

Ms Stuurman: "B"

(Judgment)



**IN THE MISCONDUCT HEARING OF:  
MAGISTRATE XB STURMAN (ADDITIONAL MAGISTRATE)  
EAST LONDON MAGISTRATES COURT**

***HELD AT THE DEPARTMENT OF JUSTICE-REGIONAL  
OFFICE EAST LONDON***

**MAGISTRATES COMMISSION REFERENCE NUMBER: 6/5/5/2- 15/2012**

**JUDGMENT**

**M. DAWRAY (SENIOR MAGISTRATE- GERMISTON)**

Ms Stuurman is an additional magistrate who is duly appointed in terms of **section 10** the **Magistrates Act 90 of 1993** read with section 9 of the **Magistrate's Courts Act 32 of 1944** and the **Judicial Matters Amendment Act No. 85 of 1995**. Her appointment as a judicial officer is confined to the magisterial district of East London where she has been presiding over matters since the inception of her career on the bench.

A number of complaints were laid against her over the past few years which resulted in this tribunal being constituted by the Magistrates Commission. This tribunal was appointed and properly constituted in terms of **Regulation 26** of the **Regulations for Judicial Officers in the Lower Courts, 1993 as amended**; this regulation prescribes for the appointments of a Presiding Officer and the Officer Leading Evidence in a misconduct hearing of a magistrate.

**Exhibits "B" and "C"** depicts, respectively, my appointment as the Presiding Officer and that of Mr IP Du Preez as the officer leading the evidence in this enquiry.

For ease of reference and practical purpose, I elect to refer to Ms Stuurman as "**the Magistrate**"; the Magistrates Commission as "**the Commission**"; the officer leading evidence as "**the OLE**"; the Regulations for Judicial Officers in the Lower Courts as "**the Regulations**"; the Code of Conduct for Magistrates issued in terms of regulation **54A** of the Regulations as "**the Code of Conduct**" and the Magistrates Act 90 of 1993 as "**the Act**".

In terms of the Regulations the Magistrate was initially charged with 18 counts of misconduct of which two thereof consists of charges in the alternative. It is important to mention that the Magistrate was served with three separate charge sheets. The first charge sheet was signed on **7<sup>th</sup> November 2013** by the chairperson of the Commission, Judge Legodi, consisting of the first seven charges. This document bears the reference number of **6/5/5/2 - 15/2012**. The second and third charge sheets were signed on the **3<sup>rd</sup> December 2014** and collectively they contain eleven charges with reference numbers **6/5/5/2 - 76/2013** and **6/5/52 - 102/2014**.

On the 20 July 2015 and just before the charges were put to the Magistrate, the OLE informed the tribunal that he will not be putting **count two** to her and does not intend leading evidence in respect of this charge. Also, it was agreed that the numbering of the charges will be changed for purpose of convenience and continuity. Hence, the charges were numbered as follow:

- On the first charge sheet with reference number **6/5/5/2 - 15/2012** the numbering remained as **Charges 1 to 7**;
- Second Charge sheet with reference number **6/5/52 - 76/2013** were re-numbered as **Charges 8 - 17**; and the
- Third charge sheet with reference number **6/5/5/2 - 102/2014** was numbered as **charge 18**.

The residual charges consist of the following:

- ❖ 15 counts in terms of **Regulation 25(c)** which deal with contravention of the Code of Conduct for Magistrates in one way or the other;

- ❖ 1 count in terms of **Regulation 25(d)**, in that she carried out her duties in a negligent or indolent manner; and
- ❖ 1 count in terms of **Regulation 25(j)**, in that she failed or refused to execute a lawful order.

In terms of Regulation 25:

***"A Magistrate may be accused of misconduct if he***

***(c) Contravenes the Code of Conduct;***

***(d) is negligent or indolent in the carrying out of his duties;***

***and***

***(j) refuses to execute a lawful order.***

## *Background*

It is common cause that the Magistrate serves as an additional magistrate on the establishment of the office of the Chief Magistrate of East London. Chief Magistrate Valerie Qiba, who is the Magistrate for the district of East London, serves as the Judicial Head of the East London Magistrate's Court.

In terms of section **12(4) of the Magistrates' Courts Act, 1944 (Act 32 of 1944)**:

*"Every additional magistrate ... shall in each district for which he/she has been appointed, be subject to the administrative direction of the Magistrate; and the Magistrate shall allocate the work among the additional Magistrates ...."*

Ms Stuurman is therefore subject to the administrative control of Mrs Qiba, the Chief Magistrate of East London.

The charges were put to the Magistrate who pleaded not guilty on all the counts and her plea explanation is contained in "**Exhibit H**".

## The Charges

### Count 1

**Contravention of regulation 25(c) of the Regulations read with Regulation 26(17) and further read with paragraphs 1,4 and 16 of the Code of Conduct** in that on **20 January 2012 at 9h14** and at the **East London Court House** the Magistrate issued and published an e-mail to **Mlimi Nolusu, Valerie Gqiba, Stephanus Stander, Khululekile Feliti, Burning Chipps and Anna Kritzinger**, wherein the Magistrate insulted and belittled **Mlimi Nolusu**, who at the time was the **Supervisor** of the civil clerks at East London Court House. The email in question was marked as **"Exhibit UU"**.

Mr Mlimi Noluso testified that he was employed at the Department of Justice during the period of **1 July 1999 to February 2013** and held the position as the Supervisor for the office of the clerk of the civil court. He is currently employed at the Department of Rural Development in Bisho.

On **19 January 2012 at 4:54pm** he forwarded an email to Mrs Qiba and Mr Stander. In the same email he copied Anna Kritzinger, Burning Chipps, Feliti Khululekile and Xoliswa Stuurman. In short, his email entails a complaint he had received from a Ms Nhliziyi, a civil clerk employed under his supervision.

The Magistrate reverted to his email on 20 January 2012 at 9:14am with a lengthy response (exhibit UU). Mr Noluso informed the tribunal that he had mixed feelings upon reading her email. He understands the concerns raised by her regarding certain issues in the office of the clerks of the civil court. However, he felt devastated with the **"offensive language"** used in the mail from the Magistrate. [See Transcripts- p861 line 5]

The Magistrate does not deny forwarding this mail to Mr Noluso. The content thereof is also not in dispute.

The content of this email is contrary to what is expected of a presiding officer. The argument proffered by the Magistrate in cross examination was that Mr Noluso did not follow protocol. He ought to have submitted the complaint to her immediate supervisor being Mr Mdalane. This argument holds no water and it does not justify the reaction of the Magistrate.

Even if the complaint laid against the Magistrate by Mrs Mdingi (Nhliziyo) was unfounded or baseless, the response from the Magistrate and more particularly the terminologies and phrases used, *inter alia*:

***"-headless chicken tactics; cheap emotional garbage;***

***-running this institution like a shebeen where a shebeen patron would in a drunken stupor just stand up and address anyone;***

***- under no circumstances can you compare my intellectual ability as well as exceptional organisational skills to the destruction you have caused in the Civil Section;***

***- I will not allow you to drag my name in your mud of incompetence"***

are not conducive to the integrity of a judicial officer, the upholding and promoting of the good name, dignity and esteem of the office of a magistrate. The Magistrate ought to have dealt with the complaint in a manner which would have advanced the discipline or the efficiency of the administration of justice or allied activities.

### **Counts 3 and 18 and the alternative thereto**

These two counts involve the same complainant, Ms **NONDUMISO SIMLINDILE PRINCESS MDINGI**, a clerk of the court at East London Courthouse. It was revealed in her evidence that her maiden surname is Nhliziyo.

I therefore deal with both counts simultaneously.

#### **Count 3**

Contravention of regulation **25(c)** read with regulation 26 (17) of the Regulations and section 16 of the further read with **paragraphs 1, 4 and 16** of the **Code of Conduct** in that on **18 January 2012** and the **East London Court House** the Magistrate **shouted over the telephone** at **Nondumiso Nhliziyo, a clerk in the civil section**; the Magistrate did not afford her the opportunity **to explain herself and insulted and belittled** her by shouting and/or saying the following to Ms Nhliziyo:

- ***".....Who told you to do the roll like this, its disgusting, unprofessional."***
- ***"You do not know civil work, because you just started at the civil office and not show this roll to the attorneys as it is a shame and you do not know anything".***

## **Count 18**

Contravention of regulation **25(c)** of Regulations read with regulation 26 (17) of the Regulations and section 16 of the Act further read with **paragraphs 1, 4 and 16** of the **Code of Conduct** in that on **13 May 2014** at the **East London court House** the Magistrate was **discourteous and/or disrespectful** to the **Civil Clerk Nondomiso Silindile Mdingi**, by stating the following to her in a **raised voice in the presence of staff members, attorneys and members of the public**:

***"You are an employee here; you are just a clerk and will never be in a same level like me; you did not come with an office; when you came we were here and you will leave us here; the phone is not yours – it is for the office..... You don't have to answer the phone and don't answer me when I talk..... you are witchcraft.... You are using medicine..... you are witch."***

These two counts arose out of two incidents which occurred at the clerk of the civil courts' office. Ms Mdingi is testified that the Magistrate shouted at her for not preparing the court roll according to what the Magistrate prefers. She could not find the template which ordinarily is used but to have the court roll ready she created her own. The second incident refers to the Magistrate insulting her in the presence of members of the public and attorneys. It is not disputed that these incidents occurred. However, the magistrate denies what the complainant alleges to have been uttered by her.

Ms Mdingi is a single witness in respect of these two counts. The Magistrate pointed the discrepancies between the statements which Ms Mdingi had deposed to the Investigating Officers.

It is a well-established judicial principle that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against factors which militate against his or her credibility [ **See S v Stevens 2005 (1) All SA 1 (SCA)**].

The correct approach to the application of the so-called 'cautionary rule' was set out by Diemont JA in **S v Sauls and Another 1981 (3) SA 172 (A)** at 180 E-G where he said the following:

*"There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness...The trial judge will weigh his evidence, will consider the merits and demerits and, having done so will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth had been told. The cautionary rule referred to by De Villiers JP in R v Mokoena 1932 OPD 79 at 80, may be a guide to the right decision but it does not mean that 'the appeal must succeed if any criticism, however slender, of the witnesses' evidence were well founded ...' It has been said that more than once that the exercise of caution must not be allowed to displace the exercise of common sense."*

The question remains whether or not the said discrepancies and contradictions are relevant and material to the issue or issues to be decided by this tribunal. The totality of the evidence ought to be considered holistically. In *S v Mkohle* **1990 (1) SACR 95** (A) at 98E-F Nestadt JA remarked that:

***'Contradictions per se do not lead to the rejection of a witness' evidence. As Nicholas J, as he then was, observed in S v Oosthuizen 1982 (3) SA 571 (T) at 576B-C, they may simply be indicative of an error. And at (576G-H) it is stated that not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation; taking into account such matters as the nature of the contradictions, their number and importance and their bearing on other parts of the witness' evidence.'***

Having regard to the abovementioned cases, I am satisfied that the Commission on a balance of probabilities proved in both **Counts 3 and 18** (in the main count) that the Magistrate acted without integrity and in a manner which does not uphold and promote the good name, dignity and esteem of the office of magistrate and the administration of justice.

### **Counts 4, 5 and 6**

Contravention of Regulation **25(c)** of the Regulations read with regulation 26(17) of the Regulations and section 16 of the Act and further read with **paragraphs 1, 4 and 16** of the Code of Conduct.



These charges relate to a series of emails to and from the Magistrate and Mr Stander. It emanates from a letter which the office received from the State Attorneys: Port Elizabeth involving a civil matter over which the Magistrate presided and delivered a judgment in the case. It appears that the judgment of the Magistrate was taken on appeal and reasons for her decision were being sought.

**MR. STEFANUS VAN ZYL STANDER** was the first witness to be called by the Commission. He is a Senior Magistrate at the East London Court House since 1993 and was appointed as an additional magistrate on 3 July 1981. He is one of two Senior Magistrates and Mr Mdalane is the second Senior Magistrate. The latter is in control of the Civil and Family Sections and the former is in control of the Criminal Courts. Mr Stander testified that he invariably acts in the position of Chief Magistrate in the absence of Mrs Qiba.

On **14 February 2012** and whilst was acting as the Chief Magistrate he received an email at 9h20 from Mrs Nel whom I later understood to be the secretary to the Chief Magistrate. He forwarded the same email to Mrs Stuurman at 9h22 with the following message:

***"Ms Stuurman please attend to this as a matter of urgency".***

In his testimony, Mr Stander gave an explanation to the subject of the email. It involves a civil matter, cited as **"East London Own Haven versus MD Bakana and Five Others"** over which the Magistrate presided and reasons for her Judgment were being sought. Attached to this email was a letter from the office of the State Attorneys: Port Elizabeth to Ms Nhlanzi who appears to be the Legal Admin Officer at the office of the Chief Litigation Officer affiliated to the Department of Justice and Constitutional Development (as it was then called). The contents of the letter were read into the record and which consists of the following:

***"NOTICE OF MOTION: EAST LONDON OWN HAVEN-versus- ND BAKANA AND 5 OTHERS***

***I tried to obtain an extension in the above matter. However the other side has indicated that their instructions are to proceed. What will now happen is that an application will be made to court by the applicant to compel the fourth and the fifth respondents to furnish the record. A costs order against the fourth and fifth respondents will also be sought.***

***Please revert to me urgently.***

***Signed  
WC Breytenbach"***

Mr Stander testified further that he received a reply from the Magistrate on the same day at 10h01. The content of the mail is as follow:

“Mr Stander, how many control officers have I got? If you were one, you would know the reasons why that has not been done yet, in future I would request that you follow protocol”.

[See page 52 of the transcripts and **Exhibit I**]

This is **Count 4** in the charge sheet.

At **12h20**, the same day, Mr Stander replied to the Magistrates’ email to the following effect:

“Miss Stuurman the control officers that you are referring to, also function under my control. Further I am at present the acting Chief Magistrate for the district of East London. Chief Magistrate East London, Miss Gqiba, has been cited as the fifth respondent in the case in question, and since Miss Mhlanzi’s e-mail was addressed to her Secretary I considered it my duty to take steps in an attempt to expedite this matter. I forwarded the e-mail to you because I was informed that you will not be at work today and tomorrow, and because as we both know the Control Magistrate in the civil section Mr Mdalane does not have a computer. I have also furnished Mr Mdalane with a printed copy of the e-mail in question. With regard to paragraph 2 of your e-mail I can remark as follows. I have been aware of your initial refusal to accept service of a Notice of Motion from the Sheriff on 15 December 2011. Veritas only received a request for a record to be transcribed on 3 February 2012. Veritas was only informed today by a clerk named DJ, that the transcription is required before 17 February 2012. They have also informed us that it is doubtful that the transcript will be ready by Friday, since a typist only started working on it today. In light of the above, you should be less concerned about protocol, and more concerned about the contents of Mr Breytenbach’s letter dated 13 February 2012”.

A further response from the Magistrate was forwarded to Mr Stander at **13h44** (which now embodies **Count 5** in the charge sheet) with the following contents:

“Mr Stander it would be advisable that you remove yourself from this situation or scenario because of your propensity to be a stranger to the truth, as you know since 2006 you have been involved in a crusade to destroy my career, but up to this stage you have failed. This has nothing to do with you, Mr Mdalane is handling this matter perfectly well. This is a work matter which needs to be tackled as such, and not an opportunity for you to pursue your personal score settling. Do you think I am in trouble, that’s why you are just bulging in whereas you are not required? With your short sightedness, you would not understand even if I explain to you what is happening. In civil matters this happens, its not something new

which is happening to me for the first time in the department, its still going to happen after this matter. So you have no points to hooabalu about. Haven't you done enough damage with your damaging consistent unnecessary throwing of your weight around? As a judicial officer in a managerial position when are you going to stop depending on gossip to make work related decisions? Have you noticed that you are taking this acting Chief Magistracy thing too much as a result you over compensating? Next time if you are acting in a certain position, and you deal with a matter, which has already been dealt with, retrace the steps taken so far, then take a decision from there. Stop bullying Mr Mdalane in his position. Even if he does not have a computer which he is supposed to have, it is your duty as acting Chief Magistrate to bring that to his attention so that he can deal with the matter, as he has been doing from the beginning. Why would you lie and say I am not coming to work tomorrow, whereas my e-mail to Miss Nel, which I said she must give to Mr Mdalane, its clear that I am coming to work tomorrow. Mr Mdalane knows that I am coming to work tomorrow and then he will discuss the matter with me, instead of ambushing me on my day off. I even wrote the telephone number where I could be reached there was anything urgent requiring me at work. Don't you think that if Mr Mdalane saw it fit he would have contacted me? Why am I surprised? Doesn't that sound like what your best friend Mr Jumat was acting in your position and he told the appeals Clerk to phone me whilst I was on leave, so that I can come and sign the appeals document, whereas he had authority to do so. Is that what you discuss in the tea room with your crew when you are discussing Magistrates, Magistrates whose guts you hate. Without to your past, to your past consistent conduct of bending the truth, what are you attempting to achieve by your lies, marked a, b, c. Even if what you are saying was true, which it is not, what does that have to do with you. May I remind you that I am a Magistrate independent from your control. Your position in this institution, does not indemnify you as a gossip monger. Your consideration that it (is your duty to take steps in an attempt to expedite this matter is misplaced, your duty was to place as to what has happened with the matter up to this stage from Mr Mdalane or Miss Nel who have a first hand experience of what is happening. So what? So what was there a specific date set for such. See you are lying through your teeth again. My control Mr Mdalane, after receiving a notice from Miss Nel that the State Attorney requires me to furnish reasons, notified me and told me that he would ask Mr Mncameni AKA DJ to draw the files. He said he was going to instruct Mr Nel, to notify the State Attorney's office that I am waiting for a transcript of the record. On the same day Mr Mncameni informed me that he had contacted Veritas

and was informed they are going to fetch the recordings immediately and transcribe them ASAP as they currently do not have any work. Where, did you get those lies, written in paragraph C of your e-mail, or did you manufacture the truth for reasons only known to you, to yourself, and your crew. When are you going to stop? Aren't you tired of peddling a dead horse? Whenever you are an acting Chief Magistrate or not, whether you are an acting Chief Magistrate or not, please refrain from forcefully involving yourself in matters involving myself, where your involvement or communication with me is not required. I repeat, please follow protocol. If you do not, if you do not know what I mean in this matter, speak to Mr Mvalane my control officer. Stop pretending that things only happen in this office, only when they are done by you, and thereby undermining him in his position."

Mr Stander informed the tribunal in his testimony that he replied to the Magistrate at **3:13** in the afternoon on **14 February 2012**. His reply was as follow:

"Miss Stuurman, I am not going to stoop to your level other than to say that the lies marked A to C, can be confirmed by Miss Nel, and various other people. The fact of the matter is that if you had furnished your reasons timeously there would have been no need for my involvement in this matter. The question to be answered is accordingly what you have done in order to ensure that you were in a position to do so".

Subsequent to this email Ms Stuurman replied to Mr Stander with the following remarks:

"Mr Stander point of correction, if you want to come to my level, you have to go up in strides here and not stoop down, you are the one who is making me to stoop down to your level, which is non-existent. Fact of the matter is that if you had furnished your reasons timeously there would have been no need for my involvement in this matter. The questions we have answered is accordingly what have you done in order to ensure that you were in a position to do so".

"Maybe you think by the above statement you are making a point Mr Stander, as a judicial officer there is a certain level of intelligence which is expected from you. Such a statement which is so shallow would be expected from a lay person who does not know anything about the law or the Courts, all what you are doing with such a naïve statement is proving what I have been telling all along. Have you ever heard of a player being

chased whereas he doesn't have a ball, you are exactly doing that. Where is my control officer in all of this? Being undermined by you as always, although you are holding the same rank of Senior Magistracy. If I am lying about my not coming to work, I send an e-mail, what don't, why don't you attach or print the e-mail and show that I am lying. In respect of your point A, where you or was Miss Nel present on 15 December 2011, when I allegedly refused service of the Notice, if that is not so as the judicial officer can you swear to that, and maintain it as a fact. Did you confirm that with your colleague Senior Magistrate Mdalane, since he is dealing with the matter? Stop dragging me down to your level of gossip mongering which you worship. You are requested to differentiate between the gossip mongering you are peddling in your office with your crew. The real issues required from us by our work as judicial officers this is alien to me, because I grew up in a society where gossip mongering and males don't go hand in hand. If I am lying in respect of point C, why don't you point out which part I am lying in, what I have written about Mers Mdalane, Mncameni as well as Miss Nel, and then tell the correct position. Please I beg you not to write me these e-mails again, because the reader will not be able to differentiate who falls on which level in here please. I remind you that some of us have more important things to do, and have to do the real hard work than writing inconsequential e-mails, knowing that we are going to make more money by being giving acting positions in the silver platter as someone knows us up there".

This is **Count 6** in the Charge sheet.

I deemed it necessary to quote all the emails as it will illustrate the reasons for my findings later in my judgment. If one has regard to the contents of the letter from Mr Breytenbach, it is evident that the matter was urgent because it was so marked in bold and capital letters. It is also important to add that he tried to obtain an extension but the opposition was not amenable to same and intended to bring an application to compel the fourth and fifth respondent for the case record coupled with a costs order against the said respondents.

Mr Stander cannot be criticized for requesting the Magistrate to attend to the issue as a matter of urgency. His reason for acting immediately after receiving the email was due to a number of factors; *inter alia*, Mrs Qiba was cited as the fifth respondent and an adverse cost order was being sought against her. It is further evident that there was an undue delay in the furnishing of the reasons for judgment and the record especially if one has regard to the fact that Mr Breytenbach was unable to obtain an extension in the matter.

In cross examination by the Magistrate it was put to Mr Stander that he knew that she was not on duty on the day the email was remitted to her and ***"a reasonable person in a managerial position would have waited until I came back to work and then hand me or brought it to my attention this is urgent attend to it"***.

[See page 120 of the transcripts]

It is obvious, from the aforementioned statement to Mr Stander, that Ms Stuurman has no idea what the consequences are in matters which are taken on appeal and where Judicial Officers are cited as respondents. In his letter, Mr Breytenbach explicitly mentions that the opposition intends seeking a cost order against Mrs Qiba as the fifth respondent.

Judicial Officers are not immune to costs orders being issued against them. This was confirmed in the case of **Regional Magistrate Du Preez v Walker 1976 (4) SA 849 (A)**. The issue in this matter was whether in our law an order for costs can be made against a judicial officer in his official capacity when such judicial officer's decision is reversed on review. The court held that it had the power to award costs against a judicial officer in exceptional cases i.e. where his conduct has been perverse or malicious; or there has been gross illegality.

The position was recently confirmed in the matter of **Magistrate M Pangarker v Botha 2015 (1) SA 503 (SCA)** where **Mhlantla JA** in **paragraph 39** stated the following:

***"As the magistrate has not committed any gross irregularity, the costs order issued against her must be set aside. Nevertheless it is worth emphasising that, in general, the courts will only grant a costs order against a judicial officer in a dispute over the performance of their judicial functions where bad faith on their part has been proven"***.

Furthermore, the **Department of Justice and Constitutional Development** deemed it necessary to emphasise the importance of the procedure to be followed when an employee or magistrate is served with a Notice of Motion and the urgency thereof by issuing **Circular 63 of 2015**; more especially paragraph **3.2 of the said Circular** which states as follow:

***"Once a Notice of Motion has been served on an official/employee or magistrate, it should immediately be forwarded to the officials listed below. The legal position regarding costs and the opposing of an application by a magistrate is set out clearly in Macleane v Haasbroek NO 1957 (1) SA 464 (A) and the Regional Magistrate Du Preez v Walker 1976 (4) SA 849 (A). This position has been confirmed in Magistrate M Pangarker v Botha and Another 2015 (1) SA 503 (SCA) at [39] and MAGISTRATES ARE***

*REQUESTED TO ACQUAINT THEMSELVES WITH THE RELEVANT PRINCIPLES.” (My highlight)*

Having regard to the aforementioned circular and case law it explains the reason for Mr Stander’s immediate actions upon receipt of the letter from the State Attorneys.


If it is so that there was no fault on the part of the Magistrate and that her reasons were submitted already then the contents of all her emails to Mr Stander in this regard were irrational and absurd.

I am satisfied that the Commission has proved their case on a balance of probabilities on Counts 4, 5 and 6 whereby the Magistrate acted without integrity and in a manner which does not uphold and promote the good name , dignity and esteem of the office of a magistrate and the administration of justice.

### *Count 7 and the Alternative thereto*

Contravention of regulation **25(d)** read with regulations 26(17) of the Regulations and section 16 of the Act in that on **14 December 2011 and 15 December 2011** and at **East London Court House** the Magistrate **refused** to accept a notice of motion [East London Own Haven and Noluthandu Dorothy Bakana (first respondent) and five other respondents] dated 14/12/2011 from **Bax Kaplan Attorneys, the Sheriff of the Magistrates Court, East London and Mrs D. Nel, the secretary of the Chief Magistrate, East London** and further that she **failed** to adhere to the prayer in paragraph 2 of the said notice of motion and thereby carried her duties in a **negligent or indolent manner**.

This charge relates to the Notice of Motion in which Magistrate Stuurman is cited as the Fourth Respondent and Mrs Qiba as the fifth. The Applicant, East London Own Haven, called upon the Respondents to show cause why the Fourth Respondent’s order issued under case numbers **14784/2008** and **16174/2009** granting the First Respondent’s applications for rescission of judgment should not be reviewed. [See “**Exhibit FF**”]

 Paragraph two of the notice of motion calls upon Magistrate Stuurman to deliver within fifteen days of her receipt of the notice of motion to dispatch to the Registrar of the High Court of South Africa – Eastern Cape Provincial Division- Grahamstown the record of the proceedings and copies of all the documents filed of record in regard to this matter and together with such reasons as are required by law.

Ms **DESIRE NEL** informed the tribunal under oath that she is the secretary to the Chief Magistrate at the East London Courthouse. On **15 December 2011** the Sheriff approached her regarding the said notice of motion which was to be served on the Magistrate. She told the Sheriff to wait in her office and proceeded to the Magistrate in an attempt to get the latter to sign for the document. She unfortunately failed to obtain the signature or to deliver the said notice to the Magistrate. Ms Stuurman indicated to her that an attorney tried to serve the same documents on her the previous day but she did not sign same due to the fact that a certain procedure was not followed; and she does not intend to accept the documents from Ms Nel. The Magistrate expressed her view to Ms Nel that "***the attorneys like to take shortcuts***". [See p628 – line 5 of the Transcripts]

Ms Nel then approached Mr Stander, who was the Acting Chief at the time, after she had failed to get the signature of Ms Stuurman. Ms Nel was then instructed by Mr Stander to hand the documents to Mr Mdalane. She received the documents back from Mr Mdalane later with the instruction to forward it to Mr Venkatsamy who is at the legal department for further processing.

Mr **MOKETSI ABEL POULO MDALANE** testified under oath that as Senior Magistrate in the civil section, Ms Stuurman is placed under his direct supervision. The Sheriff approached him on **15 December 2011** reporting that they could not effect service on the Magistrate and he signed for the notice of motion. He approached the Magistrate at tea time and she raised the concern that the notice was not recorded in the appeal register. She only accepted the document after he had explained to her that it is a process issued from the High Court.

It is evident from the testimonies of both these witnesses that Ms Stuurman did not accept the notice of motion. In fact, Mr Mdalane corroborates the testimony of Ms Nel in that the Magistrate was of the view that proper procedure was not followed. She informed Mr Mdalane that it was not entered in the Appeals Register.

I want to pause at this juncture and refer to the commentary in **Jones and Buckle** (10<sup>th</sup> Edition) under Rule 51 which deals with Appeals and Reviews. On page 51-2 it is mentioned that "***a magistrate is not entitled to refuse to react to a request brought in terms of the subrule on the ground that it does not comply with the local practice in a particular magistrate's court.***" This was decided in **Priem v Hilton Stuart Trust 1994 (4) SA255 (E)**.



Surely, the position is the same (if not more urgent) when a party is seeking an order in the High Court to compel a magistrate to submit reasons within 15 days.

By her own admission to Ms Nel under cross examination of the latter, the Magistrate refused to accept the notice of motion on the 14 December 2011 which necessitated the Sheriff to return the following day and serve it on Mr Mdalane.

Mr **LUYANDA MNCAMENI**, a clerk of the civil court, testified that he received a request from both Mr Mdalane and Ms Stuurman on 2 February 2012 to cut a CD in respect of the digital recordings to have the recordings transcribed. He duly complied and took the CD to Mr Cenge who is the Appeals Clerk.

Mr **DALUXOLO CENGE**, an administration clerk at the Clerk of the Criminal Courts, confirmed under oath that he had received a CD from Mr Mncameni in the abovementioned cases in February 2012.

It is clear from the evidence before me that the Magistrate did not comply with paragraph two of the notice of motion. She did not make the necessary arrangements to have the record transcribed timeously and also furnish same to the Registrar. Hence, the letter from Mr Breytenbach (**exhibit "I"**) dated **13 February 2012** informing that a cost will be sought against the fourth and fifth respondent due to the record not being submitted. This is despite the fact that the notice was handed to her on 15 December 2011.

My views expressed in counts 4, 5 and 6 regarding Mr Standers' haste in obtaining reasons from the Magistrate applies to this charge as well.

The Commission succeeded on a balance of probabilities in the **main count** that the Magistrate carried out her duties in a negligent or indolent manner.

### **Count 8**

Contravention of Regulation **25(c)** of the Regulations read with regulation 26(17) of the Regulations section 16 of the Act and further read with **paragraphs 1, 4 and 16** of the **Code of Conduct** in that on or about **15 February 2012** and East London Court House, at approximately 8:20am, the Magistrate uttered, *inter alia*, the following

words in the presence of Senior Magistrate Stephanus Stander, Additional Magistrate Tyler, and others, of which the tone thereof was disrespectful, insulting and abrupt:

- ***"To Senior Magistrate Stander: I am not talking to you, the office does not belong to you. I am to people sitting here;***
- ***To additional Magistrate Tyler: I am not to you – shut up – I will deal with you later;***
- ***To Senior magistrate Stander: I have Shown you Many on Many occasions in the past and will show you again"***

It is common cause that an incident occurred in the magistrates' tea room on 15<sup>th</sup> February 2012. Mr Stander testified that he made a note of the words uttered by Ms Stuurman immediately after the incident occurred.

Mr **MELVYN BASIL MEYER**, an **additional magistrate** at the East London Court House, confirmed in his testimony that he was in the tea room on the day in question and he was present when Ms Stuurman stood in the doorway and mention that she is observing them. It was then that Mr Stander told her "I hope you like what you are seeing". He remembers that Ms Stuurman replied to Mr Stander but could not remember her exact words. Ms Tyler then told her that she is being rude to Mr Stander. Ms Stuurman told Ms Tyler to "**shut up**". Ms Stuurman denies this.

[Transcripts p1177 -1178]

The magistrate argued that Ms Tyler as the complainant in this count was not called to testify and therefore she cannot be found guilty. This is not correct. In this instance both Mr Meyer and Mr Stander testified what they had experienced and I beg to differ from the view held by the Magistrate. Ms Tyler is not the complainant. It is an incident which occurred in the presence of a number of magistrates who corroborated each other in their testimonies.

I am satisfied that the Commission on a balance of probabilities proved that the Magistrate acted without integrity and in a manner which does not uphold and promote the good name, dignity and esteem of the office of magistrate and the administration of justice or allied activities.

## Count 9

Contravention of regulation **25(c)** of the Regulations read with regulation 26(17) of the Regulations section 16 of the Act and Further read with **paragraphs 1 and 4** of the **Code of Conduct** in that on or about **16 July 2012** and at **East London Court House** the Magistrate published a letter dated **16 July 2012** by posting it on a wall in the East London Court House. This letter was in response to correspondence dated 29 June 2012 which the Magistrate received from the then President of the East London and Mdantsane Attorneys Association, Mr Richard Jardine.

This charge relates to a correspondence which the Magistrate posted at the courthouse which is a response to a letter from Mr Jardine.

It is worth noting that both the Magistrate and the OLE agreed not to call Mr Jardine due to the fact that is not in dispute that Mr Jardine is the author of **Exhibit "W"** and that Ms Stuurman is the author of **Exhibit "X"**. [See pages 215 to 217]

It is upon my insistence that Mr Jardine was called to testify due to the fact that the Magistrate is not represented and she pleaded not guilty to the charge.

Mr **RICHARD KEITH JARDINE**, a director at the attorneys operating under style and name of Drake Flemmer and Orsmond Incorporated, testified that he was "**mortified and embarrassed**" with the contents of the response from the Magistrate (**exhibit "X"**). The Attorneys Association always had a cordial relationship with the Magistracy.

I deem it unnecessary to comment further on this count as the Magistrate does not dispute publishing a letter and posting it on the wall.

The Commission has on a balance of probabilities proved that the Magistrate acted without integrity and in a manner which does not uphold and promote the good name, dignity and esteem of the office of magistrate and the administration of justice.

## Count 10

Contravention of Regulation **25(c)** of the Regulations read with regulation 26(17) of the Regulations section 16 of the Act and Further read with **paragraphs 1, 4 and 16** of the **Code of Conduct** in that on or about **12**

**February 2013** and at East London Court House the Magistrate wrote a letter and addressed to Ms V.T. Gqiba, the Chief Magistrate, East London, of which the tone thereof was disrespectful, insulting and abrupt.

This charge relates to the Magistrate expressing her discontent in a letter to the Chief Magistrate after the latter instructed her to put in leave should the Magistrate not report for duty before leaving for Port Alfred to attend a Civil Workshop.

Mrs **VALERIE QIBA**, the Chief Magistrate of the East London Court, testified that she received a letter dated 12 February 2013 from the Magistrate with the heading "RE: MY ATTENDANCE AT OF THE CIVIL WORKSHOP ON 13 FEBRUARY 2013" [Letter marked **Exhibit "WW"**]

The Magistrate does not deny that she is the author of the letter. It is self-explanatory. Mrs Qiba read the letter and placed on record that she realised that Ms Stuurman did not take kindly to discipline. When someone points out her wrong doing then she would accuse the person of having an agenda. The submissions made by Mrs Qiba are confirmed if one has regard to the contents of the letter inter alia:

- ***'But, taking into account your vendetta against me, and the fact that you are never in this office and you do not know what is happening in our office workwise, and in those few days that you are here you are always out of this office as early as you possible can, I assumed that you decision was based on a lack of information and I took it upon myself to fill and make you up to date with what is happening in my office which would cause me not come to work tomorrow:.....'***
- ***'I am of the opining that you decision was solely based on your vindictiveness and was tainted with your boundless and uncontrollable hatred for me. In the process, whilst pursuing your personal agendas you are sabotaging productivity in my court, thereby disadvantaging my employer and the masses of the people we are supposed to serve. The attorneys are writing letters asking when they can get their judgements, whilst you are busy making arm-chair decisions not based on the interest of the office.'***

Mrs Qiba informed that she just sticks to the rules when it comes to Ms Stuurman. I am satisfied that the Commission on a balance of

probabilities proved that the Magistrate acted without integrity and in a manner which does not uphold and promote the good name, dignity and esteem of the office of magistrate and the administration of justice.

### Count 11

Contravention of regulation **25(c)** read with regulation 26 (17) of the Regulations and sections 16 of the Act and with **paragraphs 1, 3, 4 and 16** of the **Code of Conduct**.

This charge relates to a correspondence to Mr Terrence Mathie (an attorney at law) of which the Magistrate was the author. The letter dated **26 April 2013** contains the heading: "*RE Mr Bell's ALLEGATIONS ON 25 APRIL 2013 ABOUT MS STUURMAN TO MR MDALANE*".

This document is marked as "**Exhibit O**"

Mr **MATHEW WILLIAM BELL** testified that he is currently a legal officer at ELIDZ and during 2013 he was a candidate attorney employed at Mr Terrence Mathie Attorneys in East London. Furthermore, he was called by his principal Mr Mathie to discuss the complaint laid against him by the Magistrate. He calls it the first complaint.

Subsequent to this letter Mr Mathie responded to the Magistrate in writing which was sent via an email dated 27 May 2013. He states that he has knowledge of the contents of the letter because after Mr Mathie drafted same he showed it to him. The letter is now marked as "**Exhibit O**"

Mr **TERENCE ROBERT MATHIE**, a local attorney in East London, confirmed under oath that Mr Bell served his articles with him and continued to be under his employ after he was admitted as an attorney. Mr Mathie confirms receipt of the complaint from the Magistrate against Mr Bell. Another copy of "**Exhibit O**" was handed in and was marked as "**Exhibit GG**" when Mr Mathie testified. Both documents are the same. The Magistrate does not dispute the contents of the letter.

Mr Mathie also confirmed that Brenda Middleton is his secretary.

## Count 12

Contravening of regulation **25(c)** read with regulation 26 (17) of the Regulations and sections 16 of the Act and with **paragraphs 1, 3, 4 and 16** of the **Code of Conduct** as amended.

This charge flows from **Count 11** which is a response from the Magistrate to Mr Mathie about her initial complaint against Mr Bell. This email is marked "**Exhibit Q**".

Both Mr Mathie and Mr Bell testified in respect of this count as well. The contents of the document are not disputed by the Magistrate.

I am satisfied that the Commission had on a balance of probabilities proved that the tone of the Magistrates' correspondences in both **Counts 11 and 12** was disrespectful, insulting and abrupt.

## Count 13

Contravention of Regulation **25(c)** read with regulation 26 (17) of the Regulations and sections 16 of the Act and further read with **paragraphs 1, 2, 3 and 4** of the **Code of Conduct**.

This charge speaks to an incident between the Magistrate and a candidate attorney which occurred in the civil motion court.

Mr **MATHEW WILLIAM BELL** testified that he is currently a legal officer at ELIDZ and during 2013 he was a candidate attorney employed at Mr Terence Mathie Attorneys in East London.

On **12 September 2013** he appeared in the Civil Motion Court before Magistrate Stuurman and appearing on behalf of an Applicant in a Section 32 application. After introducing himself to the court, he confirmed his appearance on behalf of his client and also placed on record his reason for seeking a postponement as per the instructions of his principal, Mr Mathie.

Magistrate Stuurman then "**consulted with the respondent – she did so in isi Xhosa.**" [See page 225: lines 8-9 of the transcripts]

Mr Bell is not conversant in the Xhosa Language and as a result did not understand the conversation between the Magistrate and the Respondent in the matter. He actually heard his colleagues laughing behind him;

**"those who understood isi Xhosa"**. It appears from the testimony of Mr Bell that no Interpreter or Stenographer was available in court on the day in question.

The Magistrate then addressed him and stated that **"Terence Mathie Attorney was exploiting the law by infringing respondent's constitutional rights"**.

It is important that I quote from the transcripts the evidence of Mr Bell where he describes exactly what had transpired in court on this day:

*"Its also worth noting that the courtroom was full, there were members of the public, they were doing rescission applications on their own, and as well as my fellow colleagues and senior attorneys. Once she had told me that we had infringed upon this individual's Constitutional rights, she laughed and stated that this the respondent must approach a very good attorney, and sue Terence Mathie Attorney for damages as well as approach the local newspaper the Daily Dispatch. She then stated that Terence Mathie Attorney must release the goods attached.*

*She then said that Terence Mathie Attorney must release the goods that were attached in terms of the Section 32 application. Magistrate Stuurman then asked me what are we do with this matter to which I replied that the Court has made a ruling. Magistrate Stuurman then rebuked and said this is not what she said.*

*She then got quite aggressive with me and told me that I am, I am a liar, she referred to an ex parte application, which I brought forth before a different Magistrate, Magistrate Hansjee. And Magistrate Mdalane, and that I had spoken behind her back to them.*

*Then after that she, she stated that I undermined her court, on the basis that she is black, and its people like me that sew discord in her court"*.

[See Transcripts page 226: line 7 – 25 and page 227: line 2- 17]

It is evident from the aforementioned quote that Mr Bell was ridiculed not only in the presence of his fellow colleagues but including members of the public. The Magistrate spoke to the respondent, who is a party to the matter, in a language which was not understood by the applicant's attorney. I have no issue with the fact that the Magistrate conversed with the respondent in one of our official languages. The question that comes to mind is how was Mr Bell supposed defend his clients' case if he does not understand what was said to his opponent by the court? The Magistrate ought to have secured the presence of a Xhosa Interpreter to assist in the matter.

I need to pause at this juncture as I deem it necessary to make reference to the **Constitution of the Republic of SA- Act 108 of 1996** ("The Constitution")

The relevant Chapter which comes to mind is "**The Bill of Rights**" and more particularly **Sections 9 and 34** thereof.

**Sub-sections (1) and (3) of Section 9** under the heading "**Equality**" reads as follow:

*"(1) Everyone is equal before the law and has the right to equal protection and benefit of the law; and*

*(3) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, **language** and birth."*

(My highlight)

**Section 34 – Access to courts** -provides as follow:

*"Everyone has the right to have any dispute that can be resolved by the application of law decided in a **fair** public hearing before a court or, where appropriate, another independent and **impartial** tribunal or forum."*

(My highlight)

There is a constitutional duty on all judicial officers in South Africa to ensure that the litigants in their courts understand the proceedings and to make the courts accessible to everyone if one has regard to the abovementioned sections. With the advent of our democracy the **Department of Justice** issued **Circular 48 of 1995** in which it requests all Heads of Offices to make the services of court Interpreters available in civil matters.

The Magistrate clearly lost focus of the application before her. It was a **Section 32** application and I assume it was in terms of the **Magistrates Court Act 32 of 1944** if one has regard to what Mr Bell had testified.

**Section 32** deals with the attachment of property in security of rent. Mr Bell indicated that he had received instructions from his principal to seek a postponement to afford the respondent an opportunity to provide the applicant with evidence relating to his marital regime. They would have approached the Sheriff to release the goods upon receipt of the required evidence from the respondent.

Instead of affording Mr Bell the opportunity to request a postponement, confirm or discharge the order or deal with it in terms of the said section, the Magistrate informed the respondent to approach "**a very good attorney and sue Terence Mathie Attorney for damages**". I find the tail end of this statement extremely unbecoming of a presiding officer where the respondent is informed to approach the local newspaper called the Daily Dispatch.

It, later, becomes apparent that the Magistrate was not focusing on the application before her when she referred Mr Bell to other matters which



he had brought before Magistrate Hansjee and Senior Magistrate Mdalane. Mr Bell was then accused of speaking to these two magistrates behind her back. Mr Bell testified that he just smiled when he was told by the Magistrate that "***the court is open to all people who are pink, blue and black***". He was asked by the OLE the reason for him smiling at that juncture to which he replied that he was embarrassed. He was called a liar and a racist in the presence of his colleagues and members of the public. A senior attorney, Mr Makhanya attempted to interject and requested the Magistrate to stand the matter down but he was told to sit down because she (the Magistrate) was not done with Mr Bell. Upon the advice from Mr Makhanya and after waiting for his turn, he withdrew the matter.

It is clear that the Magistrate became extremely personal with the attorney if one considers the fact that she was not done with him and ordered a senior attorney to sit down. She became aggressive with him and rebuked Mr Bell when she did not appreciate his reply to her question. After all the "***tongue lashing***", the Magistrate wanted to know from Mr Bell how the matter will be disposed of to which he replied that she already dealt with the case by releasing the goods. She also told him that he is a liar and accused him of lying about her to her colleagues, etc.

I find that the Commission has proved on a balance of probabilities that the Magistrate acted towards Mr Bell in such a manner that constituted a breach of paragraphs 1, 2, 3 and 4 of the Code of Conduct by acting without integrity, objectivity, dignity courtesy and self- control.

### **Count 14**

Contravention of regulation **25(c)** read with regulation 26 (17) of the Regulations and sections 16 of the Act and with **paragraphs 1, 3, 4 and 16** of the **Code of Conduct** in that on or about **17 October 2013** and at East London Court House and in open court the Magistrate stated the following reasons inter alia for refusing to recuse herself in civil case **18591/12** whereof the tone was disrespectful, insulting and abrupt:

- o *'Mr Bell is making the application because he wants to make his forum shopping, where he takes his matters to the Magistrate of his choice permanent. That would be unfair to the other attorneys who have to follow the rules and regulations as well as the office practices which Mr Bell is refusing to follow';*

- *'As it has become apparent to the court, based on many dealings with Mr Bell, he is a stranger to the truth and he is doing the same thing in respect of this matter';*
- *As indicated above, Mr Bell is very good at twisting things and is a stranger to the truth';*
- *The court is of the opinion that Mr Bell's application is based on opportunism to create forum shopping and legalise it in our office'.*

Mr Bell's testimony is that his principal agreed with him that he was harshly treated on 12 September and decided to lodge a complaint with the Magistrates Commission against the Magistrate.

On the **17 October 2013** they had an application to compel discovery in case number **18591/2012**. Due to the fact that they had lodged a complaint against the Magistrate they felt that there would be a likelihood of bias in the court and decided to opt for an application of the Magistrate's recusal. The application was then brought formally in court. The court does not have a stenographer as a result the recordings of the application were made with the long hand.

The record of proceedings in this matter (18591/2012) was handed in and marked as "**Exhibit R**" of which same depicts the statements mentioned in the charge sheet. This document is self- explanatory.

The contents of this document are not disputed by the Magistrate.

I am mindful of the fact that the magistrate is not charged with failure to recuse herself but rather her reasons proffered in the dismissal of the application. As a matter of interest, the test for a recusal of a judicial officer is now well settled and the leading case in this regard is the ***President of the Republic of South Africa v South African Rugby Football Union 1999 (4) SA 147 (CC)***.

In respect of this count, I am satisfied that the Commission has on a balance of probabilities proved that the tone of the magistrates' reasons is disrespectful, insulting and abrupt.

## **Count 15**

Contravention regulation **25(c)** read with regulation 26 (17) of the Regulations and sections 16 of the Act and with **paragraphs 1, 3, and 4**

of the **Code of Conduct** in that on or about **24 October 2013** and at East London Court House the Magistrate was the author of an electronic mail in correspondence with Tanya Appelgryn and/or Niehaus Mc Mahon Attorneys of which the tone thereof was disrespectful and abrupt by stating the following inter alia:

- o 'I will treat your e-mail as if it has not arrived and delete it.'

**MS TANYA APPELGRYN**, employed as a secretary at Niehaus McMohan Attorneys, testified that she had received instructions from Mr McMohan to draft a letter to Magistrate Stuurman to enquire about an outstanding judgment. The letter dated **23 October 2013** contains the following:

***"We refer to the above matter, and to our correspondence dated 19 August 2013, a copy of which is attached hereto for your reference. Your response hereto as to when Judgment can be expected will be appreciated."*** The document is marked as **"Exhibit Z"**

In response to her letter, Ms Appelgryn received an email from the Magistrate on **24 October 2013** in with the following message:

***"Madam***

- 1. You are kindly request that to refrain from using my e-mail address for any purposes other than the one listed in my directives which were issued to all the attorneys practising in the district of East London.***
- 2. I treat your email as if it has not arrived and delete it."***

Document is marked as **"Exhibit AA"**.

The Magistrate does not deny remitting **"Exhibit AA"** neither does she dispute the contents thereof.

To anyone reading this charge, more particularly the second paragraph thereof, it would appear that the Magistrate is charged with an issue which is petty. However, what is of importance is the intention with which the Magistrate wrote the said paragraph. I am of the view that intention was to insult Ms Appelgryn because she communicated to the Magistrate directly, if one has regard to the cross examination by the Magistrate in respect of this witness.

The Commission has on a balance of probabilities proved that the Magistrate acted without integrity, objectivity, courtesy and self-control,

and thus in a manner which does not uphold and promote the good name, dignity and esteem of the office of magistrate and the administration of justice in this particular charge.

### Count 16

Contravention of regulation **25(j)** read with regulation 26 (17) of the Regulations and section 16 of the Act in that on or about **12 February 2014** and at East London Court House the Magistrate refused to execute a lawful order from Chief Magistrate Gqiba and / or Senior Magistrate Mdalane to attend a Default Judgement Meeting of the Civil Court at Office Number 40, by not attending the said scheduled meeting.

This charge arose out of an instruction issued by the Chief Magistrate-Mrs Qiba requesting the Magistrate to attend a meeting with the object of addressing the backlog in Default Judgment applications. Mr Mdalane wrote a letter dated 7 February 2014 to the Magistrate requesting her presence at the meeting and also indicating the purpose of the said meeting.

[See "**Exhibit "JJ"**"]

Mr Mdalane confirms receiving a response from the Magistrate in the form of a letter of which same was handed in and now marked as "**Exhibit KK"**

Mr Mdalane testified that the scheduled meeting took place but Ms Stuurman was not present. He informed that other than **Exhibit "KK"** he had not received any other communication from Magistrate Stuurman not intending to attend the said meeting. In this exhibit a number of issues are raised by the Magistrate. Amongst other things, in paragraph 17 thereof, the Magistrate expressed her discontent to Mrs Qiba facilitating the meeting. She is of the view that the Chief Magistrate is "legalising the undermining of my authority in my court by Mr Kobese".

Although the Magistrate does not explicitly indicate that she will not attend the meeting, it is apparent from the contents of her letter (**exhibit "KK"**) that she had no intention of adhering to the instruction. More so, if one has regard to paragraph 22 of her letter where she states that the intended meeting is nothing more than an interference with the

independence of her court. In fact, this is a clear indication that she was opposed to the meeting being held.

On a balance of probabilities it is clear that the Magistrate refused to execute a lawful order by not attending the meeting.

### Count 17

Contravention of Regulation **25(c)** read with regulation 26 (17) of the Regulations and section 16 of the act and further read with **Paragraph 9** of the **Code of Conduct** in that on or about **10 April 2014** and at East London Court House the Magistrate published and distributed a document titled 'Spotlight Shines on EL Magistrate – Investigation could lead to impeachment' – Your article dated 05 April 2014', at the Civil Section.

This charge arose out of an article by Ray Hartle which was published in the Daily Dispatch, a local newspaper in East London, with the heading – ***"Spotlight shines on EL magistrate- Investigation could lead to impeachment"***. The article is marked as **Exhibit "NN"**. It makes specific reference to Magistrate Stuurmans' conduct and work performance. Mr Hartle reported that the local lawyers and officials from the Department of Justice refer to the Magistrate as ***"Racist, recalcitrant, defiant, unprofessional, working at "her own snail's pace", flatly refusing to do her job."***

It is common cause that the Magistrate published and distributed a response to the article by Mr Hartle. It is an eleven page document with the heading ***"THE EDITOR DAILY DISPATCH- RE:"SPOTLIGHT SHINES ON EL MAGISTRATE- Investigation could lead to impeachment" – Your article dated 05 April 2014"***.

Mr Mdalane testified that he received a copy of the document published by the Magistrate and it was also attached to the notice board at the Clerk of the Civil Court. According to his understanding, Mrs Qiba as the Head of Office was responsible to answer to the article by Mr Hartle.

Mr Mncameni testified, in respect of this charge, that he received a call from the Magistrate requesting him to attach the said document on the notice board on the wall next to Motion Court and place a number of copies of the same document on the floor. He only realized later that it is

a response to the Daily Dispatch after Mr Stander requested a copy of the document.

**Paragraph 9** of the **Code of Conduct** stipulates as follows:

***"A magistrate refrains from discussing or remarking or commenting on matters pertaining to his/her profession with the media or in public in a manner which is detrimental to the image of the office magistrate."***

The contents of the article published by the Magistrate are not only detrimental to the image of the office of the magistrate but rather it is destructive to the judiciary as a whole and the administration of justice.

I am satisfied that the Commission on a balance of probabilities proved that the magistrate discussed, remarked and commented on matters pertaining to her profession in public which was detrimental to the image of the office of magistrate.

## *Evaluation*

The Magistrate did not testify in her case but instead called one witness, Mrs **SIBONGILE RAPHAHLELO**, who is the Cluster Head of Cluster A and who is stationed at Port Elizabeth Magistrates Court. I have to mention from the outset that this witness did not assist the Magistrate in her case or the tribunal in any of the charges which the Magistrate is facing. The Magistrate is not charged with incompetency or the standard of her work. These charges are in relation to her conduct towards her seniors, members of the side bar, administrative staff at the court house and members of the public in general. Her emails to Mr Stander (*inter alia*) are indicative of the fact that she lacks self- respect, dignity, objectivity and self- control. Her actions in all the charges, if one has regard to the terminologies and language used in the written correspondence albeit a letter or emails are contrary to that of what is required of a judicial officer.

It is also important to mention that the Magistrate clearly has the perception that she is not accountable. In her mail to Mr Stander she states the following:

***"May I remind you that I am a Magistrate independent from your control. Your position in this institution, does not indemnify you as a gossip monger."***

Mr Stander was acting as Chief Magistrate at the time and he had all the reason to address an urgent letter from the State Attorneys and also in so doing performing his functions as the Head of Office.

Mr Bell gave an apt and accurate description of what is expected of a magistrate in his testimony and that also under cross examination by the Magistrate. The transcripts reflect as follow on page 302 thereof:

***"MR BELL: As far as I, I know, a Magistrate must be a, a reasonable person, and a person who is quite astute with the law, because the Magistrate's Court is a creature of statute. A Magistrate must show impartiality at all times. A Magistrate should not compromise its, its seat or its position, and yes that's what I know of a Magistrate."***

Magistrate Stuurman elected not to testify in this tribunal. It is a right which she enjoys and exercised in terms of **Section 35(3)(h) of the Constitution.**

The following is stated by the authors in ***The Law of Evidence by Zeffert, Paizes and others***

***"Our legal system is an adversarial one. Once the prosecution has produced evidence sufficient to establish a prima facie case, an accused who fails to produce evidence to rebut that case is at risk. The failure to testify does not relieve the prosecution of its duty to prove guilt beyond reasonable doubt. An accused, however, always runs the risk that, absent any rebuttal, the prosecution's case may be sufficient to prove the elements of the offence. The fact that an accused has to make such an election is not a breach of the right to silent. If the right to silence were to be so interpreted, it would destroy the fundamental nature of our adversarial system of the criminal justice."***

Furthermore, **Navsa JA** states the following ***in Kashief Naude and Another v The State (448/10[2010] ZASCA 138 at paragraph:***

***"[37] The court below stated that the State produced 'weighty' evidence against all of the accused which called for an answer. I agree. Two months ago this court reiterated that a court***

***is unlikely to reject credible evidence which an accused has chosen not to deny. In such instances an accused's failure to testify is almost bound to strengthen the prosecution's case. In S v Chabalala 2003 (1) SACR 134 (SCA) para 21 the following was stated:***

***'The appellant was faced with direct and apparently credible evidence which made him the prime mover in the offence. He was also called on to answer evidence of a similar nature relating to the parade. Both attacks were those of a single witness and capable of being neutralised by an honest rebuttal. There can be no acceptable explanation for him not rising to the challenge. If he was innocent appellant must have ascertained his own whereabouts and activities on 29 May and be able to vouch for his non-participation. . . . To have remained silent in the face of the evidence was damning. He thereby left the prima facie case to speak for itself. One is bound to conclude that the totality of the evidence taken in conjunction with his silence excluded any reasonable doubt about his guilt.'***

***See also S v Boesak 2001 (1) SACR 1 (CC) para 24. "***

Magistrate Stuurman cross-examined most of the witnesses at great lengths and with respect to her; most of the questioning were irrelevant, unrelated or insignificant. She put it to some of the witnesses that she would be calling a number of people to corroborate her version. She did not call any of the names she had mentioned.

In her address before judgment, the Magistrate chose to deal with the Commission not following the procedure. The first 10 pages consist of the ***procedure for misconduct hearing, her special plea, absolution from the instance and proceedings after the application for discharge was dismissed***. These are issues which were dealt with by this tribunal and rulings were made on them. On **page 11** of the document at paragraph [79] the Magistrates concedes that ***"There is not much in dispute when it comes to whether the incidents mentioned in the charges did happen or not, the only thing in dispute, as the evidence has shown, is how some of them happened as shown by the evidence, or that there is a ground of justification for some of them to happen.***

Mr Du Preez argued that the evidence before the tribunal is sufficient to convict the Magistrate and argued that she be found guilty on all the charges put to her.



In conclusion, most of the charges relate to documentary evidence of which the Magistrate did not place in dispute; both the contents thereof and that she was the author of the emails and correspondences.

I am satisfied with the evidence adduced in all the charges by the Commission and therefore find the Magistrate as follow:

Count 1 – Guilty

Count 3 – Guilty

Count 4 – Guilty

Count 5 – Guilty

Count 6 – Guilty

Count 7 – Guilty

-Not Guilty on the Alternative to Count 7

Count 8 – Guilty

Count 9 – Guilty

Count 10 –Guilty

Count 11 – Guilty

Count 12 – Guilty

Count 13 – Guilty

Count 14 – Guilty

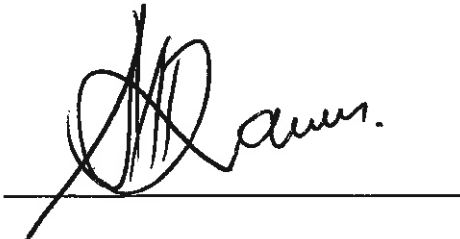
Count 15 – Guilty

Count 16 – Guilty

Count 17 – Guilty

Count 18 – Guilty

- Alternative to Count 18 – Not Guilty

A handwritten signature in black ink, appearing to read "M. Dawray", is written over a horizontal line.

MS. M DAWRAY

SENIOR MAGISTRATE

GERMISTON

12/12/2016