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Ref: 3/26/5/5 (n021001)
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The Honourable Ms B Mbete
Speaker of the National Assembly
Parliament of the RSA
CAPE TOWN
8000



Dear Ms Mbete

**PROVISIONAL SUSPENSION FROM OFFICE: MR E S NZIMANDE, REGIONAL COURT
PRESIDENT, KWAZULU-NATAL**

The purpose of this letter is to provide Parliament with a report to be tabled in Parliament in terms of section 13(3)(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: 09.10.2018



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



Dear Ms Modise

**PROVISIONAL SUSPENSION FROM OFFICE: MR E S NZIMANDE, REGIONAL COURT
PRESIDENT, KWAZULU-NATAL**

The purpose of this letter is to provide Parliament with a report to be tabled in Parliament in terms of section 13(3)(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: 05.10.2018



PROVISIONAL SUSPENSION FROM OFFICE: MR ES NZIMANDE, REGIONAL COURT PRESIDENT, KWAZULU-NATAL

1. PURPOSE

- 1.1 The purpose of this report is to inform Parliament on the provisional suspension from office of Mr ES Nzimande, the Regional Court President for Kwazulu-Natal, pending the outcome of an investigation into his fitness to hold office as a magistrate, as required by section 13(3)(b) of the Magistrates Act, 90 of 1993 (the Act).

2. DISCUSSION

- 2.1 Mr Nzimande is the Regional Court President of the Regional Division, Kwazulu-Natal. He is 59 years of age. Mr Nzimande served the Lower Courts Judiciary as a Regional Magistrate since 01 July 2000 and was appointed the Regional Court President, Kwazulu-Natal on 01 June 2011.
- 2.2 The Magistrates Commission (the Commission), during a preliminary investigation conducted in terms of regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994, obtained reliable evidence indicating that the allegations against Mr Nzimande are of such a serious nature as to make it inappropriate for him to perform his functions as a judicial officer and Regional Court President.
- 2.3 Having considered the existing evidence against him, the Commission, at its meeting held on 31 August 2018, resolved to charge Mr Nzimande with misconduct. A charge sheet dated 31 August 2018, containing **50 counts of misconduct**, was personally served on Mr Nzimande on 04 September 2018.

- 2.4 Mr Nzimande was, in compliance with the rules of natural justice, invited to furnish the Commission with representations why the Commission should not recommend that he be provisionally suspended from office in terms of section 13(3)(a) of the Act. A copy of the correspondence in this regard and Mr Nzimande's representations dated 14 September 2018 are attached marked "A" and "B", respectively.
- 2.5 Having due regard to the serious nature of the allegations, the totality of the information at hand and Mr Nzimande's representations, the Commission's Executive Committee (the Commission) on 27 September 2018 resolved to recommend that Mr Nzimande be provisionally suspended from office in terms section 13(3)(a) of the Act.
- 2.6 Subsequent to the Commission's decision, Mr Nzimande on 01 October 2018 sent an email to the Commission's Secretary, advising him that he requires further particulars in respect of the misconduct charges against him, in order to submit further representations to the Commission relating to his provisional suspension from office. He referred to an earlier request in this regard dated 13 September 2018. Copies of Mr Nzimande's letter dated 13 September 2018, his email dated 01 October 2018 and the Commission's response of even date are attached and respectively marked as Annexures "C", "D" and "E".
- 2.7 In summary, the misconduct charges preferred against Mr Nzimande, inter alia, relate to acts of impropriety in that he:
- a) in his capacity as Head of Office for the Kwazulu-Natal Regional Division during the period 2012 to 2016, was responsible for the recommendations of acting Regional Magistrates to the Minister for appointment in terms of section 9 (3) of the Magistrates' Courts Act, No, 32 of 1944 (The Minister has delegated the appointment of acting magistrates to the Deputy Minister);

- b) on various occasions during the period 2012 to 2016, approached the Minister, recommending the acting appointment of a number of attorneys for them to act in the Regional Courts within his Regional Division;
 - c) in turn, received numerous payments from these attorneys, which were deposited into his bank accounts either prior to, or after their respective approved acting appointments ;
 - d) received numerous payments into his bank accounts from a person who at the relevant times was a Clerk of the Court and a Prosecutor within his Regional Division.
 - e) during the period 2012-2015 unlawfully and wrongfully victimized and or sexually harassed, a female acting Regional Magistrate for the Kwazulu-Natal Regional Division by making subtle sexual advances to her and or calling her into his office, asking her to sit on his lap whilst talking to her and or indicating that she was indebted to him for her job and that he was personally responsible for her receiving the position as acting Regional Magistrate and or attempted to coerce her and pressure her into engaging in a sexual relationship with him and/or consistently discussed his personal circumstances such as who his sexual partners were and the activities which he engaged them in and/or consistently tell her of other magistrates who will engage in sexual favours in return for employment perks and/or sent a picture/photo of his genitalia *via* cellular phone to her which conduct violated her right to integrity of her body and personality.
- 2.8 Mr Nzimande, in his representation to the Commission, requested that he provided with further particulars of the misconduct charges in order to submit presentations; that the charges do not merit his suspension; the media has been conducting themselves with impunity over the past three years by publishing defamatory and false information whilst a prolonged period of investigation has fuelled such a

media frenzy; the misconduct charges seem to be based on bank transactions between himself another other people; the Commission was already alive to the facts in 2015 and he wonders why the Commission did not consider his suspension on the basis of information that already existed in 2015. Mr Nzimande is further of the view that his suspension will feed into the into the created media frenzy on allegations against him relating to rhino poaching and racketeering and will go against the very grain of the precepts of fair administrative justice as he must be regarded as being innocent until proven guilty of the misconduct charges.

- 2.9 The Commission is of the view that the existing evidence against Mr Nzimande is of such a serious nature as to make it inappropriate for him to perform his judicial functions and the functions assigned to him as a Regional Court President, while the allegations are being investigated. The reasons he furnished are not sufficiently cogent or weighty enough for him not to be provisionally suspended from office. The reasons for his provisional suspension, pending the outcome of the misconduct hearing, far outweigh his submissions for remaining in office. The existing evidence against Mr Nzimande is furthermore of such a serious nature that it would justify his removal from office, should he be found guilty of the misconduct charges which are preferred against him.

3. AUTHORITY TO PROVISIONALLY SUSPEND

- 3.1 In terms of section 13(3)(a) of the Act, the Minister, **on the advice** of the **Magistrates Commission**, may provisionally suspend a magistrate from office if-
- "(i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and

(ii) an investigation has been instituted by the Commission into such magistrate's fitness to hold office."

- 3.2 A report in which the provisional suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 7 (seven) days of such suspension, 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(3)(b) of the Act).
- 3.3 Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional of the magistrate is confirmed. The provisional suspension of a magistrate lapses after 60 days from the date of suspension, unless the Commission, within that period, commences its inquiry into the allegations in question. The said inquiry must be concluded as soon as possible and the Commission must submit a report to Parliament in respect of the progress with the inquiry. Parliament may, at any stage pending the inquiry, pass a resolution setting aside the suspension of the magistrate concerned, whereupon the suspension shall lapse forthwith.(section (13(3)(c)-(g) of the Act).

4. CONCLUSION

- 4.1 In light of the advice of the Magistrates Commission as well as the serious allegations against Mr Nzimande, I am of the view that he should not perform his judicial functions whilst the inquiry is conducted as it will undermine the independence, impartiality, dignity and effectiveness of the courts. I have therefore decided to provisionally suspend Mr ES Nzimande, the Regional Court President for the Kwazulu-Natal Regional Division, from the office of Magistrate with immediate effect, pending the outcome of an investigation into her fitness to hold such office.

4.2 This report is submitted for consideration by Parliament in terms of section 13(3)(b) of the Magistrates Act, No 90 of 1993.

Given under my hand at PRETORIA.....on this...5... day of October 2018.



TM MASUTHA, MP (ADV)

MINISTER FOR JUSTICE AND CORRECTIONAL SERVICES