



JUDICIAL CONDUCT COMMITTEE

In the complaint of:

#Unite Behind

Complainant

against

Judge T A N Makhubele

Respondent

RULING

Mogoeng CJ (Zondi JA and Dambuza JA concurring)

[1] These are the Judicial Conduct Committee (JCC) proceedings in terms of section 16(4) of the Judicial Service Commission Act, 9 of 1994 (JSC Act). Their purpose is to determine whether, based on the information before us, allegations levelled against Judge T A N Makhubele ought to be referred to the Judicial Conduct Tribunal (Tribunal) for investigation and determination.

[2] In its complaint, #Unite Behind alleges that during 2018 Judge Makhubele improperly held a dual status: as a Judge of the High Court of South Africa and Chairperson of the Interim Board of Control of the Passenger Rail Agency of South Africa (PRASA). It also contends that during that period, and acting in her capacity as

Chairperson of PRASA she engaged in certain conduct that constitutes gross misconduct. In her response Judge Makhubele took a point that the JCC does not have jurisdiction to entertain this matter because what she allegedly did wrong would have taken place before she became a Judge. Although she was appointed a High Court Judge with effect from 1 January 2018, she contends that she was not a Judge because she had not yet taken the oath of office. That said, she ultimately conceded that this body does have jurisdiction to look into allegations levelled against her.

[3] The following factors stand out in determining whether a finding of gross misconduct could be made and whether this matter should therefore be referred to a Tribunal or a section 17(2) inquiry that she prefers:

3.1 Judge Makhubele was appointed a High Court Judge with effect from 1 January 2018. The question is whether as a Judge she ought to have continued to serve as a Chairperson of the Interim Board of Control of PRASA before the revocation of her appointment.

3.2 If it were to be established that of all the cases that PRASA was involved in she paid special attention only to those of Siyaya; that she marginalised the PRASA legal unit and terminated or caused to be terminated the mandate of PRASA's attorneys and personally appointed another firm of attorneys in their stead, to represent PRASA; that she negotiated with Siyaya's attorneys and entered into a confidential settlement agreement that is manifestly and materially prejudicial to the interests of PRASA, relying on non-existent "major concessions" on its liability to Siyaya allegedly made by PRASA employees at the Insolvency Inquiry; and frustrated PRASA attempts to resist the enforcement of the settlement.

[4] Having considered the complaint and representations by #Unite Behind and the response by Judge Makhubele, we are satisfied that the allegations against her, are very serious. If they were to be proven, it is likely that a finding of gross misconduct would be made.

[5] For these reasons, in terms of section 16(4)(b) of the JSC Act, the Committee hereby recommends to the Judicial Service Commission that the complaint be investigated by a Tribunal.

Mogoeng CJ
Chairperson

Zondi JA

Dambuza JA