



REPORT IN TERMS OF SECTION 13(4)(a)(i) and (b) OF THE MAGISTRATES ACT, 90 OF 1993: SUSPENSION/REMOVAL FROM OFFICE ON THE GROUND OF MISCONDUCT: MS XB STURMAN, ADDITIONAL MAGISTRATE, EAST LONDON

1. PURPOSE

The purpose of this report is to inform Parliament on the suspension from office of Ms XB X Stuurman, an additional Magistrate at East London, pending consideration by Parliament of a recommendation by the Magistrates Commission for her removal from office as a Magistrate on the ground of misconduct in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act).

2. BACKGROUND

2.1 Ms Stuurman is 47 years of age. She has served the then Department of Justice and Constitutional Development as a prosecutor and rendered other legal services since 01 August 1996. She was appointed to the bench on 05 May 2003.

2.2 Ms Stuurman was initially charged with 18 counts of misconduct, contained in three separate charge sheets, the first of which is dated 12 July 2013 but signed by the Chairperson of the Commission on 07 November 2013, the second and the third dated 03 December 2014. The Person appointed by the Magistrates

Commission to Lead the Evidence (PLE) at the misconduct hearing, a Senior Magistrate, withdrew charge 2 contained in the first charge sheet. Ms Stuurman placed all the remaining charges in dispute. The Presiding Officer at the misconduct inquiry, with the agreement of both parties before her, had the charges as set out in the second and the third charge sheets, dated 03 December 2013, renumbered for purpose of convenience and continuity and dealt with them accordingly in her judgment. Copies of the respective charge sheets are attached.

(Charge sheets) Annexure "A"

3. DISCUSSION

3.1 The misconduct inquiry against Ms Stuurman commenced on 13 March 2015. Ms Stuurman at the commencement of the proceedings raised a point *in limine* and contended that the evidence which led to the resolution of the Commission's Ethics Committee that she be charged with misconduct was obtained in a manner contrary to the procedure laid down by the Constitutional Court in **Van Rooyen and Others v S and Others 2002 (8) BCLR 810 CC**. She further contended that the investigation into the complaints against her was not conducted in a manner consistent with natural justice as required by the Constitution as held in the Van Rooyen case. Her further submission in this regard was that the only reasonable conclusion which can be drawn from the resolution to charge her was that it was "preconceived, irrespective of any other side of the story that could rebut it". Ms Stuurman argued that the Commission was therefore biased in deciding to charge her with misconduct. The Person Leading the Evidence (PLE) on behalf of the Commission, was afforded the opportunity to counter the points raised *in limine* and submitted written arguments to the Presiding Officer in this regard. Having heard arguments from both parties, the Presiding Officer on 30 June 2015 found no merits in the points *in limine* raised by Ms Stuurman and therefore dismissed her Special Pleas filed by her in this regard.

- 3.2. The misconduct charges preferred against Ms Stuurman *inter alia* relate to various incidents which occurred during the period 2011 and 2014 at which
- Ms Stuurman would insult and belittle a number of clerks, employed at the East London Magistrate's Court;
 - she would both, at the office and in open court, use offensive language, being discourteous, disrespectful, raising her voice and shouting at not only the clerks and their supervisor(s) in the presence of other staff members, attorneys and members of the public but also at her peers, a Senior Magistrate, the Chief Magistrate and Judicial Head of Office and local attorneys;
 - she would issue and publish emails to administrative staff using offensive language;
 - Ms Stuurman refused to accept a Notice of Motion from the Respondents' Attorneys, the Sheriff of the Magistrates Court, East London and the Chief Magistrate's Secretary and failed to adhere to a prayer as set out in the Notice of Motion;
 - she published and distributed a document in which she discussed, remarked and commented on matters pertaining to her profession with the media and in public in a manner which is detrimental to the image of the office of magistrate.

3.3 Thirteen (13) witnesses testified on behalf of the Commission. Ms Stuurman cross-examined most of the witnesses at great length. She put it to some witnesses that she would be calling a number of witnesses to corroborate her version. Ms Stuurman however elected not to testify in her defense and only called one witness, to wit, the Head of the Cluster to testify.

3.4 Having heard, considered and evaluated the evidence presented before her the Presiding Officer on 12 December 2016 delivered her judgment and found Ms Stuurman guilty on 17 counts of misconduct. The matter was postponed to 16 January 2017 for purposes of the imposition of a sanction. A copy of the judgment is attached.

(Judgment) Annexure "B"

3.5 On 16 January 2017 Ms Stuurman refused to place any mitigating circumstances before the tribunal, arguing that she was not provided with a certified copy of the record of the proceedings against her. She requested to be excused from the proceedings which request the Presiding Officer refused. She nevertheless excused herself but returned a few minutes later, sat down, repeated her request and left the inquiry again for the second time indicating that she is excusing herself. The Presiding Officer decided to proceed with the inquiry in her absence in terms of regulation 26(14) of the Regulations for Judicial Officers in the Lower Courts, 1994 (hereinafter the Regulations).

3.6 In imposing an appropriate sanction, the Presiding Officer considered all the mitigating and aggravating factors. She on 17 January 2017 imposed a sanction and submitted her reasons for recommending to the Magistrates Commission in terms of regulation 26(17)(b) of the Regulations that Ms Stuurman be removed from office as contemplated in section 13(4)(a)(i) of the Magistrates Act, 90 of 1993.

(Sanction) Annexure "C"

3.7 On 19 January 2017 Ms Stuurman was advised of her right to lodge representations to the Commission in terms regulation 26(20) of the Regulations. She in terms of regulation 26(20) furnished the Commission with her representations on 17 February 2017, a copy of which is attached.

(Representations) Annexure "D"

3.8 The Presiding Officer in terms of regulation 26(21) of the Regulations forwarded her additional reasons for her recommendation on to the Commission and Ms Stuurman on 22 March 2017.

(Additional reasons) Annexure "E"

3.9 The misconduct proceedings were mechanically recorded. The transcription thereof contains 1784 pages. Ms Stuurman in her representations dated 17

February 2017 deals with the issue of the transcription of the record of proceedings. The PLE provided Ms Stuurman with a copy of the transcription of the record shortly after each postponement as soon as it became available. Ms Stuurman avers that the record of proceedings which were submitted to the Commission *"is not a true record of what happened during the hearing"*.

3.10 The Presiding Officer in her additional reasons to her findings specifically addressed this issue and stated that she deemed it judicious to explain the correct version of the situation. The Presiding Officer referred the Commission to Ms Stuurman's written address before judgment was delivered where Ms Stuurman again raised the issue of *"the poor state of the transcription"*. Ms Stuurman also raised her concerns about the record during the inquiry. The Presiding Officer indicates that she could not ignore the submissions made by Ms Stuurman and that, when she was preparing her judgment, *"upon her own perusal of the transcripts she discovered that Ms Stuurman is correct in saying that there are inconsistencies in the transcribed record"*. The Presiding Officer therefore deemed it necessary to rectify the discrepancies in the transcribed record before considering delivering judgment and advised both the PLE and Ms Stuurman in writing accordingly. She admits having, for lack of a better word at the time, incorrectly used the word "reconstruct" instead of "rectify".

3.11 The Presiding Officer, the PLE and Ms Stuurman on a number of dates together listened to the audio recordings, correlating same with the transcribed record. The PLE provided each of them with a copy of the transcribed record. The three of them sat down with the assistance of the stenographer and made the necessary corrections on his/her own set of transcripts. Ms Stuurman initially became confrontational when they were not in agreement. She was therefore given the opportunity to listen to the recordings, using the head phones provided to her. The corrections on the record were thereafter made to the satisfaction of them all. Ms Stuurman's argument in this regard is therefore without substance and holds no water.

3.12 The members of the Magistrates Commission's Executive Committee considered the documents as required by regulation 26(22) read with regulation 26(19) of the Regulations for Judicial Officers in the Lower Courts, 1994 and resolved to recommend to the Minister that the recommendation of the Presiding Officer in terms of regulation 26(17)(b) of the Regulations be accepted and that Ms Stuurman be removed from office on the grounds of misconduct in terms of section 13(4)(a)(i) of the Act. The Commission is of the view that Ms Stuurman's conduct as set out in the charges of which she was found guilty is so serious that it justifies her removal from office.

4 LEGISLATIVE REQUIREMENTS

4.1 In terms of section 13(4)(a) of the Act, the Minister of Justice and Correctional Services, if the Magistrates Commission would recommend that a magistrate be removed from office on *inter alia* the basis of misconduct, must suspend that magistrate from office or, if the magistrate is provisionally suspended from office, confirm the suspension.

4.2 A report in which such suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within fourteen (14) days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within fourteen (14) days after the commencement of its next ensuing session.


4.3 Parliament must then as soon as is reasonably possible, pass a resolution as to whether or not the restoration of his/her office of the Magistrate so suspended is recommended.

4.4 After a resolution has been passed by Parliament as contemplated in paragraph 4.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.

5. CONCLUSION

On this basis I have now suspended Ms XB Stuurman from office. This report as required by section 13(4)(b) of the Magistrates Act, 1993 is submitted for Parliament's consideration.

Given under my hand at PRETORIA.....on this 18...day of AUGUST.....2017



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T M MASUTHA, MP (Adv)

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES