



PROGRESS REPORT DATED 08 JUNE 2017 TO PARLIAMENT: PROVISIONAL SUSPENSION FROM OFFICE, ADDITIONAL MAGISTRATE M J KGOMO, RANDBURG

1. INTRODUCTION

The Magistrates Commission must in terms of section 13(3)(f) of the Magistrates Act, No. 90 of 1993 (the 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 Kgomo from office in terms of section 13(3)(a) of the Act with effect from 18 February 2014 which suspension was confirmed by Parliament on 13 March 2014.

CRIMINAL PROCEEDINGS

2.2 Mr Kgomo is an additional magistrate at Randburg. He is 57 years of age and has been appointed to the lower court bench in July 2000. He was arrested during the afternoon of 5 December 2013 and appeared in the Randburg Regional Court the following day on a charge of corruption. It is alleged that he demanded and received R150 000 (one hundred and fifty thousand rand) in exchange for

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positively influencing the outcome of an appeal for extradition brought by the complainant in the particular matter. The complainant had to face charges of corruption in another country amounting to R20 million. The money was recovered in Mr Kgomo's briefcase in his office and in his presence. The Court on 9 December 2013 granted Mr Kgomo bail to the amount of R30 000 (thirty thousand rand). The criminal case was postponed on several occasions for various reasons. The matter was on 26 August 2014 remanded to 3 October 2014 for Mr Kgomo to instruct an attorney. The Senior State Advocate assigned to prosecute Mr Kgomo advised the Commission that Mr Kgomo's attorney did not appear in court on the last occasions. Mr Kgomo's legal representative withdrew as attorney of record on 3 October 2014. The case was provisionally remanded to 30 October 2014 for Mr Kgomo to secure the services of a new legal representative. The Court also set the trial date for 16-20 February 2015. The new legal representative made his appearance in court on 30 October 2014. The criminal trial commenced on 16 February 2015 and proceeded for the entire week. Three witnesses testified in a trial within a trial. After judgment was passed, the State called the complainant to the stand. The matter was postponed to 09 June 2015 for further trial and set down for three weeks for the evidence to be finalised.

- 2.3 Mr Kgomo on 09 June 2015 again had problems with legal representation. The record of the proceedings reflects that there was an issue between Mr Kgomo and his instructing attorney which issue could not be resolved, with the result that his attorney and counsel had to withdraw. The witnesses for the State were all subpoenaed and most of them were in attendance. The case was remanded to 11 June 2015 for Mr Kgomo to sort out his problem concerning legal representation.
- 2.4 On 11 June 2015 Mr Kgomo placed on record that he had tried to negotiate with his previous legal team but that the relationship of trust had irretrievably broken down. He was given until 17 June 2015 to instruct a new legal representative.
- 2.5 On 17 June 2015 his new attorney placed on record that he was instructed to represent Mr Kgomo but that he would engage the services of an advocate to

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assist him at the trial. Although previous counsel indicated that he was prepared to proceed with the matter when so briefed, he on 17 June 2015 indicated that he was already engaged and not willing to come back to represent Mr Kgomo in the matter. This left the newly appointed attorney with no option other than to ask the court for a postponement to brief another advocate. The Court postponed the case until 23 June 2015 on condition that Mr Kgomo's newly appointed attorney, as well as counsel be present to arrange new dates for the trial to proceed.

2.6 On 18 June 2015 Mr Kgomo however terminated the services of his new attorney and once again instructed another attorney to represent him. The now newly instructed attorney was on record on 23 June 2015. Mr Kgomo's indicated that they will not be briefing counsel. Arrangements for a new trial date had to be set. The Presiding Officer however refused to set a trial date and gave Mr Kgomo until 01 July 2015 to pay his lawyer for the duration of the trial.

2.7 The matter was back in court on 23 September 2015 and 26-28 October as well as 2-3 November 2015 for further hearing. The Prosecutor advised the Commission that the State had made considerable progress in the matter. The matter was been remanded to 03 and 04 May, 09 to 11 May, 16 to 18 May and 23 May 2016 for continuation of the hearing. The complainant testified and was thoroughly cross-examined. The State made significant progress in the matter during this entire period. The case was postponed until 3, 4, 6, 10, 11 and 17 to 19 October 2016 for further evidence. The Director of Public Prosecutions: Gauteng Local Division on 20 October 2016 reported that the State had closed its case and that the defence brought an application for Mr Kgomo's discharge in terms of section 174 of the Criminal Procedure Act (CPA). The defence also brought an application in terms of section 186 of the CPA which was found to be premature. The court ordered the defence to proceed with its case and postponed the proceedings for this purpose until 18 -20 January 2017 for this purpose. Mr Kgomo's attorney was not available prior to these dates. The matter was further adjourned to 10 March 2017 to argue on the section 186 application. The Court on 31 March 2017 dismissed the application. The matter stands now postponed until 26 July 2017 for the parties to

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submit written Heads of Arguments and address on the merits. The cause of this long delay is once again due to the defence attorney not being available prior to this date and the fact that the parties requested a copy of the transcription of the record of proceedings. A magnitude of evidence has been led in this case which includes oral testimony as well as tons of documentary evidence.

DISCIPLINARY PROCEEDINGS

- 2.8 The Magistrates Commission charged Mr Kgomo with misconduct. A charge sheet dated 11 April 2014 was duly served on him. Mr Kgomo absented himself from office without leave or valid cause for the period 20 January 2014 to 04 March 2014, the latter being the day he was served with the Minister's letter informing him of his provisional suspension from office.
- 2.9 The National Prosecuting Authority (NPA) requested the Commission not to commence with its disciplinary hearing/inquiry against Mr Kgomo since it is of the view that it would prejudice the State's criminal case against him.
- 2.10 The Magistrates Commission at its meeting held on 31 October 2014 considered the NPA's request and resolved to keep a decision on the matter in abeyance until its next meeting to be held on 27 February 2015 for the NPA to provide the Commission with a progress report regarding Mr Kgomo's criminal prosecution. The Commission further resolved to approach the NPA with a request to release the prosecutor tasked with the criminal prosecution, to also lead the evidence in the misconduct hearing.
- 2.11 The Commission at its meeting held on 27 February 2015 noted that the criminal case is complex and at a very sensitive. The Commission therefore resolved to keep the disciplinary hearing against Mr Kgomo in abeyance. The NPA is keeping the Commission posted on the progress made in the criminal trial.