



**MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA**

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Ref: 3/26/5/5 (n281102)
Enq: X1700
Email: Ministry@justice.gov.za

The Honourable Mr Justice M F Legodi
Chairperson: Magistrates Commission
P O Box 9096
PRETORIA
0001

Fax No: 012 – 325 3957

Dear Judge

***PROVISIONAL SUSPENSION OF A MAGISTRATE: MS S R MONALEDI, REGIONAL
COURT PRESIDENT, NORTH WEST***

With reference to your letter dated 25 November 2016 (under your reference 6/5/5/2(41A/2015), I wish to inform you that I, after having considered the Commission's advice, decided to provisionally suspend Ms S R Monaledi, the Regional Court President North West, from office pending the outcome of the inquiry into her fitness to hold office as a Magistrate.

A copy of the report, which has been tabled in Parliament in compliance with the provisions of section 13(3)(b) of the Magistrates Act, 1993 is enclosed herewith for your records. A copy of my letter to Ms Monaledi is also enclosed.

With kind regards

**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE: 30/11/2016



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Ref: 3/26/5/5 (n281102)
Enq: X1700
Email:Ministry@justice.gov.za

Ms S R Monaledi
c/o The Regional Court President
Private Bag X2009
MMABATHO
2735

Dear Ms Monaledi

PROVISIONAL SUSPENSION FROM OFFICE

I regret to inform you that after having considered the advice of the Magistrates Commission, I have, in terms of section 13(3)(a) of the Magistrates Act, 1993 (Act No 90 of 1993), decided to provisionally suspend you from office pending the inquiry into your fitness to hold office as a Magistrate with immediate effect.

A report to this effect has been tabled in compliance with the provisions of section 13(3)(b) of the Act.

As soon as Parliament has taken a decision in this regard, you will be informed.

With kind regards

**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE: 30/11/2016



PROVISIONAL SUSPENSION FROM OFFICE: MS SR MONALEDI, REGIONAL COURT PRESIDENT, NORTH WEST

1. PURPOSE

The purpose of this report is to inform Parliament on the provisional suspension from office of Ms Monaledi, the Regional Court President, North West, pending the outcome of an investigation into her fitness to hold office as a magistrate, as required by section 13(3)(a) of the Magistrates Act, 90 of 1993.

2. BACKGROUND

2.1 Ms Monaledi is 59 years of age. She has been appointed as Regional Court President, North West on 02 June 2003.

2.2 On 5 March 2015 the Commission received a letter alleging as follows:

"... to report the excessive transport claims by M S Monaledi, President of the Regional Court North West as well as the fact that she is seldom in the office and performs no work in the Regional Court She is never available to the public, prosecutors, attorneys and the clerical staff".

2.3 The matter was referred to the Commission's Ethics Committee on 23 July 2015.

The Ethics Committee resolved that a preliminary investigation in terms of Regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994 (Regulations) be conducted into the allegations.

2.4 On 1 October 2015 the Commission appointed two Senior Magistrates, in terms of the provisions of regulation 26(1) of the Regulations as Investigating Officers to "... conduct a preliminary investigation to obtain evidence with regard to the allegations

and all matters connected with or incidental thereto in order to determine whether there are any grounds for a charge of misconduct against Regional Court President Ms S R Monaledi."

2.5 The Investigating Officers obtained, with the exception of a few, all the available motor transport and subsistence claims submitted by Ms Monaledi since January 2013. All available claims were scrutinised and summarised. A number of discrepancies, of which over or under payments, were identified which they, as part of the *audi alteram partem* principle, intended to follow up with Ms Monaledi during an interview with her.

2.6 The Investigating Officers on numerous occasions, between the period 29 October 2015 to 11 February 2016, invited Ms Monaledi (telephonically and per electronic mail) to participate in the preliminary investigation. She however elected not to do so and questioned the authority of the Investigating Officers to conduct the preliminary investigation.

2.7 On 12 February 2016 I intervened and informed Ms Monaledi *inter alia* that there is no need or basis that the Commission reconsiders the authority of the Investigating Officers at this stage and that the law must take its normal course.

2.8 The Investigating Officers completed their preliminary investigation and submitted their report to the Commission without Ms Monaledi's comments or inputs.

2.9 The Investigating Officers reported on their findings made during the preliminary investigation as follows:

2.9.1 The *audi alteram partem* principle could not be applied as Ms Monaledi, to date, notwithstanding the intervention of the Chairperson of the Commission, elects not to participate in the preliminary investigation.

2.9.2 Ms Monaledi serves on the Commission and is also a member of the Ethics Committee and she ought to know that in terms of Regulation 26(1)

the Commission may appoint a magistrate (rank not specified) or any appropriate qualified person as an investigating officer to conduct a preliminary investigation.

2.9.3 Ms Monaledi is also a member of the South African Judicial Education Institute (SAJEI) and serves on various forums which necessitate that she travels on many occasions in and outside her area of jurisdiction.

2.9.4 Due to Ms Monaledi's non-cooperation the purpose of all her trips could not be established. The inference drawn is that some of these trips were not for official purposes.

2.9.5 Ms Monaledi's constant absence from her office is confirmed without any doubt in that during the past three years (2013 – October 2015) she spent an average of 71.49% of the available work days away from her office. It is not sure whether or not she indeed was at her office on the other available court days (28.51%). Ms Monaledi does not render any court work in the regional courts.

2.9.6 Ms Monaledi, it seems, created a second salary for herself by means of monthly subsistence and travel claims. During the past three years she claimed the following amounts:

2013	R 281 477.35
2014	R 350 828.93
2015	<u>R 321 532.28</u>

Total: R 953 838.56

2.9.7 The following discrepancies regarding the claims of Ms Monaledi were identified:

Overpayments	R80 956.79
Fruitless expenses	R15 034.52
False claims: SAJEI	R27 000.00
False claims: Commission	R93 000.00 (a)

- (a) In 41 instances she claimed to have had attended meetings held by the Commission or one of its Committees whilst in fact no such meetings were held on the days she claimed they took place.

2.9.8 Ms Monaledi is in no way involved in the authorization of claims and trip authorities for the regional magistrates serving in her cluster despite clear prescripts in this regard.

2.9.9 Ms Monaledi used two vehicles for official trips but she continuously claimed as if she travelled with the more expensive vehicle.

2.9.10 Ms Monaledi constantly claimed that she left and arrived at her station at the same times claim after claim. This is not correct if compared with the incorrect and or false claims submitted while Ms Monaledi was abroad as well as with the recordings on the SANRAL system.

2.9.11 Ms Monaledi, in contravention of section 15 of the Magistrates Act, No. 90 of 1993, is the incorporator and presently an active director of a private company BOITHA TOURS AND CONSTRUCTION. She is also the founding member and an active director of KWA-LITHO AGRICULTURAL.

2.9.12 Ms Monaledi, when travelling to the various courts in her region for official purposes and during official office hours, sold expensive clothes, apparently from Dubai, "from the boot" of her car. She visited some of the regional magistrates to substantiate her travel claims.

2.9.13 Ms Monaledi obtained a certificate of good standing from the Secretary of the Magistrates Commission in which it is indicated that there are no pending investigations against her despite the fact that she had been informed of the decision to conduct a preliminary investigation against her. It was confirmed by the Office of the Chief Justice that this certificate

of good standing was indeed used as motivation when she applied to be appointed as a Judge in the High Court.

2.9.14 Ms Monaledi submitted false transport claims in that she claimed that she had departed and returned to her headquarters in Mmabatho while she in fact departed from and returned to her residence in Pretoria.

2.9.15 There is more than sufficient evidence available to prove on a balance of probabilities that Ms S R Monaledi made herself guilty of misconduct. There is also *prima facie* evidence that Ms Monaledi on numerous occasions submitted false subsistence, travel and transport claims and therefore committed fraud.

3. DISCUSSION

3.1 In a letter dated 28 September 2016 the Commission requested Ms Monaledi to show cause why the Commission should not recommend to the Minister that she be provisionally suspended from office pending the outcome of the investigation into her fitness to hold the Office of Magistrate. The letter was served on her on 18 October 2016. (Annexure A) Despite a reminder having been sent to her on 12 November 2016, she has not furnished the Commission with any response. Ms Monaledi is currently on vacation leave from 24 October 2016 until 20 January 2017.

3.2 The Commission at its meeting held on 25 November 2016 deliberated the matter and held the following views:

3.2.1 The available evidence against Ms Monaledi is of such a serious nature as to make it inappropriate for her to perform the functions of a magistrate or regional court president while the allegations are being investigated.

3.2.2 Her conduct tarnishes the good name, dignity and esteem of the Office of Magistrate and the administration of justice.

3.2.3 That, without anticipating the outcome of the investigation into her fitness to hold the Office of Magistrate, the available evidence against Ms Monaedi is of such a serious nature that it would justify her removal from office, should she be found guilty of the misconduct charges which are preferred against her.

3.2.4 The available evidence against Ms Monaedi justifies that she be criminally charged on numerous counts of fraud.

4. AUTHORITY TO PROVISIONALLY SUSPEND

4.1 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.”

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

5. CONCLUSION

5.1 In the light of the above, I decided to provisionally suspend Ms SR Monaledi, the Regional Court President, North West from the office of Magistrate with immediate effect, with retention of remuneration, pending the outcome of an investigation into her fitness to hold such office.

5.2 This report is submitted for consideration by Parliament in terms of section 13(3)(c) of the Magistrates Act, 1993.

Given under my hand at.....*CAPE TOWN*.....on this...*30*.....day of
.....*November*.....2016.



T M MASUTHA, MP [ADV]

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

30/11/2016



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The Honourable Mr Justice M F Legodi
Chairperson: Magistrates Commission
P O Box 9096
PRETORIA
0001

Fax No: 012 – 325 3957

Dear Judge

**SUSPENSION FROM OFFICE AND WITHHOLDING OF REMUNERATION: MR P S HOLE,
REGIONAL MAGISTRATE AT KIMBERLEY**

With reference to your letter dated 25 November 2016 (under your reference 6/5/5/2(50/2011), I wish to inform you that I, after having considered the Commission's advice, decided to suspend Mr P S Hole, Regional Magistrate, Kimberley, from office in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act)

Copies of the reports, which have been tabled in Parliament in compliance with the provisions of section 13(4)(b) and section 13(4A)(b) of the Magistrates Act, 1993 are enclosed herewith for your records. A copy of my letter to Mr Hole is also enclosed.

With kind regards

**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE: 30/11/2016



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Ref: 3/26/5/5 (n281103)
Enq: X1700
Email: Ministry@justice.gov.za

Mr P S Hole
c/o Enzo Meyers Attorneys
121 Devereux Avenue
VINCENT
EAST LONDON
5217

Dear Mr Hole

SUSPENSION FROM OFFICE AND WITHHOLDING OF REMUNERATION

I wish to inform you that after having considered the advice of the Magistrates Commission, I have, in terms of section 13(4)(a) of the Magistrates Act, 1993 (Act No 90 of 1993), decided to suspend you with immediate effect from office pending Parliament's resolution to either restore or not to restore you to the Office of Magistrate.

I also wish to inform you that the Magistrates Commission has in terms of section 13(4A)(a) of the Act determined to withhold your remuneration.

A report to this effect has been tabled in compliance with the provisions of section 13(4)(b) of the Act.

Yours faithfully

**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE: 30/11/2016



**REPORT IN TERMS OF SECTION 13(4)(a)(i) OF THE MAGISTRATES ACT,
90 OF 1993: SUSPENSION/REMOVAL FROM OFFICE ON THE GROUND
OF MISCONDUCT: MR PS HOLE, REGIONAL MAGISTRATE, KIMBERLEY**

1. PURPOSE

The purpose of this report is to inform Parliament on the suspension from office of Mr PS Hole, a Regional Magistrate at Kimberley, pending consideration by Parliament of a recommendation by the Magistrates Commission for his removal from office as a Magistrate on the ground of misconduct in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act).

2. BACKGROUND

- 2.1 The Magistrates Commission charged Mr Hole with ten counts of misconduct. A copy of the charge sheet, which was served on Mr Hole on 28 November 2011
- 2.2 The Commission at its meeting held on 17 September 2011 resolved to recommend that Mr Hole be provisionally suspended from office in terms of section 13(3)(a) of the Act. The Commission held the view that reliable evidence exists indicating that the allegations against him are of such a serious nature as to make it inappropriate for him to perform the functions of a magistrate while the allegations are investigated. On the advice of the Commission, your predecessor provisionally suspended Mr Hole from office with effect from 29 September 2011 which decision was confirmed by

Parliament on 24 November 2011.

3. DISCUSSION

- 3.1 The misconduct inquiry against Mr Hole commenced on 15 October 2012 and was finally concluded on 07 June 2016. The record of the disciplinary proceedings reflects that more than one year after Mr Hole's provisionally suspension from office did the tribunal convene for its first sitting. Applications for postponement of the misconduct inquiry by Mr Hole for various reasons have caused the tribunal to convene on a total of 11 (eleven) sittings. A feature of the repeated applications by Mr Hole was the repertoire of legal representatives he initially referred to as his counsel only for them not to appear on the next day. These applications grounded the continuation of the proceedings on the merits to a halt.
- 3.2 A Notice of Motion was served at the offices of the Magistrates Commission on 20 March 2015. The Department of Justice and Constitutional Development was requested to oppose the matter on behalf of all three (3) Respondents. Mr Hole approached the North Gauteng local Division of the High Court to interdict, restrain and prohibit the Presiding Officer (cited as the Third Respondent) from conducting, commencing, resuming and/or proceeding with the disciplinary hearing ordered by the Magistrates Commission (cited as the Second Respondent). He further sought relief from the High Court declaring that the Chairperson of the Magistrates Commission (the First Respondent) and/or the Commission's appointment of the Presiding Officer as Chairperson in the disciplinary hearing instituted against him are wrongful, unlawful, irrational, unreasonable and unconstitutional. Mr Hole also applied for an order, directing that the Chairperson of the Magistrates Commission appoints a new, independent and impartial Chairperson to substitute the current Presiding Officer at the misconduct hearing.
- 3.3 The Commission, in light of Mr Hole's actions/conduct in delaying the finalization

of the misconduct hearing against him, at its meeting held on 27 November 2015 resolved as follows:

"Due to the absence of a court order not to proceed with the misconduct hearing against Mr Hole, that the misconduct hearing against Mr Hole be proceeded with and that the Person Leading Evidence be directed to set a date for the hearing to continue accordingly."

3.4 Since there was no court order directing the Commission otherwise, the Officer Leading the Evidence (PLE) on behalf of the Commission on 12 February 2016 was advised accordingly in writing and was requested to arrange that the misconduct hearing/inquiry against Mr Hole be proceeded with. Mr Hole's attorney was accordingly informed on 22 February 2016. The latter indicated that he would contact counsel to confirm his availability for the continuation of the inquiry on 03 to 06 May 2016. The Presiding Officer was also advised of the Commission's resolution and confirmed his availability to continue with the misconduct proceedings. The PLE was requested to serve a Notice for the inquiry to proceed on 03 May 2016 on Mr Hole and his legal team, which he duly did. Despite having been duly notified, Mr Hole and his legal team were absent. Having satisfied himself that proper notice was given, the Presiding Officer ordered the proceedings to continue in their absence. Evidence was lead and the inquiry was postponed to 06-08 June 2016 for argument, judgment and, depending on the outcome, for the imposition of a sanction.

3.5 On 06 June 2016 the PLE presented arguments on the Merits and on 07 June 2016 the Presiding Officer gave a substantive written judgment, finding Mr Hole guilty on all the 10 (ten) charges, some on the alternative, levelled against him. A local attorney appearing on behalf of Mr Hole, on 07 June 2016 again requested the tribunal to postpone the inquiry pending the outcome of Mr Hole's application in the High Court. The PO dismissed this application. The attorney remained in attendance and observed the proceedings until same were concluded.

3.6 In imposing an appropriate sanction, the PO considered all the mitigating and aggravating factors and recommended that Mr Hole be removed from office as contemplated in section 13 of the Magistrates Act, 90 of 1993. Mr Hole's rights to make representations to the Magistrates Commission in terms of the applicable regulations were explained to the attorney, who undertook to advise Mr Hole's instructing attorney accordingly.

3.7 Mr Hole's legal team provided the Commission with his representation after having requested to be provided with a copy of a transcription of the proceedings. Mr Hole representations/arguments are in essence that the continuation of the disciplinary hearing prior to the conclusion of his application proceedings in the North Gauteng High court is unlawful and that the finding arrived upon by the Presiding Officer is therefore, on this ground alone, also unlawful. The Office of the State Attorney, Pretoria, dealing with the High Court application on behalf of the Respondents on 02 June 2016, confirmed that Mr Hole has not furthered his application and that he had not complied with his duty to have the matter prepared for hearing and set down. The State Attorney was advised to take steps to place the matter on the roll. Mr Hole's legal representative on 19 September 2016 inter alia proposed that the application be withdrawn with each party paying its own costs. It is thus abundantly clear Mr Hole intends not to proceed with his High Court application, despite his submissions in his representations to the Commission that the finalization of the disciplinary hearing against him, prior to the conclusion of his High Court application, is unlawful.

3.8 Having considered the documentation presented to the Magistrates Commission as required by regulation 26(19) read with regulation 26(22) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations), the Commission at its meeting held on 25 November 2016 resolved to recommend to the Minister that Mr Hole be removed from office on the grounds

of misconduct in terms of section 13(4)(a)(i) of the Act. The Commission is of the view that Mr Hole's conduct as set out in the charges of which he was found guilty is so serious that it justifies his removal from office. A copy of the documentation, which includes Mr Hole's representations dated 15 August 2016 and which was considered by the Commission in terms of regulation 26(19) of the Regulations, is attached. **(ANNEXURE "A")**

4. LEGISLATIVE REQUIREMENTS


- 4.1 In terms of section 13(4)(a) of the Act, the Minister of Justice and Correctional Services, if the Magistrates Commission would recommend that a magistrate be removed from office on *inter alia* the basis of misconduct, must suspend that magistrate from office or, if the magistrate is provisionally suspended from office, confirm the suspension.
- 4.2 A report in which such suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within fourteen (14) days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within fourteen (14) days after the commencement of its next ensuing session.
- 4.3 Parliament must then as soon as is reasonably possible, pass a resolution as to whether or not the restoration of his/her office of the Magistrate so suspended is recommended.
- 4.4 After a resolution has been passed by Parliament as contemplated in paragraph 4.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.

5. CONCLUSION

On this basis I have now suspended Mr Hole from office. This report as

required by section 13(4)(b) of the Magistrates Act, 1993 is submitted for Parliament's consideration.

Given under my hand at... *CAPE Town* on this... *30* day of... *November* 2016


.....
T M MASUTHA, MP (Adv)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES



REPORT IN TERMS OF SECTION 13(4A)(b) OF THE MAGISTRATES ACT, 90 OF 1993: WITHHOLDING OF REMUNERATION: MR PS HOLE, REGIONAL MAGISTRATE, KIMBERLEY

1. PURPOSE

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission in terms of section 13(4A)(a) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act) to withhold the remuneration of Mr PS Hole, a Regional Magistrate at Kimberley and to provide Parliament with the reasons therefor.

2. BACKGROUND

2.1 At its meeting held on 25 November 2016, the Magistrates Commission resolved to recommend that Mr Hole be removed from office on the ground of misconduct office in terms of section 13(3)(a) of the Act and advised me accordingly on the same day.

2.2 On 15 November 2016 Mr Hole was advised of the Commission's Ethics Committee's recommendations to the Commission that he be removed from office and that the Commission intends to determine to withhold his remuneration in terms of section 13(4A)(a) of the Act. Mr Hole's attorney, acting on his behalf, was provided with a copy of the documents which served before the Ethics Committee at its meeting held on 16 September 2016 at his request.

2.3 Mr Hole was, in compliance with the rules of natural justice, invited to show cause why the Commission, at its meeting to be held on 25 November 2016, should not accordingly determine to withhold his remuneration forthwith. Mr Hole's attorney on 16

November 2016 advised that due to consultations with his client, he would only be in a position to lodge any representations at the earliest on Monday, 21 November 2016. His attorney was informed that the Commission will accordingly await his response to be received on or before this date.

2.4 The Commission received Mr Hole's response on 21 November 2016, a copy of which is attached. (**Annexure "A"**).

2.5 Having due regard to the submissions made by Mr Hole, the Commission holds the view that the concerns/arguments he has raised have all been comprehensively dealt with during the disciplinary hearing against him. Both Mr Hole and the Person leading the Evidence (PLE) on behalf the Commission have on all these aspects been given the opportunity to furnish the Presiding Officer with Heads of Arguments and address him in this regard. The Presiding Officer made comprehensive rulings on all these interlocutory applications. This is evident from the record of proceedings which was before the Commission's Ethics Committee and subsequently before the Commission at its meeting held on 25 November 2016 for consideration. Mr Hole's submission that the Ethics Committee failed to have considered Mr Hole's representations in this regard is therefore incorrect. Mr Hole was at liberty to take the Presiding Officer's rulings on all these applications on review to the High Court. This he elected to do by serving a Notice of Motion on the Commission on 20 March 2016.

2.6 The Notice of Motion was served at the offices of the Magistrates Commission on 20 March 2015. The Department of Justice and Constitutional Development was requested to oppose the matter on behalf of all three (3) Respondents. Mr Hole approached the North Gauteng local Division of the High Court to interdict, restrain and prohibit the Presiding Officer (cited as the Third Respondent) from conducting, commencing, resuming and/or proceeding with the disciplinary hearing ordered by the Magistrates Commission (cited as the Second Respondent). He further seeks relief from the High Court declaring that the Chairperson of the Magistrates Commission (the First Respondent) and/or the Commission's appointment of the Presiding Officer as Chairperson in the disciplinary hearing instituted against him is wrongful, unlawful, irrational, unreasonable and unconstitutional. Mr Hole also applies for an order, directing

that the Chairperson of the Magistrates Commission appoints a new, independent and impartial Chairperson to substitute the current Presiding Officer at the misconduct hearing.

2.7 The Commission, in light of Mr Hole's actions/conduct in delaying the finalization of the misconduct hearing against him, at its meeting held on 27 November 2015 resolved as follows:

"Due to the absence of a court order not to proceed with the misconduct hearing against Mr Hole, that the misconduct hearing against Mr Hole be proceeded with and that the Person Leading Evidence be directed to set a date for the hearing to continue accordingly."

2.8 Since there was no court order directing the Commission otherwise, the PLE on 12 February 2016 was advised accordingly in writing and was requested to arrange that the misconduct hearing/inquiry against Mr Hole be proceeded with. Mr Hole's attorney was accordingly informed on 22 February 2016. The latter indicated that he would contact counsel to confirm his availability for the continuation of the inquiry on 03 to 06 May 2016. The Presiding Officer was also advised of the Commission's resolution and confirmed his availability to continue with the misconduct proceedings. The PLE was requested to serve a Notice for the inquiry to proceed on 03 May 2016 on Mr Hole and his legal team, which he duly did. Despite having been duly notified, Mr Hole and his legal team were absent. Having satisfied himself that proper notice was given, the Presiding Officer ordered the proceedings to continue in their absence. Evidence was lead and the inquiry was postponed to 06-08 June 2016 for argument, judgment and, depending on the outcome, for the imposition of a sanction.

2.9 On 06 June 2016 the PLE presented arguments on the Merits and on 07 June 2016 the PO gave a written judgment, finding Mr Hole guilty on all the 10 (ten) charges, some on the alternative, levelled against him. A local attorney appearing on behalf of Mr Hole, on 07 June 2016 again requested the tribunal to postpone the inquiry pending the outcome of Mr Hole's application in the High Court. The PO dismissed this

application. The attorney remained in attendance and observed the proceedings until same were concluded.

2.10 In imposing an appropriate sanction, the PO considered all the mitigating and aggravating factors and recommended that Mr Hole be removed from office as contemplated in section 13 of the Magistrates Act, 90 of 1993. Mr Hole's rights to make representations to the Magistrates Commission in terms of the applicable regulations were explained to the attorney, who undertook to advise Mr Hole's instructing attorney accordingly.

2.11 In an e-mail dated 19 September 2016 directed to the Office of the State Attorney, Mr Hole's attorney proposed that Mr Hole's Notice of Motion be withdrawn. He indicated that he is of the considered view that the application, which was set down for hearing on 24 October 2016, "has become academic in that the disciplinary inquiry against Mr Hole was concluded earlier this year". Copies of subsequent correspondence between the State Attorney, Mr Hole's legal representative and the Office of the Chief Litigation Officer of the Department are also attached. It is clear from the content of the State Attorney's e-mail dated 22 November 2016 that Mr Hole has no intention to take his current Notice of Motion any further. (**Annexure "B"**)

2.12 The Commission is of the opinion that the indication in paragraph 17 of Annexure "A" that he "*has every intention to apply to the High Court to set aside the proceedings against him...*" is another issue which has no bearing on the matter at hand. The Commission submits that he is in any event out of time. I have been advised that Mr Hole has up to date not obtained a court order directing the Commission not to decide on whether or not to recommend to the Minister to remove him from office or to determine to withhold his remuneration forthwith. The ultimate decision to suspend him from office on the recommendation of the Commission is in any event my responsibility and not that of the Commission.

2.13 With regard to Mr Hole's submission as set out in paragraph 18 of Annexure "A" that the Commission's Ethics Committee acted in direct violation of a High Court order when it recommended that Mr Hole be removed from office, I have been advised that Mr Hole, on his own admission, is left with only one (1) part heard matter, to wit case number RCZ59/08, the State v Lorisang Dondolo which was on 17 August 2016 remanded for trial to 22 and 23 November 2016. According to the list of Mr Hole's outstanding part heard matters provided by the Regional Court President, Northern Cape to the Commission, the accused is charged with robbery and is in custody. Although a High Court order declared that Mr Hole, whilst having been on provisionally suspension, is entitled to resume his duties in order to dispose of all his part heard matters, the Commission is of the view that Mr Hole, for this reason, may cause the Commission and the Minister not to proceed with the disciplinary processes as contemplated in sections 13(4)(a)(i) and 13(4A)(a) of the Act. He may hold the Commission at ransom for many months to come until he has finalized this only outstanding partly heard case. The Commission is of the view that this could not have been the High Court's intention. Based on the High Court order, Parliament on 19 June 2013 resolved to lift Mr Hole's provisional suspension from office on *inter alia* the conditions that "*Mr Hole is assigned only to dispose of his part heard matters and that the Magistrates Commission consider starting those part heard matters afresh where this is necessary and desirable having regard to possible prejudice to the children, women or any person who has already testified*".

2.14 I am advised that the Constitutional Court in Van Rooyen and Others v The State and Others, CCT case no 21/2001 held that if good reasons exist for the suspension of a magistrate, the withholding of salary during the suspension is not necessarily disproportionate. This is so even if the withholding of salary can take place from the time of a provisional suspension. The Commission is of the view that Mr Hole's suspension from office **without remuneration** is, given the circumstances set out above, **justified**. There seems to be no reason why a magistrate, who is suspended from office pending Parliament's decision to pass a resolution whether or not to restore him/her to the Office of Magistrate should still be paid.

3. LEGAL POSITION

3.1 If the Commission determines that the remuneration of a magistrate shall be reduced or withheld, a report regarding that determination and the reason therefore must be tabled in Parliament by the Minister within 7 (seven) days of such determination if Parliament is then in session, or, if Parliament is not then in session, within 7 (seven) days after the commencement of its next ensuing session. (Section 13(4A)(b) of the Act)

4. CONCLUSION

This report is submitted for consideration by Parliament in terms of section 13(4A)(b) of the Magistrates Act, 1993.

Given under my hand at *Cape Town* on this... *30* ... day of
..... *November* 2016.


TM MASUTHA, MP (ADV)

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

30/11/2016