



JUDICIAL CONDUCT COMMITTEE

Ref no: JSC/25/03/24

In the matter between:

HENRY OKAH

COMPLAINANT

and

CHIEF JUSTICE ZONDO

RESPONDENTS

Date: 12 February 2025

Decision: The dismissal of the complaint is set aside and the matter is referred to the Acting Chairperson for an inquiry under section 17 of the Act

RULING

THE JUDICIAL CONDUCT COMMITTEE (Jafta, Saldulker and Mabindla-Boqwana JJA)

Introduction

[1] This is an appeal by Mr Henry Okah (the complainant) against a decision of the Acting Chairperson in terms of which a complaint lodged against Chief Justice Zondo (the respondent) was summarily dismissed under section 15(2) of the Judicial Service Commission Act¹. This provision authorises the Chairperson of the Judicial Conduct Committee (Committee) with whom complaints are lodged, to dismiss a complaint that has certain defects². Section 15(5) vests the right of appeal in a complainant who is unhappy with the dismissal of a complaint³. This appeal was lodged in terms of that provision.

[2] The context in which the complaint arose is the following. The complainant was arrested in South Africa for terrorist activities committed in Nigeria by a group called the Movement for the Emancipation of the Niger Delta (MEND). He is a Nigerian national and at the relevant time he was the leader of MEND and lived in South Africa. He was tried and convicted in the High Court. A sentence of 24 years imprisonment was imposed on him and he is currently serving that sentence in this country.

[3] On a number of occasions, he sought to challenge the conviction and sentence. All appeals lodged by him were unsuccessful, including an appeal to the Constitutional Court. Although he regarded himself as a prisoner of war under International Law, he contends that his incarceration is in breach of section 37 of the Constitution and Article 5 of the Third Geneva Convention of 1949. Even though

¹ Judicial Service Commission Act 9 of 1994

² Section 15(2) of the Act provides: "A complaint must be dismissed if it does not fall within the parameters of any grounds set out in section 14(4); does not comply substantially with the provisions of section 14(3); is solely related to the merits of a judgement or order; is frivolous or lacking in substance; or is hypothetical".

³ Section 15(5) of the Act reads: "A complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (1) may, within one month after receiving notice of that decision, appeal to the committee in writing against that decision, specifying the grounds for the appeal".

these instruments apply to persons detained without trial during war and despite the fact that he underwent a trial which resulted in a sentence of imprisonment, he believes that they apply to him.

[4] Based on this belief he instituted numerous applications which he described as habeas corpus applications. These are applications usually instituted for the release of persons who are unlawfully detained. He alleged that these applications were initiated in the Constitutional Court. He also lodged an application that sought rescission of that Court's order in terms of which his appeal was dismissed. However, he contended, that staff in the office of the Registrar of that Court failed to place them before the Court.

[5] He stated that it was only after he had threatened the Registrars' staff with legal action that his applications were placed before the Justices of the Court. But some of the papers he had filed were removed from the relevant files and replaced with fake documents designed to ensure that his applications were dismissed. He stated further that the wrongful conduct by the Registrar's staff was instigated by the respondent.

[6] As mentioned the complaint was summarily dismissed on the ground that it solely related to the merits of the orders issued by the Court.

[7] The complainant was not satisfied with the dismissal and he lodged an appeal. In particular he took issue with the reason on which the dismissal was based. He pointed out that the wrongful conduct outlined above occurred at the behest of the respondent. In his own words he framed one of the grounds of appeal in these terms:

"I asserted in my complaint that in sabotaging my applications, staff members of the office of the Registrar had acted on the instruction of the Chief Justice, Justice Raymond Zondo, who I am made to believe has been in regular contact with the Government of Nigeria and others in South Africa and elsewhere who have an interest in perpetuating my captivity in South Africa".

[8] Notably the complaint is not about the respondent's involvement in issuing the orders in question, nor is it about whether on the papers placed before the Justices of the Court those orders were not justified. Instead the complaint is about conduct which occurred before the applications were considered and which, according to the complainant, was designed to frustrate them. In disputing that the complaint related solely to the merits of the orders, the complainant stated in the affidavit filed on appeal:

"With respect, where I allege that authentic documents which I filed in the Court were not placed before its Justices and such allegations are not shown to be unfounded, my complaint cannot reasonably be said to be in relation to the merits of any judgement or order".

[9] On appeal section 18(3) of the Act⁴ enjoins this Committee to consider the reasons for the dismissal, the grounds of appeal and representations made by the complainant and the respondent, if any. Despite the invitation from the Committee, the respondent made no representations. As a result, the appeal must be evaluated with reference to the reason furnished for the dismissal, the complaint, the grounds of the appeal and the representations made by the complainant.

⁴ Section 18(3) of the Act provides: "At the meeting referred to in subsection (1), the Committee must consider the reason for the dismissal against which the appeal is brought, as contemplated in section 15(4)(a) or 17(6)(a); or the findings or remedial steps, or the finding and the remedial steps, as the case may be, against which the appeal is brought, as contemplated in section 17(6)(b); the grounds for the appeal, as contemplated in section 15(5) or 17(7)(a) or (b), as the case may be; any representations submitted in terms of subsection (1)(b); and such further written or oral argument, if any, as may be requested by the committee".

[10] Relevant to this exercise are the allegations that officials in the office of the Registrar tampered with the complainant's cases by replacing some of the papers with fake ones and that in doing so these officials were carrying out the respondent's instruction. While it is hard to believe that the respondent was involved in such conduct, this scepticism is an irrelevant consideration at this point. This Committee is not called upon to determine the merits or demerits of those allegations. Rather it is required to establish whether the allegations are solely related to the merits of the relevant orders. Put differently the Committee is required to determine whether the complaint was exclusively directed at the merits of the orders.

[11] A careful examination of the complaint indicates that it is about an alleged irregular tampering with the complainant's cases before they were presented to the Justices of the Court. The complaint was not directed at the decision – making process or the decision reached by the Justices. Evidently the complainant accepted that, on the papers placed before them, the dismissal of his applications was justified. But he complained that his applications were tampered with so as to ensure that they failed. This analysis reveals that the complaint is not solely related to the merits of the orders.

[12] What remains for consideration is the decision to be made in this appeal. Section 18(4) of the Act⁵ guides us in this regard. In an appeal against a dismissal

⁵ Section 18(4) of the Act provides:

“After consideration of an appeal in terms of subsection (3), the Committee must in the case of an appeal against a dismissal of a complaint as contemplated in section 15(4)(a) confirm the dismissal; set aside the dismissal and refer the complaint to the Chairperson for an inquiry in terms of section 17; or set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19; in the case of an appeal against a dismissal of a complaint as contemplated in section 17(7)(a) confirm the dismissal; set aside the dismissal, and find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in section 17(8) on the respondent; or set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19; or in the case of an appeal against a finding or remedial steps, or a finding and remedial steps as contemplated in section 17(7)(b) set aside the decision concerned; or confirm the decision or set aside the decision concerned and substitute it

effected in terms of section 15, this provision stipulates that having considered the relevant information, the Committee must either confirm or set aside the dismissal. For reasons set out above, the present dismissal cannot be confirmed. It must be set aside and the complaint must be remitted to the Acting Chairperson for an inquiry in terms of section 17 of the Act. It must be emphasised that, the referral has nothing to do with whether or not there is merit in the complaint, but with the fact that the matter ought to have been referred to a section 17 enquiry, given the fact that the complaint was not solely related to the merits of the judgment or order, which can be summarily dismissed in terms of section 15 of the Act.

[13] In the circumstances the dismissal of the complaint is set aside and the matter is referred to the Acting Chairperson for an inquiry under section 17 of the Act.



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with an appropriate decision, with or without any amendment of the remedial steps imposed, if applicable; or set aside the decision and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19”.