

JUDICIAL SERVICE COMMISSION

**IN RE: *REPORT OF THE JUDICIAL CONDUCT TRIBUNAL IN THE ENQUIRY
AGAINST JUDGE T A N MAKHUBELE***

1 August 2025

REPORT OF THE JUDICIAL SERVICE COMMISSION

INTRODUCTION

1. On 3 July 2025, the Judicial Service Commission (“the Commission”) met to consider the report of the Judicial Conduct Tribunal (“Tribunal”) constituted in terms of sections 19 and 21 of the Judicial Service Commission Act 9 of 1994 (“the JSC Act”), which enquired into allegations of judicial misconduct against Judge TAN Makhubele.
2. These allegations are based on a complaint by #UniteBehind, a coalition of movements comprising various non-profit organisations. The complaint was made in two parts:
 - 2.1. Part A concerns Judge Makhubele’s acceptance and service as a chairperson of the interim board of control of the Passenger Rail Agency of South Africa (“PRASA”). #UniteBehind alleged that Judge Makhubele undermined the independence of the judiciary by having served in and received remuneration from PRASA in a role within the executive branch of government, after her position as a member of the judiciary came into effect;

- 2.2. Part B relates to Judge Makhubele's conduct during her tenure as chairperson of PRASA. #UniteBehind alleged that Judge Makhubele failed in her duty to act honourably and to avoid the appearance of impropriety and acted in a manner unbecoming of judicial office.
3. Prior to considering the matter, the Commission, constituted without the members designated in terms of section 178(1)(h) and (i) of the Constitution, called for written representations from Judge Makhubele and #UniteBehind. Both parties took up the opportunity to file representations.
4. The Commission duly considered all the relevant documents, including:
- 4.1. the representations submitted by Judge Makhubele;
 - 4.2. the representations by #UniteBehind;
 - 4.3. The record of the Tribunal;
 - 4.4. The core bundle used in the Tribunal which includes transcripts of the evidence led before the Tribunal; and
 - 4.5. the Report by the Tribunal.

DISCUSSION

Part A

5. The complaint in Part A was that:

- 5.1. Judge Makhubele served in a position which undermined the independence of the judiciary and breached the separation of powers;
 - 5.2. Judge Makhubele failed to sever professional ties upon her permanent appointment to the judiciary;
 - 5.3. Judge Makhubele occupied an office for profit, where she received payment for services, which payment was not authorised by the JSC Act;
 - 5.4. Judge Makhubele requested a special dispensation regarding her appointment.
6. Judge Makhubele denied the allegations in the complaint and alleged that Judge President Mlambo had consented to her starting her appointment in April 2018 rather than her appointment date of 1 January 2018. The written submissions filed on her behalf with the Commission also placed reliance on the fact that there were two Presidential minutes, the first dated in December 2018 and the second dated in June 2019 recording her appointment.
7. The Tribunal found, inter alia, that:
 - 7.1. On 2 November 2017, JP Mlambo informed Judge Makhubele that on 1 November 2017, the President had notified her that she was appointed as a judge with effect from 1 January 2018.

- 7.2. Towards the end of October 2017, Judge Makhubele had been informed informally by JP Mlambo that she was successful in being appointed as a judge. JP Mlambo testified that he informed Judge Makhubele on 5 October 2017 that her name would be forwarded as one of the successful candidates;
- 7.3. On 24 November 2017, Judge Makhubele appeared before the Parliamentary Portfolio Committee of Transport and disclosed that she had been appointed as a judge and would assume her position on the bench from 1 January 2018.
- 7.4. On 4 December 2017, Judge Makhubele emailed JP Mlambo with a request that she starts on the bench from 1 April 2018. His response was that the President had already made the appointment with effect from 1 January 2018.
- 7.5. On 7 December 2017, Judge Makhubele replied with a request to be “put on hold” until they were able to finalise the discussion about her starting later than January 2018.
- 7.6. JP Mlambo recalled the meeting and that he had informed Judge Makhubele that it was too late for him to change her starting date.
- 7.7. JP Mlambo’s evidence was corroborated by Deputy Judge President Ledwaba.

- 7.8. It was common cause that there was no mention by Judge Makhubele of her appointment at PRASA and/or her inability to commence her duties as a judge.
- 7.9. Judge Makhubele failed to commence her judicial duties as scheduled on 1 January 2018
- 7.10. Judge Makhubele's version that JP Mlambo had agreed that she would not commence her duties as a Judge on 1 January 2018 was most unlikely.
- 7.11. Although Judge Makhubele denied meeting with JP Mlambo and DJP Ledwaba in January 2018 and instead testified that this meeting took place in March 2018 (later changed to February 2018), this was not put to JP Mlambo during cross examination. The Tribunal found that Judge Makhubele's evidence in this regard was "deliberately misleading" and "unambiguously insufficient" to cast any doubt on the credible evidence of JP Mlambo.
8. The JSC considered the facts set out in the Tribunal's Report and finds, based on those facts, that Judge Makhubele's appointment was effective from 1 January 2018. In light hereof, the JSC agrees with the Tribunal's finding that events which transpired after 1 January 2018 are not relevant to the issues for determination in

this complaint. This must include Judge Makhubele's reliance in her written submissions on a second Presidential minute.

Part B

9. The complaint in Part B included the following allegations:

- 9.1. Judge Makhubele settled a matter without a mandate from the Board; and
- 9.2. Judge Makhubele acted contrary to interests of PRASA.

10. #UniteBehind alleged that Judge Makhubele's conduct during her tenure as chairperson of the board of PRASA was dishonest, lacked integrity and unethical. They allege that she acted in a manner unbecoming of a judicial officer and incompatible with her being a fit and proper person.

11. The Tribunal found , *inter alia*, that the following facts were common cause:

- 11.1. Judge Makhubele took up the position of chairperson of the interim Board of PRASA towards the end of October 2017.
- 11.2. She remained as chairperson until she abruptly resigned in March 2018.
- 11.3. Prior to Judge Makhubele joining the Board of PRASA, there were four claims by different entities within the Siyaya Group of Companies that were vigorously defended by PRASA. These

claims arose from contracts concluded between these entities and PRASA.

11.4. Judge Makhubele alleged that the Board had taken a resolution to settle these claims but was unable to produce proof of this resolution.

11.5. The decision to settle was conveyed by Judge Makhubele to Adv Botes SC who acted on behalf of the Siyaya entities.

11.6. Judge Makhubele provided Adv Botes SC with correspondence that assisted Siyaya to obtain default judgment against PRASA.

12. The evidence leader called four witnesses, Ms Ngoye, Mr Dingiswayo, Mr Mogashoa and Adv Botes SC. Judge Makhubele was the only witness who testified on her own behalf. The Tribunal noted that while Judge Makhubele challenged the evidence of the witnesses called by the evidence leader, she produced no countervailing evidence.

13. The Tribunal concluded that on the evidence before it, the version of Judge Makhubele was intrinsically problematic, inconsistent and amounted to a bare denial in the face of vastly credible evidence to the contrary on the crucial aspects of the matter.

14. The Tribunal specifically noted the absence of a record indicating who had taken the decision to settle the Siyaya matters as well as Judge Makhubele's conduct in assisting Adv Botes SC to obtain default judgment against PRASA. It accordingly found that Judge Makhubele's conduct, as alleged in Part B, constituted a breach of section 14(4)(e) of the JSC Act.

DECISION OF THE COMMISSION

15. The Commission accepted the findings of fact made by the Tribunal. However, the Commission differed from the Tribunal in two respects dealt with below.

16. **First**, in relation to Part A, in paragraph 43 of the Report, the Commission notes that the Tribunal found that Judge Makhubele is guilty of *gross misconduct* in terms of section 14(4)(e) of the JSC Act.

17. However, gross misconduct falls within the ambit of section 14(4)(a) of the JSC Act and is expressly excluded from section 14(4)(e).

18. In the Commission's view, the facts set out in the Tribunal's Report clearly support the conclusion that Judge Makhubele is guilty of gross misconduct in respect of the allegations set out in Part A. Thus, the conclusion is inescapable that the dishonest conduct of Judge Makhubele as described in Part A constitutes a breach of section 14(4)(a) of the JSC Act.

19. **Second**, in relation to Part B, in paragraph 62 of the Report, the Tribunal finds that Judge Makhubele's conduct constitutes a breach of section 14(4)(e) of the Act. A further concern for the Commission is that in this paragraph the Tribunal did not add the adjective "gross" to qualify the misconduct of which Judge Makhubele was found guilty.

20. However, the allegations underpinning the charges in Part B relate to dishonest conduct which qualifies as gross misconduct in terms of section 14(4)(a) of the

Act. Furthermore, the evidence on which Judge Makhubele was found guilty clearly establishes gross misconduct in the form of dishonesty.

21. Therefore, the Commission finds that the conduct of Judge Makhubele as described in Part B constitutes a breach of section 14(4)(a) of the JSC Act.

CONCLUSION

22. In terms of section 20(3)(c) (read with section 14(4)(a)) of the JSC Act, the Commission makes the following findings:

22.1. In relation to Part A of the complaint by #UniteBehind, Judge Makhubele is guilty of gross misconduct; and

22.2. In relation to Part B of the complaint by #UniteBehind, Judge Makhubele is guilty of gross misconduct.