

Ms Stuurman:

"C"

(Sanction)



**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**

**SANCTIONS**

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

Magistrate Stuurman was convicted on seventeen counts of misconduct charges on 12 December 2016. The matter was postponed to 16 January 2017 for purposes of sanctions. On the said day the Magistrate requested to be excused from the proceedings which request was refused and she nevertheless excused herself. Minutes later, the Magistrate returned to the venue in which the tribunal was held, sat down repeated what she said earlier and left the venue for the second time indicating that she is excusing herself again. It is on this basis that the matter proceeded in her absence after the provisions of **Regulation 26(14)** was applied.

Mr Du Preez, the evidence leader, addressed the tribunal in detail in his submissions and requested that Ms Stuurman be removed from the office in terms of **Section 13 of the Magistrates Act 90 Of 1993.**

**Judicial ethics and Integrity is the core of the existence of any judicial officer. Magistrates should therefore at all times seek to maintain, protect and enhance the status of the judiciary.**

### **MITIGATING CIRCUMSTANCES**

It appears that Ms Stuurman is a first transgressor if one has regard to the fact that the Commission has proved no prior contraventions.

### **AGGRAVATING CIRCUMSTANCES**

\* The record speaks volumes on aggravating circumstances in respect of Ms Stuurman conduct and attitude towards her position as magistrate and this tribunal. I elect to mention a few of these circumstances. ✓ ✓

1. The charges to which Ms Stuurman was convicted of are all of a serious nature. It varies from insubordination to a complete lack of respect to the laws of this country. By virtue of their oath of office, magistrates are to be faithful to the Republic of South Africa; will uphold and protect the Constitution and human rights entrenched in it and will administer justice to all citizens alike and that too without fear, favour or prejudice.
2. Mr Du Preez, in his address before sanctions, mentioned that the conduct of Ms Stuurman affected all the sections of the court and including other members of the legal fraternity. I agree with his submissions. This is indicative from the charges to which Ms Stuurman was convicted of. **Counts 1, 3 and 18** deals with complaints laid by members of the Administrative component of the Department of Justice and who are in direct contact with Ms Stuurman in their work environment. **Counts 4, 5, 6, 8, 10 and 16** relates to charges laid by members of the Judiciary who are stationed at the East London Magistrates Court. **Counts 9, 11, 12, 13, 14 and 15** are related to members of legal fraternity and their secretary. Ms Stuurman was convicted of publishing a letter of which she is the author and by posting it on a wall at the civil section at the East London Court. The letter is a response to correspondence received from Mr Jardine, an attorney and the then President of the East London Attorneys Association. In **Count 7**

Ms Stuurman was convicted of refusing to accept a notice of motion issued from the High Court and which emanates from a judgment she made in a civil matter over which she had presided. **Count 17** is a conviction in which Ms Stuurman published and distributed a document at the civil section of the East London court wherein she refers to her "**white colleagues as well as white attorneys**" plotting against her because they hate her efficiency. In the same document, Ms Stuurman deemed ~~it~~ necessary to insult the Chief Magistrate in public by making reference to previous investigations conducted by the Magistrates Commission on "**trumped up charges as a result of Mrs Qibas' actions**". Mr Du Preez pointed out in his address, and correctly so, that none of the charges involves the members of the prosecution. However, it became apparent under cross-examination of Mrs Qiba by Ms Stuurman that members of the **National Prosecuting Authority** regarded it not to be in the interest of justice to place prosecutors before Ms Stuurman and took a stance by not prosecuting any matters before her as per **Exhibit "XX"**. This document was introduced to the tribunal by Mrs Stuurman and not the evidence leader in this case.

3. It is required of Ms Stuurman to uphold the **integrity** of the office as a presiding officer in the lower courts. Her actions in all the charges are contrary to what is expected of a magistrate. It is evident that Ms Stuurman lacks integrity if one has regard to the evidence placed before this tribunal by her seniors, her peers and other witnesses. Magistrates should refrain from seeking public attention when faced with any type of challenge. **Counts 9 and 17** serves as confirmation in regard to Ms Stuurman resorting to public attention. The intention was to ridicule those she referred to in these documents.
4. There is a duty on every magistrate to obey lawful instructions from his or her seniors albeit in an acting position. Failure to adhere to such instructions is tantamount to insubordination. The characteristics present in insubordination are **inter alia** a wilful refusal of instructions, wilful disregard of management authority, disrespect, rudeness, rebelliousness or disobedient gestures, abusive language and addressing a senior manager or supervisor in a disrespectful manner. Ms Stuurman has been convicted of addressing both Mrs Qiba and Mr Stander in a disrespectful manner and refusing to adhere to their lawful instructions.
5. It is obvious that Ms Stuurman is under the believe that she is not accountable to anyone if one has regard to her utterances in an

email to Mr Stander where she informs him that she is "***independent from his control***"; and her actions by publishing documents in which she criticised the very management under whose control she falls. However, the record is filled with other examples of this nature.

6. **Total disrespect for the law and its process.** The record is inundated with irrelevant questioning by Ms Stuurman of the witnesses. Matters completely unrelated to any of the charges put to the magistrate were placed on record by Ms Stuurman. Mr Du Preez only objected to this line of questioning on a few occasions purely for the sake of completion and finalising the matter. As presiding officer, I too, only stopped her occasionally because Ms Stuurman held the view that we were stifling her case by not allowing her to ask irrelevant questions. At numerous junctures whilst cross examining the witnesses, the presiding officer would inform Ms Stuurman that she is testifying instead of posing questions to the witnesses. Mr Stander commented very aptly on her questioning him on **page 109** of the transcripts where he stated: "***Mrs Stuurman has now testified in her own defence here, she is no longer cross-examining me***".

Ms Stuurman refused to accept a notice of motion and failed to adhere to a prayer in the said notice which called upon her to deliver to the Registrar of the Eastern Cape High Court, within fifteen days (of her receipt of the notice), the record of proceedings and copies of all documents filed of record in regard to a matter over which she had presided. [Count 7]

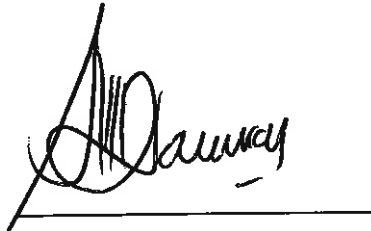
Her conduct in respect **Counts 11, 12, 13 and 14** is indicative of a person who has no regard for court procedure and judicial ethics. Instead of dealing with the applications before her in terms of the required legislation i.e. the Section 32 application and the application for her recusal by Mr Bell, Ms Stuurman resorted to ridicule the attorney in an open court whilst other members of the side bar and the public were present. Her reasons as per **Exhibit "R"** and **count 14** are unsound and irrelevant to the actual application for her recusal. This is, with the greatest of respect to the magistrate, a mockery of our legal system and the Constitution. Magistrates are representatives of the Judiciary as a whole and ought not to be allowed to conduct her or himself in such a manner. One can accept if it is a once off incident but in our matter at hand, Ms Stuurman has been conducting herself in this fashion over a few years.

Ms Stuurman refused to accept any ruling made in this tribunal and disregarded same throughout the proceedings. This is evident in her address in the application for a discharge at the end of the case for the Commission and her final address before judgment; and despite my rulings, she continued to address me on matters which were already dealt with and ruled on.

On **16 January 2017** this tribunal reconvened for purposes of sanctions. Ms Stuurman arrived and refused to proceed in placing mitigating circumstances before the tribunal in consideration of sanctions. Her reasons are that she did not receive a certified correct copy of the transcripts and the written judgment in this matter which was delivered on **12 December 2016**. Ms Stuurman is premature in requesting these documents due to the matter is not finalised. However, I deem it necessary to mention that the written judgment was electronically communicated to both Ms Stuurman and Mr Du Preez on **23 December 2016**. A delivery report and a read report in respect of Ms Stuurman are available indicating that the magistrate received and read the said written judgment. Upon my insistence that we proceed with the matter, Ms Stuurman elected to excuse herself from the proceedings not only once but twice in a span of a few minutes.

7. Ms Stuurman resorts to unsavoury language towards her seniors, peers, members of the administrative component and the legal fraternity. The record is flooded with her nasty remarks and unpleasant language. I deem this as aggravating.
8. Notwithstanding the fact that she has been convicted, Ms Stuurman shows no remorse at all. One would expect a magistrate to adhere to the findings until the completion of the matter and then take it on review. Ms Stuurman expressed her intentions to take this matter further on numerous occasions during the enquiry and before sanctions was imposed. Furthermore, I am in agreement with Mr Du Preez (in his address) that despite three investigations being conducted against her, Ms Stuurman refuses to change her attitude and does not attach value to good manners. He referred to her words in **Exhibit "EE"** confirming her attitude.
9. In conclusion and without any hesitation, I find (inclusive and not exclusively) that Ms Stuurman is not a fit and proper person to hold office; she has acted to the detriment of the administration; she did not act in the manner which upholds the good name and dignity of the office as magistrate; she brought the office of magistrate in disrepute and defied lawful instructions.

Having regard to the above, my reasons for judgment and the submissions made by Mr Du Preez , I recommend to the Magistrates Commission and in terms of **Regulation 26(17)(b)** that Ms Stuurman be removed from office as contemplated in **Section 13 of the Act**.

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

**M. DAWRAY**  
**17 January 2017**