**Report of the Select Committee on Security and Justice on the Provisional Suspension from Office of Mr. L T Mkansi, Regional Magistrate, Bloemfontein, tabled in terms of section 13(3)(b) of the Magistrates Act, 1993 (No 90 of 1993), dated 29 May 2020.**

The Select Committee on Security and Justice, having considered the Minister’s report, tabled on 18 May 2020 and referred to it, informing Parliament of the provisional suspension from office of Mr. L T Mkansi, Regional Magistrate, Bloemfontein, pending the outcome of an investigation into his fitness to hold the office as Magistrate as required by section 13(3)(b) of the Magistrates Act, (No. 90 of 1993) (the Act), reports as follows:

**Background**

Mr Mkansi was appointed as a Regional Magistrate on 1 December 2013.

The Magistrates Commission (the Commission) conducted a preliminary investigation and after considering the preliminary investigation report, the Commission resolved to charge Mr. Mkansi with misconduct.

A charge sheet, dated 12 December 2019, was served on Mr. Mkansi on 13 December 2019.

**Discussion**

1. The misconduct charges against Mr. Mkansi relates to prima facie evidence that he, during the period 28 March 2017 and 4 May 2018, on numerous occasions communicated on his cellular phone with an accused person who appeared before him in the criminal court on 24 counts of fraud.
2. The communication between Mr. Mkansi and the accused was either through calls, voicemails or short message services (SMS). The first appearance of the accused before Mr. Mkansi was on 17 February 2017 and the first call between them took place on 28 March 2017. Cellular phone contact between Mr. Mkansi and the accused was made on 49 occasions before, during and/or after the accused had to appear before court.
3. The Commission, on 7 October 2019, requested Mr. Mkansi to furnish the Commission with representations why the Commission should not recommend that he be provisionally suspended from office without remuneration. Mr. Mkansi made representations on 12 and 22 November 2019.
4. Mr. Mkansi, in brief alluded to the following:
	1. The report of the Ethics Division of the Magistrates Commission concluded that the available evidence does not support a finding of misconduct and that based on the evidence submitted, a preliminary investigation will not take the matter any further. A charge of misconduct should therefore not be pursued. The Ethics Committee of the Magistrates Commission did not accept the recommendation of the Ethics Division and resolved that a preliminary investigation be conducted. The Ethics Committee of the Magistrates Commission failed to provide written reasons for institution of a preliminary investigation.
	2. He was not provided with the minutes of the Ethics Committee meeting of 1 November 2019 and further particulars relating to reliable prima facie evidence. Mr. Mkansi was never interviewed by the investigating officer and was just requested by email if he has anything to add. Mr. Mkansi believes his constitutional rights have been infringed upon and he instituted legal action for damages.
	3. His provisional suspension without remuneration will result in an arbitrary guilty finding; he has various financial commitments; and is responsible for the maintenance of his mother and father. The allegations aren’t serious enough to warrant a provisional suspension from office without remuneration and there is no likelihood of influencing witnesses, destroying evidence or undermining public peace.
	4. Mr. Mkansi also attached a copy of the court record where the prosecutor brought an application on 3 February 2019 for him as presiding officer to recuse himself in the criminal matter and which was granted by the Court.
	5. Mr. Mkansi, during the recusal proceedings, amongst others, enquired from the prosecutor whether or not any proof of written transcript of the alleged call between him and the accused person exists to which the prosecutor replied, “I don’t believe there was a transcript of that, I’m not aware whether there was in fact a transcript.” Mr. Mkansi also enquired whether the “state has any audio perhaps of the illegal call” to which the prosecutor replied, “No, not that I know of your worship”.
	6. Mr. Mkansi, before recusing himself, stated that he denies knowingly dialing the number linked to the accused, and that he doesn’t know where and how the number linked to his name was obtained by anyone. He further stated that it is a very old number linked to his name which lasted 89 seconds which he no longer uses. That he does not have exclusive use of his phone as his wife and kids have unlimited access to his phone and following his preliminary investigation he can deduce that there is a likelihood that the number linked to the accused came up to the old number linked to his name either as a missed call and or a please-call-me. There is also a likelihood that the call was innocently made and or accidentally pressed by his kids unbeknown to them who the sender was.
5. Having considered Mr. Mkansi’s representations, as compared to the seriousness of the allegations against him, and in the interest of the image of the judiciary, the Commission at its meeting held on 29 November 2019 resolved to recommend that Mr. Mkansi be provisionally suspended from office in terms of section 13(3)(a) of the Act.
6. The Commission is of the view that the allegations against Mr. Mkansi are of such a serious nature as to make it inappropriate for him to perform the functions of a Magistrate while the allegations are being investigated. The Commission did not make any determination regarding the withholding of the remuneration of Mr. Mkansi, should he be suspended.
7. At the time the Ethics Division recommended that the matter against Mr. Mkansi not be pursued, it was in respect of evidence of one call made from the phone of Mr. Mkansi to a phone belonging to the accused person.
8. The Ethics Committee of the Commission, consisting of eight persons, resolved that a preliminary investigation be conducted in terms of Regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994. In terms of Regulation 26(1), if a magistrate is accused of misconduct, the Commission may appoint a magistrate or an appropriately qualified person to conduct a preliminary investigation and to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against the magistrate. If the Commission is of the opinion that there is prima facie evidence to support the charge, the Commission may charge the magistrate concerned in writing with misconduct without the said preliminary investigations.
9. It would further appear that following the preliminary investigation it transpired that between 28 March 2017 and 4 May 2018 contact was made on 49 different occasions between the phone belonging to Mr. Mkansi and that of the accused person, some by way of calls, and others by way of sms or voice message. This happened during and/or after the accused person had to appear in court.

**Recommendation**

Having considered the Report, tabled on 18 May 2020, by the Minister for Justice and Correctional Services, on the provisional suspension from office of Mr. L T Mkansi, pending the outcome of an investigation into his fitness to hold the office of Magistrate, the Committee recommends that the National Council of Provinces confirm Mr. L T Mkansi’s provisional suspension from the office of Magistrate.

**Report to be considered.**