JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/209/07/2025

In the matter between:

THOZAMILE SEMEKAZI **COMPLAINANT**

and

JUDGE BELINDA HARTLE **RESPONDENT**

Date: 9 December 2025

Decision: It is recommended that a Tribunal be appointed to investigate the present complaint.

SECTION 16 RULING

THE JUDICIAL CONDUCT COMMITTEE (Mlambo DCJ, Jafta J and Saldulker JA):

Background

[1] The complainant in this matter is Mr. Thozamile Semekazi who lodged this complaint against Judge Belinda Hartle (respondent) of the Eastern Cape Division of the High Court. Having considered the complaint the Acting Chairperson of this Committee then determined that it should be processed in terms of section 16 of the Judicial Service Commission Act[1] (Act). Section 14[2] of the Act requires the Chairperson first to consider a complaint and decide which provision is appropriate to processing it further.

[2] If, as here, the Chairperson decides that the complaint must be dealt with in terms of section 16 of the Act, he must first consider whether, if established, the complaint is likely to lead to a finding by the Judicial Service Commission (Commission) that the respondent Judge suffers from incapacity or is grossly incompetent or is guilty of gross misconduct. If there is a likelihood of the Commission making a positive finding on any of these grounds, the Chairperson is obliged to refer such complaint to this Committee. In the referral he must request the Committee to consider recommending to the Commission that a Tribunal be appointed to investigate the complaint.[3]

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[1] 9 of 1994.

[2] Section 14(2) of the Act provides:

'(2) When a complaint is lodged with the Chairperson in terms of subsection (1), the Chairperson must deal with the complaint in accordance with section 15, 16 or 17, but in the event of a complaint falling within the parameters of section 15, the Chairperson may designate a Head of Court to deal with the complaint, unless the complaint is against the Head of Court.'

[3] Section 16(1) of the Act reads:

'(1) If the Chairperson is satisfied that, in the event of a valid complaint being established, it is likely to lead to a finding by the Commission that the respondent suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, as envisaged in section 14 (4) *(a)*, the Chairperson must-

(a) refer the complaint to the Committee in order to consider whether it should recommend to the Commission that the complaint should be investigated and reported on by a Tribunal; and

(b) in writing, inform the respondent of the complaint.'

[3] Having taken the decision referred to above, the Chairperson is required to inform the respondent Judge about his decision and afford her or him an opportunity to make written representations to the Committee to be considered together with the complaint. At the meeting convened for considering the complaint, the Committee is called upon to determine whether the complaint would, if established, constitute a *prima facie* proof that the respondent suffers from incapacity or is grossly incompetent or is guilty of a gross misconduct. In doing this exercise, the Committee assumes that the complaint will be established.[4]

[4] If the Committee is satisfied that a *prima facie* proof of any of the grounds mentioned above would be established, it must recommend to the Commission that a Tribunal be appointed to investigate the complaint. The Committee must inform the complainant, the respondent and the Commission about its recommendation and the reasons for it.[5] Following its consideration of the recommendation, the Commission must request the Chief Justice to appoint a Tribunal[6] and must in writing inform the President forthwith of its request to the Chief Justice. If it

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[4] Section 16(4) of the Act provides:

'(4) At the meeting referred to in subsection (2), the Committee must consider whether the complaint, if established, will *prima facie* indicate incapacity, gross incompetence or gross misconduct by the respondent, whereupon the Committee may-

(a) refer the complaint to the Chairperson for an inquiry referred to in section 17 (2); or

(b) recommend to the Commission that the complaint should be investigated by a Tribunal.'

[5] Section 16(5) of the Act reads:

'(5) The Committee must inform the complainant, the respondent and the Commission in writing of any decision envisaged in subsection (4) and the reasons therefore.'

[6] Section 19(1) of the Act provides:

'(1) Whenever it appears to the Commission-

(a) on account of a recommendation by the Committee in terms of section 16 (4) *(b)* or 18 (4) *(a)* (iii), *(b)* (iii) or *(c)* (iii); or

(b) on any other grounds, that there are reasonable grounds to suspect that a judge-

(i) is suffering from an incapacity;

(ii) is grossly incompetent; or

(iii) is guilty of gross misconduct,

as contemplated in section 177 (1) *(a)* of the Constitution, the Commission must request the Chief Justice to appoint a Tribunal in terms of section 21.'

considers it necessary, the Commission should also advise the President to suspend the respondent Judge in terms of section 177(3) of the Constitution[7].

[5] Having outlined the legislative backdrop against which this complaint must be considered, it is now necessary to set out the complaint in its essential elements before determining whether it meets the standard laid down in section 16(4). That standard is the complaint *prima facie* indicates that the respondent is guilty of a gross misconduct.

The complaint

[6] The complainant is an employee of the Office of the Chief Justice stationed in East London. He has been working for it for a period of 23 years. Previously, he was based at the High Court in Mthatha. The events that gave rise to this complaint occurred on 15 May 2025 at the premises of the High Court in East London. The complainant alleges that on that day he delivered "a pile of case files" to the office of the respondent and while he was talking to her secretary the respondent walked into the secretary's office. The secretary informed the respondent that the complainant was there to deliver files relating to case flow management for the Judge's attention.

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[7] Section 19(4) of the Act provides:

'(4) Whenever the Commission requests the appointment of a Tribunal in terms of subsection (1), the Commission must forthwith in writing-

(a) inform the President that it has so requested; and

(b) advise the President as to-

(i) the desirability of suspending the respondent in terms of section 177 (3) of the Constitution; and

(ii) if applicable, any conditions that should be applicable in respect of such suspension.'

[7] It appears that the respondent was irritated by the delay in the delivery of those files to her chambers. Without asking for an explanation for the delay, the complainant alleges that the respondent hurled insults at him. In his own words the complainant states:

> 'Judge Hartle did not even allow me to speak for myself, what she heard from Ms Shakira was sufficient for her to the extent that, while standing at the door, facing the inside of her secretary's office, while I was seated and with the most ghastly body language, hanging her arms on the door frames, she uttered the following words to my face "Fuck You" (repeatedly), "puss man!" (repeatedly), and as she turned to look at her secretary continued with the insults and said: "I am tired of Mafalala's staff, bloody fucking Kaffir" with such a confident, loud and aggressive firm voice, thereafter, Judge Hartle left the scene. Her secretary was visibly amused and entertained by this conduct with a soft giggle and a smiley face.'

[8] The complainant states that these expletives were uttered in the presence of the secretary who was 'visibly amused and entertained' by her boss's conduct. The unprovoked attack broke the complainant down and he cried before leaving the secretary's office. He immediately reported what had happened to him to colleagues of his and also to Mr. Denim Kroqwana who is his supervisor. The complainant further says within two minutes, he and Mr. Kroqwana walked to the respondent's chambers but she had already left when they got there.

[9] Later, the respondent sent him WhatsApp messages, apologising for what she did to him. The complainant described the respondent's attack on him in these terms:

> 'The horrific events stated hereinabove disturbingly play in my head repeatedly. The conduct of Judge Hartle incited verbal abuse- in that derogatory language was used and labelling of myself as a puss, the Judge belittled me – in that she made me feel inadequate

> and foolish, Judge Hartle humiliated me – in that she (in an open space in the presence of an entertained colleague) criticized me and made me feel ashamed in front of colleague(s), Judge Hartle discriminated against me – in that she mistreated me by providing only Ms Shakira an opportunity to speak as well as discriminated me by race (when confidently referring to me as a "kaffir"); a word which the current dispensation has long abolished. This indicates that Judge Hartle is not part of the present Constitutional democracy, and to me, she is not fit and proper to hold the office she holds. To me this means that all the African people she works with, Judges, Advocates, Admin officials and the Chief Justice as well the President of the country are "kaffir" to her. This K word is highly insulting, and any person using it is not fit to be part of the current South African unless and until that person undergoes an extensive rehabilitation. A Judge should not be allowed to use such words as joking or in any order form. For that matter, Judge Hartle was visible and extremely angry and bitter towards me.'

[10] As a result of the humiliation and demeaning conduct of the respondent, the complainant says he suffered a major depressive disorder which was diagnosed by a psychiatrist who admitted him to hospital for treatment. The psychiatrist recommended that the complainant be granted extended medical leave to facilitate recovery.

[11] In her response to the complaint, the respondent confirmed that she and the complainant had not met before the incident. However, she pointed out that previously she had been 'at the receiving end of his tardy handling of the case management files'. On that day the respondent had earlier reported the delay in the delivery of those files to Ms. Mafalala, the complainant's manager and commented that owing to the delay and the continuing trial she was presiding over, she would not be in a position to attend to those files the following morning.

[12] Regarding her interaction with the complainant, the respondent stated:

> 'In my brief interaction with Mr. Semekazi – who I did not expect to be seated in my secretary's office when I entered to inform her of the status of the trial I was hearing, I did inform him very firmly that I would not be accepting the chair load of files that was standing in the entrance to her office. It is my sharp rebuke that must have upset him. When I turned to leave Ms. Frost's office, he remained casually sitting in the chair.
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> My expression of frustration with regard to the Registrar's abuse of my kindness was directed at Ms. Frost and her alone. I used a single expletive. I hardly had time to consider who was present in her office before the word had slipped out. I immediately apologized to the stranger in our midst (Mr. Semekazi) that I was sorry for the word.'

[13] The respondent admits that she used a swear word but denies that it was directed at the complainant. Curiously she does not tell us which word she used but disputes ever using the k-word. She accuses the complainant of grossly misrepresenting the interaction between her and him. Without any substantiation, she surmises that the complaint constitutes an attempt to undermine her work and destroy her. She complains that the complaint was leaked to social media in violation of the confidentiality principle applicable to such matters. Lastly, she accuses the complainant of laying a bogus criminal charge against her with the South African Police Service.

Evaluation of the complaint

[14] It will be recalled that at this stage we are not called upon to determine the merits of the complaint. Nor are we expected to decide which of the two versions is true. Our function does not include a consideration of the respondent's defence at this stage. On the contrary, we are required to assume that the allegations made in the complaint are correct. Approaching the matter on this footing, we must determine

that the complaint, if established, will *prima facie* indicate a gross misconduct on the part of the respondent.

[15] Therefore, for the present exercise we must accept that the respondent uttered the expletives contained in the complaint. Owing to our history of oppression and discrimination on the basis of colour, to call a black person a 'kaffir' is the most demeaning and humiliating insult that strips him completely of dignity and basic rights enjoyed by human beings. In our context the k-word connotes a sub-human species which does not deserve to enjoy fundamental rights attaching to ordinary human beings. The hostile confrontation and insult to which the complainant was allegedly subjected, are reminiscent of the false superiority complex of the apartheid era. He was not even afforded a chance to explain why the files were brought late.

[16] What is alleged to have happened here, if established, will not only be incompatible with but will also be unbecoming of holding judicial office. The primary duty of Judges is to uphold the Constitution which so emphatically restores the dignity of Black people. Human dignity, equality and freedom are sacrosanct foundational values underpinning the Constitution. The Bill of Rights which affirms them is binding on the judiciary as it does on the other arms of government. A Judge who uses the k-word against Black people betrays in the most fundamental way the duty imposed upon members of the judiciary by the Constitution. That duty is to always uphold the Constitution and the basic rights it guarantees.

[17] Moreover, the Constitution demands that before judicial officers begin to perform their functions, they must take oath or affirm that they will uphold and protect the Constitution[8]. The allegations in the complaint are in conflict with the

[8] Section 174(8) of the Constitution provides:

duty to uphold and protect our supreme law, the Constitution. Instead, they exhibit a brazen disregard of it and the type of society it forges to build.

[18] The use of the k-word was deprecated in a long line of cases by our courts even under the apartheid order. In *Puluza* Van Rensberg J and Jenneth AJ observed:

> 'When a black man is called a "kaffir" by somebody of another race, as a rule the term is one which is disparaging, derogatory and causes humiliation.'[9]

[19] Ironically, this is a decision of the Division in which the respondent is serving as a Judge. Recently, and through Brooks J, that court expressed itself once more on the use of the word in these terms:

> 'The term "kaffir" historically bandied about with impunity, is a term which today cannot be heard without flinching at the obvious derogatory and abusive connotations associated with the term. It is rightly to be classified as an inescapably racial slur which is disparaging, derogatory and contemptuous of the person of whom it is used of to whom it is directed. Considered objectively, its use can only be as an expression of racism with a clear intention to be hurtful and to promote hatred towards the person of whom it is used or to whom it is directed.'[10]

[20] The denunciation of this racial slur was affirmed by the Constitutional Court in *South African Revenue Service* where the court stated:

> 'It follows that the word kaffir was meant to visit the worst kind of verbal abuse ever, on another person. In colonial and apartheid South Africa it acquired a particular excruciating

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'(8) Before judicial officers begin to perform their functions, they must take an oath or affirm, in accordance with Schedule 2, that they will uphold and protect the Constitution"

[9] *S v Puluza* 1983(2) PH H150(E).

[10] *Thembeni v Swanepoel* [2016] ZAECMHC 37 at para 13.

bit and a deliberately dehumanising or delegitimising affect when employed by a white person against his or her African compatriot.'[11]

[21] The public cannot have confidence that a racist Judge, would administer justice fairly and justly when a person from the race he or she despises is a litigant. It follows that a racist Judge has no place in our judiciary. For all these reasons we are satisfied that the complaint if established, will *prima facie* show that the respondent is guilty of gross misconduct.

[22] Therefore, we are enjoined by section 16 of the Act to recommend to the Commission that a Tribunal be established to investigate the complaint. As mentioned, we have not considered the defence advanced by the respondent. It will be properly considered by the Tribunal if one is appointed.

[23] Accordingly, it is recommended that a Tribunal be appointed to investigate the present complaint.

THE JUDICIAL CONDUCT COMMITTEE

[11] *South African Revenue Service v CCMA and Others* [2016] ZACC 38 at para 4.