



**PROGRESS REPORT DATED 08 JUNE 2017 TO PARLIAMENT: PROVISIONAL
SUSPENSION FROM OFFICE: MS SR MONALEDI, REGIONAL COURT PRESIDENT,
NORTH WEST**

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 Ms Monaledi from office with effect from 30 November 2016, which provisional suspension was confirmed by both Houses of Parliament on respectively 16 March and 11 May 2017.

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

2.4 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.

2.4 Having considered the preliminary investigation report and all the available evidence presented to it, the Magistrates Commission resolved that Ms Monaledi be charged with misconduct. A charge sheet, containing 76 charges of misconduct, was served on Ms Monaledi on 18 October 2016. Most of the charges relate to her submitting false transport and subsistence claims, resulting in a loss to the Department of Justice and Correctional Services to an amount acceding R200 000.00. She was further found to have been absent from office without leave or valid cause for a total of 85 days, resulting in a further financial loss to the Department.

- 2.5 Despite having been invited to send or deliver a written explanation regarding the misconduct with which she is charged to establish which allegations she admits and which allegations she is placing in dispute, Ms Monaedi elected not to respond.
- 2.6 Numerous attempts to trace Ms Monaedi in order for the Commission to serve a Notice of Hearing on her yielded no results. The Commission only on 19 April 2017 received a letter from her attorney, advising the Commission that they have been instructed to represent Ms Monaedi at the misconduct hearing against her and that all correspondence and communication intended for her be directed to their offices.
- 2.7 On 03 May 2017 a Notice of Hearing, directed to Ms Monaedi to attend the misconduct hearing at Mmabatho on 22 and 23 May 2017, was subsequently forwarded to her attorney as per her instructions with the request to have the Notice served on her without delay. In his response dated 04 May 2017, her attorney advised the Commission that they would be contacting their client and that they would revert to the Commission. In a subsequent letter dated 11 May 2017 her attorney advised the Commission that they made contact with their client who advised them that she is hospitalised at Denmar Hospital (A Specialist Psychiatric Hospital in Pretoria) and that they have not been able to consult with her. Her attorney further advised that she will therefore not be able to attend the hearing, also due to a lack of proper instructions and requested that the hearing be "deferred".
- 2.8 The Commission was of the view that her attorney should attend the hearing, with or without his client's presence, to formerly come on record and place his

instructions on record at the proceedings before the Presiding Officer. The attorney was advised accordingly on 15 May 2017 and was in addition advised that the Commission required written proof that Ms Monaledi has been admitted to Denmark, indicating the date of admission and the period of her anticipated treatment. The Office of the Minister requested that Ms Monaledi be advised that Parliament confirmed her provisional suspension from office. Her attorney was requested to inform his client accordingly.

2.9 In his response dated 18 May 2017, Ms Monaledi's attorney advised the Commission that his client has not been able to instruct them as she was in hospital. He did not receive a response from his client when attempting to contact her by phone and did not know whether she was in or out of hospital. He however undertook to revert to the Commission soon should he hear from her.

2.9 The misconduct inquiry/hearing against Ms Monaledi commenced on 22 May 2017 as arranged. Ms Monaledi and her attorney were not in attendance. The Person, duly appointed to Lead the Evidence (PLE) at the inquiry applied in terms of regulation 26(14) of the Regulations for Judicial Officers in the Lower Courts, 1994 for the inquiry to proceed in Ms Monaledi's absence, since proper notice was given to her attorney. Further that despite a request to submit a medical certificate to prove that Ms Monaledi was indeed admitted to Denmark, no certificate was provided and that it was on Ms Monaledi's own instructions to only correspond and communicate with her via her attorney. Having considered all the documentary evidence presented at the inquiry in this regard, the Presiding Officer ruled to enrol the matter to the following day with the instruction that an email be sent to Ms Monaledi's attorney, directing both Ms Monaledi and her

attorney to be present on 23 May 2017 at the inquiry, further advising them that the hearing is likely to proceed in their absence, resulting in Ms Monaledi suffering prejudice by not being able to answer to the allegation and the charges preferred against her. Despite an acknowledgment of receipt of the email both verbally and in writing, both Ms Monaledi and her attorney again failed to appear before the tribunal on 23 May 2017.

2.10 The PLE therefore argued to proceed with the inquiry in Ms Monaledi's absence. The Presiding Officer however was reluctant to proceed with the inquiry and decided to act with caution, since it was not clear to him whether Ms Monaledi was still in hospital or not. He was of the view that in the circumstances fairness dictated that Ms Monaledi be given the benefit of the doubt. In consultation with Ms Monaledi's attorney the proceedings were therefore postponed to 24 - 27 July 2017.

2.11 A new Notice of Hearing, dated 25 May 2017 was, by direction of the Presiding Officer, send to Ms Monaledi's attorney on 26 May 2017 with the request to advise his client accordingly and request her to sign acknowledgment of receipt thereof. The attorney acknowledged receipt of this correspondence in writing. The Presiding Officer further directed that a Notice of Hearing also be served on Ms Monaledi personally by the PLE. Attempts however to trace Ms Monaledi have thus far been unsuccessful.

2.12 The matter was, by direction of the Commission, in terms of the provisions of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 reported to the SAPS.