REPORT IN TERMS OF SECTION 13(4A)(b) OF THE MAGISTRATES ACT, 90 OF 1993: WITHHOLDING OF REMUNERATION: MS JF VAN SCHALKWYK, CHIEF MAGISTRATE, KEMPTON PARK

1. PURPOSE

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission in terms of section 13(4A)(a) of the Magistrates Act, 90 of 1993 (hereinafter the Act), to withhold the remuneration of Ms JF van Schalkwyk, the Chief Magistrate at Kempton Park and to provide Parliament with the reasons therefor.

2. BACKGROUND

DISCIPLINARY PROCEEDINGS

2.1 The Magistrates Commission at its meeting held on 11 May 2013, having considered Ms Van Schalkwyk's representations relating the desirability to provisionally suspension from office, resolved to recommend to the Minister that she be provisionally suspended from office pending an investigation into her fitness to hold office as contemplated in in terms of section 13(3)(a) of the Magistrates Act, No 90 of 1993 (the Act). My predecessor, on the advice of the Commission, provisionally suspended Ms Van Schalkwyk from office and tabled a report in Parliament in terms of section 13(3)(b) of the Act. Parliament on 12 November 2013 confirmed Ms Van Schalkwyk's provisionally suspension from office.

2.2 Having conducted a preliminary investigation into numerous complaints of alleged misconduct, the Magistrates Commission charged Ms Van Schalkwyk

with 18 counts of misconduct. Ms Van Schalkwyk's then attorney acknowledged receipt of the charge sheet on 01 August 2013 on her behalf.

2.3 The Commission on 18 September 2013 appointed a Presiding Officer and a Person to Lead the Evidence (PLE) at the hearing. Ms Van Sckalkwyk was informed in writing accordingly.

2.4 On 07 October 2013, Messrs C Coetzee attorneys, acting on Ms Van Schalkwyk's behalf, filed a written objection with the Commission against the appointment of Mr D Nair, the Chief Magistrate, Pretoria to lead the evidence at the misconduct hearing.

2.5 In its response the Commission advised Mr Coetzee that Mr Nair has been duly appointed in terms of the applicable legislation and that his duties and functions are different to those of the Presiding Officer in the matter. He was further advised to raise any objections in this regard to the correct forum, which would be at the inquiry before the Presiding Officer.

2.6 Ms Van Schalkwyk, through her attorney, thereafter requested numerous further particulars to be provided to enable her to furnish the Commission with a written explanation regarding the misconduct charges preferred against her. Her attorney's attention was drawn to the fact that the Regulations for Judicial Officers in the Lower Courts, 1994 do not make provision for the furnishing of further particulars. Mr Nair's office has been in constant interaction with the defence vis-á-vis the furnishing of further particulars and legal argument surrounding that together with issues pertinent to discovery. Mr Nair however deemed it appropriate to provide the defence with copies of all witness statements and documentation to be tendered during the misconduct inquiry/hearing. The defense raised numerous points *in limine* and applications which were argued before the Presiding Officer on 06 October 2014. Ms Van Schalkwyk's application was successful in respect of one count. The Presiding Officer postponed the inquiry to 16 January 2015 for hearing on which date the defense again requested a postponement. Although this was vigorously opposed by the PLE on behalf of the

Commission, the matter was postponed to 23- 25 February 2015 for hearing. The hearing did however not proceed on these days.

2.7 A further postponement was requested by the defence since Ms Van Schalkwyk's mother had passed on. The inquiry was postponed to 20 and 21 April 2015. The defence on 15 April 2015 advised the person leading evidence on behalf of the Commission that they were once again forced to apply for a postponement of the matter on 20 April 2015. Ms Van Schalkwyk's legal representative indicated that he on 13 April 2015 received confirmation from the Public Service Association (PSA) that they would authorize for senior counsel to be briefed. Advocate J Cilliers (SC) was briefed but not able to proceed with the hearing on 20 April 2015, even if he would be placed in a position to prepare. The application for a further postponement was opposed. The Presiding Officer requested both parties to file Heads of Argument in respect of the application for another postponement. The application was refused. Ms Van Schalkwyk's attorney thereafter recused himself which the person leading the evidence opposed. Ms Van Schalkwyk asked for a postponement to obtain legal representation which was also opposed. The Presiding Officer however granted the postponement and remanded the inquiry to 03 June 2015, on which date Adv Cilliers, SC with instructing attorney P Rudman, were placed on record. Counsel indicated that the defence intends to challenge the validity of the Regulations for Judicial Officers in the Lower Courts, No R361 of 11 March 1994 but that he had to take final instructions thereon. The inquiry was postponed to 30 October 2015 for the defense to institute a Motion Application to the High Court, inter alia, to seek a Declaratory Order challenging the validity of the promulgated Regulations and the Code of Conduct for Magistrates. The State Attorney was instructed to oppose the application.

HIGH COURT APPLICATION

2.8 The Applicants on 14 August 2015 obtained a High Court order compelling the Minister and the Secretary of the Magistrates Commission, respectively the first and third Respondents in the matter, to provide the Applicants with any information relating to, including copies of any recommendations by the Commission to the

Minister in terms of section 16 of the Magistrates Act, 90 of 1993 relating to the promulgation of the Regulations for Judicial Officers in the Lower Courts and the Code of Conduct for Magistrates.

2.9 The office of the State Attorney, Pretoria on 26 September 2016 advised the Commission that Heads of Arguments were filed on 11 July 2016. The matter was set down on the Opposed Motion roll at the Gauteng Division of the High Court for hearing on 30 January 2017. During argument a new issue arose necessitating brief supplementary submissions to the Court. The matter was therefore postponed until 15 March 2017. The matter was heard on 15 March 2017 and judgment was reserved.

2.10 The High Court on 01 August 2017 delivered judgment dismissing the Applicants' application with costs. The Applicants filed a Notice of Application for leave to appeal to either a full bench of the High Court or the Supreme Court of Appeal (SCA) on 29 August 2017. Having heard both parties on 08 November 2017 the High Court on 10 November 2017 dismissed the Applicants' application with costs. Copies of the judgments are attached for the Minister's information.

(Judgements; 01 August and 10 November 2017)

3. DISCUSSION

3.1 Ms Van Schalkwyk was charged with misconduct, which charge sheet was served on her on 01 August 2013. She has been provisionally suspended from office by the Minister on 04 June 2013. She is to date still receiving the remuneration of a Chief Magistrate, whilst the disciplinary proceedings are pending against her. More than four (4) years have lapsed and not a single piece of evidence has been placed before the disciplinary inquiry. The PLE has been requested to, in consultation with the Presiding Officer at the misconduct inquiry, to set the inquiry down to continue without any further delay.

3.2 Having regard to the Constitutional Court's judgment in the Van Rooyen case CCT 21/2001 the Constitutional Court, the Court thoroughly dealt with the validity of the Magistrates Act, 90 of 1993, the Regulations for Judicial Officer in the lower Courts and the Code of Conduct for Magistrates and found them, with the exception to a few amendments to be made, to be consistent with the Constitution. The Act and the Regulations were accordingly amended in 2003. Her High Court Application has been dismissed with costs.

3.3 The Commission holds the view that Ms Van Schalkwyk is deliberately delaying the disciplinary process against her and that a determination by the Commission to withhold her remuneration is justified. In terms of section 13(3)(f) of the Act, a misconduct inquiry against a magistrate must be concluded as soon as possible. It could never have been the intention of the Legislature to allow disciplinary inquiries against magistrates to be held in abeyance indefinitely.

3.4 On 27 October 2017 Ms Van Schalkwyk was, in compliance with the rules of natural justice, invited to show cause why the Commission should not determine to withhold her remuneration forthwith. A letter in this regard was served on her on 01 November 2017. A copy is attached.

(27 October 2017)

3.5 Ms Van Schalkwyk filed her representations with the Commission on 09 November 2017. A copy is attached.

(09 November 2017)

3.6 Ms Van Schalkwyk in her representations admits "*that the misconduct hearing is dependent on the outcome of the High Court cases*" and that "*the High Court cases have due process to be followed*". Due process has been followed and the High Court dismissed her applications. The judgments in this regard are clear. Her representations not to withhold her remuneration therefore have no substance.

3.7 The Commission is of the opinion that, having further regard to the Constitutional

Court's judgment in Van Rooyen and Others v The State and Others, CCT case no 21/2001, where the Constitutional Court held that if good reasons exist for the suspension of a magistrate, even if provisionally, the withholding of salary during such suspension is not necessarily disproportionate, Ms Van Schalkwyk's provisional suspension from office **without remuneration is justified.**

3.8 Having regard to the fact that it is evident that Van Schalkwyk deliberately delaying the continuation of the disciplinary process against her and the serious nature of this misconduct charges preferred against her, the Commission, at its meeting held on 24 November 2017, determined to withhold Ms Van Schlakwyk's remuneration in terms of section 13(4A)(a) of the Act, pending the conclusion of the disciplinary inquiry against him with immediate effect.

4. LEGAL POSITION

If the Commission determines that the remuneration of a magistrate shall be reduced or withheld, a report regarding that determination and the reason therefore must be tabled in Parliament by the Minister within 7 (seven) days of such determination if Parliament is then in session, or, if Parliament is not then in session, within 7 (seven) days after the commencement of its next ensuing session. **(Section 13(4A)(b) of the Act)**

5. CONCLUSION

This report is submitted for consideration by Parliament in terms of section 13(4A)(b) of the Magistrates Act, 1993.

Given under my hand at ..Cape Town....on this...29....day of November 2017.

TM MASUTHA, MP (ADV)
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT
29/11/2017

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 49476/15

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

1/8/17
DATE

SIGNATURE

In the matter between:

J F VAN SCHALKWYK	1ST APPLICANT
A L LARSEN	2ND APPLICANT
A SESIAH	3RD APPLICANT
N JOEMATH	4TH APPLICANT

and

THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	1ST RESPONDENT
THE INFORMATION OFFICER, DEPARTMENT OF JUSTICE	2ND RESPONDENT
THE SECRETARY OF THE MAGISTRATES COMMISSION	3RD RESPONDENT

Coram: HUGHES J

JUDGMENT

HUGHES J

[1] J F Van Schalkwyk, A L Larsen, A Sesiah and N Joemath, the applicants in this matter are magistrates appointed in terms of section 10 of the Magistrate's Act 90 of 1993 (the Magistrate's Act) read with section 9 of the Magistrate's Court Act 32 of 1944 and Judicial Matters Amendment Act 58 of 1995.

[2] The Minister of Justice and Constitutional Development (the Minister), the Department of Justice and the Magistrates Commission are the respondents. In this judgment they are collectively referred to as the respondents.

[3] The order sought by the applicants succinctly is as follows:
(a) a declaratory that the first respondent, the Minister did not comply with the mandatory and material procedure out in section 16(1) of the Magistrate's Act when promulgating the Regulations for judicial officers in Lower Courts and the Code of Conduct for magistrates in terms of the Magistrate's Act; and
(b) an order seeking to review and set aside the Regulations and Code of Conduct as invalid for lack of compliance with the peremptory provisions of section 16(1) of the Magistrate's Act.

[4] A brief background is relevant. In May 2013 the applicants were advised that disciplinary proceedings were to be held against them for misconduct in relation to their conduct in terms of the Magistrate's Act and the charges were served on all four of them. However, proceedings have not commenced in respect of all the applicants

but for the fourth applicant. Disciplinary proceedings were held in respect of the fourth applicant and he was acquitted of all the charges on 9 April 2015.

[5] It is common cause that the charges that the applicants face are dependent on the validity of the Code of Conduct of magistrate's and the Regulations of judicial officers in terms of the Magistrate's Act.

[6] In a response to an application for information brought by the applicants, during the course of the proceedings of the current application, the state attorney representing the respondents on 2 September 2015 provided the applicants with documentation and information as requested. These documents and information dealt with the recommendations made by the Magistrates Commission to the Minister in terms of the Regulations for judicial officers and that of the Code of Conduct for magistrates.

[7] According to the applicants the aforesaid documentation and information provided by the respondents does not contain the recommendations from the Magistrate's Commission to the Minister as is required by section 16(1) of the Magistrate's Act.

[8] At the commencement of this application the applicants submitted that they would be abandoning their point raised in terms of Promotion of Administrative Justice Act 3 of 2000 (PAJA) and would be seeking the relief sought based on the common law instead. In these circumstances, I will not venture to deal with the issue raised in terms of PAJA.

[9] The parties agree that this case turns on two issues as is set out in the heads of argument of the respondents:

"6.1 The lawfulness or otherwise of the impugned decision. Stated differently, whether the Commission made the recommendation contemplated in section 16(1) of the Act; 6.2 In the event that this Honourable Court finds that the impugned decision was unlawful, the just and equitable remedy."

[10] A starting point would be the relevant provision in question section 16(1) which I set out below for easy reference:

"**16 Regulations**

(1) The Minister may, after the Commission has made a recommendation, make regulations regarding the following matters in relation to judicial officers in the lower courts:

(a) (i) The requirements for appointment and the appointment, promotion, transfer, discharge and disciplinary steps;

(ii) the recognition of appropriate qualifications and experience for the purposes of the determination of salary;

(iii) the procedure and manner of and criteria for evaluation and the conditions or requirements for the purposes of promotion;

(iv) transfer and resettlement costs;

(b) the duties, powers, conduct, discipline, hours of attendance, leave of absence, including leave gratuity, and pension, including contributions to a pension fund, and any other condition of service, including the occupation of official quarters;

(c) the creation of posts on the fixed establishment, and the number, grading, regrading, designation, or conversion of posts on the fixed establishment of any magistrate's office;

(d) the training of judicial officers in the various lower courts, including financial assistance for such training;

(e) a code of conduct to be complied with by judicial officers;

(f) the provision of official transport;

(g) the conditions on which and the circumstances under which remuneration for overtime duty, and travel, subsistence, climatic, local and other allowances, may be paid;

(h) the circumstances under which a medical examination shall be required for the purposes of any provision of this Act or any other law, and the form of medical reports and certificates;

(i) the legal liability of any judicial officer in respect of any act done in terms of this Act or any other law and the legal liability emanating from the use of official transport;

(j) the circumstances under which and the conditions and manner in which a judicial officer may be found guilty of misconduct, or to be suffering from continued ill-health, or of incapacity to carry out his or her duties of office efficiently;

[Para. *(j)* amended by s. 8 *(g)* of Act 35 of 1996 (wef 1 October 1998).]

(k) the procedure for dealing with complaints and grievances of judicial officers, and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such judicial officers shall be submitted;

(kA) the procedure to be followed by a committee referred to in section 6B and, in general, any matter, which is not in conflict with this Act, which is reasonably necessary for the functioning of the committee;

[Para. *(kA)* inserted by s. 7 of Act 35 of 1996 (wef 1 October 1998).]

(l) the recognition of any professional society;

(m) the membership or conditions of membership of a particular medical aid scheme or medical aid society and the manner in and the conditions on which membership fees and other moneys which are payable or owing by or in respect of judicial officers or their dependants, to a medical aid scheme or medical aid society, may be recovered from the salaries of such judicial officers and paid to such medical aid scheme or medical aid society;

(n) the contributions to and the rights, privileges and obligations of judicial officers or their dependants with regard to such a medical aid scheme or medical aid society;

(nA) the requirements for, and the registration of, not more than one person and the deregistration of that person as a partner of a magistrate, as envisaged in section 15A, with the Director-General: Justice and Constitutional Development;

[Para. *(nA)* inserted by s. 6 of Act 28 of 2003 (wef 1 November 2003).]

(o) in general, any matter, which is not in conflict with this Act, which is reasonably necessary for the regulation of the conditions of service of judicial officers or any matter in connection with the rights, powers, functions and duties of a judicial officer."

[11] The applicants argue that the point of departure in addressing compliance with section 16(1) is that the Regulations and Code of Conduct can only come into existence after the Magistrate's Commission made recommendations, of course on the Regulations and Code of Conduct, to the Minister. As stated above the applicants further argue that from the documents and information provided by the respondents no recommendations were provided and no correspondence between the Magistrate's Commission and the Minister signifies that recommendations were either requested or made. Yet a further argument advanced by the applicants is that though the respondents provided minutes of the meetings held by the Magistrate's Commission on an examination of these minutes, there is no suggestion therein that recommendations were made in writing or orally to the Minister nor is there an indication that the Minister requested such recommendations.

[12] The respondents on the other hand contend that the Magistrate's Commission did make recommendations to the Minister to promulgate the regulations which is evident in the minutes of 3 December 1993 and other documentation provided. The respondents argue that the case made out by the applicants is merely initiated to derail their forthcoming disciplinary proceedings and is not to declare the impugned decision as invalid, unlawful or unconstitutional as they allege.

Do the minutes of 3 December 1993 delineate that a recommendation was made to the Minister?

[13] In order to illustrate the respondent's compliance with section 16(1) the respondents make reference to the minutes of 3 December 1993. They contend that there was in fact a recommendation to the Minister from the Magistrates Commission. To this end they refer to the agenda of such minutes, specifically items 5 and 6 which state:

"5. *Oorweging en goedkeuring van die voorgelegde konsepregulasies.*
6. *Algemene voorlopige bespreking van voorstelle ten opsigte van 'n Gedragskode.*"

[14] At the meeting itself on 3 December 1993 points 6 and 7 of the minutes of such meeting reflect the following:

"6. *Oorweging en goedkeuring van die voorgelegde konsepregulasies*."

'n Breedvoerige bespreking word gevoer oor die voorgelegde konsepregulasies. Talle wysigings word aangebring. Die regulasies saal na die vertalers teruggaan vir die vertaling met al die aanpassings en dan na die Minister vir goedkeuring en afkondiging. [My emphasis]

7. Algemene voorlopige bespreking van voorstelle ten opsigte van 'n Gedragskode.
'n Kort bespreking word gevoer waar besin word of die voorgestelde gedragskode slegs algemene riglyne moet daarstel en of dit riglyne in detail moet wees.
Die volgende besluite word geneem:
BESLUIT: Die saak van die voorgestelde gedragskode word na die Landdrosteverenigingverwys, om kommentaar of daar 'n gedragskode moet wees, en indien wel, moet 'n konsep voorgelê word."

[15] The respondents argue that the Minister having acted on the recommendations from the Magistrates Commission duly promulgated the Regulations on 11 March 1994. This is evident, they say, as at the second meeting of the Magistrates Commission on 18 March 1994 the commission resolved to amend certain of the Regulations and considered the issues of the Code of Conduct.

[16] The respondents pointed out that Judge Van Dijkhorst (as he then was) transmitted a memorandum of 11 February 1994 as the Chairperson of the Commission to the Chief Legal Advisor in response to the legal opinion of the state legal advisors. The memorandum states as follows as regards the issue of the Regulations:

"***Regulasies Ingevolge die wet op Landdroste, 1993***

1. *Konsepregulasie ingevolge article 16 van die wet op Landdroste, 1993 (Wet 90 van 1993) (die Wet), is reeds gedurende Augustus/ September 1993 aan u vir versorging voorgelê. U het ons reeds van kommentaar voorsein.*

(Wet; 1.10.93)

5. Die Landdrostekommissie het versoek die regulasies met ingang van 1 Maart 1994 uitgevaardig word. Gevolglik moet die regulasies op 'n uiters dringende basis gefinaliseerd word."

[My emphasis]

[17] Further to the aforesaid, the respondents state that the Director General of the Department of Justice transmitted a letter dated on 16 March 1994 to the Chairperson of the Commission Judge Van Dijkhorst. From the aforesaid it can be gleaned that it was common cause between the parties that the Regulations had been promulgated by the Minister in terms of section 16.

[18] As regards the Code of Conduct, on 23 May 1994 a meeting was held where the Chairperson of the Magistrates Commission presented a draft code of conduct for consideration. At the said meeting the respondents state that the following was resolved as regards the Code of Conduct:

"16. Gedragskode

Die Landdrostekommissie BESLUIT dat n gedragskode nodig is. Die konsep opgestel deur die Voorsitter, soos gewysig, sal gesirkuleer word aan die Landdrosvereniging, alle Hooflanddroste en alle Streekhof president on kommentaar."

[19] The respondents were at pains to point out that the applicants do not take issue with the correctness of how the recommendations were formulated but rather whether the recommendations were in fact made. In any event they state that the provision only requires that recommendation be made and does not prescribe the form of the recommendation.

[20] The respondents contend that it is conceivable from the above and other documentation that the Minister promulgated the Regulation after the recommendations by the Magistrates Commission. They further contend that the Constitutionality thereof has been considered by the Constitutional Court and the said Regulations in general had passed muster, and those that did not, amendments were ordered to bring them in line with the Constitution.

[21] The applicants argue that the prerequisite provided for in section 16 is not a procedural issue but rather a jurisdictional issue. Thus, for the Minister to exercise his discretion contained in section 16, he would have to first comply with the jurisdictional prescripts of section 16, that being that the recommendation would first have to be

made by the Magistrates Commission before he exercised his discretion provided in the aforesaid provision.

[22] The crux of the applicant's argument is that there is no evidence of any written and/or oral recommendations, there is no suggestion from the correspondence and/or documents that recommendations were in fact made by the Magistrates Commission. Further, that said recommendations were received by the Minister. There is no minutes illustrating that the Magistrates Commission prepared and presented recommendations to the Minister.

[23] Of critical importance, according to the applicants, there is the crucial memorandum from the Chairperson of the Commission dated 11 February 1994. This memorandum sent to the Minister a few weeks before the promulgation in March 1994 is indicative that the view held was that the Regulations were not necessary, that there was no obligation on the Minister to promulgate the regulations, there were also submissions to the effect that the Department of Justice and the Magistrates Commission were far apart as to what the content of the Regulations ought to have been. To this end the respondents have not even put up an affidavit confirming which official was involved in suggesting, discussing and handing over such recommendations to the Minister.

[24] The applicants further argue that the prerequisite set out in the said provision was not complied with at all, at the least even on a substantive level. The applicants state that there is no evidence whatsoever to indicate that the Minister had even received or considered recommendations from the Magistrates Commission.

[25] In addressing the question posed after the consideration of the argument advanced by both applicants and respondents, I take cognisance of the fact that the Magistrates Commission proposed as is evident in the minutes of 3 December 1993 that:

"Die regulasies sal na die vertalers teruggaan vir die vertaling met al die aanpassings en dan na die Minister vir goedkeuring en afkondiging." [My emphasis]

[26] In the circumstances, the Magistrates Commission acknowledged that the Regulations would have to go via the Minister for approval, adoption and promulgation

("*goedkeuring en afkondiging*"). I agree with the respondents that no set procedure exists as to how the Magistrates Commission ought to have the recommendations made and provided to the Minister. In my view, as at 3 December 1993, the recommendations existed and were to be transmitted to the Minister consideration. The process followed at that time was that which was opted by the parties concerned and as such I cannot dictate the process that ought to have been followed. See **Premier, Province Mpumalanga and Another v Executive Committee of the Association of Government Bodies of State Aided Schools, Eastern Transvaal 1999 (2) SA 91 (CC) para [41]** where O'Regan J held:

"[41] In determining what constitutes procedural fairness in a given case, a court should be slow to impose obligations upon government which will inhibit its ability to make and implement policy effectively (a principle well recognised in our common law and that of other countries). As a young democracy facing immense challenges of transformation, we cannot deny the importance of the need to ensure the ability of the executive to act efficiently and promptly. On the other hand, to permit the implementation of retroactive decisions without, for example, affording parties an effective opportunity to make representations would flout another important principle, that of procedural fairness. This is a principle, which the second applicant himself recognised as important in his speech on 5 August 1995 (See para 19 above). Indeed, it may be that in many cases a retroactive termination of benefits will not be fair no matter what process is followed unless there is an overriding public interest, as the European Court of Justice has held on several occasions.[13] In the light of the conclusions I reach, it is not necessary to explore that issue further in this case. Citizens are entitled to expect that government policy will ordinarily not be altered in ways which would threaten or harm their rights or legitimate expectations without their being given reasonable notice of the proposed change or an opportunity to make representations to the decision-maker. In this regard, there are similarities between the facts of this case and those in the recent decision of the English Court of Appeal, *R v Devon County Council ex parte Baker and another; and R v Durham County Council, ex parte Curtis and another* [1995] 1 All ER 73 (CA) in which the court was faced with the closure of state-run residential homes for old people. It was held that there was a duty on the county councils concerned to consult the permanent residents in the homes before the decision to close the homes was taken. In one of the cases heard on appeal, the court held that the failure to consult prior to the taking of the decision rendered the decision susceptible to judicial review."

[27] Another document pointed out is that of the Chairperson of the Commission who stated in his memorandum to the Chief Legal Advisor that the Magistrates

Commission was given an opportunity to commentate and the Regulations were given to the Department of Justice during August/September 1993 for approval, adoption and promulgation. These facts coupled with the fact that proposed amendments of the Regulations were also considered by the Magistrates Commission during their second meeting held on 18 March 1994 are to me also pointers that the conclusion can be reached that the recommendation was made.

[28] On my examination of the facts above cumulatively I cannot but conclude otherwise that indeed the Magistrates Commission provided the Minister with the necessary recommendation prior to the promulgation of the Regulations with the Code of Conduct proposed on 23 May 1994 and duly promulgated on 27 October 1994 which is contained in Schedule E of the Regulations.

[29] I am mindful of the guidance enunciated by O'Regan J *supra*, if the parties opted to act in the manner that they did in order to deal with the required recommendation, I must be weary not to be stringent and dictate to the parties how the provision of the recommendation should have been done at that time.

[30] In the circumstances set out above I can but only conclude that the Regulations and the Code of Conduct were promulgated in terms of section 16 (1) and as such passed muster, as was also confirmed by the Constitutional Court, having been promulgated in terms of the jurisdictional prescripts of section 16 and the prerequisite therein. I find that the applicants have failed to show that the promulgation of the Regulations and the Code of Conduct as far back as 1994 was unlawful.

[31] From the determination made *supra* it is evident, in my view, that the decision taken by the Minister was lawfully made and thus I need not address the just and equitable remedy debate. Neither is there reason to deal with the issue of whether or not section 172 (1) of the Constitution is applicable in these circumstances.

[32] Consequently I make the following order:

[32.1] The application of the applicants, J F Van Schalkwyk, A L Larsen, A Sesiah and N Joemath, are dismissed with costs.

W. Hughes
Judge of the High Court Gauteng Pretoria

Appearances:

For the Applicant: J G Cilliers SC
Instructed by: Rudman Attorneys

For the Defendant: N Monama
Instructed by: State Attorney

Date heard: 15 March 2017
Date delivered: 01 August 2017

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED

10/11/2017
DATE

SIGNATURE

Case Number: 54391/2017

In the matter between:

J F VAN SCHALKWYK	1ST APPLICANT
A L LARSEN	2ND APPLICANT
A SESIAH	3RD APPLICANT
N JOEMATH	4TH APPLICANT

and

THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	1ST RESPONDENT
THE INFORMATION OFFICER, DEPARTMENT OF JUSTICE	2ND RESPONDENT
THE SECRETARY OF THE MAGISTRATES COMMISSION	3RD RESPONDENT

Coram: HUGHES J

REASONS

HUGHES J

[1] This is an application for leave to appeal against the whole of my judgment and order handed down on 01 August 2017.

[2] The legislation dealing which deals with the circumstances upon which leave to appeal may be granted is set out in section 17 (1) of the Superior Courts Act 10 of 2013 (the Superior Courts Act). What is specifically relevant in this case, is section 17 (1) (a). I set out section 17 (1) in its entirety below:

"Section 17(1)

(1) *Leave to appeal may only be given where the judge or judges concerned are of the opinion that-*

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a);and

(c) *where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."* [My emphasis]

[3] The test which was applied previously in applications of this nature was whether there were reasonable prospects that another court may come to a different conclusion. See **Commissioner of Inland Revenue v Tuck 1989 (4) SA 888 (T) at 890B.** What emerges from section 17 (1) is that the threshold to grant a party leave

to appeal has been raised. It is now only granted in the circumstances set out and is deduced from the words '*only*' used in the said section. See **The Mont Chevaux Trust v Tina Goosen & 18 Others 2014 JDR 2325 (LCC) at para [6]**, Bertelsmann J held as follow:

"It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see ***Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 343H.*** *The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against."* [My emphasis].

[4] The grounds for leave to appeal are to a large extent factual asserting that this court's reasoning was erroneous and that I failed to take into consideration or give sufficient weight to other factors.

[5] What I do not propose to do is to set out the exhaustive grounds of appeal again or repeat that which is set out in my judgment, in as much as that which was relevant was dealt with in the judgment. I am mindful of the fact that an appeal is solely aimed at an order of a court and not its reasoning.

[6] The applicant argue that in terms of section 17 (1) (a) they should be granted leave to appeal on the grounds set out in their notice for leave to appeal as their appeal ' would have a reasonable prospect of success' in another court.

[7] Firstly, what constitutes reasonable prospects of success? This was dealt with in **Smith v S 2012 (1) SACR 567 (SCA) at para [7]** where the court held:

"[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as

hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal." [My emphasis]

[8] The crux of the applicant argument was that there was no record of recommendations having been made and I erred in finding so. In addition I erred in finding that the Regulations and the Code of Conduct was promulgated in terms of section 16(1) of the Magistrate's Act and lawful.

[9] I am of the view that I have dealt with this extensively and conclusively in my judgment under the heading *"Do the minutes of 2 December 1993 delineate that a recommendation was made to the Minister?"*

[10] What I am basically faced with in this leave to appeal, in my view, is submissions and contentions being made of what I should have found, should have considered critically, should have considered certain probabilities and erred in not considering factors and erred in not taking certain factors into account.

[11] In my view, the conclusion that I have reached from an analysis of the proven facts could only be that which is apparent from my judgment. I am fortified in my view that on the facts of this case the applicant does not have prospect of success before another court.

[12] Consequently the following order is made:

[12.1] The application for leave to appeal must fail and is dismissed with costs.

W. Hughes
Judge of the High Court Gauteng, Pretoria

(27 October 2017)

MAGISTRATES COMMISSION | **LANDDROSTE-KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001 ☎ (012) 325 3951 FAX/FAKS (012) 326 0094

Ms JF van Schalkwyk
22 Peperboom Street
ROUXVILLE
KUILSRIVIER
7560

Reference / Verwysing : 6/5/5/2 – 43/2013
Enquiries / Navrae : J Meijer
Date / Datum : 27 October 2017

Dear Ms Van Schalkwyk

PROVISIONAL SUSPENSION FROM OFFICE: YOURSELF

A duly signed charge sheet dated 01 August 2013 was served on you on 01 August 2013. As a result of the reliable ***prima facie*** evidence against you the Minister of Justice and Correctional Services provisionally suspended you from office in terms of section 13(3)(a) of the Magistrates Act, No. 90 of 1993 (the Act) on 04 June 2013 since the allegations against you are of such a serious nature as to make it inappropriate for you to perform the functions of a magistrate while the misconduct hearing is pending against you. You have been receiving full remuneration since. The misconduct inquiry has on several occasions been postponed on your request and no evidence has been led to date. The view is held that you are deliberately delaying the disciplinary process against you.

In view hereof, you are requested to show cause why it should not be recommended to the Magistrates Commission that your remuneration be withheld in terms of section 13(4A) of the Act. Your written submission, if any, should reach this Office (Secretary of the Magistrates Commission, Pretoria) or by means of e-mail message to jmeijer@justice.gov.za on or before 10 November 2017.

Should you fail to reply within the stipulated period it will be deemed that you do not wish to submit any submissions.

Yours faithfully

SECRETARY: MAGISTRATES COMMISSION

FOR OFFICIAL PURPOSES ONLY

I, the undersigned, certify that I have served this *~~subpoena~~/notice upon the within-named person by-

	*(a)	delivering a true copy to *~~him~~/her PERSONALLY;
or	*~~(b)~~	delivery as *he/she could not be found, a true copy to ..... 1/11/2017 ..... A person apparently over the age of 16 years and apparently residing or employed at the person's place of *RESIDENCE/EMPLOYMENT/BUSINESS

at 22 Peperboom Street Rouxville Kuilsriver

The nature and exigency of this subpoena was explained to the recipient thereof.

Time 13H15 Day 01st Month November Year 2017

Place Kuilsriver

Signature of authorised officer

Signature of recipient 1/11/2017

Mr Mogamat Nazeem Kasu
Full name

Ms Judy Van Schalkwyk
Full name

Maintenance Investigator
Capacity

*Delete whichever is not applicable.

Meijer Johannes

From: rudmanatt@telkomsa.net
Sent: 09 November 2017 10:29 AM
To: Meijer Johannes
Subject: JF VAN SCHALKWYK: PROVISIONAL SUSPENSION FROM OFFICE
Attachments: Scaned_PDF(31).pdf

Importance: High

OUR REF: P RUDMAN/P64/9
YOUR REF: 6/6/6/2 – 43/2013

Dear Sir,

Your letter, dated 27 October 2017, addressed to our client, Ms J F van Schalkwyk, refers.

Enclosed herewith please find our clients response to your letter along with annexures thereto.

Kindly note that Judgment in the Application for Leave to Appeal will he handed down on 10 November 2017.

Kindly acknowledge receipt of this communication with annexures thereto.

You are requested to kindly address all future correspondence to this office at the above e-mail address.

Yours faithfully
P R T RUDMAN
RUDMAN ATTORNEYS
PRETORIA
TEL: 012-751 4613
FAX: 012-347 3097

REF: 6/5/5/2-43/2013
ENQUIRIES: J. MEIJER

9 November 2017

The Secretary of the Magistrate's Commission
Magistrate's Commission
P.O. Box 953095
PRETORIA
0001

Dear Mr Mohammed Dawood

PROVISIONAL SUSPENSION FROM OFFICE – J.F. VAN SCHALKWYK

I refer to your letter dated 27 October 2017 received personally on 1 November 2017. According to the contents of this letter, you seek written submissions from me before 10 November 2017 i.t.o Section 13 (4A) of Act 90 of 1993 whereby I should show cause to the Magistrate's Commission why my salary should not be withheld i.t.o the said sections.

I concur that the Honourable Minister of Justice provisionally suspended me from office i.t.o Section 13 (3)(a) of the Magistrate's Act 90 of 1993 on the 4 June 2013. I.t.o the Act, the remuneration of a magistrate is not affected during a period of suspension unless the Commision determines otherwise.

In my case the Commission did not deem it fit to recommend that my remuneration should be withheld or reduced.

There are no other new contributing factors that prove my remuneration should be reduced besides the fact that I am currently litigating against the Minister of Justice, the Magistrate's Commission and the Department of Justice. So this matter is sub judice.

It is indeed correct that I was served with a charge sheet on the 1 August 2013 which contained various allegations. In all allegations, litigations and tribunal hearings, each person has the right to institute legal action to defend oneself, and one's constitutional rights. There is a powerful principle in law that states: innocent until proven guilty.

Despite having received a written charge sheet on 1 August 2013, the Magistrate's Commission lodged a full-blown investigation and proceeded to garner evidence against me. It was only after my suspension that the magistrates at Kempton Park were rounded up and requested to provide statements against me. It was quite clear at this stage that the Magistrate's Commission was not ready to proceed with the Disciplinary Hearing, nor was this investigation completed. In the interim period, I obtained the services of Maodi Attorneys to represent me in this matter. On the 14 August 2013, the Magistrate's

Commission was served with a request for further particulars *(see Annexure A). The charge sheet was vague, embarrassing and did not disclose a specific date, time, person or particular facts for me to respond to the allegations. Magistrate Gail Pretorius wrote to Mr Maodi (15 Aug 2013) and stated that his request for further particulars was premature. I had to tell them which allegations were admitted and which denied (see Annexure B). On the 16 August 2013, Mr Maodi wrote to inform them that the Regulations cannot require their client to respond to vague and embarrassing allegations. He furthermore stated that we were waiting for the allegations to be couched correctly so that the client can respond. To do so, we needed further particulars *(see Annexure C).

In the interim, Mr Maodi's services were terminated, and Charl Coetzee was appointed as the new attorney on record. (See Annexure D)

Due to various scurrilous reportage by Hans Meyer to the Justice Portfolio Committee, a complaint was lodged against the said individual via the Chairperson of the Justice Portfolio Committee. On the 3 September 2013, a letter was written to the Chairperson of the Portfolio Committee on Justice and Constitutional Development. To date (1 November 2017) we have had no response (see attached Annexure E).

On the 2 October 2013 as well as the 6 March 2014, Charl Coetzee wrote a letter that he wishes to record that his client persists in her application for further particulars. He also advised that the writer shall bring an application to compel them to submit such particulars at the commencement of the hearing (see Annexure F).

It is only on the 17 March 2014 that Mr Nair informed us that his secretary was still making photocopies of the documents. Mr Nair held the view that the documents would place us in a position to prepare for trial and he wished to hold a pre-trial "In order to formulate the issues and such other matters as to aid with the expeditious disposal of the matter."

The matter was set down for the 7 November 2014 to argue in limini for the request to further particulars – unfortunately, Charl Coetzee the attorney was ill, and the matter was rescheduled to 28 November 2014 (see Annexure G).

On the 7 January 2015 we received further particulars for the first time.

The delay in meeting the request for furnishing further particulars by the Magistrate's Commission and the appointed evidence leader (Mr Nair), took 16 months. I cannot be held responsible for this tardiness, and it can hardly be attributed to me as a factor for deliberately delaying the disciplinary process against me. (Nine months to give us documents to prepare and 16 months to provide us with further particulars).

I further need to mention that a contributing factor for the delay was the fact that the Commission only appointed a presiding officer and a person to lead the evidence on behalf of the Commission at the hearing on the 18 September 2013.

On the 7th October 2013, we lodged an objection to Mr Nair being the leader of the evidence (see Annexure H). We requested his recusal, but our request was denied. The application will resurface on the eventual date of the misconduct hearing once we have finalised our litigation in the Hight Court or the next highest court.

The unavailability of earlier dates by the regional magistrate to preside over the misconduct inquiry also played a role because it clashed with his duties in the Regional Court. On the 26 March 2014, regional magistrate SS Hlophe wrote to Mr Nair, the evidence leader, and said he's not available on the proposed dates and would only be free in July and September 2014 (see Annexure I).
The matter was set down for the 23rd and 24th February 2016 to arrange dates for a hearing but sadly, I lost my beloved mom on the 21st February 2015, and I had to fly back. Suffice to say, I couldn't delay my mother's untimely passing.

The misconduct hearing was postponed to the 21 April 2015 for trial, and I believe it was the first time that the witnesses were present. My attorney requested a postponement to bring Adv J. Cilliers on board to litigate in the High Court. Regional Magistrate S.S. Hlophe denied the application. Mr Charl Coetzee withdrew as the attorney on record. At that stage, I appeared in person and brought an application for a postponement to bring Adv Cilliers on board. I informed the Court that my plea was going to be one of no jurisdiction, seeing that we will challenge the validity of the regulations.

In this instance, we will challenge the fact that my constitutional rights have been breached because the Department and the Magistrate's Commission accessed my bank accounts without a section 205 statement. Such a statement can only be obtained in criminal matters and not in misconduct hearings. Furthermore, we will challenge the fact that my computer had been seized illegally without the permission of the Director-General.

It is important to note that a misconduct tribunal could not decide on the validity of the said Regulations.

It is fair to say that at that stage the Magistrate's Commission became aware that this was going to be a long and protracted affair due to the sui generis nature of the defence. A lawyer in the true sense of the word will recognise that I have a right to litigate in whichever court to clear my name. The postponement was granted. The matter was provisionally set down for the 3rd June 2015 for me to indicate that an application was filed in the High Court.

Once again, we cannot speak about a deliberate delay. The presiding officer, S.S. Hlophe, used his judicial discretion to conclude that a postponement was justified.

On the 28 April 2015 Percy Rudman came on board as the new attorney on record.

On the 12 May 2015, Percy Rudman brought an application in terms of The Access to Information Act. It was served on the Department of Justice who forwarded the application to the Magistrate's Commission who referred it back to the Department of Justice. Sending these applications from pillar to post indicates that the delay was caused by The Department of Justice and the Magistrate's Commision.

On the 3 June 2015, we appeared at the Pretoria Magistrate's Court where we were informed that the evidence leader, Desmond Nair, was in India on urgent family business. Furthermore, the Presiding Regional Magistrate, S. S. Hlophe, was removed as the Presiding Officer because he had been charged with contraventions of the disciplinary code in an unrelated matter. The Magistrate's Commission appointed an ad hoc person to lead the evidence - Gail Pretorius and an ad hoc Presiding Officer, Regional Magistrate David Makhoba.

The Magistrate's Commission sought a postponement to the 30 October 2015. The long postponement was agreed to for the following reasons: (1) to appoint a new Presiding Officer, (2) to Lodge applications in the High Court to compel the Minister of Justice and the Secretary of the Magistrate's Commision to furnish the said recommendations.

On the 26th June 2015, we received affidavits from the deponents and were attending to the issuing of the Application. The state obviously had 21 days to file the notice of intention to oppose. On the same day, the attorney's offices received a notice that Regional Magistrate Maharaj had been appointed on the 24 June 2015 as the new Presiding Officer by the Magistrate's Commision Executive Committee.

On the 26th June 2015, the application was served on the State Attorney who refused to accept it. The application was forwarded to the Sheriff's office on the 29th June 2015. On the 27th July 2015, the attorneys received the Sheriff of the Court's return of service. The Respondents thus had 21 days to file a notice of Intention to Oppose.

The Application to proceed was set down on an unopposed basis on the 14th August 2015 because they did not file applications on time. On the 28th August 2015, we received a Court Order in our favour (see Annexure J). This order was

served on the Respondents on the 28th August 2015. The Court Order stated that the Respondents should comply with the order before the 16 September 2015.

Before this order, an order that the Commission should provide us with the said recommendations was issued and if they did not have it should admit the fact.

Needless to say, there was non-compliance by the Minister of Justice, the Magistrate's Commission and the Department of Justice. They were in Contempt of Court by failing to comply with the said court order.

The Application to have the Regulations declared unlawful was issued and submitted to the Sheriff on the 14th December 2015. A notice of intention to oppose was transmitted to this office via facsimile on 6 January 2016. The Respondent's opposing papers should have been served no later than 27 January 2016.

The Disciplinary Enquiry was postponed to the 5th February 2016 due to the fear that the Commission initially advanced the argument that they intended to take the Van de Schyff judgement on review or appeal. This lead to the Disciplinary Hearings against inter alia: Ms Van Schalkwyk, Mrs Larsen, Mrs Sesiah being postponed. It is common knowledge that we have lodged an Application on behalf of Ms van Schalkwyk plus three others, which application has been issued in the High Court of South Africa, Gauteng Division, Pretoria, under case no. 49476/2015. After proper service of the Application upon the Respondents, the State Attorney (Pretoria) filed a notice of Intention to oppose on the 18th January 2016. It was agreed between Percy Rudman and Regional Magistrate Maharaj that the matter would be postponed to the 5th February 2016 in absentia due to litigation in the High Court.

On the 5th February 2016, Mr Percy Rudman attended the Pretoria Magistrate's Court, A Mrs Naidoo (standing in for Mr Nair). The Presiding Officer, Mr Maharaj, agreed that the evidence leader, Mr Nair, will no longer be the evidence leader because he became a Commissioner on the Magistrate's Commission. The matter was subsequently adjourned to 4 November 2016, leaving sufficient time for the opposed application to be argued. Mr Percy Rudman placed the Resondent's attorney on terms requesting that they file their opposing papers no later than close of business on the 12th February 2016.

On the 30th September 2016, Mr Percy Rudman received an email from magistrate Maharaj suggesting that it is pointless to convene the disciplinary proceedings on the 4th of November 2016. All the parties agreed, and on the 3rd of October 2016, Mr Rudman sent an email to Mr Maharaj confirming that the disciplinary proceedings will not proceed on the 4th November 2016 as arranged. The Misconduct Enquiry was postponed sine die pending the High Court applications.

The opposed application was set down for Monday 30 January 2017. On the 30 January 2017. Mr Rudman and Adv Jaap Cilliers attended the court where Judge Hughes recorded that she had not read the Respondents' opposing papers or our replying affidavits. The judge indicated that it would be a disservice to herself to hear the matter without having read the papers. Consequently, Justice Hughes advised in her chambers that she will hear the matter on the 15th of March 2017. On the 15th of March 2017 this matter was argued and judgement was reserved. On the 1st of August 2017, the judgement was handed down - five months late. On the 29th of August 2017, Rudman Attorneys filed a notice of application for leave to appeal. The Application for Leave to Appeal will be heard by Judge Hughes on 8 November 2017 at 09:30. Note: a three-month delay. The Application for Leave to Appeal was argued on 8 November 2017 and Judgment was reserved until 10 November 2017.

Suffice to say that the misconduct hearing is dependent on the outcome of the High Court cases. The High Court cases have due processes to be followed. Lengthy periods elapse in the Hight Court before matters are set down for hearing, and even longer periods of time pass by before judgement is given, and we waited three months for the provision of notice to appeal dates.

On the strength of the above submissions, the allegation that I am deliberately delaying the disciplinary process is entirely unsubstantiated. I sincerely hope that you can see the frustration that litigants experience in the Department of Justice when the wheels of Justice grind slowly, as I am currently experiencing as a litigant. Delayed Justice is tantamount to No Justice. Due to all the factors indicated, it is clear that the delays do not stem from me but from all the parties implicated above. I, therefore, implore you not to withhold my remuneration because such an application has no basis in light of the submissions above. Furthermore, I reserve my right to bring an urgent application in the High Court to contest your actions as mala fide.

Lastly, in Labour Law there is a principle that says that uniform practices and rules should be consistently applied. It is quite clear that it is not so. Judge Nkola Motata was placed on special leave in 2007 with full pay.

In addition, the purpose of the suspension of a judicial officer should not be done lightly. The act of suspending a judicial officer on flimsy grounds, in and of itself, brings the entire Judiciary into disrepute.

The power to suspend a judicial officer should never be used as a punitive measure. If it is used as a sanction, it will defeat the purpose of holding the inquiry to ascertain the veracity of the allegations. None of the allegations in the charge sheet are so severe that they can warrant any impeachment. If I were corrupt, I would have expected an allegation of corruption. If I were dishonest, I

would expect an allegation of fraud and dishonesty. It is therefore clear that the intended suspension can only be a punitive measure, especially because a Regional Court President and a Chief Magistrate who have committed criminal charges and one that admitted to two instances of fraud and dishonesty were not suspended until recently. And yet, I've been suspended for alleged misconduct that warrants no impeachment.

I'm also aware that the current Chief Magistrate, who forms part of the Magistrate's Commission, has such serious allegations of misconduct against him/her that the two magistrates in Pietermaritzburg refused to deal with the file. It is clear that the principle that rules and practices should be implemented uniformly is a fallacy when it comes to the Magistrate's Commission.

The Magistrate's Commission, the Minister of Justice, and the Department of Justice cannot hamper me in seeking legal remedies and legal redress that are available to me to challenge the validity of their allegations and to clear my name from these frivolous charges.

To withhold my remuneration would have a detrimental effect and impact in the following ways:

1. My health would deteriorate rapidly because I have been diagnosed with a chronic condition that is potentially life-threatening if not treated. I would lose my Medical Aid and would lose access to decent medical services because of this.
2. It could lead to the loss of property because I have mortgage bonds that need to be serviced.
3. Like all South African citizens, I have debt and financial commitments to meet.
4. Most importantly, I am a single mother with three children. One of my children has been declared medically disabled due to injuries sustained in an accident. I am the sole breadwinner in my household.
5. I have been a loyal and honest servant in the Department of Justice. It seems that someone must have made a mistake when it came to the screening processes. It took them thirty years to come to this conclusion.
6. The misconduct proceedings have placed an additional hardship on me. The misconduct hearing is not held at the Kempton Park Magistrate's Offices where it should. I have to travel to Pretoria Magistrate's Court. I have relocated to the Cape, and thus have to pay for flights, accommodation and travel in order to attend the hearing. The Magistrate's Commission has not paid a cent towards these costs.

It is my humble submission that I have shown cause why it should not be recommended to the Magistrate's Commission that my remuneration should be withheld in terms of section 13 (4A) of the Act.

JF VAN SCHALKWYK