom were women, as contemplated in section 8 of the JSC Act.

In accordance with section 8(3) of the JSC Act, the Chief Justice may, either generally or in a specific case, delegate any of his or her powers or functions as Chairperson of the Committee to the Deputy Chief Justice.

During the period under review, the four Judges designated by the Chief Justice in terms of section 8(1)(c) of the JSC Act, in consultation with the Minister of Justice and Correctional Services, were:

- (a) Justice C N Jafta;
- (b) Justice J B Shongwe;
- (c) Justice H Saldulker; and
- (d) Justice N P Mabindla-Boqwana.

5.2 MEETINGS OF THE JUDICIAL CONDUCT COMMITTEE

Section 9(1) of the JSC Act provides for the meetings of the JCC to be determined by the Chairperson.

On 24 and 25 October 2023, the JCC convened to consider appeals in accordance with section 16(1) and section 18(1) of the JSC Act. In terms of section 16(1), a total of seven (7) complaints were referred to the JCC for consideration and in terms

of section 18(1), a total of nineteen (19) appeals were referred to the JCC for consideration. However, six (6) appeal matters were postponed to 08 December 2023 for further consideration.

The JCC met again on 02 February 2024 to consider the two appeal matters that were postponed because the Committee did not quorate.

Out of all these matters, the JCC issued seventeen (17) rulings in respect of the appeals adjudicated in terms of section 18 and two rulings in respect of the matters adjudicated in terms of section 16.

5.3 REPORT ON JUDICIAL COMPLAINTS

In accordance with section 14(1) of the JSC Act "any person may lodge a complaint about a judge with the Chairperson of the Committee".

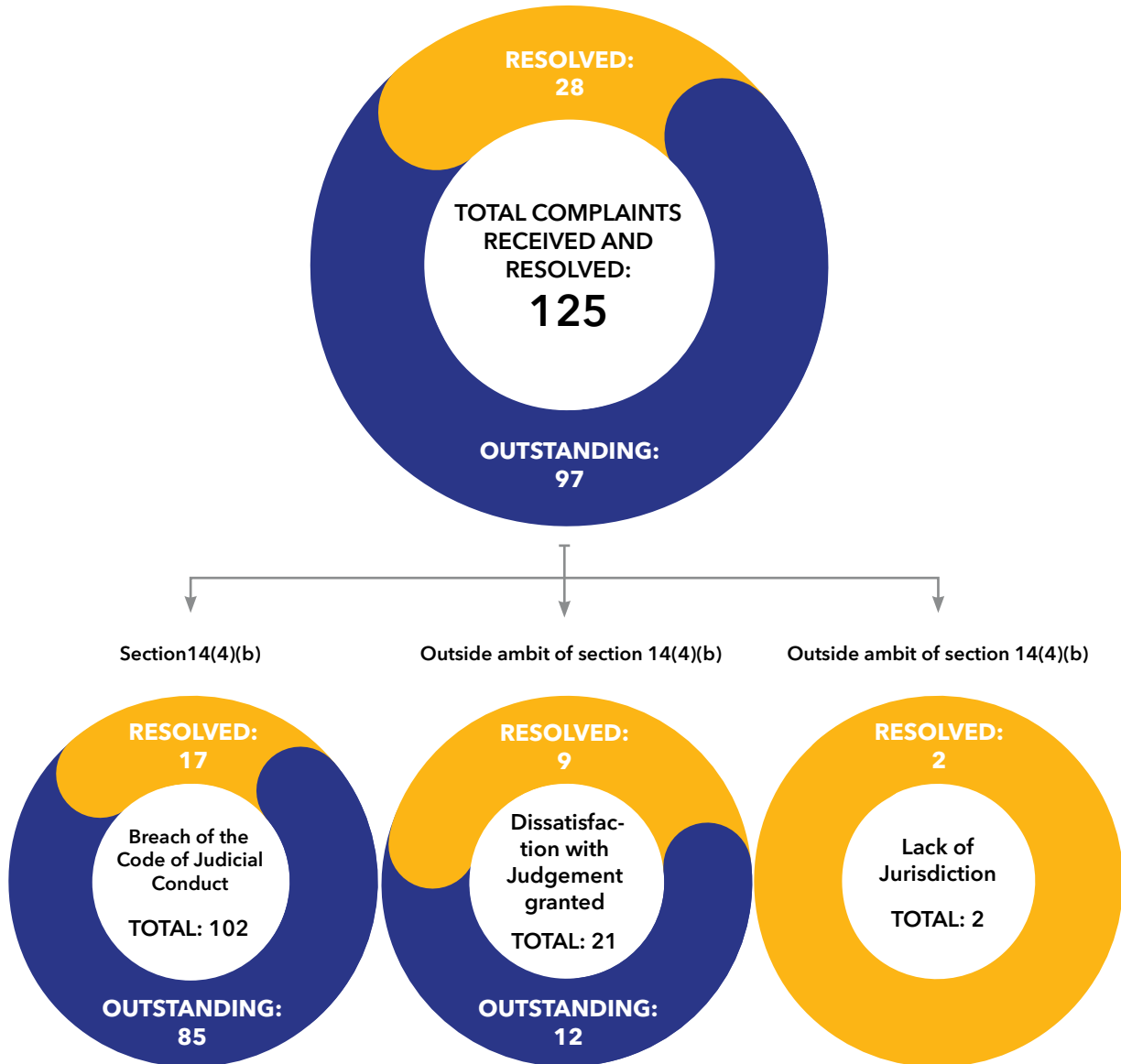
Section 14(4) sets out the grounds upon which a complaint against a Judge may be lodged. These are:

- (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.”

Figure 4: Complaints received and resolved during the reporting period



For the previous reporting period namely the 2022/23 financial year, a total of ninety-three (93) complaints were received. Of these, 46% (38) were resolved and 54% (55) were carried over into the period under review.

For the period under review, a total of 125 complaints were received and 22% (28) complaints were resolved, whilst 78% (97) were outstanding at the end of the Financial Year. The outstanding complaints were carried forward to the next financial year (2024/25).

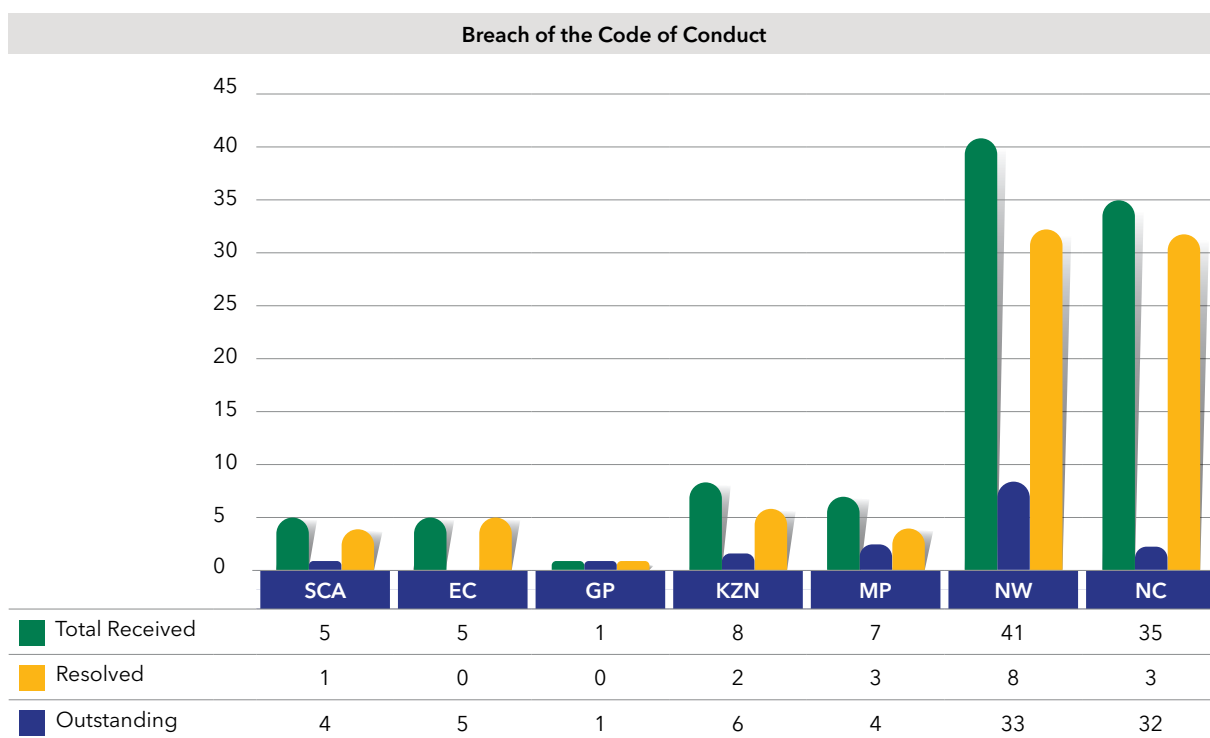
82% (102) of complaints received during the period under review, related to alleged breach of the Code of Judicial Conduct in terms of section 14(4)(b) of the JSC Act and 21 related to the dissatisfaction with a judgment or order whilst two complaints were found to lack jurisdiction.

Of the one hundred and two (102) complaints that related to alleged breach of the Code of Judicial Conduct in terms of section 14(4)(b) of the JSC Act, five (5) of the complaints related to Article

4 (Judicial Independence), five (5) complaints related to Article 5 (To act honourably), one (1) complaint related to Article 6 (Compliance with the law), nine (9) complaints related to Article 7 (Equality), eight (8) complaints related to Article 8 (Transparency), forty-one (41) complaints related to Article 9 (Fair Trial) whilst thirty-five (35) complaints related to Article 10 (Diligence) of the Code of Judicial Conduct.

A breakdown of these complaints is depicted in the figure below:

Figure 5: Breakdown of the Complaints in terms of the Code of Judicial Conduct



A further breakdown indicates the manner in which the twenty-eight (28) complaints were resolved. Twenty-two (22) were dismissed in terms of section 15(2)(c) of the JSC Act on the basis that they solely related to the merits of a judgment or order, one (1) complaint was dismissed in terms of section 15(2)(d) on the basis that it was found to be frivolous or lacking in substance, one (1) complaint was dismissed in terms of section 15(2)(b) on the basis that it does not comply

substantially with the provisions of section 14(3), two (2) complaints were withdrawn and finally, two (2) complaints were disposed due to lack of jurisdiction. These complaints were resolved within an average of 4.8 months.

Further, of the ninety-seven (97) complaints outstanding, thirty-three (33) complaints were referred in terms of section 17, five (5) complaints were referred to Heads of Court for adjudication

and three (3) complaints were referred for further adjudication under section 16. Eleven (11) complaints were appealed and are under consideration by the Judicial Conduct Committee. Forty-two (42) complaints are being considered by the JCC in terms of section 14(2) of the JSC Act and three (3) complaints are being processed by the Secretariat.

The table below provides an overview of the complaints received against Judges and the manner in which they were dealt with during the period under review.

Table 5: Complaints received from 01 April 2023 - 31 March 2024

SUPERIOR COURT	Total number of complaints received	No. Resolved	% Resolved	Average number of months from receipt to resolution	No. Pending	% Pending
Constitutional Court	4	0	0%	0,0	4	100%
Supreme Court of Appeal	5	1	20%	3,0	4	80%
Eastern Cape Division	9	3	33%	3,7	6	67%
Free State Division	2	1	50%	6,0	1	50%
Gauteng Division	48	9	19%	4,3	39	81%
KwaZulu-Natal Division	11	1	9%	4,0	10	91%
Limpopo Division	9	1	11%	3,0	8	89%
Mpumalanga Division	1	0	0%	0,0	1	100%
North West Division	3	0	0%	0,0	3	100%
Northern Cape Division	5	3	60%	5,0	2	40%
Western Cape Division	9	2	22%	2,5	7	78%
Labour Court	17	7	41%	6,3	10	59%
Land Claims Court	2	0	0%	0,0	2	100%
TOTAL	125	28	22%	4,6	97	78%

A comparison of the number of complaints received and the number of resolved complaints as well as those that remained unresolved over the past four-year period is reflected in the table below:

Table 6: Overview of complaints for four (4) consecutive years

FINANCIAL YEAR	Complaints Received	Complaints resolved at the end of the reporting period (2023/24)	% Resolved	Unresolved Complaints carried forward to the next reporting period (2024/25)	% Unresolved
2020/21	162	160	99%	2	1%
2021/22	95	89	94%	6	6%
2022/23	93	86	92%	7	8%
2023/24	125	28	22%	97	78%
TOTAL NUMBER	475	363	76%	112	24%

During the reporting period of 2020/21, a total of one hundred and sixty-two (162) complaints was received and eighty-one (81) complaints were resolved and eighty-one (81) complaints were carried forward. At the end of the period under review, one hundred and sixty (160 or 99%) complaints, of the one hundred and sixty-two (162) complaints registered during 2020/21, have been resolved. This leaves only two (2) unresolved complaints, which are still under consideration in the year under review, to be carried forward to the next financial year.

During the reporting period 2021/22, a total of ninety-five (95) complaints were received. Of these, forty-four (44 or 46%) complaints were resolved during the same reporting period. A total of fifty-one (51 or 54%) complaints remained outstanding and were carried forward to 2022/23. At the end of the period under review, a total of eighty-nine (89 or 94%) complaints of the ninety-five (95) complaints registered during 2021/22 have been resolved. This leaves only six (6) unresolved complaints to be carried forward to the next financial year.

During the reporting period 2022/23, a total of ninety-three (93) complaints were received. Of these, forty (40 or 43%) complaints were resolved during the 2022/23 reporting period, and a total of fifty-three (53 or 57%) remained unresolved at the end of the Financial Year and were carried forward to the next financial year (2023/24). At the end of the period under review, a total of eighty-six (86 or 92%) complaints of the ninety-three (93) complaints registered during 2022/23 have been resolved. This leaves only seven (7) unresolved complaints to be carried forward to the next financial year.

For the period under review, a total of one hundred and twenty-five (125) complaints were received and 22% (28) complaints were resolved, whilst 78% (97) were outstanding at the end of the reporting period and were carried forward to the next financial year (2024/25).

In summary, over the four-year period, a total of four hundred and seventy-five (475) complaints were received. Of these, three hundred and sixty-three (363 or 76%) were resolved and one hundred and twelve (112 or 24%) remained unresolved and were carried forward to the 2024/25 financial year.

5.4 JUDICIAL CONDUCT TRIBUNALS

Section 19 of the JSC Act provides for the Commission to request the Chief Justice to appoint a Judicial Conduct Tribunal on account of a recommendation by the Committee or on any other grounds, that there are reasonable grounds to suspect that a Judge is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct. The following tribunals were appointed:

5.4.1 COMPLAINT AGAINST JUDGE T A N MAKHUBELE

The Tribunal for Judge T A N Makhubele reconvened on 08 May 2023 to 19 May 2023. The Tribunal was further postponed to 01 August 2023. However, due to issues related to Judge Makhubele's legal funding, the Tribunal was rescheduled to take place from 13 November 2023 to 17 November 2023 at the same venue. The Tribunal reconvened on 22 January 2024. The hearing took place from 22 January 2024 until 26 January 2024. It was remanded to 07 February 2024 until 09 February 2024 for further hearing. Subsequently, the Tribunal was again postponed to 11 March 2024 until 13 March 2024 for finalisation of adducing evidence. The hearing was concluded on 11 March 2024 and the parties were requested to file their head of arguments. The evidence leader undertook to file heads of argument on 14 June 2024 and Judge Makhubele undertook to file her heads of argument on 28 June 2024.

5.4.2 COMPLAINTS AGAINST JUDGE M K PARKER

Since the establishment of the Tribunal during October 2020, to investigate the complaints against Judge Parker, his state of health has unfortunately prevented the commencement of the Tribunal.

5.4.3 COMPLAINTS AGAINST JUDGE N P MNGQIBISA-THUSI AND JUDGE T A MAUMELA

On 18 August 2023, the Chief Justice established a Judicial Conduct Tribunal to investigate the conduct of Judges T Maumela and N Mngqibisa-Thusi. The panel for the Judicial Conduct Tribunal comprises Justice Jafta, a retired Justice of the Constitutional Court who is also the Tribunal President, Judge D Davis, a retired Judge-President of the Competition Appeal Court and former Judge of the Western Cape Division of the High Court, and Adv Rajab-Budlender SC as a non-judicial member. The Tribunal convened on 01 December 2023. The Tribunal was scheduled to sit from 01 to 07 December 2023, but did not proceed due to the Tribunal members granting an application by the parties for postponement. The proceedings were rescheduled to 29 January 2024 until 02 February 2024. The Tribunal convened on 29 January 2024 and concluded the hearing on 31 January 2024. Upon conclusion of the hearing, the Tribunal President directed the parties file their heads of arguments by 29 February 2024. The Evidence Leader duly complied with the ruling and made his submissions on 29 January 2024. However, Judge Mngqibisa-Thusi's legal team requested a postponement to file by 07 March 2024, on which date they duly complied and filed their heads of argument.

Furthermore, on 08 December 2023, the Tribunal received an application seeking a postponement of the hearing related to the complaint against Judge Maumela. The Tribunal granted the postponement. The Tribunal reconvened on 18 March 2024. The hearing was set to take place from 18 March 2024 to 20 March 2024 and again on 22 March 2024. The hearing started on 18 March 2024 but had to be postponed to 27 May 2024 owing to Judge Maumela's ill health.

REPORT ON THE REGISTER OF JUDGES' REGISTRABLE INTERESTS

LEGAL FRAMEWORK

Section 6(1) of the JSC Act requires the Commission to submit a written report to Parliament for tabling within six months after the end of every year.

In terms of section 6(2)(c) of the Act, the report must include information regarding all matters relating to, including the degree of compliance with, the Register of Judges' Registrable Interests as reported by the Registrar of Judges' Registrable Interests (Registrar).

Regulation 5(5) of the Regulations Relating to the Judicial Service Commission Act, 1994: Disclosure of Registrable Interests (the Regulations) requires the Registrar, for the purpose of indicating the degree of compliance with the Register in the annual report of the Commission, also to furnish the Commission with the names of those Judges in active service who have disclosed interests of their family members.

DISCLOSURE BY JUDGE'S APPOINTED IN 2023/24

Section 13(3) of the JSC Act requires that every Judge must disclose to the Registrar particulars of all his or her registrable interests and those of her or his immediate family members, where applicable. The disclosure is done annually.

In terms of Regulation 3(2) of the regulations relating to the disclosure of Judge's registrable interests, newly appointed Judges are required to disclose their registrable interests to the Registrar within 30 days of their appointment.

The Registrar is required to enter the particulars of a disclosure by a Judge in the Register of

Judge's Registrable Interests and thereafter cause a copy of all entries relating to that Judge to be communicated to the Judge (Regulation 3(3)).

In 2023/24, sixteen (16) new Judges commenced active service in the Judiciary of South Africa. These Judges disclosed their registrable interests within 30 days of appointment as prescribed by the regulations. The disclosed information has been entered into the Register and copies of entries made into the Register were provided to the Judges in accordance with Regulation 3(3).

STATUS OF DISCLOSURES FOR ALL JUDGES AS OF 31 MARCH 2024

After making the first disclosure, a Judge may at any time disclose to the Registrar or inform the Registrar of such amendments as may be required (Regulation 3(4)).

However, in March of every year, Judges in active service must inform the Registrar in writing whether the entries in the Register are an accurate reflection of their registrable interests and, if

applicable, make such further disclosures or amendments as may be required. In the financial year 2023/24, there were two hundred and fifty-two (252) Judges in active service and they all disclosed their registrable interest by 31 March 2024, as prescribed by the Regulations. The information disclosed by the Judges was recorded in the Register of Judges Registrable Interests as contemplated by the Regulations.

REPORTS ON OTHER MATTERS

7.1 LITIGATION AGAINST THE COMMISSION

During the 2023/24 financial year, sixteen (16) matters were initiated or pending in the courts. At the end of the financial year under review, four

(4) matters were finalised and twelve (12) matters were still pending in the courts. The reasons for these pending matters are set out in the table below:

Table 7: Litigation case overview

No.	Litigation matter	Date initiated	Date Finalised / Age of pending matter	Status
1.	Freedom Under Law v Judicial Service Commission and Another	10 July 2020	Matter finalised on 22 June 2023	Judgment handed down on 22 June 2023
2.	Maseko A A v Molemela JA and Others	08 November 2021	Matter finalised on 29 May 2023	Judgment handed down on 29 May 2023
3.	WL Seriti and MT Musi v JSC and Others	01 July 2021	Matter finalised on 14 April 2023	Judgment delivered on 14 April 2023
4.	Hlophe JP v JSC and Others	14 September 2021	30 months	Removed from the Roll
5.	Mpumalanga Society of Advocates v JSC and others	25 November 2021	28 months	Matter set down for hearing on 06 August 2024
6.	Poswa J v JSC	11 February 2022	25 months	JSC to file Answering Affidavit by 28 March 2024
7.	Montshiwa v JSC and others	28 April 2022	23 months	Awaiting issuance of court date
8.	Hlophe JP v JSC	29 August 2022	19 months	Parties are to file their Affidavits
9.	Amalgamated Lawyers Association v JSC	19 October 2022	17 months	Leave to appeal granted by SCA to High Court Full Bench
10.	Sekgala v JSC	26 January 2023	14 months	Applicant to file replying affidavit
11.	Former President Jacob Zuma v the President of RSA, JSC and Zondo CJ	15 August 2023	7 months	JSC to file an explanatory affidavit

No.	Litigation matter	Date initiated	Date Finalised / Age of pending matter	Status
12.	African Institute for Human Rights and Constitutional Litigation vs President of the Republic of South Africa & 2 Others	30 August 2023	7 months	JSC to file an explanatory affidavit
13.	Tebeila Institute v President of the Republic of South Africa and 3 others	30 August 2023	7 months	JSC to file opposing papers
14.	Lawyers Without Borders (Pty) Ltd v President of the Republic of South Africa and 2 others	30 August 2023	7 months	JSC to file its notice to abide
15.	Freedom Under Law v JSC	29 November 2023	4 months	JSC to file answering affidavit in respect of Part B of the application
16.	Mr Dlodlo v Acting Chairperson of the JCC and the JSC	04 January 2024	Matter finalised on 11 January 2024	Struck from roll on 11 January 2024

A summary of litigation matters against the Commission is as follows:

7.1.1 FREEDOM UNDER LAW V JUDICIAL SERVICE COMMISSION AND ANOTHER

Date of initiation:

10 July 2020

from some form of incapacity as stipulated in section 177(1)(a) of the Constitution.

Matter finalised on

22 June 2023

The Commission opposed the application. The matter was heard on 02 February 2022 and judgment was reserved. On 12 April 2022, the court dismissed the review application. The determination of another complaint by Mr Pretorius, one of the complainants was remitted to the Commission for a decision to be made thereon in terms of Section 20 of the JSC Act.

Overview of the matter:

Freedom Under Law (FUL) launched an application in the Gauteng Division of the High Court, Johannesburg, to have the High Court review and set aside a decision of the JSC taken on 10 October 2019, which rejected the finding of the Judicial Conduct Tribunal that Judge N J Motata was guilty of gross misconduct and imposed a fine of R1.1 million.

The Commission and FUL filed an appeal and cross-appeal, respectively. The application was heard on 12 May 2023. The application for leave to appeal was granted in favour of the applicant. The matter was heard in court and judgment was delivered on 22 June 2023.

FUL also asked the High Court to replace the Commission's decision with a finding that Judge Motata was guilty of gross misconduct or suffering

7.1.2 MASEKO A A V MOLEMELA JA AND OTHERS

Date of initiation:

08 November 2021

Matter finalised on

29 May 2023

Overview of the matter:

Mr A A Maseko launched an application in the Gauteng Division of the High Court seeking to replace the decisions of the JCC (Molemela JA) and the Appeal Committee (Khampepe ADCJ, Zondi JA and Dambuza JA). Mr Maseko was aggrieved by the JCC's dismissal of his complaint and appeal that he had lodged against the late Judge Steenkamp. The Commission is opposing this matter.

Counsel was appointed to represent the Commission. Mr Maseko set the matter down in the unopposed roll on 11 March 2021, despite the Commission's filing of an answering affidavit.

Mr Maseko, however, failed to appear before the High Court on the date of set down and the matter was struck off the roll.

Mr Maseko re-enrolled the matter for hearing on 08 November 2021. The matter was referred to the Office of the Deputy Judge-President for case management, which was conducted on 06 December 2021. The matter was heard on 15 June 2022 and judgment was handed down on 15 December 2022. On 10 January 2023, Mr Maseko applied for leave to appeal, which the Commission opposed. The application was heard on 16 February 2023 and upon hearing arguments by the parties, Olivier AJ requested the Commission's counsel to make legal submissions on certain issues in order to assist the court.

The submissions were duly filed and judgment was handed down on 29 May 2023.

7.1.3 WL SERITI AND MT MUSI V JSC AND OTHERS

Date of initiation:

01 July 2021

Matter finalised on

14 April 2023

Overview of the matter:

Judges Musi and Seriti were the Commissioners of the Commission of Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package (Arms Deal Commission). This matter is a sequel to the decision of the Gauteng Division of the High Court, Pretoria, which reviewed and set aside the findings and conclusions of the Arms Deal Commission.

As a result of the decision of the Gauteng Division of the High Court, Pretoria, Shadow World Investigations and Open Secrets lodged a complaint against Judges Seriti and Musi with the JCC, contending that they had committed gross misconduct in their handling of the Arms Deal Commission.

In response, Judges Seriti and Musi brought an application in the Gauteng Division of the High Court. They sought an order declaring that the definition of "judge" in section 7(1)(g) of the JSC Act did not include a retired Judge, and that, if the court concluded that the word included a retired Judge, it should declare section 7(1)(g) of the JSC Act, unconstitutional and invalid.

The purpose of the relief sought was to insulate the two Judges, who are now retired, from being subjected to the disciplinary procedures of the JSC. In essence, the Judges contended that, once a Judge is discharged, he or she may no longer be subjected to disciplinary procedures provided for in the JSC Act. The Commission opposed this application. The matter was heard by a Full Bench (Sutherland DJP and Wepener and Molahlehi JJ) on 14 March 2023. The judgment was handed down on 14 April 2023. The application was dismissed with costs and it was declared that section 7(1)(g) of the JSC Act is not inconsistent with the provision of the Constitution.

7.1.4 HLOPHE M J V JSC AND OTHERS

Date of initiation:

14 September 2021

Reason for pending:

Commission awaiting formal communication from former Judge-former President Hlophe explaining the legal basis for the contention that the Commission should fund his defence. To date, such communication has not been forthcoming.

Overview of the matter:

A Judicial Conduct Tribunal (Tribunal) which conducted an inquiry into allegations that former Judge-President Hlophe (Hlophe JP), had improperly attempted to influence Justices of the Constitutional Court in 2008 in a matter involving former President Jacob Zuma found Hlophe JP guilty of gross misconduct on 09 April 2021. The Commission met on 25 August 2021 to consider the findings of this report as contemplated in section 20 of the JSC Act. The Commission found Hlophe JP guilty of gross misconduct and referred the matter to the National Assembly to perform its functions in terms of section 177(1)(b) of the Constitution.

Hlophe JP launched an urgent application in the Gauteng Division of the High Court to stay the processes for his suspension by the President under section 177(3) of the Constitution and his impeachment by the National Assembly, which is regulated by section 177(1)(b) of the Constitution. Hlophe JP further sought an order declaring the

decision of the JSC taken at the meeting held on 25 August 2021, to be unconstitutional and invalid. Additionally, he also sought to have the decision of the Tribunal reviewed and set aside. He abandoned the urgent application relating to the stay of the process of suspension following the Commission’s decision not to recommend to the President at that stage that he be suspended. In March 2022 a Full Bench of the Gauteng Division of the High Court dismissed Hlophe JP’s application whereupon he filed an application for leave to appeal, which the Commission opposed. The judgment was handed down on 22 June 2022 and Hlophe JP was granted leave to appeal to the Supreme Court of Appeal.

On 01 November 2022, the Commission received a letter from his legal representative stating that he would not be able to cover the substantial costs in this matter. They requested the Commission to cover Hlophe JP’s costs of preparing the appeal record and his legal representation in this matter. The matter was brought to the attention of the JSC Litigation Committee. The Committee wrote a letter to Hlophe JP’s legal representatives on 04 November 2022 requesting the legal basis on which it was contended that the Commission was obliged to pay his legal costs. The Commission has not yet received a response to its enquiry and no record was filed at the Supreme Court of Appeal. Consequently, the application lapsed because the record of the appeal was not filed within the prescribed three-month period.



7.1.5 THE MPUMALANGA SOCIETY OF ADVOCATES V JSC AND OTHERS

Date of initiation:

25 November 2021

Reason for pending:

The matter has been set down for hearing on 06 August 2024

Overview of the matter:

The Mpumalanga Society of Advocates launched an application that the decision Commission’s decision to recommend the third Respondent (Adv Roelfose) for appointment as a Judge of the Mpumalanga Division of the High Court on 08 October 2021 is unlawful, invalid and unconstitutional. Additionally, that

the Commission's decision to recommend the third respondent for Judicial appointment to the President be reviewed and set aside and the matter be remitted to Commission for reconsideration. The Commission initially opposed the application. However, it subsequently resolved to withdraw its opposition and instead file a notice to abide by the decision of the court and an explanatory

affidavit which would comprehensively explain how it arrived at its decision.

The Commission has since filed the explanatory affidavit and instructed the State Attorney, on 01 March 2023, to file a notice of withdrawal of its opposition. The matter has been set down for hearing on 06 August 2024.

7.1.6 POSWA J V JUDICIAL SERVICE COMMISSION

Date of initiation:

11 February 2022

Reason for pending:

Parties to file their heads of Argument by 26 April 2024

Overview:

Judge Poswa launched an application in the North Gauteng High Court seeking an order to review

and set aside the decision by the Commission that he was guilty of a misconduct not amounting to gross misconduct and the imposition of two remedial steps, an apology to the litigants and a reprimand as envisaged in section 17(8)(a) and (b) of the JSC Act.

On 05 August 2022, the Commission received Judge Poswa's supplementary affidavit. On 11 August 2022, the State Attorney notified the Commission that Senior Counsel had passed away and a new one subsequently appointed.



The Commission filed an answering affidavit on 23 November 2022. On 14 December 2022, Judge Poswa's legal representative requested an extension for filing his replying affidavit, citing Judge Poswa's health condition. The Commission acceded to the request. Judge Poswa filed his replying affidavit on 24 February 2023, and the Commission filed a response in terms of Rule 6(15) on 30 June 2023.

Judge Poswa has submitted a second supplementary affidavit. Counsel for the Commission prepared an answering affidavit in response to the applicant's further supplementary affidavit, along with an application for condonation regarding the Respondents' Answering Affidavit to the Applicant's Second Further Supplementary Affidavit which are scheduled to be filed by 26 April 2024.

7.1.7 MONTSHIWA V JSC AND OTHERS

Date of initiation:
28 April 2022

2023 but was subsequently removed from the roll and the applicant ordered to pay costs on attorney and client scale.

Reason for pending:
Awaiting a court date to be issued.

Mr Montshiwa served the Commission with an application to appeal the costs order. On 15 February 2023, he filed supplementary heads of argument in the interlocutory application. On 23 May 2023, the Secretariat deposed to an affidavit for an application for condonation of the late filing of the Commission's heads of argument which have since been filed. Once the President's heads of arguments are filed, the State Attorney will be in a position to apply for a date of hearing. On 26 September 2023 the President's heads of argument remained outstanding.

Overview:

Mr Montshiwa, launched an application in Court for the review and setting aside of the Commission's decision to recommend to the President of the Republic of South Africa Deputy Judge-President Hendricks' appointment as Judge-President of the Division of the North West High Court. Counsel was appointed to represent the Commission.

On 26 March 2024, the State Attorney advised that all the relevant papers had been filed and that they await the issuance of a court date.

The Commission filed its answering affidavit on 16 August 2022. On 14 September 2022 Mr Montshiwa served the Commission with an interlocutory application. In response, the Commission instructed the State Attorney to oppose the application. The application was set down for hearing on 24 January

7.1.8 HLOPHE JP V JSC

Date of initiation:
29 August 2022

Overview of the matter:

Former Judge-President Hlophe (Hlophe JP) instituted an application to review and set aside the decision taken by the JSC on 25 July 2022. The decision was to advise the President of the Republic of South Africa to suspend Hlophe JP pending the conclusion of the process envisaged in section 177(1) of the Constitution. Furthermore, the application sought a court order to declare

Reason for pending:
The Commission is yet to file its Answering Affidavit

that the Commission decision taken on 25 July 2022 to advise the President to suspend Hlophe JP to be unlawful and therefore unconstitutional and invalid.

Hlophe JP sought an order declaring that the Commission was not lawfully constituted at its meeting held on 25 July 2022 when it resolved to advise the President to suspend him from judicial office. On 19 January 2023, Hlophe JP amended

his notice of motion and filed a supplementary affidavit in which he seeks to compel the state to fund his legal costs. This relief is opposed by the Commission.

On 21 August 2023, the Litigation Committee instructed the Secretariat to forward the draft Answering Affidavit incorporating the inputs of the Litigation Committee to the State Attorney. The Answering Affidavit has not yet been filed.

7.1.9 AMALGAMATED LAWYERS ASSOCIATION VS JSC AND OTHERS

Date of initiation:

19 October 2022

Reason for pending:

Awaiting a court date after leave to appeal was granted by the SCA to the High Court Full Bench on 01 September 2023

Overview of the matter:

Amalgamated Lawyers Association (ALA) instituted a review application for an order declaring that the Commission's conduct during the interviews of the third, fourth and fifth respondents on 5 October 2022, for purposes of the Commission's decision, was unlawful. Additionally, the ALA seeks the review, declaration of invalidity, and setting aside of the Commission's decision, which was announced on 05 October 2022, to recommend the appointment as Judge-President of the Limpopo Division of the High Court of the fifth respondent, Judge M G Phatudi, to the President of the Republic of South Africa, in accordance with section 174(6) of the Constitution. ALA further requests that the matter be remitted to the Commission for reconsideration or to commencement de novo following a fair process that aligns with the requirements of section 174(1) of the Constitution. The Commission opposed this application.

On 27 October 2022, ALA served the Commission with an interdict. This interdict aimed to halt, the implementation of the decision taken by the JSC on 5 October 2022, pending the final determination of the review application proceedings issued manually under case number 22/27367. The said

decision pertained to the recommendation of the fifth respondent for judicial appointment as Judge-President of Limpopo Division of the High Court.

On 25 November 2022, the Commission received a letter addressed to the Chief Justice indicating that the President has, in terms of section 174 (6) of the Constitution, appointed Judges in the Superior Courts and various Divisions of the High Court following the advice of the Commission. The letter also stated that the President has decided not to appoint the fifth respondent as the Judge-President of Limpopo Division of the High Court due to the pending litigation.

Subsequently, the Commission filed a notice of withdrawal in relation to the interdict application and has since filed an answering affidavit in the review application. On 24 March 2023, the State Attorney addressed a letter to Deputy Judge President Sutherland of the Gauteng Division of the High Court requesting that the case management of the matter. The matter has been set down for case management on 13 April 2023. Additionally, on 3 April 2023 ALA filed a Rule 30A application against Judge Phatudi.

Judge Phatudi has since filled an answering affidavit in the interlocutory application and ALA has filed a replying affidavit. Black Lawyers Association has bought an application to be admitted as an amicus curiae. ALA is opposing the application and has filled an opposing affidavit. ALA has also indicated to Deputy Judge-President Sutherland that it will no longer pursue the

interlocutory application in terms of rule 35(12), read with 30A against Commission.

The interlocutory applications related to this matter were set down for hearing on Wednesday 30 August 2023 and the following transpired:

- Tebeila Institute was admitted as a party to the proceedings.
- Black Lawyers Association was admitted as an amicus curiae.

- Limpopo Legal Solutions application to be joined as a party was refused.
- Judge Phatudi's point of law under section 47 of the Superior Courts Act was upheld and the main review application was dismissed.

ALA launched an application for leave to appeal at the SCA on 01 September 2023. The SCA granted leave to appeal to the Full Bench of the High Court. The matter has not yet been set down for hearing.

7.1.10 SEKGALA V JSC

Date of initiation:

26 January 2023

Reason for pending:

Awaiting a replying affidavit to be filed by the applicant alternatively for the matter to be set down for hearing

Overview of the matter:

Mr Sekgala instituted an application that the decision of the Judicial Conduct Appeal Committee on 24 July 2022 and the decision relating to the dismissal of the complaint he lodged with the Commission on 02 August 2021 be reviewed and set aside. In addition, the matter should be referred to the Commission for a proper decision.

The Commission is opposing the application and furnished the State Attorney with the record on 28 February 2023. On 11 April 2023 a virtual consultation with Counsel was held in preparation of drafting the answering affidavit. On 22 June 2023, the Commission deposed to an answering affidavit in the interlocutory application which was furnished to the State Attorney. Subsequently, the State Attorney filed the answering affidavit on 23 June 2023. Mr Sekgala has not filed his replying affidavit, nor has the matter been set down for hearing.

7.1.11 FORMER PRESIDENT JACOB ZUMA VS THE PRESIDENT OF RSA, JSC AND ZONDO CJ- 2023-070201

Date of initiation:

15 August 2023

Reason for pending:

The Commission to file an explanatory affidavit

Overview of the matter:

The Secretariat received a review application filed in the High Court of South Africa Gauteng Division, Pretoria, with case number 2023-070201. The applicant, as outlined in the notice of motion, seeks to challenge multiple decisions made by the President. These decisions include:

- Reviewing the establishment of the Nominations Panel, alleging unlawfulness, irrationality, and unconstitutionality.
- Challenging the rejection of a recommendation made by the Commission, claiming it was unlawful, irrational, and unconstitutional.
- Contesting the appointment of Justice Zondo as the Chief Justice, on the basis that the appointment was unlawful, irrational, and unconstitutional.

The applicant also seeks an order declaring that the President's conduct in establishing the nominations panel, disregarding the Commission's advice/recommendations, and appointing Justice Zondo, is inconsistent with the Constitution and is, therefore, invalid.

The Secretariat instructed the State Attorney, on 01 September 2023, not to oppose the application but to file an explanatory affidavit.

A consultation meeting was held with the Counsel on brief, the State Attorney and the Secretariat on 04 March 2024 to discuss the contents of the explanatory affidavit.

7.1.12 AFRICAN INSTITUTE FOR HUMAN RIGHTS AND CONSTITUTIONAL LITIGATION V THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & 2 OTHERS

Date of initiation:

30 August 2023

Reason for pending:

The Commission to file explanatory affidavit

Overview of the matter:

The Secretariat received application papers filed with the Constitutional Court. The Applicant, the African Institute for Human Rights and Constitutional Litigation, is a South African non-profit organisation dedicated to litigating constitutional and human rights matters within South Africa and beyond. The application is

directed at various respondents, including the President of the Republic of South Africa, the Commission, and the Minister of Justice and Correctional Services.

The applicant seeks an order, inter alia, declaring that section 174(3) of the Constitution is inconsistent with and/or contradicts section 174(1) of the Constitution. There seems to be no relief sought against the Commission. The matter is currently pending. The State Attorney has filed a notice to abide and awaits an explanatory affidavit from Counsel.

7.1.13 TEBEILA INSTITUTE V PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND 3 OTHERS

Date of initiation:

30 August 2023

Reason for pending:

The Commission to file opposing papers

Overview of the matter:

The Secretariat has received application papers filed at the Constitutional Court. The applicant, Tebeila Institute, is a non-profit organisation with objectives which include educating communities, especially those in disadvantaged circumstances, about their constitutional rights as enshrined in the 1996 Constitution of the Republic of South Africa. The applicant asserts that its interest in this case arises from the constitutional issues it raises, which align with its core objectives. The

application is directed at various respondents, including the President of the Republic of South Africa, the Commission, and the Minister of Justice and Correctional Services.

The applicant seeks various forms of relief, including direct access to the Constitutional Court, a declaration that this matter falls under the jurisdiction of the Constitutional Court, and a declaration that the President's nomination process contradicts the principles of separation of powers and transparency. Additionally, the applicant contends that section 174(3) of the Constitution is inconsistent with sections 1(a), 9, and 9(1) of the Constitution, particularly concerning gender equality.

There seems to be no relief sought against the Commission. This application is similar to the one of African Institute for Human Rights and Constitutional Litigation v President of the Republic of South Africa & 2 Others mentioned above and it seems appropriate to follow the

decision taken in that application – to abide and file an explanatory affidavit. The matter is still pending. The first and third respondents have filed their notices to oppose. The Commission intends to file opposing papers.

7.1.14 LAWYERS WITHOUT BORDERS (PTY) LTD V PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND 2 OTHERS

Date of initiation:

30 August 2023

current President, Mr C M Ramaphosa, purporting to act under section 174(3) of the Constitution.

Reason for pending:

The Commission to instruct the State Attorney to file a notice to abide

The applicant seeks an order, inter alia, declaring that section 174(3) of the Constitution is inconsistent with Section 9(1) and Section 23(1) of the Constitution. There seems to be no relief sought against the Commission. This application is similar to the one of African Institute for Human Rights and Constitutional Litigation v President of the Republic of South Africa & 2 Others mentioned above and it seems appropriate to follow the decision taken in that application to abide and file an explanatory affidavit. The first and third Respondents have filed their notice to oppose. The Commission will file its notice to abide.

Overview of the matter:

The Secretariat received application papers filed at the Constitutional Court. The applicant, Lawyers Without Borders (Pty) Ltd, a registered company in South Africa, filed an application that pertains to constitutional matters involving the appointment of key judicial positions. The application arises from the actions taken by both the former President of South Africa, Mr J G Zuma, and the

7.1.15 FREEDOM UNDER LAW (FUL) V JSC

Date of Initiation:

29 November 2023

set aside and declare unlawful the following decisions taken by the Commission on 02 and 03 October 2023: (i) the decision to terminate its deliberations on its recommendations of candidates for appointment to the Supreme Court of Appeal without considering whether to fill the remaining two vacancies (ii) its failure to consider whether the remaining candidates should be recommended for appointment to the remaining two vacancies (iii) its decision not to recommend any of the remaining candidates for appointment to the remaining two vacancies.

Reason for pending:

the Commission to file answering affidavit in respect of Part B of the application

In Part B, FUL sought an order in the following terms: (i) to declare unlawful the Commission's failure to develop, publish and apply assessment criteria for the selection of candidates for appointment

Overview of the matter:

The Secretariat received an unsigned Notice of Motion and founding affidavit from Freedom Under Law (FUL), a non-profit organisation, served electronically on 29 November 2023, to review and set aside the decision of the Commission taken on 02 and 03 October 2023 to not fill in two vacant positions of the Supreme Court of Appeal. The application was in two parts, Part A and Part B. Part A was urgent and sought an order to review,

as Judges; (ii) the Commission be directed to develop and publish the selection criteria for the selection of candidates for appointment within three months; and (ii) when it selects its candidates for appointment as Judges, it require each member to assess each candidate in writing for compliance with its published criteria.

On 30 November 2023, the legal representative for FUL proposed mediation under rule 41A to resolve Part A of the application. On 20 December 2023, the Chief Justice wrote to the Litigation Committee directing that Commissioners Ngcukaitobi and Matolo-Dlepu participate in mediation with FUL and explore the possibility of settling part A of the Notice of Motion. The Chief Justice and the Litigation Committee had a virtual meeting on 04 January 2024 to discuss the settlement proposal by FUL. From the meeting it was decided that a legal opinion should be sought from counsel and that there should be further engagement on the settlement terms with FUL. FUL made a request to be furnished with the Commission's private deliberations. A virtual meeting was held on 23 January 2024 in which it was decided that the deliberations be provided but certain portions of the deliberations be redacted.

The Chief Justice proposed that a meeting be held with the full Commission to apprise them of the application and its developments particularly the settlement agreement proposed by FUL. A meeting was held on 26 January 2024 and the Commission resolved that the settlement not be made an order of court and that the SCA interviews be held in April or May as proposed. There was also a proposal by FUL that the Commissioners record their decisions at the interviews, in writing. The Commissioners rejected this proposal. The proposal by FUL, to develop and apply new assessment criteria for the interviews was also rejected by the Commissioners. It was resolved that the Litigation Committee would settle the matter in these terms.

Counsel for the Commission met with FUL and an agreement was reached. A draft order which was favourable to all parties was drawn. It was concluded that Part A is settled and that the SCA interviews will be held in April or May 2024. FUL reserved its rights with regard to Part B. The draft settlement was made an order of court on 14 February 2024.

The matter in respect of Part B is currently under consideration by the Litigation Committee.

7.1.16 MR DLODLO V ACTING CHAIRPERSON OF THE JCC AND THE JSC

Date of Initiation:

02 January 2024

Matter was finalised on

11 January 2024

Overview of the matter:

Mr Dlodlo launched an urgent application in the Gauteng Division of the High Court, Johannesburg to review to set aside the decision of the Acting Chairperson dismissing his complaint, which he lodged with the Judicial Conduct Committee on 15 May 2023. His complaint was dismissed on 14 December 2023.

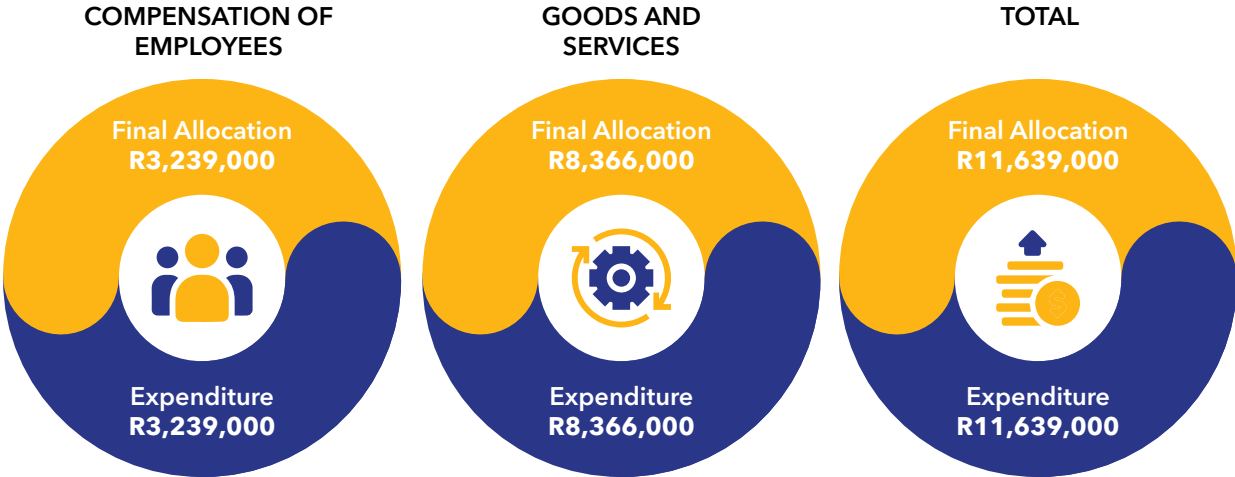
The Commission opposed the application. An instruction letter, together with the record, was provided to the State Attorney on 05 January 2024. The review application was set down for hearing on 09 January 2024 and the State Attorney acted swiftly in securing counsel for the Commission. The State Attorney reported on 11 January 2024 that Counsel attended to the matter and that it was struck from the roll.

7.2 BUDGET OF THE COMMISSION

The Commission was allocated a total budget of R11 639 000 in the 2023/24 Financial Year. The total budget for the Commission consists of R3 239 000 for the compensation of employees and R8 366 000 for goods and services. The total expenditure at the end of the Financial Year was R11 639 000.

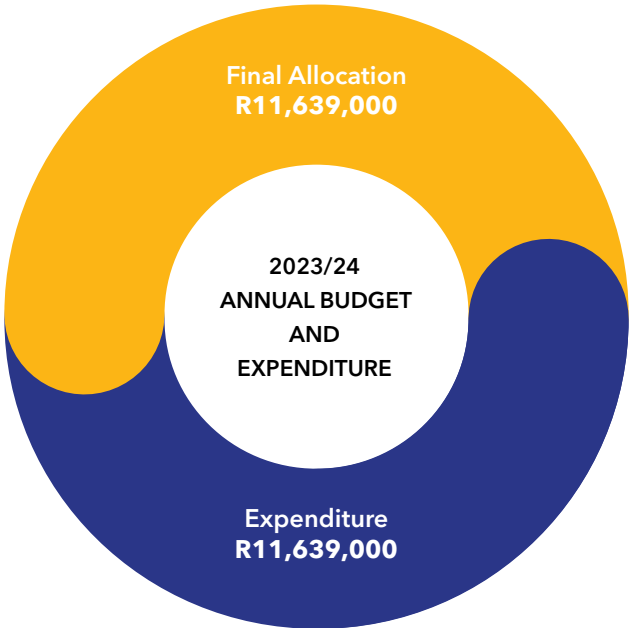
The 2023/2024 JSC Budget and Expenditure for the year under review is illustrated in the table below:

Figure 6: JSC Budget and Expenditure



The 2023/24 financial year JSC Budget and Expenditure Report is illustrated in the figure below:

Figure 7: JSC Budget and Expenditure report for 2022 / 2023



CONCLUSION

The Commission has continued to discharge its constitutional and statutory mandate pertaining to the appointment of Judges by the President and all other matters which fall within the ambit of the responsibilities of the Commission. The transformation of the Judiciary continues to be central to the Commission's role when considering candidates for judicial appointment. Focus on this constitutional imperative will continue until the Judiciary fully reflects the racial and gender composition of the people of the Republic of South Africa as is envisaged in the Constitution.





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REPUBLIC OF SOUTH AFRICA





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