

MISCONDUCT INQUIRY OF CHIEF MAGISTRATE V T GQIBA (MS)
HELD AT REGIONAL OFFICE EAST LONDON

Reference: 6/5/5/2: 202/2014

In the matter between:

THE MAGISTRATES COMMISSION

: PLAINTIFF

And

VICTORIA THABO GQIBA

: MAGISTRATE CHARGED

A. SANCTION

[In terms of Regulation 26(17)]

REASONS FOR SANCTION [In terms of Regulation 26(19)(a)(i); These reasons also serve in terms of Regulation 26(1)(a)(i) and 26(19)(a)(iii)]:

The following reasons for imposing the particular sanction is inclusive and not exclusive as motivation for the sanction considered and recommended:

MITIGATING CIRCUMSTANCES:

1. Ms Gqiba is a lady, 63 years old with approximately 38 years' service. She will reach retirement age in August 2018 but considers applying for extension of her appointment for a few more years.
2. She has been a Chief Magistrate for the past twenty (20) years. She holds the degrees BProc and LLM. She is a widow and has two independent children.
3. The amount that was spent on expenditure for her unauthorised travel to Pretoria amounts to R6803.87. It is not an excessive amount that was spent for her (a) unauthorised travel and accommodation to Pretoria and (b) claim of Subsistence and Travel.
4. Even though the Magistrates Commission¹ proved previous conduct of a similar nature, it did not previously institute formal misconduct proceedings against her. Therefore, though previous disciplinary action was taken against

¹ Hereinafter referred to as 'The Commission'

her by means cautionary correspondence and order to repay monies, this inquiry is the first formal misconduct inquiry in which she was charged. It is evident then that even though a lesser – if not insignificant – previous disciplinary action was taken against her, no previous convictions were proved. This particular issue was raised by Ms Gqiba during her address in mitigation of sanction. Having heard both parties, I have upon consideration resolved that her previous record cannot be considered as previous convictions. For ease of reference it is referred to herein as ‘previous transgressions’ or ‘irregular expenses’ as phrased by Ms Gqiba. In light of formal correspondence² by The Commission to her regarding her record it is accepted The Commission in the past proceeded in terms of Regulation 26(4)(b) against her.

5. The timeline of record of previous funds spent inappropriately was committed between 1999 and 2011.
6. Ms Gqiba continues to feel aggrieved in the manner the chain of command Ms Raphahlele, her colleague at Port Elizabeth and Cluster Head, imposed on her. The extent thereof caused an emotional strain which even yesterday could clearly be heard by the Chairperson of this tribunal. Her working relationship with the previous Cluster Head, whereby she was allowed to operate largely undisturbed and independently was not extended. Her powers and duties were largely - it appears - usurped by Ms Raphahlele. She believes unnecessarily so. She is an older and more experienced colleague to Ms Raphahlele whose appointment was endorsed at the interview whilst Ms Gqiba was Chairperson of the Appointments Committee which recommended her to the position.
7. I accept that to be charged with misconduct proceedings is a humiliating and sobering experience. As Judicial Head of East London Lower Court her position is tarnished and an unenviable position to be in. Even though Ms Gqiba raised the issue of her working relationship once more in her submissions before sanction, the purported reason for her to visit Pretoria was found to be baseless and rejected. Therefore, overt sympathy is unwarranted, if not misplaced.
8. She is willing to repay to the Department of Justice the amount spent for the travel and accommodation which was undertaken for the unauthorised return travel from East London to Pretoria.

AGGRAVATING CIRCUMSTANCES:

9. Ms Gqiba's record of similar conduct to these charges was proven by Mr Meijer for The Commission to be the following: (1) 23-29/10/99 where it relates to ‘Incidental expenses’ in the amount of R12598.00; (2) 3-5/07/01 for

² Exhibit E

Substance and Travel (S&T) claims as well as Car hire and air ticket, amount unknown and (3) 22/03/11 for S&T R51.32. A letter dated 31/10/2003 was accepted by this Tribunal on 26/04/17 wherein The Commission reprimanded her. Her record proves this incident is not an isolated one. She was warned against similar conduct in future. Following this reprimand Ms Gqiba conceded in writing that she "...negligently... handled state monies." In her submissions to the Tribunal she refers to her past record as 'irregular expenses/expenditure'. It follows her continued appointment was not unblemished when she committed this fourth instance.

10. This past conduct indicates a tendency to not observe and conduct her official duties with the necessary measure of diligence and irregular expenditure of State monies. These previous disciplinary steps originate from failing to conform to what was integral in her observance of due protocol and committed in pursuance of official duty.
11. There is no record of Ms Gqiba's dissatisfaction or report of chain of command imposed by Ms Raphahlele. It is uncertain how long the status quo existed that Ms Gqiba alleges it to be; no formal structure or institution were approached to mediate or intervene nor has she personally taken issue with Ms Raphahlele to clarify her standing or to diffuse the situation. Ms Gqiba has explained once more in her address in mitigation why she did not follow that route. I remain unconvinced thereof and am not persuaded by these reasons.
12. At the heart of the incident is whether you acted with integrity. Integrity is a cornerstone of the duties of any judicial officer, including a magistrate. As Chief Magistrate she is called upon to set an example to colleagues. After previous reprieves where The Commission did not institute disciplinary proceedings against her, she was appointed to act as Judge in the High Court. For her to be so appointed, the erstwhile Chairperson of The Commission, Ngoepe JP, Gauteng intervened for her to be appointed to such position. Most disappointing is the fact that she as far back as 2004 (the first page of the letter in Exhibit E incorrectly states 14 January 2002, it should be 2004) she acknowledges to Ngoepe JP that her conduct "...not only caused embarrassment to my colleagues, but almost compromised the integrity of our profession."
13. The two (2) charges you are convicted of are very serious. It is required of you to uphold the integrity of the office as magistrate. This conviction corresponds in nature and method to the previous irregular expenses as your record indicates. It further confirms that you have not applied due diligence to the manner you have conducted yourself vis-à-vis State funds. In admission 9³ received by the Tribunal you admit to having two other commitments to attend on the day in question, in Pretoria. Sadly, your silence in respect thereof is deafening. It cannot be allowed that a person in your position use such an

³ Exhibit A5

occasion to travel for private purposes at State expense merely because the resources are available.

14. You are the Sub-Cluster head and are afforded a supervisory position to preside by your appointment over smaller magistrates offices. As judicial head and cluster chief over these offices your position calls to be vigilant in your duties and responsibilities.
15. This position you hold is one that many colleagues aspire to hold. There are only a limited number of Chief Magistrate positions available in the Republic. Many magistrates aspire to be appointed to this position.
16. By virtue of your position as Chief Magistrate you are regarded as the apex of your Court and district. Legal representatives, Correctional Services and administrative personnel are inter alia subject to your decisions and orders. Your conduct of unauthorised travel and claiming Subsistence and Travel in pursuance thereof has brought your position into disrepute. Sadly, you have failed the people who look up to you and at whose duty you serve.
17. The community must have faith and reliance in the office of a magistrate and his/her integrity to uphold that office is foremost. Such person is the face of the office of lower court judiciary and is adjudged not only by the duties (s)he conducts at office but also in public. When the image and reputation of a person who holds the position of Chief Magistrate who must ensure that justice is served is tainted, an integral pillar of the Lower Judiciary and of society is weakened.
18. At the heart of Ms Gqiba's conduct are her recurring misuse of state funds and the apparent lack of realisation to act with such responsibility. This case illustrates that she acted in the knowledge that the meeting in Pretoria was cancelled and proffered a flimsy reason when confronted. The wasteful expenditure of State funds must be laid solely at her door. Subsequent to arrival back in East London this unauthorised expenditure gained momentum when you completed claim forms for payment of Subsistence and Travel which you signed. If it was not for the diligent exercise of duties by personnel at the Regional Office of the Department of Justice where this hearing takes place, this could have passed by unnoticed. The extent to which the Regional Office regards your transgression is not wasteful expenditure but fraud or theft⁴. This I mention without pronouncing on the correctness of such opinion. Your conduct is akin to what is regarded to irreparably damage the reputation of the position of Chief Magistrate and lower judiciary. It lingers in the minds of all who had taken note thereof for many years to come. Even if one commands the position of Chief Magistrate orders/chain of command/protocol must be followed. If not, the good name and respect of the Office you hold cannot be sustained neither can it be said to be professional conduct.
19. The reputational damage of Ms Gqiba's conduct thus has far-reaching consequences. What is intrinsic to the office of a magistrate is developed,

⁴ Exhibit B2

protected and nurtured over many years. Intrinsic in magistrates' duties is to act responsibly. I have no doubt that you have, with particular reference to the ethics which need to be upheld, dismally failed.

20. The most disappointing feature of your failure to uphold her position is that you, considering your past transgressions, did not take immediate steps or pro-actively to remedy this situation to repay to the Department of Justice an amount equal to your wasteful expenses. This cannot be tolerated neither can it be condoned.
21. When one is appointed to this position you are entrusted and relied upon to act as a competent person. This is expected by inter alia the Magistrates Commission, the relevant Minister by whose appointment you serve, your acceptance by court personnel/legal representatives and community of his position. More than that, we are responsible to ensure a diligent adherence to the Constitution⁵ with all its consequences. It is not only limited thereto but the position of Chief Magistrate qualifies you to be a member of the Chief Magistrates Forum and any of its Sub-Committees. This trust is broken.
22. Colleagues are offended if they strive to uphold integrity but the head of the lower court judiciary is tainted by allegations and convictions of this type of conduct. Respect for a superior⁹ entrenched in the position you command. The fact of the matter is that your position qualified you to abuse the situation to your benefit. It follows therefore that you did not uphold principles and ethics inherent to her office.
23. The severity of transgressions would determine whether the harshest sanction be imposed, if it is found to be so severe in nature. It goes without saying that conduct which give rise to irregular expenditure of State funds is one of the severest⁹ as magistrate as senior as she committed. This being your fourth instance of irregular spending of State funds and tax payer's money makes it all the more aggravating.

CONCLUSION:

24. Your conduct which led to the charges detract all the good work so many judicial officers in the lower courts do, sometimes in the most challenging and difficult circumstances. The majority of magistrates hold their position, judicial independence, social standing and integrity in high regard. This position of Chief Magistrate is a 'noble' one. They are the administrators of justice of the lower courts and judicial administration and serve as role models to many who aspire to hold this position. It calls for such person to treasure his/her position and to act with humility knowing full well what consequences may follow upon orders and pronouncing in any matter.

⁵ Act 108 of 1996

25. I find it disconcerting that a person of Ms Gqiba's standing, taking into account her position, her years of experience, her previous exposure to act in the High Court would reveal conduct not only unbecoming her position but indeed not fit to occupy such office.
26. No person can ever lay claim to an unblemished record. Even if our records are somewhat tarnished, we may escape the harshest punishment. No Tribunal can, when it considers sanction, be insensitive to the fallibility of any human being. On Judicial Officers rests a duty to act diligently and spend State money scrupulously. Ms Gqiba is a legally qualified and professional person, she holds two degrees of which the second is a Masters in Law, she has approximately 38 years' experience, has been a Chief Magistrate for twenty years, is a Sub-Cluster head and knows the vagaries of non-adherence to prescripts. More importantly, she has on three previous occasions either negligently spent State money and/or claimed what she was not entitled to do and/or not used it in accordance with provisions. As a person who on a fourth occasion contravened these provisions, even though for the first time formally charged with misconduct, it is inconceivable and unreasonable she acted in the manner convicted of. Her integrity must be above criticism. This conduct which is the basis of the charges against her is to be differentiated from mere lack of better judgment and no possible remedial action can be prescribed by the Tribunal.
27. The **'Code of Conduct For Magistrates'** prescribes the manner in which a magistrate must conduct him/herself. I find the following from the Code of Conduct to be applicable in the instance of Ms Gqiba insofar her conviction on the charges breached the Code. In its Preamble the Code contains the second statement: "...magistrates as judicial officers are required to maintain high standards of conduct in both professional and personal capacities;" It is followed by Code 1 which states as follows: "A magistrate is a person of integrity and acts accordingly. There are no degrees of integrity. Integrity is absolute." Code 4 states: "A magistrate acts at all times (also in his/her private capacity) in a manner which upholds and promotes the good name, dignity and esteem of the office of magistrate and the administration of justice." Code 11 states: "A magistrate executes his/her official duties diligently and thoroughly and requires his/her subordinates to do likewise."
28. Where the record of Ms Gqiba especially proves a tarnished tendency due to previous and similar conduct, it is to be distinguished. I accordingly have no hesitation in my recommendation that Ms Gqiba is (a) not a fit and proper person to continue to hold her current office, (b) her lack of accountability is evident, (c) she acted to the detriment of the administration of justice, (d) she did not act in a manner which upholds the good name and dignity of the office as magistrate, (e) she brought the office of magistrate in disrepute.
29. Mr Meijer quoted passages from the Chief Justice and former Chief Justices in their approach to deal with matters such as these. I am in agreement with the sentiments he argued. Ms Gqiba has not acted with care. As a custodian

ANNEXURE A

MISCONDUCT INQUIRY OF CHIEF MAGISTRATE V T GQIBA (MS)
HELD AT REGIONAL OFFICE EAST LONDON

Reference: 6/5/5/2: 202/2014

In the matter:

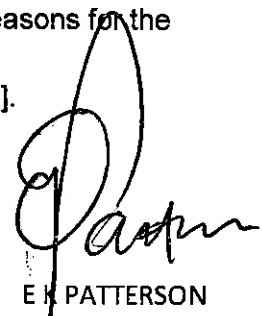
THE MAGISTRATES COMMISSION : PLAINTIFF

Versus

VICTORIA THABO GQIBA : MAGISTRATE CHARGED

**INFORMATION TO MAGISTRATE CONVICTED AND WHERE
RECOMMENDATION IS FOR REMOVAL FROM OFFICE**

1. In terms of Reg.26(20) you have the right to lodge representations to The Commission [Reg. 26(18)].
 - 1.1 The representations must be –
 - In writing [Reg. 26(20)(b)(i);
 - Lodged with the Secretary, Magistrates Commission, P O Box 9096, Pretoria, 0001 within twenty one (21) working days after today's date, 2 June 2017, being the date the findings have come to your notice [Reg 26(20)(b)(ii)];
 - Set out the grounds for the representations [Reg. 26(20)(b)(iii)] and
 - Must be lodged with the Presiding Officer, E K Patterson at epatterson@justice.gov.za and/or preferably for proceedings to run smoothly to jmeijer@justice.gov.za.
2. I, as Presiding Officer may, within twenty one (21) working days after receipt of the notice of representations in terms of Reg. 26(20) forward additional reasons for the recommendation to –
 - 2.1 The Commission and to you, the magistrate charged [Reg. 26(11)].



E K PATTERSON
CHAIRPERSON: MISCONDUCT INQUIRY, MS V T GQIBA
EAST LONDON
2 JUNE 2017

Received: _____


V T Gqiba (Ms)

2 June 2017

Exh A1.



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001 ☎ (012) 325 3951 FAX/FAKS (012) 326 0094

Mr EK Patterson
c/o The Regional Court President
Private Bag X 9017
CAPE TOWN
8000

Reference : 6/5/5/2 -202/2014
Verwysing
Enquiries : Mr G Ramoroka
Navrae
Date : 25 November 2016
Datum

Dear Mr Patterson

**APPOINTMENT AS PRESIDING OFFICER: MISCONDUCT INQUIRY OF CHIEF
MAGISTRATE VT GQIBA, EAST LONDON:**

This letter serves to confirm that the Commission appointed you in terms of the provisions of regulation 26(6)(a) of the Regulations for Judicial Officers in Lower Courts, 1994, as amended, as presiding officer to preside at the hearing into the alleged misconduct of **Ms VT Gqiba, Chief Magistrate, East London.**

A copy of the relevant documentation is enclosed herewith for your attention.

I also wish to draw your attention to the provisions of regulation 26 of the said Regulations.

I wish to thank you in advance for your willingness to assist in this matter.

Mr J Meijer, Judicial Quality Assurance Magistrate at the Magistrates Commission, Pretoria has been appointed to lead the evidence in this matter.

Mr Meijer will liaise with you in connection with the date and venue for the hearing. He can be contacted at **(012) 3253951** or at **082 929 4314.**

I attach a form (pages 3-4 below) to be completed should you require the assistance of the Secretariat of the Magistrates Commission with your **travelling and accommodation** arrangements. The form, duly completed, should be faxed /

emailed to the contact person at the address as indicated on the form. The completed form should reach the Secretariat of the Magistrates Commission by not later than **5 working days** prior to the date on which the travel and accommodation arrangements are required. The Secretariat of the Commission might encounter problems to make the necessary booking arrangements if the form is not submitted timeously.

Please note that if the abovementioned matter is postponed the same form must be completed each time that you require the assistance of the Secretariat with your travelling and accommodation arrangements. Timeous submission of the completed form is paramount to ensure that the Secretariat is given enough time to make the necessary arrangements.

Claims for subsistence costs, duly completed and signed, must be submitted to the Secretary of the Magistrates Commission for approval and payment. Claims for the use of your private vehicle must however not be submitted to the Magistrates Commission. These claims must be paid from the budget of your own office. It will be your responsibility to obtain the necessary trip authority for the use of your private vehicle prior to your departure.

Your kind co-operation as requested above will be appreciated.

Yours faithfully

A handwritten signature in black ink, appearing to read 'G Ramoroka', with a stylized flourish at the end.

G RAMOROKA
SECRETARY: MAGISTRATES COMMISSION