



**MAGISTRATES  
COMMISSION**

**LANDDROSTE-  
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001

(012) 325 3951

FAX/FAKS (012) 326 0094

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The Honourable Mr J T Radebe, MP  
Minister of Justice and  
Constitutional Development  
Private Bag X276  
**PRETORIA**  
0001  
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Reference : 6/5/5/2: - 43/2013  
Verwysing

Enquiries : Mr. J Meijer  
Navrae

Date : 13 May 2013  
Datum

Dear Sir

**PROVISIONAL SUSPENSION FROM OFFICE: Ms J F VAN SCHALKWYK, CHIEF  
MAGISTRATE AT KEMPTON PARK**

1. The purpose of this letter is to appraise you of the circumstances which moved the Executive Committee of the Magistrates Commission (hereinafter the Commission) to resolve to recommend that Ms Van Schalkwyk be provisionally suspended from office pending the outcome of an investigation into her fitness to hold office and to enable you to table a report in Parliament in terms of section 13(3) (b) of the Magistrates Act, 1993 (Act 90 of 1993).

2. Ms Van Schalkwyk is the Chief Magistrate and the Judicial Head at Kempton Park. She was appointed to this position in 2004.

3. Although not limited to, the allegations presently against her are as follows:

3.1. The Acting Chief Magistrate, Johannesburg (The Chief Magistrate) and acting Cluster Head, Gauteng, lodged a formal complaint with the Magistrates Commission as regards

her refusal to execute a lawful order. The tone of her written correspondence dated 20 March 2013 per e-mail to the Chief Magistrate in this regard, is derogatory, disrespectful and insulting, to both the Chief Magistrate and the Chief Justice. She furthermore distributed the said correspondence to all and sundry in the Lower Courts Judiciary.

3.2. That she severely abuses her power as judicial head of the office, especially with reference to the magistrates under her control by utilizing them *inter alia* for non-official purposes, like work on behalf of JOASA, a professional society for magistrates; to complete application forms for loans with micro lenders and chauffeuring her with their private motor vehicles to and from the office to her residence, the airport and other places.

3.3. That she requires magistrates under her control to attend to her personal matters during official hours, including court hours, to the detriment of court and case flow management. She has *inter alia* instructed a magistrate on contract to do her hair on several occasions.

3.4. That she gambled during official hours and *inter alia* requested one of her magistrates, to take her to Emperor's Palace one morning at approximately 10:00.

3.5. That she frequently borrows money from subordinates, and that she does not always return the borrowed money.

3.6. That she borrowed and received on regular basis money from attorney Moloi who deals with her court house in an official legal capacity.

3.7. That during November 2012 she obtained a large amount of money shortly before her departure to Washington from the said Mr Moloi, who also funded her travel and accommodation costs.

3.8. That she took money from the local sheriff, and abused her position to assist him with an application to extend his area of jurisdiction which ultimately would secure

financial gain for the said sheriff.

3.9. That during 2010/2011 she presided over a criminal matter where the accused was represented by the said Mr Moloi from which she obtained money.

3.10. That during January/February 2013 she defeated the ends of justice and made misrepresentations to the Judge President, Gauteng during her stint as an Acting Judge in that she handed down judgements which were not written by herself, but by magistrates under her control, and by occasion by an attorney. These judgments were furthermore prepared prior to hearing arguments of counsel.

3.11. That she took magistrates out of court during official court hours to attend to her personal matters well knowing that they had partly heard matters. These resulted in the postponement of the matters whereby she acted to the detriment of the discipline and efficiency of the administration of justice.

3.12. That she appeared as an applicant in a debt review at Kempton Park Magistrate's Court in Case number 40552/2012 and requested an acting magistrate from her office to preside in the matter whereas in the spirit of transparency, objectivity and fairness a magistrate from another office should have presided over the matter.

3.13. That her tone of voice used towards the Regional Court President, Gauteng was not benefitting a judicial officer. Similarly, she displayed unprofessional conduct at a recent meeting of the Lower Courts Remuneration Committee held at the offices of the Magistrates Commission in Pretoria.

3.14. That her conduct and tone of her written correspondence to the Chief Magistrate, that was sent to all and sundry in the Lower Courts Judiciary, brought the Chief Magistrates Forum into disrepute.

3.15. That she is implicated in respect of irregularities at the civil section of Kempton Park Magistrate's Office, specifically concerning the issuing of applications in terms of section 58 of the Magistrates' Courts Act.

4. In order to advise the Minister on her provisional suspension from office pending the outcome of the investigation, Ms Van Schalkwyk was afforded the opportunity to comment on the desirability of such provisional suspension. A copy of a letter dated 23 April 2013, addressed to Ms Van Schalkwyk is attached. **(Annexure A)**

5. Ms Van Schalkwyk responded in writing on 02 May 2013, a copy of which is attached for your convenience. **(Annexure B)**

6. At its meeting held on 11 May 2013, the Commission, having considered Ms Van Schalkwyk's response dated 02 May 2013, resolved to recommend that Ms Van Schalkwyk be provisionally suspended from office in terms of section 13(3)(a) of the Magistrates Act, 1993, pending the investigation into her fitness to hold office. The Commission is of the view that the allegations against Ms Van Schalkwyk are of such a serious nature as to make it inappropriate for her to perform the functions of a magistrate while the allegations are being investigated.

7. The following further considerations weighed with the Commission:

7.1. The severity and alleged continuation of the abuse of her power as judicial head of the office, especially with reference to the magistrates under her control.

7.2. The fact that the allegations are based on several sworn statements.

7.3. Allegations that, despite a written request not to communicate with any members of the administrative support staff, prosecuting authority or any magistrate attached to her court house pertaining to the allegations against her and not to interfere directly or indirectly with the pending investigation instituted against her, administrative staff, which initially indicated to furnish the Commission with statements in respect of complaints against Ms Van Schalkwyk, are not prepared to do so at this stage.

7.4. That although Ms Van Schalkwyk denies ever having presided over a criminal matter in which Mr Moloï was the legal representative for the accused during 2010/2011, the record of proceedings in this particular matter indicates the contrary.

7.5. The allegations against Ms Van Schalkwyk are of a serious nature as to make it inappropriate for her to perform her functions as a magistrate, particular as judicial head of office while the allegations are being investigated. Three senior judicial officers have already been appointed to conduct an investigation into all allegations against Ms Van Schalkwyk. Fear for intimidation and / or victimization of possible witnesses is not excluded when she remains at the office whilst the investigation is pending.

8. In the light of the foregoing, it is recommended that you provisionally suspend Ms Van Schalkwyk, Chief Magistrate at Kempton Park from office with immediate effect, pending the outcome of an investigation into her fitness to hold the office of Magistrate.

9. It is further recommended that you table a report in Parliament for consideration in terms of section 13(3)(b) of the Act. A draft report is attached for your convenience.

**(Annexure C)**

Yours faithfully

**M F LEGODI  
CHAIRPERSON OF THE MAGISTRATE COMMISSION**