Ms Stuurman: "E"

(Additional reasons)

IN THE MISCONDUCT HEARING OF:

MAGISTRTATE XB STUURMAN (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

ADDITIONAL REASONS

Regulation 26(21)

The following serves as additional reasons and/ or comments to Ms Stuurman's representations dated **17 February 2017**.

AD PARAGRAPHS 1 TO 126

Having regard to the contents of the representations, Ms Stuurman is confirming her intentions to take the matter on review (or on appeal as she elects to call it) as she has indicated throughout the enquiry and in her email to Mr Du Preez dated **13 December 2016**; a day after I had given judgment on the merits of the matter and had found her guilty on all the charges put to her. It is important to mention that she expressed her intentions before sanctions was dealt with and imposed. The said email is attached for ease of perusal and marked **Annexure "A".** However, once again Ms Stuurman totally disregards procedure as I have indicated in my reasons on sanctions and more specifically **paragraph 6**

thereof. These are matters which I have already ruled upon and I do not intend to traverse on my own findings save to comment on a few other issues raised in the representations.

In paragraph 4 of her representations, Ms Stuurman contends that ***"it was clear from the beginning that these proceedings were out of the Chairperson's depth."*** And that I ***"clearly disregarded the procedural and substantive principles throughout these proceedings".***

If one has regard to the terminologies used in **Regulation 26** of the Regulations to the **Magistrates Act 90 of 1993** and more particularly **sub-regulations (12) and (15)** thereof, it cannot be incorrect to hold the view that these proceedings are ***sui generis***. It speaks of ***"charge/s, guilty or not guilty"*** and after the conclusion of the matter ***"the presiding officer shall on a balance of probabilities make a finding as to whether the magistrate charged is guilty or not guilty of the misconduct as charged".***

It is trite law that the test in criminal proceedings is that the State must prove their case beyond any reasonable doubt for an accused to be found guilty; and in civil proceedings the test is on a balance of probabilities.

In a nutshell, it can be said that it was required of me to make a finding on a balance of probabilities as to the guilt or the innocence of the magistrate concerned on the evidence placed before me. However, the transcripts indicate the procedure which was followed in this matter. Furthermore, I respectfully submit that I had followed the correct protocol and I have nothing further to add on this point.

Ms Stuurman deals with the issue of the transcripts in paragraphs 19 to 57 of her representations. I deem it judicious to explain the correct version of the situation. In her written address before judgment, the magistrate raised the issue of ***"the poor state of the transcription"*** in paragraphs 38 and 39 which reads as follow:

"[38] It is of importance to put it on record that immediately after we got the first transcription of these proceedings, I contacted the evidence leader's office and notified him about the poor state of the transcription. He said he had taken note of my concern and he had promised to take that up with the company transcribing the record.

[39] Amongst other things, you are referred to page 75 of the recordings paragraph 20 where Mr Stander's reply to my statement about not knowing a Mr Meyer (Meijer) is written in the transcript as if it was said by the Chairperson. Furthermore, my narration about Mr Meyer (Meijer)'s visit to our office in the absence of Mr Stander is transcribed

as if it was stated by Mr Stander. That is contained in paragraph 20 of the same page to paragraph 10 of page 76 of the transcribed proceedings."

After the matter was postponed and during my preparation for judgment I considered the evidence placed before me with the arguments of both Ms Stuurman and Mr Du Preez before judgment. Having regard to the aforementioned paragraphs, I could not ignore the submissions made by the magistrate and upon my own perusal of the transcripts I discovered that she is correct in saying that there are inconsistencies in the transcribed record. It would have been highly irregular to proceed with judgment knowing that the transcribed record is of a ***"poor state"***. I deemed it necessary to rectify the discrepancies in the transcribed record before judgement is considered and delivered. As pointed out in paragraph 22 of the representations made by Ms Stuurman, I sent an email indicating my reason for not delivering the judgment on the date as arranged. For lack of a better word at that time, I mentioned the word reconstruct in the said email. It is also important to note that the word was mentioned with inverted commas.

I admit that it was incorrect to mention the word **"reconstruct"** as this was not the situation where the record went missing or untraceable to the extent that we had to reconvene and deliberate on the possible evidence. The audio cassettes were available and it still is so. In fact, I expressed myself clearly in the said email with the following: *"I have made the decision to "reconstruct" the record* ***by listening to the audio recordings and simultaneously checking the transcripts".*** The correct word, in my view now, was to **rectify** the discrepancies.

On the day we commenced with listening to the audio recordings and correlating it with the transcribed record, Mr Du Preez furnished each one of us with a copy of the transcripts. The three of us sat down with the assistance of a stenographer and made the necessary corrections. In other words, each one had to rectify his or her set of transcripts. I deem it important to mention that initially Ms Stuurman became confrontational when we did not agree on certain discrepancies. We then decided to hand over the head phones to Ms Stuurman and she will inform us what she hears and in so doing record was rectified. Hence, the submissions made in paragraph 20 of her representations are regarded as absurd.

It is said in paragraph 35 that I was inattentive during the process of rectifying the record. It could be that I was looking at my laptop or my cell phone but not to the extent that I had put the transcripts aside as Ms Stuurman stated in her representations. Without implying that I am

throwing stones back to her, she too was on her phone on many occasions during this process.

Paragraph 38 states that I became agitated and left the boardroom insinuating that I left without giving her a hearing. This is incorrect.

I had adjourned in that I got up from my chair, half way to the door and about to leave the room when she said that she wants deal with the issue. I then returned to the chair and heard her repetition of what she had said earlier and after I had already ruled on the issue of the transcripts. [See pages 1705 to 1713 of the transcribed record.]

An element of dishonesty came to the fore on **16 January 2017**. At first Ms Stuurman argued that she is not in a position to proceed because she did not receive a copy of the rectified transcripts. Her entire argument for refusing to proceed with sanctions was about the rectified transcripts not being furnished to her. As per page 1731 of the transcripts – line 23 she excused herself from the proceedings. Minutes later she walked back into the boardroom or enquiry and I decided to allow her back because I thought she probably realized that she is making a mistake by excusing herself. Only to be told that her second reason for not proceeding with sanctions is because she did not receive a copy of my written judgment which was delivered on **12 December 2016**. I immediately informed her that it is not the truth because I have reports proving that the mail was delivered to her and that she read it. Your attention is drawn to page 1734- lines 10 to 19. [See also **Annexure "B"** attached]

On the same page- line one- Ms Stuurman informs me in her address that ***"we are not here to create our own rules"*** but she excuses herself from the proceedings after I (as presiding officer) refused to excuse her and minutes later she returns to the enquiry and excused herself again. This is an embarrassment to the ***"rules which are governing this institution".*** I am quoting Ms Stuurman as per line two of page 1734.

As far as paragraphs 58 to 126 are concerned, I respectfully submit that these issues were dealt with in my written judgment on the merits and my written reasons for sanctions. The fact that I did not respond to each and every paragraph must not be construed that I am conceding to the allegations made by Ms Stuurman. I am of the view that the record reflects what had transpired and I strongly suggest that the audio recordings be played to hear exactly what we had to deal with and the character of the magistrate displayed throughout the proceedings.

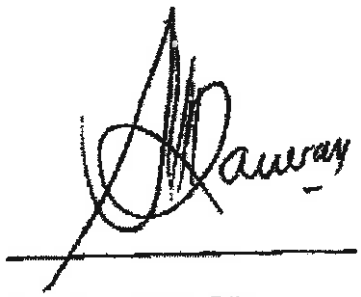
AD PARAGRAPHS 127 TO 130

These paragraphs deal with mitigating circumstances. Ms Stuurman decided not to be present for purposes of sanctions. It, however, serves no purpose to me at this stage as I had already made my recommendations to the Commission.

CONCLUSION

I elect to conclude with the words of Mr Stander to Ms Stuurman as per page 68 of the transcripts - line 6:

"You are a law unto yourself."



M. DAWRAY
22 March 2017

Bosman DeVilliers

From: Stuurman Xoliswa
Sent: 13 December 2016 08:57 AM
To: Du Preez Ignatius
Cc: Dawray Mumtaz
Subject: FW: Re:

Good Morning Mr Du Preez

1. Would you kindly make sure that on the 16/17 January 2017 the transcribed record up to yesterday's proceedings is available? I would like to urgently file an appeal in this matter immediately after those dates.

2. We all know that this matter was long finalised in 2015 and that it was unnecessarily delayed, and I would like us to prevent a further unnecessary delay.

3. I would appreciate if we could all three work together towards the speedy resolution of this matter in order to quench rumours which have long been doing rounds in the judicial circle that one of us has been promised a higher post if "*Stuurman is brought down to her knees at all costs*".

4. Taking into account a judgement which was supposed to have been passed at the end of 2015, and was not passed because the record had to be reconstructed first (it was the first time I heard such reasoning for delaying a judgement for almost a year, taking into account that the magistrates court is a court of record where a presiding officer is required to write down evidence long hand, in addition to the recording machine), and the fact that yesterday we were told that the reconstruction which we had been doing the whole of 2106, has not been transcribed and there is no certificate filed in respect of its authenticity, it's hard to regard those rumours as far-fetched.

5. The reason I am saying that is because, since the evidence leader and the chairperson in this matter are Senior Magistrates managing other magistrates under them, lack of knowledge on the person responsible for the certificate is ruled out.

6. Even before the whole inquiry started, someone high up in the inner circle of the Commission told me to ask the Commission to find someone outside who is not subservient to the Commission to chair the inquiry, because the people at the Commission who has decided on me being charged were out to get me at all costs. But I said I would appeal in a higher court if that is the case.

7. How do you explain the fact that "The Commission has been found to have proven "*beyond reasonable doubt*" charges it never charged me for and where there was no evidence to support such? Accept evidence of a single witness without doing any credibility finding? And much more questions in respect of what is supposed to come as a second nature to a judicial officer.

8. The only way to disprove these rumours is to let a higher court decide this matter through evidence presented before the tribunal as soon as possible and see if it's going to reach the same decision.

Your co-operation in this matter would be deeply appreciated.

Xoliswa Stuurman
Add. Magistrate
East London
043 702 8078
086 656 6086

"The Lord promises a safe landing, but not a calm passage" – Bulgarian Proverb

Meijer Johannes

From: Stuurman Xoliswa
To: Dawray Mumtaz
Sent: 23 December 2016 11:23 AM
Subject: Read: STUURMAN JUDGMENT.docx

Your message

To: Stuurman Xoliswa
Subject: STUURMAN JUDGMENT.docx
Sent: Friday, December 23, 2016 10:52:05 AM (UTC+02:00) Harare, Pretoria

was read on Friday, December 23, 2016 11:23:08 AM (UTC+02:00) Harare, Pretoria.