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MISCONDUCT INQUIRY OF CHIEF MAGISTRATE V T GQIBA (MS)

HELD AT REGIONAL OFFICE EAST LONDON

Reference: 6/5/5/2: 202/2014

In the matter:

THE MAGISTRATE'S COMMISSION

: PLAINTIFF

Versus

VICTORIA THABO GQIBA

: MAGISTRATE CHARGED

A. FINDING

[In terms of Regulation 26(15)]

GUILTY: BOTH COUNTS

REASONS FOR FINDING [In terms of Regulation 26(16)(a)]:

INTRODUCTION:

1. The tribunal was appointed and properly constituted by the Magistrates Commission "Commission" in terms of Regulation 26 of the Regulations for Judicial Officers in the Lower Courts, 1993¹. Such regulation provides for the appointment of both Presiding Officer and Officer Leading Evidence in a misconduct hearing of a magistrate. Its powers are derived pursuant from section 174(7) on the Constitution of South Africa², which prescribes that other judicial officers must be appointed in terms of an Act of Parliament which must ensure that the appointment, promotion, transfer, dismissal of, or disciplinary steps (my emphasis) against judicial officers (i.e. magistrates) takes place without favour or prejudice. The Constitutional Court³ held that the Hoexter Commission of Enquiry which was established in 1983 to investigate the structure and the functioning of the courts recommended that magistrates be removed from the ambit of the public service and that their appointment, discipline (my emphasis) and discharge be dealt with by advisory bodies consisting of judicial officers⁴. The Commission is such an institution particularly endowed with all functions pertaining to magistrates.

¹ The Regulations

² Act 108 of 1998

³ State v Van Rooyen, 2002 (5) SA 246 (CC)

⁴ -do- para 79

2. A charge sheet was sent on 29/09/16⁵ to Ms Gqiba and a Misconduct Hearing Notice on 20/02/17⁶. The presiding officer was appointed in terms of Regulation 26(6) (a)⁷ and Mr J Meijer as Officer Leading Evidence in terms of Regulation 26(6) (b)⁸ of the Regulations. It commenced with sitting of this hearing yesterday, 25/04/17. Ms Gqiba elected to conduct her own defence and all formalities which Regulation 26 (12) prescribes were dealt with prior to plea proceedings. A plea of not guilty was entered and pursuant thereto the tribunal received into evidence the plea trial conference minute⁹. This document contains various admissions which will be referred to later. It was resolved the only matter in dispute was what is contained in the preamble to the charge sheet in paragraphs (g1) and (g2), as amended.
3. Mr D Nair, Chief Magistrate at Pretoria and Chairperson of the Chief Magistrates Forum (CMF) was called in Plaintiff's case whereas Ms Gqiba was the only witness in Defendant's case. Parties addressed the tribunal on the merits whereafter the matter was postponed to today, 26/04/17, for ruling.
4. The charges in essence are briefly centred in the following allegations (please refer to charge sheet): Ms Gqiba was aware that a meeting by the Family Sub-Committee (a Committee of the CMF) for 22 and 23/03/15 was cancelled, that Ms Gqiba received prior notice to cancellation of such meeting, she nevertheless proceeded to travel/rent a vehicle/stayed overnight at State expense and claimed subsistence and travel expenses for her trip. This trip is touted by her to be an official trip whereas it was not and that she was not entitled to any claim resulting from such travel as it was for personal interests.
5. As presiding officer I am reminded to be cautious in consideration of evidence and to pronounce on the guilt of Ms Gqiba. The Commission bears the onus to prove its case on a balance of probabilities. Evidence cannot merely be accepted on face value as the tribunal should have regard to the inherent strengths and weaknesses of such evidence. In fact, it would not be incorrect if the most stringent test to this principle is applied in light of the severe consequences to the magistrate charged the finding by this tribunal holds. I therefore state unequivocally that not only prima facie evidence is considered but the veracity of the evidence and allegations, the evidential material presented, the evidential burden applicable and the totality of all evidence was closely scrutinised before reaching a decision.

THE EVIDENCE:

6. The admissions recorded in Exhibit A5 are the following:

⁵ Exhibit A4

⁶ Exhibit A3

⁷ Exhibit A1

⁸ Exhibit A2

⁹ Exhibit A5

"1 - That she is a magistrate duly appointed by the Minister in terms of the applicable legislation; 2 - That she, on State expense, travelled to Pretoria on 22 March 2015 and returned to East London the following day, 23 March 2015; 3 - That she submitted a Substance and Travelling (S&T) claim to the amount of R577,72 for expenses incurred out of her own pocket and that she was reimbursed by the Department of Justice and Correctional Services (the Department) to the amount of R595,87; 4 – That the Department incurred additional costs for her flight ticket and the use of a rented car to the amount of R6208,00; 5 – That the total costs of her trip to Pretoria on 22 and 23 March 2015 amounts to R6803,87; 6 – That she claimed to have attended a Family Sub-Committee (a Committee of the Chief Magistrates Forum (CMF) meeting at Pretoria for official purposes in respect of a Child Protection Register on 23 March 2015; .7 – That this meeting was however cancelled and that Ms S Raphahlelo, the Chief Magistrate, Port Elizabeth and her Cluster Head advised her accordingly on 18 March 2015 that the said meeting was cancelled; 8 – That she therefore did not have the required official authority from her Cluster Head to travel to Pretoria on 22 and 23 March 2015; 9 – That she in fact had two other commitments to attend to in Pretoria on 23 March 2015 for which she did not have the required official authority; 10 – That she advised her Cluster Head in her response dated 14 April 2015 that "On hindsight, I realise that this was not the smartest thing to do" and during a mediation session, facilitated by the CMF at the request of the Commission's Ethics Committee, advised that "In hindsight I should not have travelled. I concede that I was wrong"; 11 – Consequently, that the statements as set out in paragraphs a) to g) (the second paragraph g), erroneously so marked) are not in dispute and that potential witnesses who would be able to testify on behalf of the Commission to support these statements will not have to be called at the inquiry. We are in agreement that the above is a true reflection of what was discussed between us on 06 March 2017. This document dated and signed on 13/03/17 by Mr Meijer and on 28/03/17 by Ms Gqiba."

7. Mr Nair testified the incident escalated to where the intervention of the CMF was required to determine whether it could mediate between Ms Gqiba and Ms Raphahlelo, Chief Magistrate of Port Elizabeth. He opined that the matter should not be dealt with by the Commission but to bring about a solution to mediate between the two parties mentioned above. The report on mediation 'Mediation Report'¹⁰ recommended that: *"The finding of the task team (EXCO) and recommendation to the Ethics Committee would be that Ms Gqiba be sensitized by the Chair of the Ethics Committee. Both Chief Magistrates were in agreement. It was further resolved that Ms Raphahlelo will also be in*

¹⁰ Exhibit C

attendance at that meeting.” Mr Nair denies having had a conversation with Ms Gqiba that they would discuss matters of a personal nature or relating to specific issues Ms Gqiba has with her employment; that if the issue was raised by her he did not have any independent recollection thereof; if it was raised he would remember; that the circumstances wherein the provisional arrangements were made does not accord with his practice wherein he operates; that she did not call him on the morning of 23/03/15; that it is possible he was attending to duties in civil court on the morning of 23/03/15 but would usually be available any time from 13h00; that he conducts civil court in his office; if his secretary had received a call from Ms Gqiba or any person who wanted to see him or speak to him urgently, he would have made arrangements accordingly; he did not receive any call, prior email or any communication from Ms Gqiba that she would meet with him that day. He testified it rarely happens colleagues would visit each other to discuss individual aspects and stated that the arrangements between them to meet never happened. He is very meticulous and would not have backtracked on a promise to meet a colleague. During cross-examination he reiterated he could not remember arrangements for such a meeting were made, that he would not condone her to piggyback on an official meeting to see him, he would be hard-pressed to meet her if he did not know what she wanted to meet him about, he had verified he was in his office the day of 23/03/15 and he was not informed that day by his secretary, Veebha, that Ms Gqiba had called. Further questioning centred on aspects relating to chain of command, the position of Cluster Heads and whether it is a rank afforded a magistrate, the forum wherein complaints against colleagues can be addressed, that such issues would be referred to the CMF EXCO, the position of Head of Administration and its functioning, that Mr Nair was aware of issues between Ms Gqiba and Ms Raphahlelo and described their relationship as a “hot thing”, that Ms Gqiba’s attendance at a previous meeting which drew the criticism of Ms Raphahlelo was not irregular and that in the proper course complaints against a magistrate are not directed at the Judge President of a Division.

8. Ms Gqiba testified she is a Chief Magistrate for longer than twenty (20) years. She assumed duties in September 1996 and took up her current position during 2004 at East London. She is responsible for Mdantsane and Komgo offices. The Chief Magistrate of Port Elizabeth is the designated Cluster Head. She had a good relationship with the previous Cluster Head but the same does not apply to the current colleague. The first issue Ms Gqiba referred the tribunal to was that she was addressed on a lower rank on correspondence to colleagues in the cluster. However, what caused the current position was that a newspaper carried a report with photos that the civil section at East London was in a state of disarray. Ms Gqiba established by the Court Manager that the attorneys complained the filing is in a mess. She took up the matter with the Deputy Director of Court Services, National Office, Pretoria. Within two weeks he had instructed the problems to be addressed and soon thereafter

files were stored on newly-acquired shelves. Ms Raphahlelo was not happy that she was not approached by Ms Gqiba in respect of the condition at East London to seek a solution and Ms Gqiba took exception. She was guided by the Deputy Minister of Justice' approach wherein he had an open line for complaints whereas Ms Raphahlelo wanted to be notified of complaints first. There is a hint of further issues without mention thereof. This matter Ms Gqiba dearly wanted to discuss with Mr Nair. She concedes in hindsight that was probably not the correct route to take. However, due to her emotional state, that the issued related to her duties and that she was despaired by not knowing what she could do and what not, she had rushed into a decision to address her issues to Mr Nair. She felt Ms Raphahlelo specifically targeted her. Ms Raphahlelo is her Cluster Head and Ms Gqiba wanted to have the issues resolved. Ms Gqiba felt vindicated in her decision to see Mr Nair as the Deputy Minister called her on 23/03 to explain things needed to change. A Draft Framework: Lower Courts Restructuring was accepted into evidence¹¹ and the tribunal specifically referred to paragraphs A7 and B3. Part of the frustration Ms Gqiba experienced was that practices which exist for so long change due to clash of personalities. It was with that frame of mind that she decided the matter had to be discussed. She believes there is an element of malice in the reporting of the matter to the Judge President by Ms Raphahlelo. The timing of the report by Ms Raphahlelo to the Judge President appeared to be suspect as Ms Gqiba was at High Court finalising partly-heard matters. Further, as Chief Magistrates are the pinnacle of the Lower Courts there was no place for her to report her dissatisfaction and concerns she experienced at work. She testified during cross-examination that she did not even attend the meeting with the Police regarding an unrelated, personal incident. Further, in hindsight she acknowledges that she would've met Mr Nair had he received notification of her presence at his office. With reference to the position of a Cluster Head she testified that such position is not prescribed by legislation but that she needs to follows orders from the person who holds such office. She maintained that the problems she encountered personally applied to her and the position she holds. This justified her to travel to Pretoria as she did not think it appropriate that she report to Ms Raphahlelo a complaint directed at her. On reflection and now being rational she believes she could've dealt with the matter differently and perhaps she should've either emailed or called Mr Nair to air her problems.

9. In submissions on the merits to the tribunal Mr Meijer requested conviction on both counts whereas Ms Gqiba on Count 1 remained steadfast in her innocence and conceded that she should not have completed the second claim (relating to count 2), that she cannot justify it and therefore concedes guilt on count 2.

¹¹ Exhibit D

DISCUSSION OF EVIDENCE:

10. Ms Gqiba's relationship with Ms Raphahlelo: Ms Gqiba is a senior member of the Lower Court Judiciary. I do not know how many years' experience she has but any person who holds the position of Chief Magistrate for 20 years is, by any standards, a senior member in the profession and experienced. Her acting appointment as Judge in the High Court confirms this fact. I deduce from her evidence that when appointed as magistrate, the system of Cluster Head was not yet operative but was implemented subsequent thereto. Initially she had no issues with how the system operated but since Ms Raphahlelo was appointed to the similar position at Port Elizabeth and became Cluster Head, the position changed. It is difficult to determine what exactly brought about the status quo. I have regard for the fact that with each new appointment to a senior position change inevitably will occur. It is accepted that each new appointee would put his/her stamp on a system and duties as far it is deemed necessary. As a senior to Ms Raphahlelo in terms of age – I infer - and experience, subjectively one could be forgiven to think that Ms Gqiba would be able to operate on the basis of the relationship she had with Ms Raphahlelo's erstwhile predecessor. Sadly though, this was not to be. These proceedings have an indirect basis on this position. No evidence relating to clash of personalities was presented to the tribunal and I fail to find, based on the evidence, that different personalities gave rise to the status quo. This tribunal finds, in the absence of prior animosity and lack of independent evidence in this regard, the differences came about in the professional relationship between the two adversaries.
11. The cancellation of a meeting at Pretoria on 22-23 March 2015: This meeting is common cause. Ms Gqiba is a member of the Sub-Committee. She was invited to attend and would have attended the meeting. It was cancelled yet it is not known when correspondence was issued to members of its cancellation. What is certain though is that Ms Gqiba on 18/03/15 was informed by Ms Raphahlelo that this meeting was cancelled. It follows that official authority for her to travel to Pretoria no longer existed. Ms Gqiba however travelled to Pretoria for reasons stated above. Exhibit B1 contains an Authority to Undertake an Official Journey (MC9) which indicates that Ms Gqiba requested permission for the trip to Pretoria on 16/03/15. This is in keeping with official journeys to be undertaken as prior approval therefor must be obtained. What this means is that even though Ms Gqiba was informed of the cancellation of the meeting, she could not have proceeded without approval from her Cluster Head to Pretoria. An important fact to remember is that she still possessed a trip authority by which an air ticket, rental vehicle and accommodation at State expense were arranged. It allowed her on 22/03/15 to fly to Pretoria, to rent a vehicle and be accommodated at State expense. This tribunal finds she had no authority to travel as she did and make use of State resources and privilege.

12. The meeting with Mr Nair: It not disputed that no specific time and place was arranged for this meeting to take place. In light of the cancellation of the Sub-Committee meeting no further arrangements were made by Ms Gqiba in this regard. She nonetheless, on her version, proceeded purposely to meet with Mr Nair at his office. Evidence during cross-examination elicited the fact that she on the morning of 23/03/15 called a certain Veebha, secretary of Mr Nair, requesting to meet him. She was informed Mr Nair was in court. She resolved to see him that afternoon as he was occupied. She called her secretary to arrange for a later flight back to East London on same day but was unsuccessful. As she did not want to sleep over another night she proceeded to leave Pretoria without seeing him. During cross-examination Ms Gqiba confirmed she telephonically called Mr Nair about two weeks prior to the date of the meeting but subsequent thereto did not confirm it. When speaking to him she did not elaborate on why she wanted to speak to him. If her version is accepted it follows there was no confirmation of any meeting of any particular nature. The next time he would be aware of the meeting thereafter, on her version, was when she reported at his office. She conceded not having verified the meeting with Mr Nair. She cannot explain Mr Nair's evidence that had he been aware of her presence at his office, he would have accommodated her.
13. From the foregoing it is evident that Ms Gqiba's visit was intended to solely address her unhappiness and fractured working relationship with her colleague and Cluster Head, Ms Raphahlelo. It is a salient feature that Magistrates conduct their daily routine and duties by diarising such commitments. Chief Magistrates have secretaries delegated to their Office they hold. The reason why this is varied but necessary is due to the extent of their duties; also inter alia being absent from office where they are based at and for attendance of meetings. Mr Nair dismissed ever receiving a call from Ms Gqiba and he was not informed that his secretary received her Ms Gqiba's call. Even so, he steadfastly informed this tribunal what steps and procedure exists at his office in any such eventuality. I venture to infer from his evidence that had Veebha taken a call from Ms Gqiba she would have alerted him to it either whilst the person is holding on the line or during the course of the day. It appears from the evidence and various punctuations by Ms Gqiba during her testimony that she was emotional about the relationship with Ms Raphahlelo. Subjectively she believed the only person who could assist her in being about a change was Mr Nair. However, objectively and in hindsight she concedes another means could be employed to seek a solution for her problems. By her own admission she did not speak to other colleagues how she felt nor did she consider any other way of dealing with the matter. No complaint was lodged in terms⁴ of Regulation 31; no meeting was requested with Ms Raphahlelo to address the issues and/or try to find an amicable solution with her. In fact, her version is silent as to what a reasonable person

in a senior position would do to systematically address the issues and why she allowed it to simmer for so long.

14. Finding Mr Nair's evidence: Mr Nair impressed as a good witness who holds no animosity against Ms Gqiba. He knows her for longer than two decades; they have served together on the Commission and are on the EXCO of the CMF. He has no reason to give false incriminating evidence and their cordial relationship remains. The evidence of Mr Nair I find satisfactory, credible to acceptance and uncontroverted. He has testified with an air of authority, has in place at his office measures and processes to address issues as they crop up even if he cannot attend immediately to those. Ms Gqiba clearly contradicts his recollection of a conversation they had in relation to a meeting. Mr Nair was willing to concede that she could have mentioned to him that she wanted to discuss an issue with him but any other factor surrounding this meeting he disputed. His concession is accepted as a measure of credibility and indicative that he did not rule out any possibility which favoured the version of Ms Gqiba. Most importantly though, he denies any meeting was either arranged or confirmed between them; not for the 23 March or any other date.
15. Ms Gqiba's motivation for travelling without authority to Pretoria: According to her no other avenues were available for her to address her concerns. When confronted with Regulation 31 which provides for the procedure of complaints and grievances against magistrates¹², she replied she knows about it; she was part of the Commission and had also chaired the specific Sub-Committee. However, she declared it to not be the proper route to take as it would not solve anything. The only option for her to seek remedy was to have the matter taken to the EXCO of CMF. She later testified during cross-examination she wanted to meet with Mr Nair to put the matter on the agenda of the EXCO. This explanation is short of merit and acceptance. To her credit she later concedes she cannot justify this opinion as she was too emotional and had rushed to come to this decision. In addition, having confided to other colleagues she was convinced that her concerns and need to find a solution to her problems could have been addressed in other ways. She accepts, in hindsight, this to be the case and conceded she "...went about it the wrong way."
16. A most disconcerting aspect however is that Ms Gqiba did not address admission 9 contained in Exhibit A5 which states: "*That she in fact had two other commitments to attend to in Pretoria on 23 March 2015 for which she did not have the required official authority*". On a question by Mr Meijer why she did not leave on Sunday to attend to the meetings she replied that the flights left midday and she cannot drive when it is dark. Her matters with SAPS took a backseat to the meeting with Mr Nair. I find this very disconcerting and strange. If she was intent to meet with Mr Nair and was

¹² Regulations for Judicial Officers in the Lower Courts, 1993

unsuccessful to meet him then clearly there was sufficient time to attend to matters with the SAPS. She had called Mr Nair just after 09h00. Even though she concedes there was enough time to meet with SAPS she started obsessing to meet Mr Nair. This explanation is surprising if not contrived. It cannot be accepted. She basically drove to Nair office, gave him a call at the gate, did not enter the premises and when told that he is in court she forego all her intentions why she took the effort, against official protocol, to come to Pretoria. Her version is improbable if one considers the sole reason she was in Pretoria was to meet with Mr Nair. Even though she was outside where his office is located her testimony is silent as to whether she requested Veebha what the possibility was to urgently see Mr Nair, what Veebha could arrange given the gravity of the situation and/or why only at that stage was it the first direct and immediate steps she had taken to contact Mr Nair. Her attempt at seeing him considering the gravity of the situation she experienced, does not add up. The tribunal finds the only reasonable inference to be drawn from the evidence is that Ms Gqiba visited Pretoria for reasons other than her official duties.

17. Finding Ms Gqiba's evidence: I find the evidence does not prove any compelling and urgent reason for Ms Gqiba to have met with Mr Nair in the manner she described. I do accept that she felt particularly aggrieved by the worsening professional relationship between Ms Raphahlelo and her but the long build-up to visiting Mr Nair has no trigger element which necessitated her to see him at all cost. I find it incredulous and am not convinced that her explanation is reasonable or acceptable. Her version paints a professional relationship which laboured without any substantial urgent intervention for a period of time by any party. Moreover, were she to succeed in having met with Mr Nair the extent of her success would be to place the matter on the agenda of an EXCO meeting of the CMF. No date when such meeting were to be held neither was the speed with which the matter would be resolved ever mentioned by her. Therefor any urgency in her attempt to address these issues would be subverted by the process EXCO would convene on the matter. In addition thereto, there is no guarantee that EXCO would find in her favour. Insofar Ms Raphahlelo differed with her regarding reporting of complaints such as brought about by the scything newspaper article, this objectively cannot and never will be sufficient reason for her to have acted by misrepresenting to the Department that it was for official duties. In this regard all references to claims submitted by her in lieu of her travel to Pretoria are indicated on such forms that the purpose for her visit was to attend the aborted Sub-Committee meeting. This I find not a bona fide error but an indication she had no reason to make an official trip to Pretoria. She cannot explain the apparent dichotomy her version is tainted with. She held Mr Nair in high regard, if not an esteemed colleague and experienced. There is a good collegial relationship between her and Mr Nair and her evidence does not dispel the inferences favourable to the version and facts of him as witness.

FINDING ON FACT ON MERITS OF CASE:

18. The tribunal makes the following findings of fact as proven on a balance of probabilities against Ms Gqiba:
 - 18.1 She is the Chief Magistrate of East London;
 - 18.2 Two offices, Mdantsane and Komgo, falls under her supervision;
 - 18.3 She is a member of the Family Sub-Committee of the CMF;
 - 18.4 Ms Raphahelo is her colleague and Cluster Head who is Chief Magistrate at Port Elizabeth;
 - 18.5 The relationship between Ms Gqiba and Ms Raphahelo is fragile and unkind;
 - 18.6 Ms Gqiba was invited to attend a meeting at Pretoria on 22 – 23 March 2015;
 - 18.7 She completed a trip authority for air travel, rental vehicle on 16 March 2015 and accommodation on 22 March 2015 for this meeting at State expense;
 - 18.8 That the meeting was cancelled;
 - 18.9 She was informed by latest 18 March 2015 by Ms Raphahelo of the cancellation of this meeting;
 - 18.10 She nevertheless travelled to Pretoria, rented a vehicle and stayed over at State expense with the arrangements for the cancelled meeting of the Family Sub-Committee;
 - 18.11 She had no trip/official authority from her Cluster Head to travel to Pretoria for this visit;
 - 18.12 The amount for wasteful expenditure by Ms Gqiba amounted to R6803.87 (R6208 for flight ticket and rental vehicle and R595.87 for Subsistence and Travelling expenses;
 - 18.13 She never visited Mr Nair nor was there any arrangements for them to meet on the 23 March 2015;
 - 18.14 She never called Mr Nair's office to speak to him on 23 March 2015.

FINDING

19. A consideration of the evidence and evidential material proves Ms Gqiba was not honest in her reasons for visiting Pretoria on 22 and 23 March 2015. She patently pursued an own agenda which is devoid of ever meeting with Mr Nair. There was never any appointment for them to meet on this day. The time of day they had to meet, the agenda for their proposed meeting, confirmation of appointment and dissuasive tale of speaking to Veebha on 23/03/15 does not carry weight and cannot be accepted. Mr Nair's evidence of the processes he has implemented of reporting to him and responsibilities of his personnel is uncontroverted. The veracity of his evidence carries much weight. It follows that it is accepted. On the contrary, Ms Gqiba's account of

events lacks credibility and I cannot find it is satisfactory to the acceptance thereof. By her own admission she had other commitments in Pretoria on the day and her failure to address this during evidence speaks volumes for rejecting her version. Only during cross-examination was this point debated but to the detriment of acceptance of Ms Gqiba's exculpatory version. It follows the tribunal finds there never was an agreement to a meeting between Ms Gqiba and Mr Nair on 23/03/15. Her version is not reasonably possibly true and it is rejected. The tribunal finds the Plaintiff has proven its case on a balance of probabilities.

20. In professional sphere differences of opinion, work practice and function will forever be encountered by an individual. It is the nature of our job to function, perform and adjudicate on matters which have by its very nature its origin in conflict and where there was transgression of the law. It requires of us as presiding officers to be thick-skinned, to be open to robust argument and to allow intense difference of opinion and argument to perform our duties. Moreover, to follow chain of command is integral and salient to us performing our duties. Therefore we are accustomed to change in practice and procedure as times change and must adapt to forever evolving and change to personnel. I cannot pronounce on who is to blame for the breakdown in relationship between Ms Gqiba and Ms Raphahlelo but do sympathise with Ms Gqiba. However, she had to make earlier use of the structures to vent her dissatisfaction. Her dismissive attitude towards what is provided in Regulation 31 is disturbing as she was a past chairperson of such Sub-Committee. Her distrust therein is of concern and not warranted. She needed to trust the system and at least test it before she deemed alternative steps necessary. Notwithstanding her frustrations she let it lingered for too long and never addressed it before she took action as described. This reason she proffered for her travel to Pretoria is however rejected as false. This tribunal finds that most, if not all the allegations Ms Gqiba raised as to why she deemed it necessary to travel to Pretoria, are devoid of any truth. The evidence for the Commission is accepted as proven on a balance of probabilities. It follows that her evidence is rejected as not reasonably possibly true on this ground.
21. Had a meeting taken place with Mr Nair on the 23rd March 2015 this finding could well have been in Ms Gqiba's favour. It follows the tribunal finds Plaintiff has proven its case on a balance of probabilities.

ORDER:

22. AD Count 1: The tribunal finds that Ms Gqiba made a false or incorrect statement (on 23/03/2015 or the date corrected during evidence) 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. For the motivation and reasons stated above, Ms Gqiba is found guilty as charged on the main count.

23. AD Count 2: The tribunal finds Ms Gqiba submitted to the Department of Justice and Constitutional Development 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 further personal interests. For the motivation and reasons stated above, Ms Gqiba is found guilty as charged on the main count.



E K PATTERSON

CHAIRPERSON: MISCONDUCT INQUIRY, MS VT GQIBA

EAST LONDON

26 APRIL 2017

LIST OF EXHIBITS RECEIVED, CONSIDERED AND APPLIED WHERE APPLICABLE

EXHIBIT NO.	DESCRIPTION	DATE RECEIVED
A1	Appointment Presiding Officer by MC dd 25/11/16 Misconduct Hearing Notice by MC dd 25/11/16	25/04/2017
A2	Appointment Officer Leading Evidence by MC dd 25/11/16	25/04/2017
A3	Notice of Misconduct Hearing by MC dd 20/02/17 (and email correspondence between Mr Meijer and Ms Gqiba dd 21/02/17)	25/04/2017
A4	Misconduct Charges by MC dd 29/09/16	25/04/2017
A5	Minute of Pre-trial Conference between Mr Meijer and Ms Gqiba dd 6/03/17	25/04/2017
B 1	Subsistence and Transport Claim (MC7) completed by Md Gqiba	25/04/2017
B2	Email correspondence by Mr A Hartman to Mr Meijer and copy of TWF booking and costs	25/04/2017
C	Mediation report compiled by Mr Nair on behalf of CMF	25/04/2017
D	Draft Framework: Lower Courts Restructuring	25/04/2017