



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

DRAFT REPORT

Report of the Portfolio Committee on Justice and Constitutional Development on the suspension of Magistrate L Myles, dated 27 March 2013:

The Portfolio Committee on Justice and Constitutional Development, having considered the report on the suspension of Magistrate L Myles, an additional magistrate at Upington, reports as follows:

1. The Ethics Committee, which is a sub-committee of the Magistrates Commission, ordered that there be an investigation into Ms Myles's removal from office on account of continued ill-health.
2. Ms Myles was informed of the Ethics Committee's decision and submitted the requested medical information to the Commission. The information supplied by Ms Myles was, in turn, submitted for expert opinion to the service provider appointed to evaluate and advise on ill-health retirement.
3. The relevant service-provider reported that, since April 2009, Ms Myles's health has been compromised. It found that her working environment contributed significantly to her condition. Still, she was found fit enough to continue with her work. However, because of her medical history, it recommended that where possible she be accommodated in the workplace by reducing her workload and allocating less stressful cases to her. The employer should be more empathic and supportive towards her. Also, she should continue with regular medical treatment.
4. On 1 December 2011, having considered the medical reports, together with other relevant information including her attendance record since November 2004, the Ethics Committee formed the opinion that Ms Myles did not have the capacity to carry out her duties of office in an efficient manner due to continued ill-health. Ms Myles was informed of the Committee's opinion and that she could submit written comments on it to the Chairperson of the Commission.
5. On 9 January 2012, the Commission received Ms Myles's written comments on the opinion, which argued that her sick leave was not unreasonable as it was covered by medical certificates for every period. She submitted that she had never asked to be accommodated with a reduced workload; her work performance showed that she was capable of producing longer court hours; and that she was able to dispose of more matters than her colleagues. In her view, she was capable of carrying a normal workload. She questioned her treatment by the Commission and submitted that the enquiry into her capacity to carry out her duties of office in an efficient manner due to continued ill-health was both substantively and procedurally unfair.

6. On 16 February 2012, the Ethics Committee considered her comments but disagreed as it felt that the review of Ms Myles's capacity to carry out her duties of office in an efficient manner was fair. Ms Myles was still on sick leave and it was unclear when she would return to work. The Ethics Committee, therefore, resolved to recommend to the Commission that Ms Myles be removed from office due to continued ill-health. It, however, noted that the expert opinion suggested that she be accommodated, where possible. The question was whether it was possible to accommodate her as recommended given her sick leave history and the extent to which she had already been accommodated in terms of sick and vacation leave. The relevant Cluster Head was approached, who confirmed that "the judicial officers at Upington are struggling to cope under the normal workload. During the last judicial staff establishment investigation it was recommended that one further post of magistrate is required at Upington due to the increased workload. The post has not been created yet and the Magistrate at Kenhardt is assisting at Upington three days per week. The heavy workload at Upington court requires dedicated, versatile and hardworking magistrates who are able to assist across all divisions on a daily basis. There is no less stressful court and/or environment at Upington Court".
7. The Commission, therefore, resolved to support the Ethics Committee's recommendation that Ms Myles be removed from office on account of her continued ill-health and advised the Minister accordingly.
8. On 21 August 2012, the Committee on Justice and Constitutional Development (the Committee) considered whether Ms Myles should be removed from office on account of her continued ill-health. The Committee had certain concerns and, therefore, requested that a legal opinion be obtained from the State Law Advisors on the following:
 - o Whether the Magistrates Commission had correctly applied the administrative procedure provided for in Regulation 29 of the Regulations for Judicial Officers in the Lower Courts, 1993;
 - o Whether the Commission's opinion that Ms Myles did not have the capacity to carry out her duties of office in an efficient manner due to continued ill health is justified; and
 - o Whether it was proper for the Commission to recommend to the Minister that Ms Myles be removed from office on account of continued ill-health, despite the medical opinion to the contrary, but in view of continuous absenteeism and with due regard to the background and peculiar circumstances of the matter?
9. The legal opinion obtained from the State Law Advisors, dated 19 November 2012 concluded that:
 - o The Commission had correctly applied the administrative procedure in terms of Regulation 29.
 - o It was logical that the recommendation of the medical experts that Ms Myles continue with her work was subject to it being possible to reduce her workload and to assign less stressful cases to her. If this was not possible, it follows that she was unable to continue the work and was not fit to do her work as a magistrate. Therefore, the Commission's opinion

that she was incapable of carrying out her duties in an efficient manner due to continued ill health was justified.

- Ms Myles's continuous absenteeism was the direct result of her continued ill-health. For this reason, the issues concerning Ms Myles's continued absenteeism could not be disregarded nor could her absenteeism be viewed in isolation from the issues that dealt with her ill-health when determining whether she was fit to continue work or be removed from office.

10. On 27 March 2013, having considered the legal opinion, the Committee resolved to recommend to the National Assembly that it confirms Ms Myles's suspension from office on the grounds of continued ill-health.

Recommendation

Having considered the report on the suspension of Magistrate L Myles, the Committee recommends that the National Assembly confirms the suspension.

Report to be considered