



**MINISTRY
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REPUBLIC OF SOUTH AFRICA**

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Ref: 2/1/3 (Feb 2018)
Enq: X1700
Email: Ministry@justice.gov.za



Mr L Claasen
Parliament of the RSA
P O Box 15
CAPETOWN
8000

Dear Mr Claasen

***CONFIRMATION OF PROVISIONAL SUSPENSION AND THE REMOVAL FROM OFFICE: MR I W O M
MORAKE, MAGISTRATE, LICHTENBURG***

The purpose of this letter is to provide the Speaker of the National Assembly and the Chairperson of the National Council of Provinces with a report to be tabled in Parliament in terms of sections 13(4)(b) of the Magistrates Act, No 90 of 1993. The report is attached.

Yours sincerely

Ms Judith Tshabalala
Parliamentary Liaison Officer
Date: 08/02/18

Cell: 0718524919
Email: JudTshabalala@justice.gov.za



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Ref: 3/26/5/5 (Feb 2018)
Enq: X1700
Email: Ministry@justice.gov.za

The Honourable Ms B Mbete
Speaker of the National Assembly
Parliament of the RSA
CAPE TOWN
8000



Dear Ms Mbete

**CONFIRMATION OF PROVISIONAL SUSPENSION AND THE REMOVAL FROM OFFICE: MR I W O M
MORAKE, MAGISTRATE, LICHTENBURG**

The purpose of this letter is to provide Parliament with the report to be tabled in Parliament in terms of sections 13(4)(b), of the Magistrates Act, No 90 of 1993. The report is attached.

With kind regards

**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE: 08/02/2018



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Ref: 3/26/5/5 (Feb 2018)
Enq: X1700
Email:Ministry@justice.gov.za

The Honourable Ms T R Modise
Chairperson of the National Council of Provinces
Parliament of the RSA
CAPE TOWN
8000



Dear Ms Modise

**CONFIRMATION OF PROVISIONAL SUSPENSION AND THE REMOVAL FROM OFFICE: MR I W O M
MORAKE, MAGISTRATE, LICHTENBURG**

The purpose of this letter is to provide Parliament with the report to be tabled in Parliament in terms of sections 13(4)(b), of the Magistrates Act, No 90 of 1993. The report is attached.

Yours sincerely

**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE: 08/02/18



REPORT IN TERMS OF SECTION 13(4)(a)(i) OF THE MAGISTRATES ACT, 90 OF 1993: CONFIRMATION OF PROVISIONAL SUSPENSION/REMOVAL FROM OFFICE ON THE GROUND OF MISCONDUCT: MR IWOM MORAKE, MAGISTRATE, LICHTENBURG

1. PURPOSE

The purpose of this report is to inform Parliament on the suspension from office of Mr IWOM Morake, Magistrate at Lichtenburg, pending consideration by Parliament of a recommendation by the Magistrates Commission for his removal from office as a Magistrate on the ground of misconduct in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act).

2. BACKGROUND

- 2.1 Mr Morake is the Magistrate and Judicial Head at Lichtenburg. The Commission charged Mr Morake with six (6) counts of misconduct which are contained in a charge sheet which was served on Mr Morake on 29 December 2010.
- 2.2 One of the counts related to the fact that the Regional Court, Lichtenburg on 18 October 2010 convicted him on two counts of theft. On 13 July 2007, Mr Morake appeared in the Lichtenburg Regional Court on three charges of theft. On 21 July 2011 the Court sentenced him to four years imprisonment on each count in terms of section 276(i) of the Criminal Procedure Act. The sentences were to run concurrently. He filed an application for leave to appeal, which application was finally struck from the roll on 27 January 2016. He was represented by Senior Counsel and argued all along that the record of the criminal proceedings against him were incomplete and had to be reconstructed. The Court refused another postponement for this purpose and revoked his bail. He started to serve his sentence on 27 January 2016 and was released at the end of 2016.

2.3 The Commission commenced with the disciplinary inquiry against Mr Morake on 11 April 2011. He requested the disciplinary inquiry to be kept in abeyance until the outcome of the criminal case him. The Commission therefore served an amended charge sheet on him in March 2012 and proceeded to set down the matter for hearing. A copy of the amended charge sheet dated 20 March 2012 is attached.

(Charge sheet)

2.4 The inquiry was set down to continue on 23 April 2012. Since then Mr Morake on numerous occasions requested for a postponement to either instruct an attorney or to raise funds to pay his attorney and Senior Counsel, etc. The evidence was finally led on 28 September 2015 and postponed for Heads of Argument to be filed.

2.5 Mr Morake's incarceration caused a further delay to have the misconduct inquiry against him concluded.

2.6 The inquiry was however postponed to a provisional date in April 2016 for both parties to submit Heads of Arguments on the merits to the PO. On 25 May 2016 Counsel for Mr Morake advised the PO that he was not placed in funds for drafting Heads of Arguments and indicated that judgment may be delivered in his absence. Counsel, as well as his instructing attorney's mandate was terminated.

2.7 Arrangements were made for M Morake to appear at the Lichtenburg Court House for both parties to address the PO the merits on 26 September 2016. He reported ill and did not appear. His erstwhile legal representative advised the PO on 26 September 2016 that he has again been instructed to proceed in the misconduct proceedings and to brief counsel. Although Mr Morake was afforded an opportunity to file Heads of Argument, he failed to do so.

2.8 A notice of set down for the inquiry to continue on 18 April 2017 was served on Mr Morake. He appeared in person and indicated that his former attorney of record and counsel will again represent him. The inquiry was postponed to 23 June 2017 for both

parties to address the Presiding Officer (PO) on the merits. Neither Mr Morake nor counsel was present. The PO ruled to proceed with the inquiry in Mr Morake's absence. The PO delivered judgment on 23 June 2017 and found Mr Morake guilty of five (5) counts of misconduct. A copy of the judgment and the reasons therefore is attached.

2.9 The PO imposed a sanction on 16 November 2017 and in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations) recommended to the Commission that Mr Morake be removed from office as contemplated in section 13 of the Act. A copy of the sanction imposed and the reasons therefore is attached.

(Sanction)

3. DISCUSSION

3.1 My predecessor, on the advice of the Commission, provisionally suspended Mr Morake from office with effect from 04 November 2010 which suspension was confirmed by both Houses of Parliament on 18 and 24 November 2010 respectively. The Commission on 24 November 2011 determined to withhold his remuneration with immediate effect, which determination was confirmed by Parliament shortly thereafter.

3.2 A decision by the Magistrates Commission to determine to withhold Mr Morake's remuneration in terms of section 13(4A)(a) of the Magistrates Act No 90 of 1993 was confirmed by Parliament on 24 November 2011. Mr Morake is currently not receiving any remuneration. His whereabouts since his last appearance at the misconduct inquiry and the withdrawal of his legal team are unknown. He could not be traced and failed to submit any representations.

3.3 Having duly considered all the required documentation presented to it, the Commission's Executive Committee on 30 January 2018 resolved to recommend that Mr Morake be removed from office in terms of section 13(4)(a) of the Act.

4. LEGISLATIVE REQUIREMENTS

- 4.1 If the Magistrates Commission would recommend that a magistrate be removed from office on *inter alia* the basis of misconduct, the Minister of Justice and Correctional Services, in terms of section 13(4)(a) of the Act, 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.

5. CONCLUSION

On this basis I have now confirmed Mr Morake's provisional suspension from office. The Magistrates Commission recommended that Mr Morake be removed from office and it is now for Parliament to pass a resolution to either restore or not to restore Mr Morake from his office as a magistrate. 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.....*8th*.....day of.....*2018*

TM
.....

T M MASUTHA, MP (Adv)

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

(Charge sheet)

MAGISTRATES

COMMISSION

**LANDDROSTE-
KOMMISSIE**

P O BOX 9096, PRETORIA, 0001

☎ (012) 325 3951

FAX (012) 326 0094

STAFF: CONFIDENTIAL

Reference: 6/5/5/2 (201/2007)
(89/2012) (20/2012)(88/2009)

Mr I W O M Morake
c/o The Chief Magistrate
Private Bag X 2045
MMABATHO
2735

Enquiries: Mr J Meijer

Date: 20 March 2012

Dear Sir

CHARGE OF MISCONDUCT

You, **ITUMELENG WILLIAM OTSILE MORAKE**, at all relevant times a magistrate duly appointed in terms of section 10 of the Magistrates Act, No. 90 of 1993 read with section 9 of the Magistrates' Courts Act, No. 32 of 1944 and the Judicial Matters Amendments Act, No. 85 of 1995, as amended in respect of whom the Magistrates Commission has jurisdiction, is being charged with the following charges of misconduct:

CHARGE 1:

That you are guilty of misconduct in contravening regulation 25(c) read with regulation 26(17) of the Regulations for Judicial Officers in the Lower Courts, No. R361 of 11 March 1994 (the Regulations) read with paragraphs 1 and or 3 and or 4 and or 16 of the Code of Conduct for Magistrates issued in terms of regulation 54(A) of the Regulations and contained in Schedule E to the Regulations (the Code of

Conduct for Magistrates) as amended.

In that on or about 23 June 2006 and at or near the Court House, Lichtenburg you -

- irregularly instructed Mr. Thabo Andrew Moswetsi and Ms. Boitumelo Norah Moswetsi, who attended the court as the Respondent and Applicant respectively in a domestic violence matter, to accompany you to the office of the Maintenance Officer whereupon you, in the absence of any written complaint lodged in terms of section 6 of the Maintenance Act, No. 99 of 1998 and without such an application been made by the Applicant, instructed the Maintenance Officer to open a maintenance matter against the Respondent and to complete a consent form in terms of which the Respondent should pay R500-00 per month for each of the three children, buy groceries in the amount of R500-00 per month and clothing for the three minor children and pay for their medical and school expenses;
- handed the consent form to the Respondent and instructed him to sign and when he objected, threatened to lock him up if he does not sign whereafter he signed the consent form;
- instructed the Maintenance Officer to insert that the Respondent must buy twice a year clothing for an amount of R 1 000-00 per occasion and that the Respondent had to contribute 50% towards medical and school expenses for two (2) of the children on the consent form; and
- made an order in terms of section 16 of the Maintenance Act, 1998 whereby the Respondent had to make the first maintenance payment of R 1000-00 on or before 30 June 2006 to the Applicant.

Your actions displayed an abuse of power and the irregular performing of the statutory functions and duties of a maintenance officer in terms of the Maintenance Act, 1998. You accordingly did not act in accordance with the judicial powers of a magistrate in accordance with section 12(1) of the Magistrates' Courts Act, No. 32 of 1944 and section 14(1) of the Magistrates Act, No. 90 of 1993.

You therefore did not act with integrity and/or did not execute your official duties objectively, competently and with dignity, courtesy and self-control and/or acted 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 and/or acted to the detriment of the discipline or the efficiency of the administration of justice or allied activities.

CHARGE 2:

That you are guilty of misconduct in contravening regulation 25(d) and/or regulation 25(c) read with regulation 26(17) of the Regulations, read with paragraphs 3 and/or 11 of the Code of Conduct for Magistrates as amended.

In that on or about 23 June 2006 and at or near the Court House, Lichtenburg you presided in maintenance case 14/3/2 – 206/2006 and issued a maintenance order in terms of section 16 of the Maintenance Act, 1998 while you have failed to keep proper record of the proceedings in accordance with section 4(1) of the Magistrates' Courts Act, No. 32 of 1944 as the record only reflects information of the appearances and your order in terms of section 16 of the Maintenance Act, 1998.

You therefore were negligent and or indolent in the carrying out of your duties and or did not execute your official duties objectively, competently and with dignity, courtesy and self-control and or did not execute your official duties diligently and thoroughly.

CHARGE 3:

That you are guilty of misconduct in contravening regulations 25(c) read with regulation 26(17) of the Regulations read with paragraph 1 and or 4 and or 16 of the Code of Conduct for Magistrates as amended.

In that on or about December 2009/January 2010 and at or near Lichtenburg you-

- on various occasions ordered/instructed a certain Mr. Mohamed Shohag, an adult business man doing business in the magisterial district of Coligny, to come to your office either by phoning him and his business associate or by means of sending members of the South African Police Services to his place of business to summons him to your office whereupon you on various occasions threatened to arrest and lock him up;
- told Mr. Shohag to do business with a certain Mr. Joglu Islam;
- told Mr. Shohag that you are the Chief Magistrate and that you can do anything;
- told Mr. Shohag on various occasions that if he does not listen to you, you would send him back to Bangladesh and put his business partner, one Habib, in jail;
- told Mr. Shohag that you will put him and his lawyer in jail;
- ordered Mr. Shohag to sign a document in terms of which he was forced to do business with Mr. Joglu Islam.

Your actions displayed an abuse of power whereby you did not act in accordance with the judicial powers of a magistrate in accordance with section 12(1) of the Magistrates' Courts Act, 1944 and section 14(1) of the Magistrates Act, 1993.

You therefore did not act with integrity and or acted 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 and/or acted to the detriment of the discipline or the efficiency of the administration of justice or allied activities.

CHARGE 4:

That you are guilty of misconduct in contravening regulations 25(c) read with regulation 26(17) of the Regulations read with paragraph 1 and or 4 and or 16 of the Code of Conduct for Magistrates as amended.

In that on or about April/May 2010 and at or near Lichtenburg you-

- visited a certain Ms. Mathilda Roman, a member of the public, at her workplace regarding a rental/arrear electricity account dispute between her and a certain Ms. Miliesia Roman and instructed/ ordered her to come to your office and to bring her husband, who works in Mmabatho along;
- instructed Ms. Matilda Roman and her husband in your office to pay and insisted that they pay an amount of R 1 173-00 to you and threatened to have them arrested and locked-up if they do not comply with your instructions in this regard;
- took an amount of R 1 173-00 in cash from Ms. Mathilda Roman in your office

and informed her that you would hand the money over to Ms. Miliesia Roman;

- failed/refused to pay the amount of R 1 73-00 to Ms. Miliesia Roman
whereafter Mr. Matilda Roman's husband was summoned to appear in the
Small Claims Court;
- gave all sorts of excuses when confronted by Ms. Matilda Roman on the
matter whereafter you paid the amount on 26 May 2010 to a certain Ms.
Tasmia Christopher and told her to tell the Clerk of the Small Claims Court
that there was a misunderstanding and that she had already received the
money on 3 May 2010.

Your actions displayed an abuse of power whereby you did not act in accordance
with the judicial powers of a magistrate in accordance with section 12(1) of the
Magistrates' Courts Act, 1944 and section 14(1) of the Magistrates Act, 1993.

You therefore did not act with integrity and or acted 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 and or acted to the detriment of the discipline or the
efficiency of the administration of justice or allied activities.

CHARGE 5:

That you are guilty of misconduct in contravening regulation 25(c) read with
regulation 26(17) of the Regulations read with paragraph 1 and or 4 and or
16 of the Code of Conduct for Magistrates as amended.

In that on or about 24 August 2009 and at or near the Court House, Lichtenburg you-

- ordered/instructed Inspector R.J. Mutloane, the investigating officer in the

stock theft case of the *State v Sam Pule* (case number B308/2009) to report to your office urgently in which process you also left a message at his office that if he fails to come to your office, drastic steps will be taken against him;

- were with the said accused person, Sam Pule, in your office when Inspector Mutloane honoured your order/instruction;
- allowed Mr. Pule to complain against Inspector Mutloane regarding his arrest and the impounding of his livestock. You then asked Inspector Mutloane how he could help Mr. Pule whereafter Inspector Mutloane informed you that the matter was already before court and that he could not help Mr.Pule.

Your actions displayed an abuse of power whereby Inspector Mutloane found it unusual in discussing the matter with you and felt threatened by your conduct. You accordingly did not act in accordance with the judicial powers of a magistrate in accordance with section 12(1) of the Magistrates' Courts Act, No. 32 of 1944 and section 14(1) of the Magistrates Act, No. 90 of 1993.

You therefore did not act with integrity and or acted 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 and or acted to the detriment of the discipline or the efficiency of the administration of justice or allied activities.

CHARGE 6:

MAIN CHARGE

That you are guilty of misconduct in contravening regulation 25(c) read with regulation 26(17) of the Regulations read with paragraph 5 of the Code of Conduct

for Magistrates as amended.

In that on or about July to September 2003 and at or near the Court House, Lichtenburg you took the cash amounts of R 450-00 and R 480-00, belonging to Mildred Motholo, a member of the public, from her with the intention of permanently depriving her of the possession thereof knowing that the act was unlawful and that you were not entitled to do so, whereby you did not obey the laws of the land.

ALTERNATIVE CHARGE:

That you are guilty of misconduct in contravening regulation 25(c) read with regulation 26(17) of the Regulations read with paragraph 1 and or 4 and or 16 of the Code of Conduct for Magistrates as amended.

In that on or about July to September 2003 and at or near the Court House, Lichtenburg you took the amounts of R 450-00 and R 480-00 respectively in cash from one Mildred Motholo, a member of the public, to assist her to obtain the service of an attorney and or legal aid/advise in respect of an estate matter. You did not pay the amounts over to any attorney, nor anybody else and did not return the amounts to the said Mildred Motholo.

You therefore did not act with integrity and or did not execute your official duties objectively, competently and with dignity, courtesy and self-control and or acted 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 and or acted to the detriment of the discipline or the efficiency of the administration of justice or allied activities.

You are invited in terms of regulation 26(5) to send or deliver a written explanation regarding the misconduct with which you are charged in order to establish which allegations are admitted and which allegations are disputed within ten (10) days after receiving this charge. Such explanation is to be made to the Secretary, Magistrates Commission, P O Box 9096, Pretoria, 0001

GIVEN UNDER MY HAND AT PRETORIA ON THIS 20 DAY March 2012


M F LEGODI
CHAIRPERSON: MAGISTRATES COMMISSION

Acknowledge receipt of charge sheet on

.....
SIGNATURE: ACCUSED MAGISTRATE



(Judgment)

Case No: 6/5/5/2//2007

In the matter between:

MAGISTRATES COMMISSION

And

ITUMELENG MORAKE

JUDGMENT DELIVERED ON

NAIR D :

1. Mr Itumeleng William Otsile Morake, the Head of Office (Magistrate) at the Lichtenburg Courthouse stands charged with 6 counts of misconduct.
2. The charges are set out hereunder:

3. Mr Morake was represented by Advocate Engelbrecht SC and the Commission's case was initially dealt with by Mr J Meijer and thereafter by Ms De Klerk (Chief Magistrate Palmridge).
4. The Commission led the evidence of several witnesses on the various counts with the exception of count 6. Mr Morake was discharged on count 6.
5. The Maintenance Prosecutor Ms Hlongwane testified that on the 23rd June 2006, Mr Morake dealt with a domestic violence matter involving Mr and Mrs Motswetsi.
6. The main witness on count 1, Mr Motswetsi passed away prior to the commencement of the proceedings and the State relied on the evidence of Ms Hlongwane on these counts.
7. Mr Morake brought the parties to her and requested that she "see to it that a maintenance order is completed between them." After she had requested the administrative personnel to do the necessary she went to Mr Morake and read the order to him.
8. Mr Morake enquired about the clothing and medical aid which were not included. He then directed that Ms Hlongwane endorse the order to include medical and clothing contributions. This was done without any involvement of the parties.

9. The order reflects endorsements in different pen colour. The order was not signed by Mr Motswetsi. It was her evidence that she was forced to endorse the additional obligations and carry out Mr Morake's instructions.
10. The additional endorsement stated that Mr Motswetsi had to purchase clothing in an amount of R1000, 00 in June and November and further contribute 50% towards medical expenses and a further 50% towards educational expenses.
11. She stated as follows: "It was difficult for me not to take the instructions. Mr Morake was my Magistrate. I had to respect him at all times. Also as I have explained this matter was from the domestic violence, so it appeared they discussed it also included the issue of the maintenance. To my understanding then I thought they have already agreed upon that. It was only when Mr Moswetse was moaning and complaining then I picked up but perhaps it was not like by consent."
12. Mr Morake distanced himself from the contentions and testified that the forms were duly completed when they were handed to him. He disputed Ms Hlongwane's evidence. It was not disputed that Mr Morake brought the parties to Ms Hlongwane and told her that Mr Motswetsi had to pay the sum of R500,00 per month as maintenance in respect of each child.
13. Mr Morake also conceded that the application form was not completed and neither were the applicant's income and expenses therein reflected.

14. Ms Hlongwane made a good impression and spoke honestly and frankly. She resisted any attempt to say the Mr Motswetsi was a willing participant.
15. She emphasized that Mr Motswetsi had protested on more than one occasion. She recalled that Mr Motswetsi stated clearly that there was no need for any maintenance order because he was already contributing towards the kids.
16. She stated that when the consent order was completed by the administrative personnel the parties had already appended their signatures. Therefore, the additional items were simply entered in blue pen after the parties had already signed.
17. During cross examination, Advocate Engelbrecht stated that Mr Morake will testify that this agreement about the maintenance, and the additional payments were agreed upon during the domestic violence discussions.
18. "Ms Hlongwane did not conduct a Regulation 3 enquiry as envisaged in the Maintenance Regulations. She testified that she received an instruction and found it difficult not to comply with the instruction. Mr Morake was the magistrate and she had to respect him."
19. It is also not in dispute that Mr Motswetsi brought an application in the High Court to set aside the order and it was indeed set aside. The

records of the Magistrates Court proceedings were handed in by consent.

20. Mr Morake could not dispute that he failed to explain the parties' right to legal representation to them. I accept Ms Hlongwane evidence as corroborated by the record.

21. Mr Morake himself conceded that the order stipulating more than a party requested is irregular. It was noted that much of Ms Hlongwane's evidence was not disputed and in this regard Ms De Klerk referred to *Small v Smith* 1954(3) SA 434 SWA at 438B-H.

22. With regard to Count 2, it is clear from the record itself and Mr Morake's answers that he failed to keep a proper record and there are several shortcomings in the manner that the record was completed. Mr Morake avers that if he has omitted to endorse the record it was not because he had not indeed explained those rights. Ex facie the record it appears that the following was not done by Mr Morake : There was no proper record of proceedings, rights to legal representation were not explained to the parties. There is no evidence on record that the consequences of failing to pay maintenance were explained to the parties. There does appear to be any note or record of engagement with the respondents employer before the emoluments attachment order was made.

23. With regard to count 3, Mr Shohag testified that he received a call from Mr Morake who identified himself as the Chief Magistrate. He was

ordered to attend Mr Morake's office within the hour and he failed to do so.

24. He next day when he attended court as requested by 3 policemen who visited him he found Mr Islam in Morake's office. Mr Morake pushed his forefinger into Mr Shohag's head 4 times and threatened him by saying that he is the Chief Magistrate and if he calls him he has to come there.

25. He demanded Mr Shohag's permit and took his partners permit also and threatened to have them arrested. Morake insisted that he continue business with Mr Islam and that Mr Shohag must pay him monthly.

26. Mr Ramcwane was also in his company on that day. Mr Islam demanded that Shohag pay him R4000, 00 per month but Mr Shohag could only tender the amount of R3000, 00 per month. Mr Morake did not listen to him at all and kept insisting that he must pay the money to Islam.

27. Mr Morake wrote on a piece of paper. He initially refused to sign the document and eventually did sign after two to three hours. He did not read the document and neither was he given a copy of the document.

28. He was made to sign a piece of paper and ordered to return the next day which he did not do. He was threatened on more than one occasion with deportation to Bangladesh and a policeman was called into Morake's office to put pressure on him.

29. He was asked by Morake for R10 000, 00 or R15 000, 00 as money for the government. Mr Morake requested them to come back in one hour. Then after a long wait Mr Morake informed him that the document was not ready and that he should return the following day.
30. Morake phoned him on the next day and enquired why he failed to come and he responded that he was going to see his attorney. Mr Morake told him that he will arrest both Shohag and his attorney.
31. Morake then phoned him on the 16th December a public holiday and threatened him and asked for his lawyer's phone number. When Morake called in January he cut the call and his attorney advised him to proceed with an application against Mr Morake.
32. Mr Morake harassed him thereafter until he brought an application to prevent harassment from Morake.
33. A further witness called to support the evidence of Mr Shohag was Mr Ramcwale, During December 2009; he accompanied Mr Shohag and Mr Habib to Mr Morake's office. Mr Ramcwale confirmed that Mr Morake called them into his Office and interrogated Mr Shohag about his absence on the previous day. He stated that Mr Morake used harsh words.
34. He was called into Morake's office and asked if he knew Shohag and Hassan and he replied in the affirmative. Mr Morake was persuading the gentlemen meaning Shohag and Habib to continue doing business with

Mr Islam and when they refused, Shohag threatened to deport them to Bangladesh because there was no peace among them.

35.They became "frightened" and pleaded with Mr Morake. Mr Morake then asked them if they had R10 000, 00 to prevent him making an order that they be deported to Bangladesh. Mr Morake called a police officer who came in and asked to check their documents.

36.The police officer left and Morake asked them all to sign on a blank sheet of paper and then asked them to wait because he wanted something typed out but there was no electricity. He asked them to return the following day after telling Shohag to buy Islam out of the business for R3000, 00 per month. Mr Shohag became scared and went to see an attorney.

37.According to him there was nothing written on the blank sheet of paper. During cross it was put to him that Morake will testify that he was not there at all and that Mr Morake never saw him at all.

38.He stated that he accompanied the three men to Lichtenburg because they did not know where Lichtenburg court was and he needed to pay his Markham account. He took time to explain why he considered Mr Morake tone and conduct towards Shohag to be aggressive. He was honest and sincere.

39. The version put to Mr Shohag and his witnesses differed from Mr Morake's opposing affidavit in the application. Mr Morake contradicted himself and differed from his version under oath in the application. Mr Shohag's evidence was corroborated by his witness Mr Ramcwale. I accept his version where it differs from that of Mr Morake.

40. On count 4, Mr Motloane testified that he is employed by the SAPs and stationed at the Stock theft Unit in Sannieshof.

41. He has been in the police service for 10 years. He has served for 17 years in the stock theft unit. He arrested one Sam Pule around July 2009. He was arrested, charged and ultimately taken to the Magistrates Court.

42. On the 24th August 2009, he received calls that he had to go to the Lichtenburg Magistrates Court at the request of the Chief magistrate and he was needed at the Office of the Chief Magistrate and he went there indeed. He received a call from a certain clerk in his Office.

43. Thereafter he received a call from the switchboard at Mr Morake's office. He also spoke to Mr Morake who told him that he needed him in his Office in relation to a complaint by somebody in his office.. Thereafter he received a call from a certain Colonel requesting him to be present at Mr Morake's Office.

44. On his arrival at Mr Morake's office he found him in the company of the suspect Mr Sam Pule. He then added that "It was a surprise to me because Mr Pule had been in court and his case was postponed, for him

to be in the Office of the Chief Magistrate I could not understand. Mr Morake reported to him that this man came to him to lodge a complaint, which he has to investigate and report back to Ms Potgieter, the Magistrate.

45. Mr Morake wanted to know why this man was arrested and further it appeared to him that it will be a problem if this man is arrested and where the exhibits are. His concern was that mostly in those cases only black people are arrested for stock theft and not the white guys and his problem was the pound served the interests of the white farmers.

46. He then informed Mr Morake that the suspect has been charged and the case has been postponed and therefore there is no way that he could assist him. This was because Mr Morake had requested how he was going to help this suspect.

47. He explained to Mr Morake that Pule was a person who had been charged and had appeared in court already. That was the end of the matter and he felt surprised and a bit threatened as to how and what is the relationship between Morake and this person and what is his interest in this matter.

48. He was inclined to report the matter to his senior who was the station commander at Lichtenburg. Mr Morake phoned his Office and he also received a message and there was another call saying that there will be a warrant of arrest out for him. He knew Mr Morake and would see him in his Office on other issues such as warrants etc.

49. He has given evidence before Mr Morake on bail applications. During cross he stated that Pule was found not guilty in the Regional Court. It was put to him that Pule had told Morake that this witness was about to seize his stock and he said to the witness that were the stock goes he goes too.

50. He stuck to his version that Mr Morake said you people only arrest black people. It was denied that Mr Morake said to him that he had to report to Mrs Potgieter. It was denied that Morake did criminal court work at that court house.

51. Mr Morake denied the comments about whites but agreed that he had called him to his Office purportedly about a complaint. Mr Mutloane's evidence is corroborated by Ms Khumalo at the SAPS who stated that she received a call from a person who identified himself as the chief magistrate of Lichtenburg and the person told her that he was looking for Mutloane and that he must avail himself at the Court house with the docket. She was told that if he did not comply he would be in trouble.

52. On the count 5, Ms Tasmia Christopher testified that he sister needed a place to rent so she approached Mr Roman who had such a place. Mr Roman was a pastor and they gave him a cheque for R6000, 00 for deposit and rent in advance.

53. This occurred early in January 2010. Towards the end of April; her sister reported that the electricity had been disconnected. Upon enquiry by

her sister it emerged that the electricity was disconnected on account of son illegal act on the part of Roman's son.

54. She was employed by Legal Aid at that stage and she had heard that "Mr Morake if you go to court and you make an appointment and you see him, he will help you with this kind of situations and I sent my sister to go there."

55. Her sister followed that advice and returned with a letter in a brown envelope addressed to Mr Roman. They were instructed to give the letter to Mr Roman and go to Morake's office the next morning.

56. On that morning Mr and Mrs Roman were in Mr Morake's Office and there was an unpleasant altercation in that Office which resulted in Mr Morake having to abandon the meeting and request all to return at two at which stage.

57. When they returned he issued a warning that what happened that morning was not to happen again. Mr Roman did not have the money to reconnect the electricity and Ms Christopher enquired if she could reconnect the electricity on the condition that Mr Roman repaid her through Mr Morake. It was at her instance that the repayment of the money was to occur through Mr Morake.

58. Mr Morake indicated that that would be fine and instructed Mr Roman to pay back the money on Monday. Mr Roman in turn requested permission for his wife to pay back the money. Mr Morake then

informed Mr Roman that if the money was not paid back on Monday he would cause him to be arrested.

59. On the Monday the money was not forthcoming from Mr Morake and attempts to contact him were unsuccessful which led her sister to make enquiries with the Small Claims court. After some time Morake called to say he was on sick leave but was aware that an envelope was dropped off at his Office.

60. The following week she went to Court and met Mr Morake. Mr Morake showed her a white envelope with the name Peter on it. The envelope was torn open. He said that somebody had taken the money out of the envelope and he was liable for the loss and that he would repay it.

61. Mr Morake then summoned Ms Christopher and Mathilda to his Office one day towards the end May and summoned them immediately to his Office. When she arrived at his Office he asked her to accompany him to another Office where they were alone and he said that "he was in trouble and he wanted me to leave with my money on that day because the situation had been dragging up.

62. He then said that somebody was on their way bringing the money and that I should sit in front of his Office and wait. She sat there for a long time. He then called her into his Office and said that he apologised for everything. He then told her that there are people who do not like him and that they were conspiring against him because he was giving public advice.

63. He then requested her to go to the small claims court and inform them that " I have received the money a long time ago, but that my sister and I had an argument so I did not inform my sister that I have received the money." It was because I had not told her that I received the money that my sister had gone to the small claims court to ask for same.
64. This conversation occurred in his Office whilst the door was closed. He then requested her to accompany him in his vehicle and they proceeded to Dada Motors where they fetched a female staff member who accompanied them to a bank where after she handed them a stack of R100,00 notes and Morake then counted the money and paid her R1200,00. He called her Office a few times but she did not take his calls.
65. During cross examination she conceded that she said that Mr Roman must pay the money to Mr Morake and she would collect the money from Mr Morake because of the confrontation earlier on.
66. During cross examination, Mr Engelbrecht confirmed that the exchange of moneys through Mr Morake was at her instance. She agreed that Morake said that he suspects that an envelope had been delivered which contained money. She agreed Morake showed her the open envelope and said that the money had been stolen. He further said that he would repay her.
67. Ms Mathilda Roman testified that she laid a complaint against Mr Morake who had helped her with her marital problems. In April/May 2010 Mr Morake arrived at the "Spar" supermarket where she worked.

He informed her that the purpose of his visit was in connection with the tenant at her husband's home.

68. There were problems with the tenants and Mr Morake requested that they come and see him in connection therewith. She testified that the tenants were not "paying. "Despite her protestations that her husband was committed at his work, Mr Morake would not listen. They went there the next morning. The tenants were Melissa Roman (no family).

69. Mr Morake only listened to those tenants and would not listen to them. Mr Morake calculated the amount that they were to pay to those tenants. She did not know how he arrived at the amount of R1173,00. She was upset because Mr Morake did not listen to them and she complied because he said he was the Magistrate and we will do what he says we should do.

70. She then returned on that Monday with the cash and handed same to Mr Morake in his hand. He said that he will call the tenants immediately but did not call them in her presence. The cash was in an envelope. There was no receipt given to her. The next day she received a letter from the Small Claims court to pay the money.

71. They received another letter and she went to Mr Morake's home to clarify but he was not there and she went to court on the day she was requested to go to court. They met an attorney with the name of Fourier and he informed them that they are wasting their time and that they should go home.

72. During cross she concedes that she knew Mr Morake long before the incident. He has helped her with maintenance issues and it was put to her that Morake helped her former husband to obtain employment at the Platina mine. She agreed that he had helped her at his Office. She agreed that the Spar had a Deli and that staff at the Magistrates Court would buy lunch there between one and two.

73. She denied that he came to buy food and said that he left empty handed. His version is that he went there to buy food and came across her incidentally. He received a complaint about her husband and her and requested her to come to his Office the next day. She denied that there was an amount owing from the previous tenants.

74. She maintained that it was Morake who stated that they should pay back the money that Tasmia paid to him. Everything they did they did because Morake said that they should do so and he was the magistrate there. When she took the money to him he was not going to court he did not have a gown but was sitting there with a lady.

75. She did not leave the money on the table but gave it to him in his hand and he asked if that was the money and she said yes this is your money. It was put to her that Morake gave Tasmia the money but she maintained it was after she struggled for the money because Morake pleaded with them when they arrived at the Small Claims Court and Tasmia was also waiting there. It was put to her that Morake realised

that the money had disappeared but that he eventually gave same to Tasmia.

76. During cross she agreed that Mr Morake helped her to get a subsidy at the school for her children in respect of school fees. Her impression of Morake as a good person changed on that day when he would not listen to their side of the story regarding the electricity. She vehemently denied that there were discussions that led to an agreement to pay the lights and maintained that Morake forced them.

77. Pieter Roman also testified and corroborated the version of his wife in material aspects. He maintained that Morake called them to his Office and dictated that they must pay the money to connect the electricity and would not listen to their version that the agreement was for the tenants to pay the electricity. He demanded that the money be paid on the same day.

78. He questioned why the money had to be paid to Morake. They received a reminder to appear in the small claims court despite his wife having paid the money on the 30th. He became frustrated and went to see an attorney Mr Fourier and made a report to him about what happened in the case.

79. He had paid many traffic fines but this was the first time that money was paid directly to a magistrate and there was not even a receipt issued. Melissa Roman also testified and corroborated the evidence of Tasmia.

80. However when Mathilda Roman paid back the money Mr Morake is alleged to have made an excuse that he could not find same yet in cross he said the money was stolen.
81. After he obtained the money, Mr Morake then sought to persuade Melissa Roman from withdrawing the case on the small claims court by averring that she had experienced a miscommunication with her sister. Mr Morake was a poor witness on this count and contradicted himself. I accept the Commission's evidence on this count and find him guilty also.
82. Mr Morake testified and did not call any witnesses. He denied dictating what should happen with the Motsweni matter. He admitting meeting the parties but after determining that the matter related to maintenance caused the proceedings to be transferred to the maintenance court. It is his version that when the consent order was handed to him the amounts for medical and educational expenses were already included therein.
83. He denied forcing the parties to accept the order by force. He could not recall if he endorsed the rights to legal representation on the record. Mr Morake maintained that he took the parties to Ms Hlongwane and told her that the parties had agreed on a certain amount. It was not disputed that he directed that the amount should be R500, 00. Mr Morake agreed that the order bears two different colours of pen writing but denies that he had anything to do with that.
84. Mr Morake denied instructing Mr Shohag to come to his Office within the hour or that he threatened to have him arrested. His version is that

the parties were referred to him by an attorney Mr Nemaname. He asked the attorney to tell them to come to his office at 2pm. Mr Islam arrived before Mr Shohag. They explained their problem and both alleged that the other had not kept his side of a business agreement. He resolved the matter and they left. Mr Morake denied calling Mr Shohag as frequently as Mr Shohag alleges. He further denies threatening Mr Shohag with deportation. In connection with the Mutloane matter Mr Morake stated that he had called Mr Mutloane to enquire about Mr Pule's matter because he had received a complaint. He did not request the police officer to bring the docket neither did he threaten him with imprisonment if he did not attend. He denied that he was aware that Mr Pule had been charged with stock theft when Mr Pule was in his Office.

85.I have carefully considered the evidence of the Commissions witnesses and find that the probabilities favour their versions. The Romans corroborated each other and Mr Morake's explanation of what happened to the money borders on ridiculous.

86.Mr Shohag is corroborated by Mr Ramcwale and further corroboration is found in the discrepancies between Mr Morake's version and the version he gave in his opposing affidavit in the harassment application brought against him. Ms Hlongwane was a good witness who could have added onto her evidence but did not. So too is Motloane corroborated by the clerk who testified and Mr Morake's own admissions on this count. .

87.I reject Mr Morake's version and accept that of Mutluane as confirmed by his witness. He was honest and credible. The evidence of Melissa

Roman is corroborated by 3 other witnesses. Mr Morake fared pathetically on this count. His version about the money is highly improbable and very disingenuous.

88. Mr Morake was a poor witness in respect of his version on all these counts. He was hesitant evasive and he contradicted himself. His version differs from the very brief cross examination by his advocate. Very often one notes that his version is at cross purpose with the version advanced by counsel. He was most unimpressive in explaining the "loss" of the money that was intended for Ms Christopher.

89. Mr Morake is found guilty on all counts except count 6.

DESMOND NAIR

PRESIDING OFFICER

(Sanction)
p. 13

IN THE MAGISTRATES COURT

FOR THE DISTRICT OF TSHWANE CENTRAL

HELD AT PRETORIA

CASE NO: 207/2007

DATE: 2017/11/16

THE STATE

Versus

MORAKE

Accused

RECORD OF PROCEEDINGS

PRESIDING OFFICER: NO ANNOTATIONS

LEADER OF EVIDENCE: MS DE KLERK

ON BEHALF OF RESPONDENT: NO ANNOTATIONS

INTERPRETER: NO ANNOTATIONS



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PROCEEDINGS ON 16 NOVEMBER 2017

[12:39]

MS DE KLERK: Thank you. Chairperson, today it is, was postponed for the consideration of a sanction, having regard to the fact that Mr Morake was found of five of six charges of misconduct he have been charged with.

He was discharged in respect of charge number six as the Commission was unable to call witnesses due to the demise of one witness and the surviving witness could not be located.

10 My heads of argument I submitted it in two portions. The first is the presence of Mr Morake at the hearing. I basically did a summary of the correspondence, postponements and appearances since the conclusion of evidence on the 6 January 2016.

And now the reason why I did that, and I do not know if you want me to read it into the record, is simply because I will once again deliberate that there was, there is no need to further give notice to Mr Morake. And also the argument on behalf of the Commission that he deliberately delayed the
20 proceedings and the finalisation of this hearing.

And I think therefore it is not unreasonable to proceed with the matter in his absence. Do you want me to read it into the record?

CHAIRPERSON: No, it is fine ma'am. It will be [indistinct] to be read into the record. Do you have an exhibit number

just for... Or can we just mark it AAA?

MS DE KLERK: AAA? Certainly. *Ja*. It sets out the history and some of the e-mails I quoted in detail.

CHAIRPERSON: Okay.

MS DE KLERK: But it supports my version or my submissions that the proceedings were simply delayed and that there was no reason to give further notice to Mr Morake.

CHAIRPERSON: Thank you.

MS DE KLERK: I can just mention in addition that since Ms
10 Morake forwarded a medical certificate on behalf of Mr Morake to my office, I have not received any further communication from either Mr Morake or any other staff member at Thlabane Magistrate or his wife.

I did after I received the medical certificate return an e-mail to Ms Makuku, who forwarded the medical certificate to inform her that the matter will proceed no matter that Mr Morake is absent. Then the sanction portion. I think let me just read everything out.

20 "Magistrates as public office bearers ought to be held to the highest standard of conduct. To this end a code of conduct was drawn up, accepted and inserted in the regulation in order to ensure the highest standard of conduct, although it does not

purport to be absolute precise or exhaustive.

In the case of *Acting Chairperson: JSC v Premier of the Western Cape* 2011 (3) SA 538 (SCA) *inter alia* remarked at page 548 as follows regarding the considering of complaints against a judge by the JSC.

10 'I pause to remark that it would be indeed a sorry day for our constitutional democracy where serious allegation of judicial misconduct is swept under the carpet for reasons of pragmatism and practicality as suggested by JSC. The public interest demand that the allegations be properly investigated, irrespective the wishes of those involved.'

This is a quotation from a document compiled by Mr CJ Barnard, Chief Magistrate Judicial Quality Assurance. Evaluation of misconduct proceeding of magistracy in view of
20 the judgment in Supreme Court of Appeal in the case *Nkabinde v Judicial Service Commission*.

"Mr Morake was found guilty of five counts contravening regulation 25(c), 25(d) of the regulation for judicial officers in the lower

courts, read with paragraphs 1, 3, 4, 11 and 16 of the code of conduct.

It will be argued that the judgment of Landman J in the matter of *TA Mosoeti v Magistrate IO Morake Lichtenburg & Another*, case number 869/2006, which judgment was an unreported judgment given on the 16 November 2006, which deals specifically with a matter that was sent on review where Magistrate Morake was the magistrate concerned.

And it is of particular importance in that the remarks made by Landman J is consistent with the finding of this tribunal in respect of the charges against Mr Morake. Landman J held at paragraph 28 that:

'The maintenance order cannot stand. It should be reviewed and set aside for the following reasons.

- (a) No written complaint was lodged. See section B of the Act.
- (b) The magistrate failed to inform the applicant of his right to legal representation.

- (c) The magistrate misconducted himself by exerting duress on the applicant to consent to the order.
- (d) The magistrate exceeded his powers in granting an emolument attachment order without the applicant being in default.
- (e) The magistrate failed to keep a record of proceedings. See section 42 of the Act.'

10

The remarks made by Landman J refers specifically to charges one and two. The veracity of the order made were further strengthened by the evidence given at the misconduct hearing in respect of the charges.

In its particular concern that Mr Morake instructed the maintenance officer to amend the consent order to pay maintenance despite the fact that Mr Mosoeti objected to the amendment of the said order."

20

And I am arguing that in, it is aggravating circumstances in the consideration of the sanction that should be imposed. It is also, I submitted that:

"The charges are not isolated incidents, which should be considered separately and in isolation. But all the charges share common patterns, which should be taken into account for the purpose of a sanction. Mr Morake for example introduced him as a Chief Magistrate Lichtenburg.

10

Mr Morake knows very well that he is not a Chief Magistrate. It will be argued that he introduced himself in this manner to establish a position of superiority where any opposition would be crushed.

He intimidated members of the public and used other officials in the furtherance of irregular performance of his functions as magistrate. Mr Morake for instance..."

And I did not quote the heads of argument, because it substantial and I think it can be incorporates as well.

20

"Mr Morake for example told Mr Shawaq that he is the Chief Magistrate in Lichtenburg and whenever he calls you must go and see him. When Mr Shawaq did not go and see Mr Morake after he was called, three police officers arrived at his

shop to tell him that he has to go to court at

09:00 the next morning to see Mr Morake.”

Also you will remember that Mr Morka, Mr Shawaq testified that Mr Morka pushed him with his finger against his head and tell him:

“If I call you come.”

Mr Morake was asked for his permit when he went to see... Mr Shawaq was asked for his permit when he went to see Mr Morkae. And was threatened to be send back to
10 Bangladesh. A policeman was also called to arrest him and Mr Habib. They were asked how much bail they wanted to pay.

He was also told that the money was not for him, but for the government. Mr Morake did not explain why the policeman had to arrest him. The policeman thereafter left when they signed a document. All of these instances are examples of [indistinct] and the coercion Mr Morake put on the members of the public, that community.

And that he did not think twice to use other officials to
20 assist him in his, the performance of his irregular acts. He informed Mr Shawaq that he had to continue to do business with Mr Isla. Mr Shawaq agreed to pay Mr Isla R3 000 per month, simply because he was scared of Mr Morake.

And it is to be expected. Mr Morake was sitting in a position of power as the Chief Magistrate of Lichtenburg,

calling upon the police to investigate whether the party should be returned to Bangladesh or not. It is quite clear that he exerted pressure on him.

Mr Morake also introduced himself as the Chief Magistrate of Lichtenburg to Peter Roman, Matilda Roman, Melissa Roman, Tasmia Christopher and Ms Khumalo. It is a pattern. It is not simply one isolated incident. Each and every of these matters have the same complaints by the parties.

10 He summons parties to his office even though there were no court proceedings pending. Completely, acting completely out irregular and not in accordance with the provisions of law. Mr Morake threatened parties that he would have them locked up should they not attend to his office.

It was the evidence of Mr Shawaq, Ms Khumalo and Peter Roman that they were threatened that they will be locked up or that they will face serious consequences should they not attend at his office. He abused his position as
20 magistrate and induced or forced parties to settle disputes while there were no court proceedings pending.

For example, Mr Shawaq agreed to pay R3 000 per month to Mr Isla because he was scared of Mr Morake. Mr Roman said that Mr Morake did not listen to the explanation they gave to him during the meeting in his office. Mr Roman

agreed to pay the outstanding electricity charges, because Morake threatened to have him arrested should it not be paid.

He asked Warrant-Officer Motloane how he was going to assist Mr Phule, well knowing that Mr Phule was arrested for stock theft. Warrant-Officer Motloane testified that he felt intimidated by the actions of Mr Morake, because he was asked:

"How are you going to assist him?"

- 10 Mr Morake had no qualms to request Tasmia Christopher to do him a favour and to tell a lie with regards to the missing money. He asked her to go to the small claims court and tell the clerk that she had received the money, but she did not tell her sister about it because they had an argument. And that is why her sister continued to go to the small claims court.

I will also argue that he would use other people without considering their personal circumstances, their position in the community, as long as it benefited himself. Mr Morake
20 threatened members of the public who he was supposed to serve without fear, favour or prejudice.

It was necessary for Mr Shawaq to approach the court to obtain relief from harassment he suffered at the hands of Mr Morake and the court granted the following order, whether correctly or not. But the following order was granted against

Magistrate Morake.

"That the respondent will immediate effect
stop to contact [indistinct] by any means
[indistinct]. The respondent..."

Who is Mr Morake.

"...is forbid to send any member of SAPS or
any other person to the applicant at all.
The respondent is forbid to interfere with
the business of the applicant in any way
whatsoever."

10

Mr Shawaq was not the only member of the public he
threatened. He threatened and intimidated Peter Roman,
Matilda Roman, Warrant-Officer Matloane, Ms Khumalo. And
in view also of the judgment by Landman J, that specific
portion, it will also be argued that he threatened the
respondent in that matter.

Mr Morake was also an untruthful witness and did not
take this hearing into his confidence when he had the
opportunity. It is furthermore common cause that Mr Morake
20 was convicted and sentenced to four years' imprisonment.
Now, I am well aware that the case law say, and he is not
charged before this hearing that he was convicted.

But I do not think that it is a factor that has to be taken
into account when considering the sanction. After the
application for leave to appeal was struck he was

incarcerated and he spent approximately ten months in prison. It will be argued that that fact cannot be ignored, even though the proceedings in respect of that charge still has to be finalised. It cannot be ignored.

Even should this, should it be decided that he should only receive a warning, it would mean that a person who has served a prison term, who is dishonest and lying to this hearing consistently, who threatened the community, who exerted undue pressure on people, will be back to serve as
10 magistrate.

Mr Morake is not a fit and proper person to hold the appointment of magistrate. He did not uphold the oath of office that he took, that he will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice in accordance with the Constitution and the law.

He completely failed to consider this oath when he acts irregularly. His actions display an abuse of power and the
20 irregular performing of his statutory functions. He failed to act in accordance to the judicial powers of a magistrate and in accordance with section 12(1) of the Magistrates Court Act and section 14 of the Magistrates Act.

He did not act with integrity, did not execute his judicial duties objectively competently, with dignity, courtesy and

self-control and who acted in a manner which does not uphold and promote the good name, dignity and esteem of an office of magistrate and the administration of justice.

And acted to the detriment of the administration of justice. In conclusion it is submitted that having regard to the serious nature of the charges of which Mr Morake had been convicted there can only be one sanction.

It is therefore requested that it be recommended to the Commission that Mr Morake be removed from office as
10 contemplated in section 13 of the Magistrates Act.

CHAIRPERSON: [indistinct]. Thank you. Thank you, Ms De Klerk. Can you tell me why if the, if the reason he was, if the charges on which he was convicted and sentenced do not form part of these charges why I should take it in aggravation?

MS DE KLERK: I do not... I think it cannot be ignored that he served, and it is common cause that he served a term of imprisonment. I think it is a factor that should be taken into consideration. Even if it is at... Even if it is basically
20 mentioned in passing, but it should be a factor that has to be considered.

CHAIRPERSON: What [indistinct]. Thank you, Ms De Klerk. This is the judgment on the sanction.

JUDGMENT

The respondent in this matter is Mr Iwon Morake who was the Magistrate Head of Office at the Lichtenburg Magistrates Court at the time these transgressions were committed. I do not deem it necessary to repeat the charges as they have been comprehensively dealt with in my judgment.

Having said that, I am cognisant of the fact that Mr Morake has been convicted of five of the six counts and the only reason that the Commission was unable to conclude its
10 evidence on the remaining count was as a result of the demise of one of the witnesses.

The provisions dealing with sanction relative to judicial officers is set out in regulation 26(17) of the Regulation for Judicial Officers in the Lower Courts 1994, and state as follows.

"The presiding officer at a misconduct hearing may if a finding of guilty has been made-

- 20
- (a) Impose one of the following sanctions or any combination thereof on the magistrate charged.
 - (i) Caution or reprimand the magistrate.
 - (ii) Specify the manner in which he or she should be cautioned or reprimanded.

(iii) Direct the magistrate to tender an apology in the manner specified by the presiding officer, or

(iv) Respond [indistinct] of his sanction for a period not exceeding 12 months with [indistinct] conditions which may include counselling, treatment or attendance of a training programme, or

(b) Recommend to the Commission that the magistrate concerned be removed from office as contemplated in section 13 of the Act.”

10

I am at a disadvantage for lack of Mr Morake's personal circumstances in order to evaluate them against the interests of the magistracy and the Magistrates Commission and society, together with the gravity of the transgressions. Notwithstanding and leaning in favour of his age and experience which are already on record, I will consider the fact that Mr Morake served as a judicial officer for a considerable period of time.

20

There has been address during these proceedings with regards to his financial commitments and the difficulties he experienced to pay for his council, which reared its head on several occasions during the length of these misconduct proceedings.

Having addressed his personal circumstances with the little that I have at my disposal I turn to the seriousness of the transgressions. Mr Morake has been convicted of among the most serious transgressions that a magistrate may indeed be convicted of.

It is indeed true as argued by the leader of evidence that Mr Morake conducted himself in a manner which was clearly discernable as a trend and a pattern. To my mind he used his position of trust and dictated terms to
10 witnesses in these five counts to have the order of proceedings go in the direction that he wished.

To that end and without necessarily repeating evidence, the judgment delivered by Landman J, which has been quoted by the leader of evidence while she was addressing me, specifically referred to charges one and two. And the comments made by the honourable judge *inter alia* are the following.

“The magistrate misconducted himself by
exerting duress on the applicant to consent
20 to order.”

Now, I find that Mr Morake's conduct in respect of the Shawaqs, in respect of Constable Motloane, and in respect of Tasmia Christopher, are nothing less than that of exerting duress to have your wishes satisfied. Regrettably it was not merely a question of desiring that an eventuality

will occur without any prejudice.

Money was misappropriated as far as I can glean. And by virtue of the inherent nature of these proceedings being [indistinct] I am taking the liberty to draw the inference that Mr Morake had full knowledge of what occurred with the money that was allegedly left on his table.

His conduct towards Mr Shawaq was nothing less than completely dishonourable. And in seeking to even mention an amount for bail Mr Morake conducted himself in a
10 manner which is tantamount to a corrupt relationship, albeit one-sided.

I am of the view when I have regard to the objectives of the Magistrates Act, 90 of 1993, and those of the various subcommittees of the Magistrates Commission that Mr Morake's conduct cannot be in any way described as less than extremely serious and dishonourable.

Having regard to the pattern that I have observed and the somewhat callous approach taken by Mr Morake, I find myself constrained to describe in my own words the extent
20 of the abuse of power.

It is clear to my mind that Mr Morake, being a head of office in what I can refer to as '*platteland dorpie*', simply manifested his presence in a manner which leaves one with the impression that it was his way or no way in respect of what he wished from members of the public.

Very early on in the proceedings I was forced to ask Mr Morake whether he understood that the doors of a head of office were not necessarily open for public consultations. And he sought to defend his position on the basis that 'what should he do if public approach him'.

I have considered the interests of the Magistrates Commission, the views of society when it comes to dishonourable conduct on the part of judicial officers, the severity of these transgressions, and I have sought to
10 imagine to the best advantage of Mr Morake his personal circumstances.

That notwithstanding, and bearing in mind that the principle extracted from sentencing proceedings in the criminal sphere that an accused ought not to be sacrificed on the altar of deterrence, that notwithstanding I am of the view that the most appropriate sanction in respect of all these counts taken together would be that Mr Morake be removed from office as contemplated in section 13 of the Magistrates Act, 90 of 1993.

20 And I so order his removal.

- - - - -

CHAIRPERSON: The proceedings of today, or today's proceedings will transcribed and forwarded to the Magistrates Commission in order for the necessary steps to be taken to expedite his removal. Thank you.

MS DE KLERK: Thank you very much. Thank you.

COURT ADJOURNS

[13:07]

TRANSCRIBER'S CERTIFICATE

This is to certify that, **insofar as it is audible**, the foregoing is a true and correct transcript of the proceedings recorded by means of a mechanical recorder in the matter of:

STATE v MORAKE

CASE NUMBER: 207/2007

RECORDED AT: PRETORIA

DATE HELD: 2017-11-16

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