



## REPORT

# LIFTMENT OF PROVISIONAL SUSPENSION FROM OFFICE OF A MAGISTRATE: MR FKS NTULI, ADDITIONAL MAGISTRATE, UITENHAGE

---

### 1. PURPOSE

The purpose of this report is to inform Parliament of a decision taken by the Minister of Justice and Constitutional Development to uplift the provisional suspension of a Magistrate, Mr F K S Ntuli from Uitenhage, with immediate effect.

### 2. BACKGROUND

- 2.1 Mr Ntuli an Additional Magistrate at Uitenhage was arrested on Friday 17 August 2012 on a charge of drunken driving (c/s 65(1)(a) of Act no 93 of 1996). He was issued with a written warning to appear in Court at Uitenhage on 13 February 2013. He was allegedly found by a Police Officer in town around 07h15, driving alone in a motor vehicle, which was moving from one lane to another, an indication that the driver was not in proper control of the motor vehicle.
- 2.2 Mr Ntuli was previously convicted of the same offence on 20 March 2008. He was subsequently charged with misconduct, found guilty and on 8 July 2009 strongly reprimanded by the Presiding Officer to refrain from any similar misconduct in future.

2.3 It is on this basis that I, on the advice of the Commission, provisionally suspended Mr Ntuli from office.

### **3. DISCUSSION**

3.1 The Commission had commenced with the misconduct inquiry against Mr Ntuli on 20 May 2013 which inquiry was concluded on 17 July 2013. The Presiding Officer found Mr Ntuli not guilty of the misconduct charge levelled against him.

3.2 The Commission is of the view that it cannot justify the continuation of Mr Ntuli's provisional suspension from office and therefore recommended that I lift Mr Ntuli's provisional suspension with immediate effect.

### **4. CONCLUSION**

4.1 Since the basis on which Mr Ntuli was provisionally suspended fell away, there was no reason to uphold his provisional suspension. Accordingly, his provisional suspension was lifted on receipt of the Commission's recommendation in this regard.

Given under my hand at ..... on this ..... day of .....2013.

.....

**MR J T RADEBE, MP**

**MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT**



**PROGRESS REPORT DATED 01 OCTOBER 2013 TO PARLIAMENT: PROVISIONAL  
SUSPENSION FROM OFFICE, REGIONAL MAGISTRATE P S HOLE, KIMBERLEY**

**1. INTRODUCTION**

The Magistrates Commission must in terms of section 13(3)(f) of the Magistrates Act, No. 90 of 1993 (Act) cause a report on the progress made in respect of inquiries against magistrates who have been provisionally suspended from office to be submitted to Parliament every three months.

Section 13(3)(e) of the Act provides that the provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegations concerned to be served on the magistrate.

**2. DISCUSSION**

2.1 Mr Hole is charged with ten charges of misconduct. It is alleged that:

-he caused matters which were no longer on his court roll to be placed before him and that he thereafter made orders to have Mr Nqadala, the Regional Court

## 2.

President, Kimberley, to be subpoenaed and acted in a manner that might be construed as abuse of power.

-he conducted himself in a manner detrimental to the discipline or the efficiency of the administration of justice in that he conduct displayed a lack of dignity, courtesy and self-control in that he shouted at regional magistrate Smith to shut up, that he refused to answer questions relating to his court roll and pointed fingers at other regional magistrates and the Regional Court President.

-he failed to comply with a lawful order issued on 15 October 2008 by the Regional Court President, Kimberley, appointed for the Northern Cape Regional Division, that a minimum of four trial ready cases be placed on the roll per day while he placed less than four cases on the roll.

-he failed to comply with a lawful order issued on 15 October 2008 by the Regional Court President, Kimberley, appointed for the Northern Cape Regional Division, in that he did not immediately report to the Regional Court President that his court did not sit the required three hours per day.

-he acted to the detriment of the discipline or the efficiency of the administration of justice by publicly commenting, via the internal e-mail system, to regional magistrates of the Northern Cape Regional Division regarding matters pertaining to his profession by stating that he is happy to see that other regional magistrates busy themselves with what should be the core of the magistracy's business rather than hatching evil plans of chasing bogus claims which conduct is detrimental to the image of the office of magistrate.

-he made a false or incorrect statement, which supported his request to be transferred, knowing it to be false or incorrect indicating that Mr. Nqadala, Regional Court President, Kimberley gave unlawful instructions to persecute Ms Thenga, by invoking section 342A of the Criminal Procedure Act, No. 51 of 1977 enquiries with a view to obtain a privilege or advantage in relation to his official position or to the prejudice of the administration of justice.

### 3.

-he discussed, remarked or commented on matters pertaining to his profession with the media and thus acted in a manner which is detrimental to the image of the office of magistrate and does not uphold or promote the good name, dignity and esteem of the office of magistrate and the administration of justice.

-he presided in a criminal case and made intemperate remarks to the witness, to wit Mr Nqadala, his Regional Court President causing Mr Nqadala to be ridiculed in public, by using the court as a platform to do so.

2.2 Mr Hole was provisionally suspended on 29 September 2011. The charge sheet containing the allegations against Mr Hole was served on him on 28 November 2011. The misconduct inquiry/hearing commenced on 15 April 2012 but was postponed on Mr Hole's request to enable him to obtain legal representation and to afford him the opportunity to study the documents which were presented to him on his request. A pre-trial conference took place on 5 July 2012 between Regional Magistrate J Lekhulene, the person appointed to lead the evidence in the misconduct inquiry, Mr Hole and his attorney, Mr Malusi. The inquiry was postponed to 15 to 19 October 2012 for hearing.

2.3 Mr Hole requested the Department of Justice and Constitutional Development for assistance to foot his legal bill. He only received a response on 16 October 2012. His application was ~~not~~ turned down without submitting him any reasons. He approached the Presiding Officer with a request for a postponement and advised that he intended to approach the High Court in this regards and that he intended to raise certain points *in limine* once he has briefed counsel. The matter was postponed to 15 and 16 April 2013 for this purpose. Mr Hole was present on 15 April 2013 and advised that his counsel was acting in the High Court. He requested a further postponement to be allowed to get his house in order. He was presented with a bundle of documents in respect of further particulars which he requested to discuss with his counsel. The matter was postponed to 29 and 30 July 2013.

#### 4.

2.4 Mr Hole requested another postponed on 29 July 2013. His application centred on the fact that at the last appearance he was supplied with incorrect documentation and that the subsequent disclosure of the documentation had not allowed him and his legal team to adequately prepare for the hearing. He also raised other factors. The Magistrate leading the evidence on behalf of the Commission argued that Mr Hole had adequate time to prepare for the hearing and that he and his legal team had frustrated the efforts to engage earlier for pre-trial purposes. The Presiding Officer, having heard arguments of both parties found that the reasons for a postponement advanced by Mr Hole, favoured his application and that it would be in the interest of justice to postpone the matter. The inquiry was on 30 July 2013 postponed with certain proviso's to 2 – 6 December 2013 for hearing.

2.5 The Minister provisionally suspended Mr Hole from office which suspension was confirmed by Parliament on 24 November 2011. Mr Hole's provisional suspension was however lifted only to enable him to finalize his part heard cases. He is currently attending to these matters.



## **PROGRESS REPORT DATED 01 OCTOBER 2012 TO PARLIAMENT: PROVISIONAL SUSPENSION FROM OFFICE, MAGISTRATE M T MASINGA, UMLAZI**

---

### **1. INTRODUCTION**

The Magistrates Commission must in terms of section 13(3)(f) of the Magistrates Act, No. 90 of 1993 (Act) cause a report on the progress made in respect of inquiries against magistrates who have been provisionally suspended from office to be submitted to Parliament every three months.

Section 13(3)(e) of the Act provides that the provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegations concerned to be served on the magistrate.

### **2. DISCUSSION**

2.1 Mr Masinga on 19 March 2009 appeared in the Durban Magistrate's Court on a charge of contravening section 17(a), read with section 7 of the Domestic Violence Act, No. 116 of 1998. It is alleged that he assaulted his wife with a blunt axe, that he kicked her, hit her with open hands and threatened to kill her. He also assaulted his

## 2.

daughters.

- 2.2 The criminal proceedings were initially remanded to 14 April 2009. Mr Masinga was granted bail of an amount of R1 000.00. The criminal case was thereafter transferred to the Regional Court, Durban, where Mr Masinga appeared on additional charges of attempted murder and two counts of assault.
- 2.3 The criminal case was postponed on various occasions at the request of the defence. An application by Mr Masinga for the recusal of the presiding officer was later abandoned. The State closed its case on 24 February 2011. The Regional Court, Durban convicted Mr Masinga on a charge of attempted murder on 23 May 2011. On 16 January 2012 he was sentenced to ten (10) years imprisonment. He has appealed against his conviction and sentence. The appeal is still pending.
- 2.4 On 08 February 2010 the Commission charged Mr Masinga with three (3) counts of misconduct. A notice in terms of section 13(3) (e) containing the allegations against him, was served on Mr Masinga. The National Education Health and Allied Workers Union (NEHAWU) informed the Commission in a letter received on 02 March 2010 that it acts on behalf of Mr Masinga. NEHAWU requested the Commission to communicate directly with them regarding the disciplinary matter.
- 2.5 The misconduct inquiry was set down to commence on 26 August 2010. NEHAWU, acting on behalf of Mr Masinga, requested a postponement to appoint a legal representative. They were further instructed to argue that the disciplinary hearing



### 3.

should not be proceeded with until the finalization of the criminal case against Mr Masinga. The hearing /inquiry was postponed to 21 October 2010 on which date the representative of NEHAWU was absent. The Presiding Officer postponed the proceedings to 4 February 2011 to inter alia enable Mr Masinga to obtain finality in respect of legal representation.

- 2.6 Neither Mr Masinga nor the representative of NEHAWU presented themselves at the inquiry on 4 February 2011. The Presiding Officer in terms of regulation 26(14) of the Regulations for Judicial Officers in Lower Courts, 1994 postponed the inquiry in Mr Masinga's absence to 28 March 2011 and requested the Commission to endeavour to serve a notice of hearing on Mr Masinga afresh. Such a notice was served on Mr Masinga on 24 February 2011.
- 2.7 The inquiry proceeded on 28 March 2011 on which date he requested another remand to enable NEHAWU to instruct an attorney. On 24 May 2011, Mr Masinga was represented by an attorney. Various points *in limine* were raised to which the presiding officer wanted to be addressed on 22 August 2011. He made a ruling at the points *in limine* and postponed the matter for plea and the leading of evidence to 31 October 2011 and 01 November 2011.
- 2.8 On 31 October 2011 Mr Masinga indicated that he considers resigning. The inquiry was kept in abeyance until the next day. Witnesses for the Commission were all present. On 1 November 2011 Mr Masinga opted not to tender his resignation. His attorney of record withdrew. Mr Masinga requested a postponement to again approach Cosatu/NEHAWU for representation.

#### 4.

- 2.9 On 5 December 2011 Mr Masinga placed on record that his attempts to approach Cosatu were not successful. He again requested a postponement. The Presiding Officer granted him the postponement, provided that the inquiry would proceed for trial either with or without any representation.
- 2.10 On 18 January 2012 Mr Masinga placed on record that he would conduct his own defence. He however reserved his right to be represented at any time of the proceedings. He requested a postponement since, so he alleged, he had no access to the documents in the possession of his erstwhile attorney and was not able to prepare himself. Copies of relevant documents he requested were given to him shortly thereafter.
- 2.11 On 9 February 2012, the matter did not proceed. The Commission's witnesses were all present. Mr Masinga placed on record that he had lost his spectacles in a taxi the evening before and that he would not be in a position to take notes and cross-examine the witnesses. The Presiding Officer again granted him a postponement as requested. The matter was postponed to 5 March 2012.
- 2.12 On 5 March 2012 the inquiry commenced late. Mr Masinga did not present himself. He instead sent a relative to submit a medical certificate indicating that he was ill. Witnesses for the Commission were again present. The matter did not proceed and was postponed to 23 March 2012. Mr Masinga was notified about this postponement per SMS. Attempts to serve a notice at his house were not successful.
- 2.13 Mr Masinga was again absent on 23 March 2012. He, just prior to the

5.

commencement of the inquiry, sent his fiancé to present a medical certificate. According to the certificate, issued by the same doctor, he was unfit to perform work from 22-24 March 2012. The witnesses were again present. At the request of the representatives for the Commission, the Presiding Officer ordered to continue with the inquiry in Mr Masinga's absence in terms of regulation 26(14) of the Regulations for Judicial Officers in Lower Courts, 1994. The evidence of three (3) witnesses was lead in his absence. Mr Masinga on 20 April 2012 informed the inquiry that he instructed an attorney to represent him and requested a postponement since the date did not suit his attorney.

2.14 Mr Masinga's attorney came on record on 26 June 2012 and advised the inquiry that he had instructions to request the Presiding Officer to recuse himself from the proceedings. This application was turned down where after various issues were again raised in limine. Since these issues were already dealt with earlier on in the inquiry, the Presiding Officer ruled that the leading of evidence be proceeded with. Mr Masinga's attorney was however not prepared to cross-examine the witnesses for the Commission and a further postponement was granted.

2.15 By agreement between the parties, an inspection in loco was conducted on 23 July 2012. Without divulging any reasons, safe to indicate that the issue is personal, Mr Masinga's attorney withdrew as attorney of record the following day.

2.16 Mr Masinga indicated once more that he will conduct his own defence. He on 1 August 2012 commenced with cross-examining the witnesses for the Commission who had already testified in his absence at length. The inquiry was postponed to 13, 14 and 17 August 2012 as well as 02 October 2012 for Mr Masinga to conclude his

6.

cross-examination of the first witness. Mr Masinga continued his cross-examination of the other witnesses, who testified on behalf of the Commission in his absence, on 8 and 9 November 2012, 10 and 11 December 2012, 1 February 2013 and 18 March 2013. The Commission on the latter day led the evidence of a further witness. Mr Masinga commenced cross-examining this witness the following day and continued to do so on 23 and 24 May 2013. On 21 June 2013 he was afforded the opportunity to cross-examine a further witness who testified in his absence. The Commission closed its case on 16 August 2013 where after Mr Masinga filed an application similar to an application filed in terms of section 174 of the Criminal Procedure Act or absolution from the instance in civil matters. Having considered written and oral arguments presented by both parties, the Presiding Officer on 12 September 2013 dismissed his application.

- 2.17 Mr Masinga placed his version of events on record and indicated that he intends to call witnesses to in support thereof. The matter has been postponed to 8 October 2013 for Mr Masinga to be subjected to cross-examination.
- 2.18 Mr Masinga does not receive any remuneration. He is provisionally suspended from office.



## **PROGRESS REPORT DATED 01 OCTOBER 2013 TO PARLIAMENT: PROVISIONAL SUSPENSION FROM OFFICE, MAGISTRATE I W O M MORAKE, LICHTENBURG**

---

### **1. INTRODUCTION**

The Magistrates Commission must in terms of section 13(3)(f) of the Magistrates Act, No. 90 of 1993 (Act) cause a report on the progress made in respect of inquiries against magistrates who have been provisionally suspended from office to be submitted to Parliament every three months.

Section 13(3)(e) of the Act provides that the provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegations concerned to be served on the magistrate.

### **2. DISCUSSION**

2.1 The Minister, on the advice of the Commission, provisionally suspended Mr Morake from office with effect from 4 November 2010 which suspension was confirmed by both Houses of Parliament on 18 and 24 November 2010 respectively.

2.2 Mr Morake is the Magistrate and Judicial Head at Lichtenburg. Several complaints were lodged with the Magistrates Commission against Mr Morake. The allegations were as follows:

- Attorneys Ranamane Phungo Incorporated alleged that Mr Morake had personally called their client into his office and instructed her to vacate the

## 2.

property she was occupying. This instruction was given to her although there was no eviction application before the court. No eviction order had been made by the court, nor had she consented to vacate the property.

- The Provincial Head of the South African Police Detective Service, North West requested the Commission to investigate a complaint made by one of its members against Mr Morake. The member was the investigating officer (IO) in a stock theft matter and had arrested a suspect in the case in Lichtenburg. The suspect was charged, appeared before the Lichtenburg Magistrate's Court and the matter was remanded. The investigating officer alleges that a week prior to the remand date he was contacted by Mr Morake and ordered to appear before him at his office. Mr Morake threatened to issue a warrant for his arrest if he failed to do so. The IO complied with the instruction and attended the meeting. The accused was also present at the meeting. Mr Morake asked the IO if he would assist the accused. The IO refused. He later stated that he found the conduct of Mr Morake unusual and threatening.
- A complaint was received from Legal and Tax Services (Pty) Ltd (a legal expense insurance company) through the Chief Magistrate of the North West Administrative Region. It is alleged that Legal and Tax Services had paid Mr Morake R950 to assist their client to secure a loan. Mr Morake failed to secure the loan. They requested that the payment be refunded.
- In another incident, it was alleged that Mr Morake contacted a businessman, Mr Shohag and ordered him to see Mr Morake at his office. Mr Shohag was threatened with arrest if he failed to attend the meeting. Mr Shohag initially ignored the instruction but was later visited by three police officers who informed him that his employee had a problem with him and he had to go and see Mr Morake about this issue. Subsequently Mr Shohag and his two partners went to see Mr Morake at his office as instructed. Mr Shohag's employee was also present. Mr Morake forced Mr Shohag to sign an agreement that he (Mr Shohag) would conduct business with his employee.

### 3.

Mr Morake threatened Mr Shohag with deportation back to Bangladesh if he failed to follow the instructions. Mr Shohag later obtained an interdict against Mr Morake and reported the incident to the SAPS Organized Crime Unit.

- Mr Morake became involved in a dispute involving the payment of arrears in respect of electricity in the amount of R1173. He ordered a woman involved in the matter to come to his office with her husband. The other party was also present during the meeting. Mr Morake insisted that the woman pay the outstanding amount to him personally rather than to the municipality. He threatened to lock her in jail if she did not comply with his instructions. A few days later she paid him the money on the understanding that he would pay the money to the other party in the dispute. Weeks later she was summoned to the Small Claims Court for payment of the amount of R1173. The other party had not received the money. When she followed up with Mr Morake he made various excuses and finally stated that somebody had taken the money from his office.

2.3 On 13 July 2007, Mr Morake appeared in the Lichtenburg District Court on three charges of theft. The matter was postponed to 18 October 2010 for judgment. Mr Morake was convicted on two (2) of the three (3) charges. The matter was postponed to 1 February 2011 for sentence. Mr Morake however terminated the mandate of his attorney. The matter was postponed to 1 April 2011 for sentence. The criminal case was on 1 April 2011 again postponed to 13 May 2011. Mr Morake's attorney fell ill. On 13 May 2011 Mr Morake indicated that he wants to call witness(es) to testify in mitigation. The case was remanded to 21 June 2011 for this purpose. Mr Morake was sentenced to 4 years imprisonment on each count in terms of Section 276(i) of the Criminal Procedure Act. The sentences are to run concurrently.

2.4 The Magistrates Commission charged Mr Morake with several counts of misconduct which are contained in a charge sheet which was served on Mr Morake on 29 December 2010. Having considered Mr Morake's written explanation on the

4.

charges of misconduct, the Commission's Ethics Committee at its meeting held on tice of hearing was served on Mr Morake. The inquiry into Mr Morake's alleged misconduct commenced on 11 April 2011. Mr Morake's representative requested the Presiding Officer to postpone the disciplinary proceedings against Mr Morake. They argued that Mr Morake will appeal against his conviction once a sentence has been imposed and requested that the inquiry be kept in abeyance until after the outcome of the criminal case on appeal.

The Presiding Officer granted a postponement until 24 June 2011, provided that Mr Morake should submit proof of the fact that he indeed filed an appeal against his criminal conviction of theft.

On 24 June 2011 the Presiding Officer granted Mr Morake a further request for postponement until 11 July 2011 to give him the opportunity to file his appeal against his conviction and furnish him with proof thereof.

- 2.5 The appeal has not been filed yet, since both parties are experiencing difficulty in having the record of proceedings reconstructed. Tapes and CD's, containing the criminal trial proceedings are missing.
- 2.6 The Presiding Officer in the misconduct inquiry therefore ordered the disciplinary hearing to proceed on the actus reus concerning the allegations of theft. This implied that the charge of misconduct had to be amended or replaced.
- 2.7 The misconduct inquiry is did not proceed in respect of all the charges on 23 April 2012 since Mr Morake's representative's mandate was terminated. On 14 May 2012 Mr Morake requested an indulgence to instruct a legal representative. He indicated that his sister would financially assist him to enable him to brief counsel. This request was granted. Although Mr Morake on 11 June 2012 placed on record that he was "frantically looking for an attorney" to represent him, his instructing attorney was on record and was present before the Presiding Officer at the inquiry



## 5.

on 18 June 2012. Dates for the leading of evidence(trial) were set in consultation with Mr Morake's counsel. He briefed counsel to represent him. The matter was postponed to 28 and 29 August 2012 for trial.

- 2.8 The Commission was ready to proceed with the leading of evidence on 28 August 2012, when Mr Morake requested a postponement again because he was able to raise funds to brief counsel. He also requested the Commission to disclose the content of the preliminary investigation reports. The Commission objected. The latter issue had to be argued before the Presiding Officer on 5 October 2012. The matter was postponed for trial to 22-24 October 2012.
- 2.9 The defense abandoned their application for the disclosure of the preliminary investigation reports. Neither MR Morake's attorney nor counsel was present on 22 October 2012. Witnesses for the Commission were present to testify. Mr Morake placed on record that he was still not able to raise sufficient funds to pay his attorney or to brief counsel and requested another postponement. The inquiry was postponed to 26 November 2012. The Presiding officer ordered that Mr Morake's attorney be present. The date for trial was ste for 21-23 January 2013. Mt Moroake was informed that if counsel has not been briefed and placed in funds by then, the inquiry will proceed without him/her.
- 2.10 The Commission was able to, in consultation with the Presiding Officer and Mr Morake's counsel, set an earlier date for the inquiry to proceed. The Commission was able to lead the evidence of three (3) witnesses on 7 and 8 January 2013. The inquiry did not proceed on 25 February 2013, due to the sudden unavailability of the Presiding Officer. The matter was by mutual agreement postponed to 3 and 4 April 2013 for continuation. The Commission lead the evidence of further witnesses on these dates where after the inquiry was postponed to 22 and 23 July 2013 for further trial.
- 2.11 The Presiding Officer was appointed an acting judge and could not avail himself for the inquiry to continue in July 2013. The matter was postponed to 04 and 05

## 6.

November 2013 to give both parties an opportunity to engage in consultation in an attempt to limit the issues in dispute.

- 2.12 A decision by the Magistrates Commission to determine to withhold Mr Morake's remuneration in terms of section 13(4A)(a) of the Magistrates Act No 90 of 1993 was confirmed by Parliament on 24 November 2011. Mr Morake is currently not receiving any remuneration whilst the misconduct inquiry is proceeding against him.



**PROGRESS REPORT DATED 01 OCTOBER 2013 TO PARLIAMENT: PROVISIONAL  
SUSPENSION FROM OFFICE, REGIONAL MAGISTRATE T R RAMBAU, LIMPOPO  
PROVINCE**

---

**1. INTRODUCTION**

The Magistrates Commission must in terms of section 13(3)(f) of the Magistrates Act, No. 90 of 1993 (Act) cause a report on the progress made in respect of inquiries against magistrates who have been provisionally suspended from office to be submitted to Parliament every three months.

Section 13(3)(e) of the Act provides that the provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegations concerned to be served on the magistrate.

**2. DISCUSSION**

2.1 The Minister, on the advice of the Commission, provisionally suspended Mr Rambau from office with effect from 4 November 2010 which suspension was confirmed by both Houses of Parliament on 18 and 24 November 2010 respectively.

## 2.

- 2.2 On 8 February 2010, the Regional Court President of the Limpopo Province informed the Commission that Mr. Rambau, a regional magistrate at Polokwane, had been arrested for corruption on 5 February 2010. Mr. Rambau was arrested together with the prosecutor and an attorney. It is alleged that Mr. Rambau, the prosecutor and the attorney arranged the outcome of a trial by pre-determining the sentence for financial reward.
- 2.3 Mr. Rambau and his co-accused appeared in the Musina District Court on 8 February 2010 on charges of corruption. The matter was set down for 11 to 13 October 2010. The criminal case is was postponed for further hearing to 7 – 11 March 2011, 11-15 April 2011, 30 May – 3 June 2011 and inter alia to 29 August 2011 - 2 September 2011, and 10 October 2011 - 14 October 2011. The matter is still part-heard and stands postponed to 21-25 May 2012.
- 2.4 A written notice containing the allegations concerned (a charge of misconduct) dated 17 November 2010 was served on Mr. Rambau. At the misconduct inquiry, which was set down for 9 February 2011, Mr. Rambau requested the Presiding Officer to postpone the inquiry until the criminal case against him has been finalized since the criminal charge(s) preferred against him form the basis of the disciplinary proceedings against him.
- 2.5 The Presiding Officer postponed the misconduct inquiry to 8 April 2011. He requested both parties to address him on whether or not he should postpone the

### 3.

misconduct inquiry *sine die* pending the finalization of the criminal case against Mr. Rambau. Mr. Rambau instructed an attorney to represent him in the misconduct inquiry. At the misconduct inquiry on 08 April 2011 Mr. Rambau applied for the proceedings to be postponed without his attorney being present. It was placed on record that Mr. Rambau did not instruct his attorney to represent him at the inquiry. He however indicated that he instructed counsel to represent him. He further indicated that he wanted to be furnished with further particulars in respect of the misconduct charge against him. The Presiding Officer granted his request for a postponement, provided that Mr. Rambau's counsel should appear before him on the remand date and that he should formally request the Commission to be furnished with further particulars in writing.

- 2.6 On 20 June 2011 counsel appeared on behalf of Mr. Rambau at the misconduct inquiry. No further particulars were requested from the Commission at that stage. The defence again requested a postponement pending finalization of the criminal matter against Mr. Rambau. They indicated that the criminal case would likely be concluded in October 2011. The Presiding Officer granted a postponement until 12 September 2011.
- 2.7 Counsel for Mr Rambau thereafter requested disclosure and/or discovery of all documents, statements, a list of witnesses etc. from the Commission which was duly submitted.

#### 4.

- 2.8 Neither Mr Rambau nor his counsel was present at the last occasion. Mr Rambau submitted a medical certificate indicating that he was unfit for work, due to “diabetes mellitus”.
- 2.9 Contact was eventually made with Mr Rambau’s counsel. On 7 February 2013, the Commission was formally informed about the withdrawal of Mr Rambau’s attorney and that instructions to counsel were cancelled. Mr Rambau was subsequently served with a notice of hearing afresh. A new date for the inquiry to continue was set for 25 March 2013.
- 2.10 On 25 March 2013 Mr Rambau confirmed on record that he placed his attorney in funds and that counsel was still on record. This was disputed by the Commission. The Presiding Officer gave Mr Rambau the indulgence until 13 May 2013 to see to it that both his attorney and counsel are present. Mr Rambau instructed another attorney to act on his behalf. The Presiding Officer was acting in the High Court during that period and the inquiry was, by mutual agreement, postponed to 15 July 2013.
- 2.11 On 15 July 2013 Mr Rambau’s newly instructed attorney requested to be furnished with all documents relating to the complaints leveled against Mr Rambau since his predecessor did not furnish Mr Rambau with any of the documents to enable him to prepare for the inquiry. The inquiry stands now postponed to 4 and 5 November 2013 for trial.



**PROGRESS REPORT DATED 03 OCTOBER 2013 TO PARLIAMENT: PROVISIONAL  
SUSPENSION FROM OFFICE, CHIEF MAGISTRATE JF VAN SCALKWYK, KEMPTON  
PARK**

---

**1. INTRODUCTION**

The Magistrates Commission must in terms of section 13(3)(f) of the Magistrates Act, No. 90 of 1993 (Act) cause a report on the progress made in respect of inquiries against magistrates who have been provisionally suspended from office to be submitted to Parliament every three months.

Section 13(3)(e) of the Act provides that the provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegations concerned to be served on the magistrate.

**2. DISCUSSION**

2.1 Having conducted a preliminary investigation into numerous complaints of alleged misconduct, the Magistrates Commission charged Ms Van Schalkwyk with 24 counts of misconduct. Ms Van Schalkwyk's then attorney acknowledged receipt of the charge sheet on 1 August 2013 on her behalf.

## 2.

- 2.2 A request for further particulars was received on 2 October 2013 from her newly instructed attorney. This request is currently being attended to by the Commission.
- 2.3 The Commission on 18 September 2013 appointed a Presiding Officer and a person to lead the evidence on behalf of the Commission at the hearing. A date for the misconduct hearing to commence is to be determined in consultation with Ms Van Schalkwyk's legal representative, the presiding Officer and the Person leading the evidence after her written explanation regarding the charges have been received.