



## **PROGRESS REPORT DATED 08 JUNE 2017 TO PARLIAMENT: PROVISIONAL SUSPENSION FROM OFFICE, MAGISTRATE I W O M MORAKE, LICHTENBURG**

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### **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 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 current misconduct inquiry is proceeding against him.

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2.3 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 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

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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. 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.

#### **CRIMINAL PROCEEDINGS**

- 2.4 On 13 July 2007, Mr Morake appeared in the Lichtenburg District Court on three charges of theft. The criminal case 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

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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 were to run concurrently.

#### 2.5 APPLICATION FOR LEAVE TO APPEAL AGAINST HIS CRIMINAL CONVICTION

Since tapes and CD's, containing the recordings of the criminal trial proceedings went allegedly missing at the Clerk of the Court's office there were various difficulties in having the record of proceedings reconstructed. An application for leave to appeal was set down for 10 March 2015. Mr Morake however did not appear since he was reportedly sick. The application was to be heard on several occasions thereafter but for various reasons postponed every time. The application for leave to appeal was again on the Regional Court's roll for hearing on 27 January 2016. The Presiding Officer reported that Mr Morake was still arguing about the record which needed to be reconstructed. He found however that he had failed to indicate to the court "which part of the transcribed record needed to be reconstructed for the past 18 months" and therefore refused a further application for postponement. The matter was struck from the roll and Mr Morake's bail was revoked/cancelled. Mr Morake therefore started to serve his sentence on 27 January 2016 and has in the meantime been released.

#### **MISCONDUCT PROCEEDINGS**

- 2.6 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. A notice of hearing was served on Mr Morake and 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

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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 an application for leave to appeal against his criminal conviction and furnish him with proof thereof.

- 2.7 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.
- 2.8 The pending misconduct inquiry 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 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.
- 2.9 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.
- 2.10 The defence 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

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postponed to 26 November 2012. The Presiding officer ordered that Mr Morake's attorney be present. The date for trial was set for 21-23 January 2013. Mr Morake was informed that if counsel has not been briefed and placed in funds by then, the inquiry will proceed without him/her.

- 2.11 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.
- 2.12 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 November 2013 to give both parties an opportunity to engage in consultation in an attempt to limit the issues in dispute on the other charges. By mutual agreement, this consultation took place on 26 November 2013. The Commission appointed another magistrate to proceed leading the evidence at the hearing. The matter was postponed to 15 and 16 October 2014 for further hearing and argument. The hearing did not continue on these dates due to the unavailability of both Mr Morake's counsel and the Presiding Officer. The matter was by mutual agreement between the parties postponed to 24 and 25 November 2014. The Commission subpoenaed 6 witnesses to testify during these two days. Both Mr Morake and his counsel were absent on 24 November 2014. The Presiding Officer phoned counsel and confronted him about this. It appeared that Mr Morake's counsel wrongly noted the dates of the hearing in his diary as 26 and 27 November 2014. Mr Morake did not appear on 25 November 2014 either. He indicated that he had no transport to attend the hearing and that he would only be available on 26 November 2014. Except for one witness, the other witnesses for the Commission, including an attorney and a magistrate were not able to testify on 26 November

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2014. Therefore, only one witness testified. The inquiry was postponed in the presence of Mr Morake and his counsel to 28, 29 and 30 January 2015 for further hearing. A further two witnesses testified on behalf of the Commission on these days. The evidence of a third witness was admitted by the defence. The matter was postponed to 18 March 2015 for further hearing at the Thlabane Court House. The evidence of another two witnesses was led where after the hearing was remanded to 14 April 2015 for further hearing.

2.13 The person leading the evidence in the matter indicated that she on 14 April 2015 attempted to hand in the record of proceedings in respect of the criminal matter against Mr Morake. Mr Morake was convicted of two charges of theft. Counsel for Mr Morake objected to the handing in of a transcription of the criminal record and only agreed to have the charge sheet handed in. Counsel argued that the transcribed version of the criminal proceedings is not a true reflection of the proceedings and that they are still in the process to reconstruct the criminal record. The matter was postponed 16 and 17 June 2015 to further argue this issue. Mr Morake however reported ill from 15-19 June 2015. The inquiry was therefore, with agreement of his counsel, postponed in his absence to 13 July 2015 on which day the matter was further postponed to 06 August for pretrial in respect of charge 6 only.

2.14 At the pre-trial conference on 06 August 2015 certain issues were admitted by the defense and the matter was postponed to 28 September 2015 for further hearing. The defense however on 28 September retracted the admissions made on 06 August 2015 in respect of charges 1 and 6. The Officer leading the evidence on behalf of the Commission closed the Commission's case. The defence applied for a postponement of the inquiry which application was opposed. The Presiding Officer ruled that the matter should proceed. Mr Morake proceeded with his testimony in his defence where after cross-examination commenced. The inquiry was postponed to 30 November 2015 and thereafter to 06 January 2016 for further cross-examination. The Officer leading the evidence concluded her cross-examination of Mr Morake on 06 January 2016. Mr Morake did not call any

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witnesses and closed his case.

2.15 The inquiry was postponed to a provisional date in April 2016 for both parties to submit Heads of Arguments on judgment to the Presiding Officer. On 25 May 2016 Counsel for Mr Morake advised the Presiding Officer that he was not placed in funds for drafting Heads of Arguments and indicated that judgment may be delivered in his absence, since Mr Morake is incarcerated. Counsel, as well as his instructing attorney's mandate was terminated. The person leading the evidence on behalf of the Commission filed her Heads of Arguments, a copy of which was delivered to Mr Morake at the Correctional Services Centre, Lichtenburg. Arrangements were made for him to appear at the Lichtenburg Court House for both parties to address the Presiding Officer on the merits on 26 September 2016. He reported ill and did not appear. His erstwhile legal representative advised the Presiding Officer on 26 September 2016 that he has again been instructed to proceed in the misconduct proceedings and to brief counsel.

## 3. CONCLUSION

3.1 The Presiding Officer postponed the matter and instructed that a notice of hearing be served on Mr Morake to attend. He ordered the parties to arrange a date to address him on the merits. Communications relating to a date for the hearing to proceed has been forwarded to the Commission and the Presiding Officer. The PLE proposed the matter to continue on 31 October 2016 or any date from 03 to 09 November 2016. On 19 October 2016 Mr Morake's attorney advised that he consulted with counsel and that the latter indicated that the dates did not suit him and that he would only be available early 2017 due to other commitments. A Notice of set down was served on Mr Morake's attorney for the hearing to proceed on 20 March 2017. Although Mr Morake was present in this day, his attorney and counsel were not. The inquiry could therefore not proceed and stands postponed until 23 June 2017 for the parties to address the Presiding Officer on the merits. It is expected that the Presiding Officer will deliver judgment the very same day.



### 3.2 SECOND CHARGE OF MISCONDUCT

The Commission resolved to prefer another charge of misconduct against Mr Morake in that he has been found guilty of an offence and that he failed to prosecute his appeal. The charge sheet was served on him on 27 May 2016. The misconduct inquiry is however kept in abeyance pending the outcome of the current misconduct inquiry against him.