

Judge faces possible impeachment for tardy judgments

By [Tania Broughton](#)

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Judge Nomonde Mngqibisa-Thusi did not deliver about 21 judgments timeously.

- Judge Nomonde Mngqibisa-Thusi will face a Judicial Conduct Tribunal hearing from Friday for not timeously handing down judgments.
- She is the first Judge in South Africa to face possible impeachment for tardy rulings.
- The tribunal, chaired by retired Constitutional Court Judge Chris Jafta, will examine her failure to deliver 21 judgments within prescribed timelines.
- Judge Mngqibisa-Thusi previously told a Judicial Conduct Committee, that she had been ill, anxious, depressed and overwhelmed by the workload.

For the first time a judge is to face disciplinary proceedings and possible impeachment in South Africa for not handing down judgments on time.

On Friday 1 December Judge Nomonde Mngqibisa-Thusi, first appointed to the bench in Johannesburg and Pretoria in 2009, will face a Judicial Conduct Tribunal hearing by retired Constitutional Court Judge Chris Jafta.

The focus will be on the fact that she did not deliver about 21 judgments timeously. If she is found guilty of “gross incompetence” or “gross incapacity” she could face impeachment.

The hearing has been set down from 1 to 7 December.

The complaint against her was made by Gauteng Judge President Dunstan Mlambo.

Last year, a Judicial Conduct Committee (JCC) consisting of Justice Dumisani Zondi, Judge Nambitha Dambuza, Judge Phineas Mojapelo and Judge Margaret Victor considered the complaint. Although the panel was split, Judge Zondi used his casting vote, meaning the majority recommended to the Judicial Services Commission (JSC) that the complaints be referred to a Tribunal for investigation.

Judge Mngqibisa-Thusi was then suspended.

The written ruling of the JCC, which forms the basis of her suspension and the disciplinary proceedings against her, sets out five matters in which she failed to hand down judgments within 12 months, six matters in which she took longer than six

months and another 10 which, while they had been delivered had been “unduly delayed”.

The JCC noted that at the time of the hearing of the complaint (June 2021), six more delayed judgments with an average time of nine months had been brought to the attention of the Judge President.

Judge Mngqibisa-Thusi told the committee that she had been suffering from anxiety and depression caused by a close relative’s addiction issues.

She also spoke of the “age-old problem that required her to undergo some form of African initiation”. Her attempts at working through the backlog were hampered by a fall when she fractured her wrist and elbow.

She said that at times she felt “overwhelmed” by what she was going through “aggravated by the heavy court load in the Gauteng division”.



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The JCC (by majority) said it appeared that the complaint, if established, would indicate incapacity or gross incompetence and this needed to be investigated by a tribunal.

The minority, however, said the judge had relied on African spirituality to deal with her problems, arguing that “the judiciary should get out of the ivory tower” and embrace African culture.

They said the well-being of judges should be recognised and addressed at an institutional level, not on an ad hoc basis.

There was no indication that her working environment had been conducive for productivity and an open-minded investigation into the mental health of judges was more appropriate than a tribunal process that determined impeachable conduct.

Mlambo’s complaint against Mngqibisa-Thusi and another similar complaint against Judge Tshifhiwa Maumela, which was also referred to a tribunal by the JCC, predated a letter to all Judge President’s written by Chief Justice Raymond Zondo in June this year regarding the unacceptable ongoing situation of judges reserving judgments for, in some cases, years.

He instructed every Judge President to lodge misconduct complaints with the JCC against every errant judge in this regard by the end of that month.

He said Article 10 of the Code of Judicial Conduct dealt with diligence on the part of judges. It stated a judge must deliver all reserved judgments before the end of the term in which the hearing of the matter was completed. If it is heard towards the end of the term, it must be delivered during the next court term.

Where a reserved judgment relates to a complex matter, and if the head of court has consented, it may be handed down during the next court term.

Failure to do so is *prima facie* (on the face of it) misconduct in terms of the code.

He said the JCC would consider the complaints and where it recommended that a Tribunal should be established, “I shall do so without any delay” .

“This issue gives the judiciary a bad name and litigants are denied justice,” he said.

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