



**PROGRESS REPORT DATE 08 JUNE 2017 TO PARLIAMENT: PROVISIONAL
SUSPENSION FROM OFFICE MRS R M MALAHLELA, ASPIRANT ADDITIONAL
MAGISTRATE, DELMAS**

1. INTRODUCTION

- 1.1 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.
- 1.2 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 Mrs Malahlela from office with effect from 17 July 2014 which provisional suspension was confirmed by both Houses of Parliament on 6 and 18 November 2014 respectively.

- 2.2 Mrs Malahlela is an aspirant additional magistrate at the Delmas District Court. She is 51 years of age and has been appointed to the lower court bench on 01 November 2004.
- 2.3 To date her permanent appointment could not be finalized due to poor performance, irregularities in her work, absenteeism, refusal to execute lawful orders, major delays in judgments, failure to finalize matters and poor utilization of court time. Her evaluation reports indicated that she is not a fit and proper person for appointment as a magistrate.
- 2.4 A preliminary investigation report in terms of regulation 26(3) of the Regulations for Judicial Officers in the Lower Courts, No. R. 361 of 11 March 1994 (the Regulations), recommended that she be charged with four counts of misconduct, but the Magistrates Commission's Ethics Committee resolved, due to the lapse of time, not to charge her with misconduct.
- 2.5 The said Committee at its meeting held on 25 May 2009 considered an alleged strained relationship between Mrs Malahlela and her Judicial Head of Office; allegations of poor performance; alleged misconduct and prejudice. It was resolved that a delegation convene at Delmas Court House to discuss the issues and determine the way forward. Two visits were scheduled with Mrs Malahlela, without any success. The issues at hand deteriorated.
- 2.6 Mrs Malahlela was for considerable periods absent from work and in default to explain her absence, she could not satisfy the Commission that she is a fit and proper person to be appointed as a magistrate.

- 2.7 Medical reports indicated that she suffered from Major Depressive Disorder and Panic Disorder. The condition does not render her unfit to work, but she has to continue with monthly psychotherapy and medication.
- 2.8 A report dated 18 October 2011 recommended that she does not have the capacity to carry out her duties of office in an efficient manner due to continued ill-health and that she should furnish reasons in terms of Regulation 29(6) of the Regulations.
- 2.9 The Magistrates Commission's Ethics Committee resolved on 1 December 2011 to refer the matter to the Appointments Committee of the Commission to recommend to the Minister not to appoint Mrs Malahlela on a permanent basis.
- 2.10 The Commission's Executive Committee referred the matter back to the Ethics Committee in order to consider whether Mrs Malahlela should not be charged with misconduct and to direct a separate investigation in terms of Regulation 29 of the Regulations.
- 2.11 The Ethics Committee resolved that a Judicial Quality Assurance Report on the judicial work of the magistrate must be submitted for consideration.
- 2.12 The report was compiled by two Senior Magistrates and covered the period 2010 to August 2012. The following concerns were raised in the report: Mrs Malahlela made mistakes in the Criminal Court that were not in line with her experience on the bench and had a negative impact on the right to a fair trial; similarly, the mistakes made in the Family Court is not reflecting her years of experience; she has a long outstanding debt for private phone calls made from the land line of the office; various complaints resulted in her allocation to the reception court; partly

heard matters prior to 2010 took years to finalize; there is a history of strained relationships between Mrs Malahlela and the local attorneys, the prosecutors and administrative staff; her absenteeism from office has reduced since she works in the reception court – she has a tendency to be absent on a Monday which extends to a Wednesday.

- 2.13 The Ethics Committee accordingly resolved on 6 September 2012 that she be exposed to an additional six months of probation under the guidance of an on board mentor, namely the acting Judicial Head of Office.
- 2.14 The said report was submitted to Mrs Malahlela on 18 April 2013 for her comments. She indicated that she needed a week to submit her comments, but only responded thereto on 28 June 2013.
- 2.15 Although the gist of the report was predominantly positive in nature, the acting Judicial Head of Office was not prepared to make a recommendation.
- 2.16 The acting Judicial Head of Office reported as follows: "It was difficult to write a comprehensive report due to the fact that the magistrate was during the period of extended probation absent for 39 days – 31 days for vacation leave and 8 days for sick leave; the magistrate was evaluated on her work done in the reception court; the statistics she provided raises many questions as to her productivity; she often arrive late at work; does not attend in time to circulars/official correspondence which she must sign; her dedication to her work is questionable; the traffic court roll is not finalized on the allocated court day."
- 2.17 New complaints were lodged against Mrs Malahlela on 24 April 2013: The Control Prosecutor averred that she in case A793/2012 held an enquiry into the

accused's failure to attend court and found him not guilty despite the fact that his bail was finally forfeited to the state on a previous occasion; the warrant of arrest was not cancelled by the magistrate; she refuses to sign circulars and official communication; failure to finalize her inquests despite reminders; left the office without finalizing her court roll; the acting Judicial Head of Office does not see her way open to discuss anything with her; the relationship has become strained and she often does not know what the movements of Mrs Malahlela are at the office. Further complaints on 7 May 2013 indicated the following: the inquests mentioned above were not submitted. She did not return on 2 May 2013 from leave and eventually handed in a sick note for the 2nd and 3rd of May 2013; she did not submit her monthly statistics on 26 April 2013; she only did so on 6 May 2013 after various reminders; she did not respond to a reminder from the Magistrates Commission.

- 2.18 A letter from the acting Judicial Head of Office and the sub-cluster Head dated 20 May 2013 requested the Commission to take into consideration all previous reports and recommendations; to consider whether Mrs Malahlela is indeed a fit and proper person to be appointed as a magistrate; the past conduct of the magistrate, namely falling asleep in court; she did not honour her bond payments which resulted in the re-possession of her house and the selling thereof on public auction; despite a court order for eviction, she refused to vacate the property for a year and left the house in a neglected and damaged state; she often arrives late at work; she takes extensive vacation and sick leave; she does not attend case flow meetings; a backlog court was created to accommodate her as she cannot cope with a normal court roll; statistics are not submitted in time; she often takes time off from work during official work hours.

- 2.19 Seven of the civil judgments taken against Mrs Malahlela were handed down at the court house where she is a judicial officer. To date she has an outstanding private telephone account in excess of R30 000.00 at the Delmas Court House.
- 2.20 Accordingly the Commission's resolved to conduct a preliminary investigation in terms of Regulation 26(1) of the Regulations to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against Mrs Malahlela and to investigate the feasibility of re-opening the previous four charges of misconduct against her.
- 2.21 The investigation report recommended that Mrs Malahlela is charged with misconduct. A charge sheet comprising of 29 counts of alleged misconduct was served on her on 5 March 2014.
- 2.22 Mrs Malahlela on 18 June 2014 filed a Notice of Motion at the North Gauteng High Court citing the Magistrates Commission and the Minister of Justice as respectively the first and fourth Respondents. She applied for an order of the Court *inter alia* to declare the Commission's decision to charge her with misconduct to be wrongful and unlawful. The application was opposed. The Commission was advised that her attorney still had to index and paginate the court papers at the time. He further had to apply for a date for the High Court to hear the matter. The Commission requested the office of the State Attorney to attend to the matter as a matter of urgency.
- 2.23 At its meeting held on 31 October 2014 the Commission considered the content of an email message from Mrs Malahlela's attorney requesting not to proceed with the disciplinary hearing pending the outcome of the High Court review application since the relief sought, *inter alia*, is to set aside the decision by the

Magistrates Commission to charge Mrs Malahlela with misconduct. The Commission resolved to stand by its earlier decision that the misconduct hearing must proceed with notwithstanding the pending litigating in the High Court. The Commission is of the view that the pending litigation involves a motion application to review certain decisions which were taken by the Commission and should not be confused with the legal position relating to appeals. The Commission was advised that both parties' papers were to be filed at the High Court shortly. A date for Ms Malahlela's application to be heard would thereafter be set.

2.24 Mrs Malahlela's attorney was advised accordingly and requested for further particulars which were furnished to him on 13 November 2014. In consultation with her attorney, the date for the hearing to commence was set for 11 May 2015. On 11 May 2015, the defence requested a postponement of the disciplinary inquiry which application was argued before the Presiding Officer.

2.25 The Presiding Officer however ruled to keep the disciplinary inquiry in abeyance pending the outcome of Ms Malahlela's High Court application. The Person appointed to lead the evidence (PLE) on behalf of the Commission had to withdraw due to other urgent commitments. The Commission at its meeting held on 27 May 2016 appointed a new PLE to substitute him.

2.26 On 04 May 2017 the State Attorney, Pretoria advised the Commission that the matter was set down for hearing on 02 and 03 May 2017 by the Gauteng Local

Division of the High Court. Ms Malahlela persisted with an application to have the matter heard by 2 Judges or more. This request was turned down. She then brought an application for the presiding Judge to recuse herself on the basis of incidents which occurred in court. Her attorney was given the opportunity to bring an application from the bar which he refused. He insisted that he wanted to bring it on a Notice of Motion supported by an affidavit. The Judge refused this request given the fact that the matter would then have to be postponed to allow the Applicant time to consult and bring such an application. The attorney then decided to withdraw as attorney of record. The Court allowed the Applicant/Ms Malahlela a postponement to afford her an opportunity to get another legal representative. She was ordered to pay the wasted costs. The State Attorney undertook to revert to the Commission on the way forward shortly.

2.27 The Commission is in communication with Ms Malahlela's attorney in respect of the continuation of the misconduct inquiry against her.