



SUSPENSION/REMOVAL FROM OFFICE: MS VT GQIBA, CHIEF MAGISTRATE, EAST LONDON

1. PURPOSE

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

2. BACKGROUND

By direction of the Magistrates Commission, Ms VT Gqiba was charged with two counts of misconduct. The Commission resolved to charge her with misconduct in that:

- a) Ms Raphahlelo, the Head of the Cluster and Chief Magistrate, Port Elizabeth had arranged a meeting between the members of the Family Court Sub-committee of the Chief Magistrates Forum (CMF), of which Ms Gqiba is a member, and the Department of Social Development to be held 23 March 2015
- b) on 13 March 2015 one of the members indicated that he would not be available and requested that an alternative date be arranged
- c) no such date could be arranged and the meeting was therefore cancelled
- d) all the members of the Committee, including Ms Gqiba were advised accordingly on 18 March 2015
- e) Ms Raphahlelo informed Ms Gqiba again on that day that the meeting intended to be held on 23 March 2015 at Pretoria was cancelled
- f) despite having been advised that the meeting was cancelled, she still travelled to Pretoria on State expense, purportedly to attend the meeting, whereas she attended to matters of a personal nature
- g) Ms Gqiba did not have official authority from her Head of the Cluster to travel to

Pretoria on 23 March 2015

h) her trip to Pretoria resulted in a total financial loss to the Department to the amount of R6803.87

i) Ms Gqiba submitted a travel and subsistence claim dated 24 March 2015 for R595.87, certifying that the expenditure she incurred were for official purposes, to wit to attend a Child Protection register meeting at Pretoria, well knowing that she did not have any official duties to perform at Pretoria on 23 March 2015

j) Ms Gqiba intentionally misrepresented to the Department of Justice and Correctional Services that she was entitled to claim the said expenditure in that the expenditure so incurred were for official purposes, well knowing that in truth and in fact the costs incurred were to attend to matter(s) of a personal interests.

The Commission resolved to charge Ms Gqiba with the following counts of misconduct:

CHARGE 1

That she is guilty of misconduct in terms of regulation 25(i) of the Regulations for Judicial Officers in the Lower Courts, No. R. 361 of 11 March 1994 (the Regulations) read with regulation 26(17) of the Regulations and section 16 of the Act, in that on or about 23 March 2015 and at or near East London she made a false or incorrect statement, knowing it to be false or incorrect, with a view to obtaining any privilege or advantage in relation to her official position or her duties or to the prejudice of the administration of justice.

ALTERNATIVE CHARGE TO CHARGE 1

That she is guilty of misconduct in terms of regulation 25(b) of the said Regulations read with paragraphs 1 and/or 4 of the Code of Conduct for Magistrates as published in Schedule E to the said Regulations in that on or about 23 March 2015 and at or near East London she failed to act with integrity and/or failed to act at all times in a manner which upholds and promotes the good name, dignity and esteem of the office of magistrate and the administration of justice.

CHARGE 2

That she is guilty of misconduct in terms of regulation 25(i) of the said Regulations in that on or about 24 March 2015 and at or near East London she submitted/presented to

the Department of Justice and Correctional Services a subsistence and transport claim for travel and allowance expenses, purportedly relating to an official trip to Pretoria on 23 March 2015, well knowing that in truth and in fact the claim she submitted was false in that she travelled to Pretoria to further her personal interests.

ALTERNATIVE CHARGE TO CHARGE 2

That she is guilty of misconduct terms of regulation 25(b) of the said Regulations read with paragraphs 1 and/or 4 of the Code of Conduct for Magistrates as published in Schedule E to the said Regulations in that on or about 24 March 2015 and at or near East London she submitted/presented to the Department of Justice and Correctional Services a subsistence and transport claim for travel and allowance expenses, purportedly relating to an official trip to Pretoria on 23 March 2015, well knowing that in truth and in fact the claim she submitted was false in that she travelled to Pretoria to further her personal interests. She therefore failed to act with integrity and/or failed to act at all times in a manner which upholds and promotes the good name, dignity and esteem of the office of magistrate and the administration of justice. The charge sheet dated, 29 September 2016, was served on her on 03 October 2016.

3. DISCUSSION

3.1 On 25 November 2016 the Commission appointed a Regional Magistrate (hereinafter called the Presiding Officer) to preside at the hearing and a Magistrate (hereinafter called the Person Leading the Evidence) to lead the evidence at the hearing in terms of regulation 26(6) of the Regulations.

3.2 A notice in terms of section 13(3)(e) of the Act, dated 20 February 2017, containing the allegations against her, was served on Ms Gqiba. A pre-trial conference was held to limit the issues in dispute on 06 March 2017. The misconduct inquiry commenced at the Department's Regional Office, East London on 25 April 2017.

3.3 Having considered the evidence presented at the hearing/inquiry and having been addressed by both parties on the merits of the evidence presented to the tribunal, the Presiding Officer on 26 April 2017 found Ms Gqiba guilty on both the main counts of misconduct preferred against her. The Person Leading the Evidence on behalf of the

Commission subsequently presented the tribunal with proof that Ms Gqiba had previously been severely reprimanded by the then Chairperson of the Commission, the Honourable Mr Judge President BM Ngoepe, for similar transgressions. She attended a course in Copenhagen and received an amount of R12598.00 as incidental expenses. She could not furnish authority for the expenses incurred which resulted in a loss to the Department. On two other occasions she claimed for air tickets from the Magistrates Commission, which payments were made into her bank account, whilst these tickets were already paid for by the Magistrate Mdantane. On another occasion Ms Gqiba again submitted a transport and subsistence claim for payment. It was discovered however that the air ticket and car hire expenses for the same period and the same trip were already paid for by the Department. The Presiding Officer postponed the misconduct inquiry to 01 and 02 June 2017 for both parties to submit any mitigating and aggravating circumstances, prior to him imposing a sanction.

3.4 Having heard both parties' submissions in this regard, the Presiding Officer on 02 June 2017 recommended in terms of regulation 26(17)(b) of the Regulations that Ms Gqiba be removed from office as contemplated in section 13(4) of the Act. Ms Gqiba was, in terms of regulation 26(20) of the Regulations, given the opportunity to lodge written representations with the Commission within 21 working days after the findings of the Presiding Officer. Ms Gqiba was furnished with a copy of the transcription of the record of the proceedings throughout the proceedings.

3.5 On 14 June 2017 Ms Gqiba requested extension of time to lodge her written representations with the Commission, which request was favourably considered, and filed her representations in terms regulation 26(20) of the Regulations on 31 July 2017.

3.6 Having been provided with Ms Gqiba's written representations, the Presiding Officer on 07 August 2017 indicated that he has nothing to add to his reasons for sanction and requested that it be regarded as final.

3.7 Having considered Ms Gqiba's representations in terms of regulation 26(21) of the Regulations, the Presiding Officer indicated that he has no additional reasons for his recommendation to submit to the Commission.

3.8 At its meeting held on 25 August 2017, the Magistrates Commission considered the documents as required by regulation 26(22) read with regulation 26(19) of the Regulations and resolved to recommend to the Minister that the recommendation of the Presiding Officer in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations) be accepted and that Ms Gqiba be removed from office on the grounds of misconduct in terms of section 13(4)(a)(i) of the Act. Her representations were not significant and relevant to the charges of misconduct levelled against her for which she was found guilty. The Commission is of the view that Ms Gqiba's conduct, as set out in the charge sheet, of which she was found guilty is so serious that it justifies her removal from office. Her conduct displays dishonesty which puts her integrity as a judicial officer in serious doubt and renders her unfit to hold the office of Magistrate any longer.

4. LEGISLATIVE REQUIREMENTS

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

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

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

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


from office, as the case may be.

4.5 On this basis I have now suspended Ms Gqiba from office.

5. CONCLUSION

This report as required by section 13(4)(b) of the Magistrates Act, 1993 is submitted for Parliament's consideration.

Given under my hand at...*Cape Town*...on this...*13th*...day of...*September*...2017


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T M MASUTHA, MP (Adv)

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

13 / 09 / 2017