



# PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

## COMMITTEES

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### **Report of the Select Committee on Security and Justice on the Provisional Suspension from Office of Magistrate L Zantsi, dated 22 September 2015**

#### **1. Introduction**

The Select Committee on Security and Justice, having considered evidence relating to the report on the provisional suspension from office of Magistrate Mr L Zantsi, an aspirant Magistrate at Laingsburg, Western Cape, tabled by the Minister for Justice and Correctional Services in terms of section 13(3)(b) of the Magistrates Act, Act no 90 of 1993 (the Act), reports as follows:

The Committee heard evidence from representatives of the Magistrates Commission concerning the matter of the provisional suspension from office of Magistrate Mr L Zantsi on 2 September 2015.

#### **2. Background**

Mr Zantsi was appointed, with effect from 04 November 2013, as an aspirant Magistrate in the vacant post of Magistrate (Judicial Head of Office) at Laingsburg. He is 49 years of age and served the Department of Justice and Constitutional Development as an interpreter, prosecutor and Senior Prosecutor prior to his appointment to the lower court bench. He has been an acting magistrate since 03 May 2010 before his appointment at Laingsburg. The Commission, as a result of the complaints against him, resolved to extend Mr Zantsi's probation period for a period of six months from 1 December 2014 to 31 May 2015 or until such time that the investigation into the complaints have been concluded.

#### **3. Charges of Misconduct**

Having received numerous complaints and allegations of misconduct against Mr Zantsi, the Commission conducted a preliminary investigation into the allegations. The Commission considered the content of the preliminary investigation report and resolved to charge Mr Zantsi with 14 counts of misconduct.

The allegations against him are inter alia that:

- 3.1. He reported on duty while he was under the influence of intoxicating liquor or stupefying drugs.
- 3.2. He consumed alcohol which had the effect of preventing him from reporting for duty and performing his duties as the sole appointed judicial officer at the Laingsburg Court House.
- 3.3. He on a number of occasions absented himself from office or duty without valid cause, and without notifying the Sub Cluster and / or Cluster Head of his intended absence, and thereby caused no arrangements to be made for a substitute magistrate to act in his absence at the Laingsburg Court House, at which court house he is the sole appointed judicial officer. He thereby created a situation where judicial service delivery at the Laingsburg Court House was left unattended.
- 3.4. He uttered vulgar and abusive words towards a female member of the South African Police Service.

- 3.5. He at the Laingsburg Police Station, whilst under arrest for driving a motor vehicle while under the influence of intoxicating liquor and laying on his stomach inside the charge office, uttered vulgar and abusive words in the presence of members of the South African Police Services and / or members of the public. He is to appear before court in August 2015 to face criminal charges based on these allegations.
- 3.6. He, at Laingsburg Caltex Garage, made a misrepresentation to a petrol attendant, in the employment of the said garage, that he has an arrangement with the owner of the garage to buy fuel on credit.
- 3.7. He failed to pay monies due and payable to Laingsburg Caltex Garage for fuel obtained and failed to settle his debt resulting in Laingsburg Caltex Garage to demand payment from him.
- 3.8. He consumed alcohol in a public place and left behind his empty liquor/alcohol bottles and drove his motor vehicle after consuming alcohol.
- 3.9. He often arrives at work smelling of liquor, arriving late and leaving early.
- 3.10. He holds parties over weekends and during the week and plays loud music until 03:00. His neighbour had many times phoned the SAPS to intervene.
- 3.11. Mr Zantsi's mentor, the acting Senior Magistrate, Worcester on many occasions had to drive from Worcester to Laingsburg to attend to the court work at Laingsburg. Mr Zantsi would be at home then. Mr Zantsi once asked his mentor to come to his home. Mr Zantsi informed him that he is drinking excessively and admitted that he was in no condition to face the public. He has on many occasions been advised that he needed to be admitted for rehabilitation. He advised the investigation officer that he was willing to go for rehabilitation but elects to do so only when the Minister has confirmed his appointment to the bench permanently.

#### **4. Magistrates Commission's preliminary findings**

- 4.1. In order to advise the Minister on his provisional suspension from office pending the outcome of the investigation, Mr Zantsi was afforded the opportunity to comment on the desirability of such provisional suspension in a letter dated 27 January 2015.
- 4.2. Having considered Mr Zantsi's response dated 13 February 2015, the Commission on 24 June 2015 resolved to recommend that Mr Zantsi be provisionally suspended from office in terms of section 13(3)(a) of the Magistrates Act, 90 of 1993 (the Act) pending the investigation into his fitness to hold office.
- 4.3. The Commission is of the view that the existing evidence against Mr Zantsi is of such a serious nature as to make it inappropriate for him to perform the functions of a Magistrate while the allegations are being investigated. It would be inappropriate for a judicial officer, appearing as an accused before a court of law, to still sit on the bench.
- 4.4. The Commission holds the view that, without anticipating the outcome of the investigation into his fitness to hold the office of Magistrate, the existing evidence against Mr Zantsi is of such a serious nature that it would justify his removal from office, should he be found guilty of the misconduct charges which are preferred against him.

#### **5. Minister's authority to provisionally suspend a magistrate**

- 5.1. In terms of section 13(3)(a) of the Magistrates Act, 90 of 1993, the Minister, on the advice of the Magistrates Commission, may provisionally suspend a magistrate from office if-
  - (i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and
  - (ii) an investigation has been instituted by the Commission into such magistrate's fitness to hold office."

5.2. In terms of section 13(3)(b) of the Act, a report in which the provisional suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 7 days of such suspension, if Parliament is then in session, or if Parliament is not then in session, within 7 days after the commencement of its next ensuing session.

#### **6. Minister's recommendation to Parliament for approval**

In the light of the above, the Minister for Justice and Correctional Services decided to provisionally suspend Mr Zantsi, an aspirant magistrate at Laingsburg, from the office of Magistrate with immediate effect, with retention of remuneration, pending the outcome of an investigation into his fitness to hold such office.

#### **7. Parliament's responsibility with regard to provisional suspensions in terms of the Act**

7.1. In terms of section 13(3)(c) of the Act, Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed.

7.2. In terms of section 13(3)(d) of the Act, If Parliament passes a resolution as contemplated in paragraph (c) that the provisional suspension is not confirmed, the suspension lapses.

7.3. In terms of section 13(3) (g) Parliament may, at any stage pending-

- (i) the conclusion of an inquiry referred to in paragraph (e); or
- (ii) a resolution referred to in subsection (4)(c), pass a resolution setting aside the suspension of the magistrate concerned, whereupon the suspension shall lapse forthwith.

#### **8. Committee recommendation to the NCOP for approval**

The Select Committee on Security and Justice having considered the Commission's report on the provisional suspension from office of Magistrate Mr L Zantsi, and the Minister's request, recommends that the National Council of Provinces approve the provisional suspension from office of Magistrate Mr L Zantsi.

Report to be considered.

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The Honourable Mr D L Ximbi, MP  
Chairperson: Select Committee on Security and Justice

Date: \_\_\_\_\_