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The Honourable Ms T. Modise, MP
Speaker of the National Assembly
P O Box 15
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Dear Honourable Speaker

***REPORT ON THE CONFIRMATION OF SUSPENSION/ REMOVAL FROM OFFICE
OF MS L B FREEMAN, SENIOR MAGISTRATE, MOSSEL BAY***

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

Kind regards


MR R.O. LAMOLA, MP
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
DATE: 25/05/2020



REPORT IN TERMS OF SECTION 13(4)(b) OF THE MAGISTRATES ACT, 90 OF 1993: CONFIRMATION OF SUSPENSION/REMOVAL FROM OFFICE ON THE GROUND OF MISCONDUCT: MS LB FREEMAN, SENIOR MAGISTRATE, MOSSEL BAY

1. PURPOSE

The purpose of this report is to inform Parliament on the suspension from office of Ms LB Freeman, the Magistrate of George, pending consideration by Parliament of a recommendation by the Magistrates Commission for her 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 Ms Freeman is a Senior Magistrate and the Judicial Head of Office at the Mossel Bay District Court. She is 42 years of age and has been appointed to the lower court bench on 24 October 2006. She was appointed a Senior Magistrate at Mossel Bay on 01 May 2017.

2.2 By direction of the Magistrates Commission, Ms LB Freeman was charged with 29 counts of misconduct. A charge sheet dated 17 November 2017 was personally served on Ms Freeman on 23 November 2017.

2.3 The misconduct charges preferred against Ms Freeman relate to acts of dishonesty committed during the period 2015 to 2017. In summary:

- a) In 21 of the misconduct charges it is alleged that Ms Freeman made a false or incorrect statement regarding transport claims where the kilometres claimed are more than the existing distances between the destinations;
- b) Ms Freeman indicated that she performed an *inspection in loco* at a location whilst no such *inspection in loco* took place. She claimed for the kilometres travelled;

c) Ms Freeman indicated in one of her transport claims that she used an Audi A4 whilst in fact she used an Uno and that the kilometre tariff for the Audi is more than the tariff for the Uno;

d) Ms Freeman, in her application for Appointment as Senior Magistrate on the question to list all directorships and other interests in business has held during the past ten years, she falsely and or unlawfully declared "N/A" (not applicable) on the application form, whilst she in fact is registered by the Commissioner of Companies and Intellectual Property as an active director and founding member in the company Southern Cape Fish Co-operative Limited;

e) Ms Freeman, in her application for Appointment as Senior Magistrate, on the question whether she has ever been convicted of any offence or crime, stated "No" whilst in fact she had been convicted of theft and sentenced in the Magistrates Court, Potchefstroom on 06 May 1993 and,

f) That she was negligent and indolent in the execution of her duties as a Magistrate and later as a Senior Magistrate, in not timely attending inquest cases allocated to her. The time delay in attending to these inquests ranged between 1 year and 1 year and 8 months. She returned the matters whilst she was provisionally suspended from office, without indicating that she dealt with them.

3. DISCUSSION

3.1 Having duly been served with a Notice of Hearing, the misconduct inquiry/disciplinary hearing against Ms Freeman commenced on 21 February 2018 at Mossel Bay. Ms Freeman was unrepresented at her first appearance at the inquiry. She requested the Presiding Officer (the PO) to postpone the inquiry to 22 March 2018 in order for her to obtain legal representation. She indicated that she was under the impression that the hearing would be held at the office of the Magistrate's Commission in Pretoria which caused her to consult with an attorney in Johannesburg. She later advised that she did not utilise the attorney in Johannesburg when she learned that the hearing was to be held in Mossel Bay. On 22 March 2018 Ms Freeman was still unrepresented and indicated that the attorney she had approached was not available on

that day. She was given an opportunity to approach another attorney, apparently from Oudtshoorn, to confirm his availability on a future date. On confirming a date on the availability of the attorney from Oudtshoorn, the hearing was postponed to 02 August 2018. On 02 August 2018, Ms Freeman advised the inquiry that the mandate of her attorney from Oudtshoorn was terminated but that she instructed another attorney, who was present at the inquiry. He confirmed having received instructions to act at the inquiry on Ms Freeman's behalf.

3.2 On the advice of the Magistrates Commission, the previous Minister of Justice and Correctional Services provisionally suspended Ms Freeman and the NCOP and the NA confirmed the **provisional** suspension of Ms Freeman on 5 September 2018 and 25 October 2018, respectively.

3.3 At the request of Ms Freeman, the inquiry was once again postponed to 12 to 14 September 2018 as she, without giving prior notice to the PO at the inquiry, had approached the High Court for a ruling that certain statements be made available to the defense at that stage. This caused a further delay for the inquiry to commence hearing the evidence. The High Court ruled that the statements must be made available, which ruling was complied with. Since the application by Ms Freeman was at that stage not yet finalised, it caused another postponement and further delay. The inquiry was then postponed to 21 to 23 November 2018.

3.4 At the time Ms Freeman had not tendered a plea to the charges preferred against her. The Commission therefore had to identify and appoint another magistrate to preside at the inquiry. This was done and the newly appointed PO presided at the inquiry on 21 November 2018. He instructed the Officer Leading Evidence (the PLE) and Ms Freeman's legal team, prior to the continuation of the inquiry at its next date, to sort out any outstanding issues in dispute in order to expedite the conclusion of the matter. The inquiry was, for that purpose, postponed to 28 to 31 January 2019. A "pre-trial" meeting took place which resulted in Ms Freeman making certain formal admissions. Ms Freeman was on 28 January 2019 represented by her attorney and counsel. She pleaded not guilty to all the charges. The majority of the Commission's

witnesses testified at the inquiry during this week. On 31 January 2019, the PO postponed the proceedings until 08 to 11 April 2019 for the presenting of further evidence on behalf of the Commission.

3.5 All the evidence was led during the April session of the inquiry. On 10 April 2019, the Presiding Officer postponed the inquiry to 24 and 25 July 2019 for judgment, and ordered both parties to file their respective Heads of Argument on or before 28 June and 09 July 2019. Although the PLE timeously presented his Heads of Arguments, Ms Freeman's counsel failed to do so. The Presiding Officer on 24 July 2019 delivered his judgment and found Ms Freeman guilty on all 29 charges of misconduct which the Magistrates Commission preferred against her. A copy of the judgment is attached.

(Judgment)

3.6 Both parties were given the opportunity to address the Presiding Officer on the imposition of a sanction. The inquiry was postponed until 12 September 2019 for the Presiding Officer to impose a sanction.

3.7 Having heard both parties' submissions in this regard, the Presiding Officer on 12 September 2019 recommended in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations) that Ms Freeman be removed from office as contemplated in section 13(4) of the Act. Ms Freeman was, in terms of regulation 26(20) of the Regulations, given the opportunity to lodge written representations with the Commission within 21 working days after the findings of the Presiding Officer. A copy of the sanction imposed and the Presiding Officer's reasons therefore are also attached.

(Sanction)

3.8 Ms Freeman failed to lodge her representations with the Commission by 15 October 2019, the date on which they were due. She lodged her representations with the Commission on 17 October 2019, but failed to forward a copy thereof to the Presiding Officer as required. On 21 October 2019 the Ethics Division forwarded her representations to the Presiding Officer, whereupon the latter indicated that, although her representations were clearly lodged out of time, there is nothing new which Ms Freeman disclosed which was not considered during the hearing itself. He therefore had nothing to add to his written recommendations which he already had made to the

Commission. A copy of Ms Freeman's written representations are further attached.

(Representations)

3.9 Having considered all the relevant documentation, as is required in terms of regulation 26(19) of the Regulations, including Ms Freeman's representations, the Commission, at its meeting held on 12 November 2019, resolved to recommend to the Minister that Ms Freeman be removed from office on the ground of misconduct as contemplated in section 13(4)(a)(i) of the Act. Ms Freeman's conduct as set out in the charge sheet of which she was found guilty is so serious that it justifies her removal from office. Her conduct displays dishonesty which puts her integrity as a judicial officer in serious doubt and renders her unfit to hold the office of Magistrate any longer.

4. AUTHORITY TO SUSPEND/REMOVAL FROM OFFICE

4.1 In terms of section 13(4)(a) of the Act, the Minister of Justice and Correctional Services, if the Magistrates Commission recommends that a magistrate be removed from office on *inter alia* the basis of misconduct, **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 the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.

REPORT IN TERMS OF SECTION 13(4)(b) OF THE MAGISTRATES ACT, 90 OF 1993: CONFIRMATION OF SUSPENSION/REMOVAL FROM OFFICE ON THE GROUND OF MISCONDUCT: MS LB FREEMAN, SENIOR MAGISTRATE, MOSSEL BAY

5. CONCLUSION

In view of the above, I herewith in terms of section 13(4)(a)(i) of the Magistrates Act, 1993, confirm the suspension of Ms Freeman and submit a report as required by section 13(4)(b) of the Magistrates Act, 1993, for Parliament's consideration.

Given under my hand at.....*Pretoria*.....on this.....*25th*.....day of.....*May*.....2020


MR RO LAMOLA, MP

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

MAGISTRATES COMMISSION REFERENCE NO: 6/5/5/2 27/2016 / 32/ 2018

IN THE MISCONDUCT HEARING BETWEEN:

THE MAGISTRATES COMMISSION

and

MS L.B FREEMAN, SENIOR MAGISTRATE: MOSSEL BAY

(Held at Mossel Bay Municipal Court, Mossel Bay)

JUDGMENT

Introduction

1.

Liticia Benita Freeman is a Senior Magistrate and Judicial Head of Court serving at Mossel Bay Magistrate's court. She was duly appointed as such on 1 May 2017.

2.

She began her legal career as a Prosecutrix for 7 and a half years before her appointment in October 2006, as Magistrate to the District Courts bench in Noupoort,

Northern Cape, where she also served as Judicial Head of Court at this one-person station. After a period of four and a half years, she was transferred to Mossel Bay Magistrate's Court in April 2011, as additional magistrate.

3.

At the time, the post of Judicial Head of Court at Mossel Bay Magistrate's Court was occupied by Mr BH Vermeulen, an additional magistrate at Mossel Bay. The office was later upgraded to a senior level and Mr Vermeulen acted in the post. When the vacant post as Senior Magistrate and Judicial Head of Court was advertised, Ms Freeman and Mr Vermeulen applied. Both were shortlisted and interviewed, and Ms Freeman was appointed. Ms Freeman, who served under the leadership of Mr Vermeulen for 6 years, was the new Head of Court since 1 May 2017, and Mr Vermeulen from then served under her leadership. Arising from the allegations herein, she was suspended from duty on 27 March 2018 and is currently still on suspension.

4.

Ms Freeman stands accused on 29 charges of misconduct at the instance of the Magistrates Commission. The Magistrates Commission is a statutory body enacted under Section 2 of the Magistrates Act 90 of 1993 (the Magistrates Act), with the objects of, amongst other things, the compilation of a Code of Conduct for judicial officers in the Lower Courts, and to deal with issues relating to misconduct, including the taking of disciplinary steps against magistrates.

**[Section 4 of Act 90 of 1993, read with Part 5 (Regulations 25 and 26) of the
Regulations]**

5.

The majority of charges stem from alleged excessive transport claims lodged by Ms Freeman for official journeys undertaken as magistrate. It is common cause that she served at various periodical and other surrounding courts which necessitated a fair amount of travelling.

6.

Following complaints received, a magistrate from Johannesburg, Mr Karikan, was appointed by the Magistrates Commission, as Investigating Officer, to conduct a preliminary investigation into the allegations as envisaged under Regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1993 (The Regulations).

7.

The main purpose of the investigation was to obtain evidence, if any, to determine whether there were any grounds for a charge of misconduct against Ms Freeman and, if so, for the Investigating Officer to recommend to the Commission, the contents of the charge.

[Regulations 26 (2) and (3)]

8.

It has been placed on record, and not disputed, that the Investigating Officer abandoned the investigation at some point due to security concerns. From the investigations completed, he found that there was “*overwhelming*” evidence in support of the allegations of excessive transport claims lodged by Ms Freeman pertaining to 20 instances. A further incident investigated related to a claim wherein Ms Freeman represented that she had used an Audi A4 motor vehicle, when she undertook official journeys to Groot Bakrivier court on 8 and 15 November 2016, when it is alleged that she utilized her Fiat Uno motor vehicle. The significance of this, and it is common cause, that reimbursement for transport expenditure, in terms of the prescribed tariff, is calculated per kilometre based on, inter alia, the engine capacity of the motor vehicle used. The higher the engine capacity, the higher the rate at which kilometres travelled is computed. Mr Karikan recommended that Ms Freeman be accordingly charged for misconduct.

9.

It is perhaps unfortunate that, as Investigating Officer, Mr Karikan concluded in his report that the evidence he obtained “*suggested that a finding of misconduct was inevitable*”. A copy of the preliminary investigation report is contained on pages 93 to 108 of Exhibit “LL”.

[See page 97 of The Report]

10.

Although the preliminary investigation covered 20 counts of excessive transport claims and 1 count pertaining to an incorrect or false representation of the motor vehicle used to undertake an official journey, totalling 21 counts, the Commission, if it is of the opinion that there is prima facie evidence to support any charges, may charge the magistrate, in writing, without any preliminary investigation. This appears to be the course followed in respect of the balance of 8 counts, bringing the total number of counts of misconduct against Ms Freeman, to 29.

[Regulation 26 (1) of the Regulations]

11.

The Commission subsequently formally charged Ms Freeman with misconduct as envisaged in Regulation 26 (3) of the Regulations.

12.

The first charge sheet is dated 17 November 2017 wherein Ms Freeman stands accused of 24 counts of misconduct. This was served on her on 23 November 2017.

13.

Before she could plead to the charges, the Commission decided to charge her with an additional 5 counts of misconduct, namely counts 25 to 29. These additional charges were detailed in a second charge sheet dated 7 December 2018 and by agreement, served on the attorney representing Ms Freeman, Mr E Beddy, on 13 December 2018.

14.

Ms Freeman declined the invitation in terms of Regulation 26(5), to make any written explanation regarding the 29 counts of misconduct.

15.

Senior Magistrate, Queenstown, Mr V Nqumse, was initially appointed as Presiding Officer by the Commission and later due to his unavailability, the current Presiding Officer was appointed. The latter appointment is encapsulated in a letter dated 14 November 2018 from the Commission. Mr AP Louw, a magistrate attached to the National Judicial Quality Assurance Office, Pretoria, was appointed as Officer to lead evidence on behalf of the Commission.

[Regulation 26 (6) (a) and (b) of the Regulations]

16.

Mr Van Der Schyff, an Advocate at the Cape Bar, duly instructed by attorney E Beddy, represented Ms Freeman at the Hearing. I am indebted to the representatives for their assistance and the professional manner in which they conducted their respective cases.

Background

17.

I think it is important to set-out a brief history of the matter leading to the commencement of the Hearing.

18.

The misconduct enquiry was initially set down for hearing on 21 February 2018 before Mr Nqumse and postponed until 22 and 23 March 2018 for Ms Freeman's legal representative. On 22 March 2018 the hearing stood postponed until 1, 2 and 3 August 2018, once again, for Ms Freeman's legal representative. On 1 August 2018 the proceedings were postponed until the following day, 2 August 2018, when Mr Beddy appeared and sought a postponement in order to adequately prepare for the Hearing and for Counsel to be instructed.

19.

Ms Freeman at some stage approached the Western Cape Division of the High Court under Case Number 13252/2018 and a Consent Order was taken providing for the misconduct Hearing to be postponed on 2 August 2018 (although this appeared to be in dispute), and for certain documentation and information to be made available to Ms Freeman, so as to enable her to prepare adequately to the charges preferred. The Hearing on 2 August 2018 was eventually postponed until 12, 13 and 14 September 2018. On 12 September 2018, the Hearing was postponed yet again until 13 September 2018. It appears that the Defence was not supplied with all the documentation requested by it. From the transcripts supplied to me, it is apparent that the proceedings of the 13th were not recorded. It is however common cause that the Hearing was on that date postponed until 21 November 2018 when the matter first served before me.

20.

On this date, the Officer leading the evidence indicated that further charges would be preferred against Ms Freeman and the hearing was postponed for this purpose and, at the instance of the Chairperson, to allow the parties to conduct a pre-trial conference with a view to obtaining consensus on issues not in dispute thereby saving costs and time. In view thereof, by agreement, the Hearing was postponed until 28 January 2019 when it eventually commenced, almost a year after it was initially set-down and 7 postponements later.

21.

The Charges

Of the 29 counts of misconduct: -

21.1 **Counts 1 to 20 and 27 to 29** relate to the submission of various transport claims submitted by Ms Freeman for the period March 2015 until March 2017 in which it is alleged she made false and incorrect statements in regard to transport reimbursements for official journeys she had undertaken as magistrate, it being alleged that she claimed for more kilometres than the actual distances travelled to the various destinations.

21.2 **Count 21** relates to a travel claim dated 10 August 2017 wherein it is alleged that Ms Freeman claimed excessive kilometres for an official journey undertaken to Stillbaai and when queried thereon, ex post facto, motivated the excessive claim by endorsing on the claim form that she had conducted an inspection in loco when in fact no such inspection in loco took place.

21.3 **Count 22** relates to a travel claim submitted by Ms Freeman for the period 8 and 15 November 2016, wherein she falsely and incorrectly professed and claimed for travelling in an Audi A4 motor vehicle which has a higher engine capacity than the vehicle she allegedly travelled in, namely, an Uno motor vehicle.

21.4 **Count 23** relates to a question answered by Ms Freeman, in paragraph 25 of her application form for appointment as Senior Magistrate dated 26 May 2016, wherein she was required to list all Directorships she held at the time and other interests in business, as "N/A" (not applicable), when in fact she was registered as an active Director and Founding Member of the company Southern Cape Fish Co-Operative Limited, which was registered on 15 December 2015, that is some 5 months before completion of her aforesaid application form. In the alternative to this count, it is alleged Ms Freeman contravened Regulation 25 (c) of the Regulations, namely, the Code of Conduct applicable to magistrates in that in so answering that question, she acted without integrity or 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 and/or efficiency of the administration of justice.

21.5 **Count 24** relates to a further question answered incorrectly or falsely by Ms Freeman. In paragraph 38 of her application form for appointment as Senior Magistrate in 2016, she indicated that she has never been convicted of any offence or crime, when in fact she was convicted of theft in the Magistrate's Court, Potchefstroom on 6 May 1993 under case number B436/1993 (Potchefstroom CAS 752/03/93), wherein the imposition of sentence was postponed for 5 years. In the alternative to this count, like in Count 23, it is alleged that Ms Freeman contravened Regulation 25 (c) of the Regulations.

21.6 **Count 25** pertains to questions answered incorrectly or falsely in paragraphs 10 (ii), 10 (iii) and (v) of her application form for appointment as magistrate dated 1 December 2005: namely, *“Have you ever been found guilty of a criminal offence?”*, *“Have you ever appeared in a court as an accused?”* and *“Was the imposition of sentence ever deferred in your case?”*. It is common cause that Ms Freeman answered no to all these questions when in fact she had been convicted of theft in 1993. In the alternative to this count, like in Counts 23 and 24, it is alleged that she contravened Regulation 25 (c) of the Regulations.

21.7 It is not in dispute that the above information supplied by Ms Freeman in her application forms for appointment as magistrate in 2005 and Senior Magistrate in 2016, referred to in Counts 23, 24 and 25 above, are relevant in the consideration of the suitability of a candidate for appointment as magistrate.

21.8 **Count 26** relates to the non-attendance by Ms Freeman of judicial work allocated to her namely, 6 inquest cases which she returned on 29 June 2018 without any indication that she dealt with such work. In acting as she did, it is alleged that she contravened Regulation 25(d) of the Regulations in that she was negligent or indolent in executing her duties. In the alternative, like in counts 23, 24 and 25, it is alleged she contravened Regulation 25 (c) of the Regulations.

Admissions and Defences

22.

22.1 In pleading not guilty to all main and alternative charges, Ms Freeman elected not to disclose her defence.

22.2 She however made various formal admissions, in writing, which were handed in as Exhibit "F". During the hearing itself, further admissions, both formal and informal, were also made which served to and shorten the proceedings considerably.

Counts 1 to 20 and 27 to 29

22.3 In these counts, which relate to the reimbursement of transport expenditure, Ms Freeman admits that: -

- (a) she undertook the various trips (from Mossel Bay and return trips) on the dates and to the destinations indicated in the charges;
- (b) the threshold distances in Counts 1 to 20 and kilometres she claimed are as specified in charges 1 to 20 and 27 to 29; and

(c) she made the claims as set-out in the charge sheets.

22.4 Certified copies of all relevant transport claims submitted by Ms Freeman were handed in and marked Exhibit "G" to "Z" in respect of Counts 1 to 20, and Exhibits "GG" to "II" in respect of Counts 27 to 29.

22.5 Save for denying that she made a false or incorrect statement knowing it to be false or incorrect when claiming the kilometres travelled, she admitted the rest of the allegations in these counts.

22.6 In her defence she alluded to being under the impression that to claim more kilometres than the actual distances was allowed as *"it is never clear cut as driving from one town to another"*. I think it apposite to quote from paragraph 2 of her response to the allegations she sent to the Chief Magistrate, Ms Alman, on 15 February 2017, contained on page 15 of Exhibit "LL", which reads: -

"My argument was that there are killos (sic) driven when you work in another town that will be in excess of the strict town – to – town kilo (sic) list. Because what happens to the kilo(sic) when you go get coffee you entitled to, the killos (sic) when you go for lunch, when you go put (sic) petrol in your car, when you forget (sic) your notes for a partly - heard matter and have to turn back, when you do inspections in loco, and something that happens to me alot since I'm

(sic) working in all the towns in our cluster, that on my way from one court I turn at one of the other courts, I'm working at for something that needs to be signed or picked up. The list of reasons why the kilos would be more is exhaustive (sic)".

22.7 She conceded that she received a Guide regarding distances from Mossel Bay to surrounding courts from the Court Manager at the time, Ms Gerike, which was distributed to all magistrates. As the distances in the Guide were not discussed with her by the then Acting Head of Court, Mr Vermeulen, Ms Freeman viewed it as the Court Manager's Guide. Her main contention was that it was merely a Guide. It is, however not clear, why she herself if she disagreed with the Guide, did not discuss her concerns at the time with the acting Head of Court, Mr Vermeulen.

[See Exhibit "001 to 003"]

22.8 **In regard to Counts 27, 28 and 29** which are transport claims submitted by Ms Freeman for travelling from Mossel Bay to Cape Town and return to attend training courses under the auspices of the South African Judicial Education Institute (SAJEI) (see pages 451 to 506 of Exhibit "KK"), she claimed 204 kilometres more than the actual distance in Count 27, 207 more kilometres in respect of Count 28 and 178 more kilometres in Count 29, totalling 589 more kilometres than the actual distances in respect of these 3 trips.

22.9 She explained that she usually gets lost in Cape Town and although she is booked into a hotel where accommodation and meals are provided and paid for by SAJEI, she would, at times, drive out at night to get something to eat if she did not want to eat the hotel food. She also alluded to going to the chemist. These were the likely reasons, she submitted, why excess kilometres were travelled and claimed.

Count 21

22.10 In respect of Count 21, she admits that:

- (a) She undertook one trip on 9 June 2017 to Stilbaai with a threshold distance of 210 kilometres and that she claimed travelling for 230 kilometres;
- (b) When queried, she ex post facto, endorsed on the claim form that the basis for the trip was in order to conduct an inspection in loco; and
- (c) An inspection in loco was neither scheduled for the day in question and nor did she attend any inspection in loco on that day.

22.11 Her explanation to this is that Mrs Van Staden, Acting Court Manager, queried her claim as the distance claimed was not within the parameters of the Guide, and advised her that it would not be processed for payment. As Ms Freeman needed the monies and the claim was already delayed, at the suggestion of Mrs Van Staden that she writes something on the claim form to justify the kilometres claimed, she endorsed the words "*inspection in loco*" ex post facto.

Count 22

22.12 She admitted during the hearing that on 29 November 2016, she indicated in her claim form that when undertaking an official journey, she used her Audi A4 motor vehicle when she likely used her UNO motor vehicle and that she claimed the kilometre tariff for the Audi A4 which is more than the tariff for the UNO motor vehicle.

22.13 Her defence is that she made a mistake with the date, in that the claim form should have read 01 November rather than 08 November. She remembered using her UNO motor vehicle early in November as there was a problem with her Audi A4. She served at Groot Bakrivier on both of these days and in support of her contention of a mistake, she alluded to not having claimed for 1 November 2016. The evidence of Mr Taylor that she used her UNO motor vehicle on 08 November was not disputed.

22.14 Ms Freeman testified that she does not claim travel expenditure when using her UNO motor vehicle as it has a low engine capacity and it is not worth the effort claiming. She seldomly utilised her UNO motor vehicle for work purpose.

Count 23

22.15 In respect of Count 23, she admits that she did not disclose her Directorship she had and interest as Founding Member of Southern Cape Fish Co-operative Limited bearing registration number 205/015070/24, which company was registered on 15 December 2015.

22.16 She explained that she was invited by the Pastor in her church to join in a venture described as a community upliftment project. Her Pastor paid her joining fee of R150-00 and she attended a few meetings relating to this venture in 2015. This was confirmed by her Pastor who testified on her behalf.

23.

Ms Freeman admits that her details appear in the application form for registration of the Co-operative as Founding Member and Director (on pages 117 and 118 of Exhibit "LL"), and that she signed the application form, together with 16 others, as Founding Member and Director (pages 114 and 127 of Exhibit "LL"). Before signing she however did not read the application form, it was not explained to her and nor did she understand it. She did not know that she was signing as Director. She alluded to be a criminal court magistrate and thought she was merely signing to establish the project for the benefit of the community.

22.17 By her own reckoning she alluded to being naive and silly in not knowing what she signed. As the project did not take - off and collapsed 2 or 3 months thereafter, she thought it was the end of it. She accordingly did not disclose same in her application form for appointment as Senior Magistrate.

Count 24

22.18 In respect of Count 24, she admits that: -

(a) In paragraph 38 of her application form for appointment as Senior Magistrate dated 26 May 2016, she answered in the negative to the question; *"Have you ever been convicted of any offence or crime?"*

(b) She was convicted of theft in 1993; and

(c) That the bundle of documents discovered by the Magistrates Commission relating to this conviction, the case docket bearing CR No.752/3/1993, inclusive of Van Rensburg's affidavit, the investigation diary, the SAP 69 (list of previous convictions) and arresting statement, are what they purport to be and could be relied upon by the Magistrates Commission without having to prove its contents.

Count 25

22.19 In respect of Count 25, during the hearing, Ms Freeman admitted that in her application form for appointment as magistrate dated 1 December 2005, in paragraph 10, to the questions *“Have you ever been found guilty of a criminal offence?”*, *“Have you ever appeared in court as an accused?”* and *“Was the imposition of sentence ever deferred in your case?”*; that she replied *“no”* to all 3 questions.

22.20 Her version is that when she initially learnt of the allegations of a previous conviction, she could only recall one incident of being arrested and appearing in court for collecting some roadwork cones. This was done at the instance of the seniors from the Hostel at the University of Potchefstroom as part of her initiation in her first year of studies. This happened in 1993 when she was 17 years old at the time.

22.21 In her application to the Western Cape High Court to compel the Commission to discover, she alluded to recalling the abovementioned cone incident only, of when she was arrested and appeared in court. It was only when a copy of the docket and relevant pages of the court book pertaining to her criminal conviction of theft were supplied to her by the Commission, could she vaguely remember appearing in court for theft. According to her this incident happened in March 1993, a month after she

enrolled at Potchefstroom University. She remembers the incident as being a traumatic experience when she was 17 years old, alone and scared. She could recall standing in the accused dock but could not remember if she had an attorney or what transpired in court. What she could remember is that she was informed that she could go with an admonishment or warning. Later her hostel father told her she was lucky that she got off lightly. No fine was paid, and she did not realise she was convicted. Accordingly, when she completed the application forms for appointment as magistrate, to her mind, she answered truthfully in not disclosing any previous conviction as she could simply not recall this incident. There is no explanation however why she did not disclose her arrest and appearance in court for the cone incident, which she clearly remembered and disclosed in her High Court application in 2018.

Count 26

22.22 Ms Freeman admitted that she failed to attend to the 6 Inquest cases allocated to her as set out in this charge.

22.23 These cases were returned by her to the Clerk on 29 June 2018, that is 1 year and 8 months after the first Inquest case was allocated. She explained that she did not deal with the Inquest cases because she did not have time. She served at surrounding courts and travelled alot. She was further inundated with other duties and it was the norm at her office that Inquest cases did not receive priority. Mr

Vermeulen confirmed this in his testimony. In any event, she alluded to being suspended from duty in March 2018 and thought it best to return the Inquests at that stage.

22.24 She accordingly denied that she knowingly and / or unlawfully and / or wrongfully did not attend to judicial work allocated to her.

23.

23.1 Ms Freeman also alluded to the charges against her as being the manifestation of tensions, with racial undertones, at the Mossel Bay Magistrate's court. In effect, she alluded to a conspiracy by individuals at the courthouse, who did not support her appointment as Head of Court and who were opposed to transformation. According to her this was calculated to bring about her downfall. She accordingly felt victimized. It is not in dispute that Ms Freeman did not lodge any formal grievance in this regard.

Tensions at Mossel Bay Court

24.

24.1 Ms Freeman testified that her relationship with Mr Vermeulen began deteriorating since the news of both of them being short-listed for the post of Senior Magistrate and Head of Court at Mossel Bay was published by the Commission on 15 December 2016. According to her the office was split into 2 camps, namely those

who supported her and those who supported Mr Vermeulen. This version was disputed by the various witnesses.

24.2 Shortly thereafter on 19 December 2016, a Supervisor in the administration section, Mrs Van Staden, who also acted as court manager for the period April 2016 until April 2017, sent an email to the acting Head of Court, Mr Vermeulen, requesting an investigation into certain excessive and / or fraudulent transport claims submitted by Ms Freeman.

24.3 Mr Vermeulen forwarded this email on the same day to the Chief Magistrate and Head of the Administrative Region, Ms Alman. Copies of these emails are contained on page 11 of Exhibit "LL".

24.4 Ms Alman, in turn, sent the email on 31 January 2017 to Ms Freeman, inviting her comments to the allegations. Ms Freeman availed herself of this opportunity and responded on 15 February 2017. A copy of Ms Freeman's response is contained on pages 15 to 17 of Exhibit "LL".

24.5 Ms Freeman entertained thoughts that the complaints of excessive transport claims levelled against her, which arose shortly after the publication of the shortlisted candidates in December 2016, was an attempt to influence the pending interviews for the post of Senior magistrate, Mossel Bay, which were scheduled to be

conducted in January 2017. However, during the interview no such allegations surfaced and she thought that was the end of the matter. It is common cause that Ms Freeman was subsequently appointed to the position of Senior Magistrate and Head of Court, Mossel Bay, with effect from 1 May 2017.

24.6 She was later shocked to learn that the Magistrates Commission had appointed an Investigating Officer to conduct an investigation. She was interviewed by the Investigating Officer regarding her travel claims and whether it was the Uno or A4 motor vehicle that she used for the trip undertaken to Stillbaai court on 8 November 2016.

24.7 When she assumed her position as Head of Court, Mr Vermeulen refused to vacate the office which was the Judicial Head of Court's office used by him and he further refused to relinquish his parking bay. Mr Vermeulen disputed it was the Head of Court's office and maintained that as he dealt with Children's court matters, it was more convenient for him to remain in that office.

24.8 After the intervention of a senior official from the Regional Office, Mr Vermeulen eventually vacated the office after a few weeks to a month but did not leave the office furniture behind. As Ms Freeman was informed that there was no budget to purchase new furniture for her, she took it upon herself to arrange furniture from other offices and the cleaning staff assisted her. To date, Mr Vermeulen has not surrendered his parking bay. She raised no other issues concerning Mr Vermeulen.

Mr Vermeulen testified that his office furniture was old and was of the view the Ms Freeman as the newly appointed Head of Court was entitled to new furniture. He denied his parking bay was that of the Head of Court and alluded to paid parking being allocated on a first come first serve basis.

24.9 She considers the complaints against her as an attack on her character, integrity and believes that she is being victimised by persons opposed to transformation. Mr Vermeulen is a white male, and Ms Freeman, a coloured female.

Travel Claims

25.

25.1 A magistrate who renders official service away from his or her station using private motor vehicle transport is entitled to be reimbursed for transport expenditure as prescribed from time to time for the Public Service.

[Regulation 48 (d) of the Regulations]

25.2 All official journeys are required to be authorised by the Head of Court, who must ensure that the journeys are necessary, and in the interest of the administration of justice.

[Regulation 47 (1) of the Regulations]

25.3 The Head of Court in considering an application for an official journey must have regard to costs, availability of transport, route, timespan and any other relevant circumstances.

[Regulation 42 (2) of the Regulations]

25.4 It is not in dispute that during 2015, the then acting Head of Court, Mr Vermeulen, in conjunction with the then Court Manager, Mrs Gericke, compiled a Guide for magistrates to use in claiming transport expenditure. The Guide listed the distances from Mossel Bay Magistrate's Court to the surrounding 9 courts where magistrates were, from time to time, allocated work to perform. According to Mr Vermeulen he compiled the distances in the Guide based on his experience of having travelled to the various surrounding courts. This was discussed with the Court Manager who also agreed with the distances based on her everyday experience and reference to maps. The Guide was subsequently disseminated by Ms Gericke, at the request of Mr Vermeulen, to various magistrates, including Ms Freeman on 4 September 2015.

[Exhibit "001 to 003"]

25.5 A magistrate who claims transport expenditure in respect of any official trip undertaken is required to complete a claim form (MC10) and to lodge same with the Administration, together with an approved trip authority (MC9). The trip authority is signed by both the Judicial Head of Court, who certifies that the journey is approved in terms of Regulations 47 (1) and 48 (d) of the Regulations, as well as the Policy issued in terms thereof. The magistrate, who undertakes the trip, is required to certify that all the information in the trip authority and claim form is indeed true and correct. None of this is in dispute.

25.6 The Trip Authority (MC 9) contains information such as the particulars of the magistrate, purpose of journey, make, model, engine capacity and registration of the motor vehicle used. It is signed by the magistrate undertaking the trip, Judicial Head of Court as well as the Court Manager.

25.7 The claim form (MC10) contains similar information such as the details of the magistrate undertaking the trip, make, model, engine capacity and registration of the vehicle used. It also has a section headed "*Detailed trip log register*" wherein provision is made for the date, destination, odometer reading from start and finish and total kilometres travelled. A declaration by the claimant that the information is true and correct is also signed. Provision is also made for signatures by the Checking Official in certifying the claim as correct as well as the Court Manager in approving the claim. The administrative staff who certify and approve the claims cannot declare the truth and correctness of the claim with reference to the exact kilometres travelled. That is the responsibility of the magistrate claiming. The

certification and approval by the Administration only refers to the completeness of the claim forms, that it is in accordance with prescripts in the DFI and Regulations, and that the kilometres claimed by the Magistrate is computed as per the prescribed tariff depending on the engine capacity of the motor vehicle used and the date when the journey was undertaken.

25.8 The Policy regarding travel claims is contained in a document titled *"Department of Justice Financial Instructions" (DFI)*.

25.9 The purpose of the Policy is to set parameters within which officials and defined individuals (including magistrates) may claim reimbursements for costs incurred in respect of official trips undertaken away from an individual's headquarters. Its purpose is also to ensure efficiency, cost effectiveness and transparency in regard to claims generally.

25.10 The Travel Policy in paragraphs 8.4.10.7 (iv), (v) and (viii) provide that: -

"(iv) Each traveller must exercise good and ethical judgment when incurring travel expenses;

(v) Each traveller must conduct official business in a manner that excludes consideration of personal advantage when complying with this policy; and

(viii) Compliance with the Departments travel policy is the responsibility of all travellers, travel bookers, the appointed TMC and any other person involved with travel related matters."

25.11 The Travel Policy also provides that any journey between a traveller's home and normal workplace generally constitutes a private journey and that where part of the official journey is utilised for private purpose, the distance involved must be deducted from the kilometres claimed.

[Paragraphs 8.4.10.10.4.1 (i) and (vi) of the DFI]

25.12 In paragraph 8.4.10.10.5 the DFI provides that if required by the relevant Head of Court, the traveller must attach proof of a reputable map (for example Google maps) to the claim form. It is not in dispute that this was never requested from Ms Freeman.

25.13 Transport claims when submitted by the magistrate are checked by a Checking Officer (administrative staff in the finance section) who signs it and submits it to the Court Manager for approval. Once approved, the claims are submitted to the Regional Office for processing of payment.

25.14 Mr Vermeulen's view, as acting Head of Court, is that if a magistrate indicated he or she travelled a particular distance, the Administration should not question that as the magistrate certifies it as correct under signature. His view in essence is that individual magistrates must take personal responsibility for the kilometres claimed.

Analysis of evidence

26.

Counts 1 to 20

26.1 An analysis of the claims submitted by Ms Freeman in Counts 1 to 20 reveals the following: -

- (a) A total of 107 official trips were undertaken to surrounding courts during the relevant period;
- (b) In 102 instances, 20 kilometres or less in excess of the threshold distances were claimed, in 4 instances it was 40 kilometres and in once instance 50 kilometres in excess was claimed;

- (c) A total of 1654 excess kilometres was claimed in these 107 official trips;
- (d) In 69 of the 107 trips (representing 64%) was an excess of 16 kilometres each claimed. These trips were made to courts at Riversdale and Albertina. It does indeed raise suspicion that for travelling to these 2 courts which are 184 kilometres and 104 kilometres in distance from Mossel Bay, that exactly 16 kilometres excess for each of these 69 trips to both courts were claimed;
- (e) In the 3 trips to Stillbaai undertaken in 2015 in Counts 1, 3 and 4, 40 kilometres in excess of the threshold distance of 210 kilometres was claimed for each trip;
- (f) In the 6 trips to the same court, undertaken in the following year in 2016 in Counts 6,8,9,10,13 and 14, the excess kilometres claimed to the same court was reduced by half to 20 kilometres for each of the 6 trips when compared to the previous year;
- (g) In the one trip undertaken to the same court in the following year in 2017, the excess kilometres claimed was reduced by a further half to 10 kilometres. Clearly a pattern emerges of when travelling to the same court in Stillbaai of claiming 40 kilometres excess for each trip in 2015, 20 kilometres excess for in 2016 and 10 kilometres in 2017;

(h) In the 69 trips undertaken to Riversdale or Albertina during 2015 and 2016 (save for 1 trip on 12 December 2016), a distance of 16 kilometres excess for each trip was claimed. In the following year, namely 2017, 12 further trips to the same courts were undertaken, but the excess kilometres claimed were reduced from 16 to 6 kilometres in respect of each trip, when compared to the previous years.

26.2 Clearly something caused the reduction of excess kilometres claimed by Ms Freeman in 2017. It coincides with the complaint of her excessive transport claims being escalated to the Chief Magistrate, Ms Alman, who sent an email to Ms Freeman on 31 January 2017 inviting her comments to the allegations.

26.3 The reduction also coincides with Ms Freeman learning during December 2016, from Mrs Van Staden, of the complaint against her pertaining to Count 22, wherein she indicated in her claim form that for the trips on 8 and 15 November 2016, she used her Audi A4 motor vehicle when it was alleged that she used her Uno motor vehicle. Mrs Van Staden also informed her at that stage of the fact that 2 staff members had submitted affidavits that she used her Uno motor vehicle for these trips. The names of the staff members were also disclosed to her.

26.4 One would expect the excess kilometres travelled to differ due to the varied reasons therefor given by Ms Freeman, namely, to go out for lunch, tea, to fill petrol, to fetch notes and to attend inspections in loco. As alluded to above, with the

exception of one, all her claims to the same surrounding courts (and in some instances different courts), reflect exactly the same excess kilometres travelled. This by itself also creates doubt regarding the correctness and reliability of the excess claimed.

26.5 Ms Freeman's evidence that she rounds the travel distances downwards for ease of convenience, must be considered in the light of her version that when she newly purchased her motor vehicle, she made a mistake with regard to the odometer reading and she thereafter *"improvised"*. To the proposition put to her that she guessed the kilometres, she responded: -

"I did not guess it, but it was approximately, but because of the mistake that slipped in, I had to take that into consideration".

26.6 When it was further put to her that it was never the actual kilometres travelled that she claimed, she responded as follows: -

"after the mistake that slipped in it was not as I have said I improvised it and I took into consideration the mistake that came."

26.7 Her evidence of improvising must also cast further doubts on the reliability of the excess kilometres travelled, as claimed by her. This coupled with the patterns

that emerge from her claims alluded to above adds to the suspicion. At best for Ms Freeman, I have understood her to have guessed or estimated the distances she thought she travelled and claimed accordingly. However, to have done so for over a hundred times during the period in question is alarming.

26.8 The evidence of the administrative staff, namely Ms Van Staden, Ms Terblanche and Ms Gericke, that the DFI makes an allowance for extra kilometres to be claimed between 3 and 20 kilometres (although they differed on the distances amongst themselves), must be viewed in the context that the DFI and Regulations provide only for the actual kilometres travelled which may be claimed. The latitude seemingly allowed to Ms Freeman by the administrative staff cannot condone any exaggeration or guesswork in claiming transport expenditure. It is ultimately the responsibility of the magistrate claiming to justify as reasonable the kilometres claimed particularly where it exceeds the threshold kilometres determined by the Head of Court. So too, if Ms Gericke, as Court Manager had no cause of concern with the claims of Ms Freeman, it cannot exonerate Ms Freeman from being called upon to justify the kilometres claimed in excess of the threshold distances. Judicial officers are after all accountable to the law, Constitution, Norms and Standards issued by the Chief Justice, as well as the Oath of Office wherein magistrates undertake to be faithful to the Republic of South Africa in the execution of duty.

26.9 In any event the prescripts are clear that only exact kilometres can be claimed and if there is a deviation for whatever reason, the trip authority and claim form should be endorsed accordingly. In addition, a motivation for the excess kilometres

should be attached. In none of the trip authorities and claim forms submitted by Ms Freeman is there any explanation for the excessive kilometres claimed nor are there any additional motivations, save perhaps for Count 21 where she endorsed inspection in loco.

26.10 In terms of Section 33(1) of Act 108 of 1996, everyone has the right to administrative action that is lawful, reasonable and fair. It would have been preferable if the excessive claims were queried at the time of lodgement of the claims. But the fact that the claims were not queried at the relevant times, cannot exonerate Ms Freeman from being asked to account for the excess kilometres travelled, even at this stage. I do not think that the lapse of time since undertaking the trips in 2015, 2016 and 2017, is of such a nature that she would not remember the likely reasons (as opposed to specific reasons) why she would claim kilometres in excess of the threshold distances. She was able to give the likely reasons without difficulty when she testified.

26.11 Her assertion that she was unaware of the DFI although she did not dispute its existence, must be considered in the light of her vast experience, namely, 7½ years as prosecutor, 4½ as Head of Court in Noupoot and 6 years as magistrate in Mossel Bay. She previously submitted travel claims and with over 10 years' experience as magistrate, one would reasonably expect her to be aware of the applicable prescripts.

26.12 In State -vs- Du Toit 1981 (2) SA33(C) at 42 (C), it was stated that: -

“Anyone engaging in any activity which to his knowledge is governed by Regulations or Law designed to achieve a known object, and which carry or may carry penalties for infringement is expected to acquaint himself with those Regulations or Laws.”

26.13 It accordingly does not assist Ms Freeman to say that she was not aware of the DFI. She was aware of the Magistrates Act 90 of 1993, the Code of Conduct applicable to magistrates, the Magistrates Court Act 32 of 1944 and the Regulations under Act 90 of 1993. She had many years as magistrate to acquaint herself with the prescripts and also claimed before when she served at Noupoort. She can also hardly be heard to claim that she was unaware of the Norms and Standards issued by the Chief Justice pertaining to the exercise of judicial functions.

26.14 It is not unreasonable, I think, when serving at the branch or periodical courts to go out for lunch and tea. Having travelled to the court in question on numerous occasions, Ms Freeman estimated it to be around a few kilometres travelling distances to have coffee or go to the mall, for example when in George. Most of the surrounding courts are in small towns. Mr Vermeulen’s evidence was that the distances in the Guide made due allowance for travelling for lunch or tea.

27.

Counts 27 to 29

27.1 The excessive kilometres claimed in respect of these 3 counts, relate to official trips undertaken by Ms Freeman in attending training courses/ workshops in Cape Town under the auspices of the South African Judicial Education Institute (SAJEI). These are regarded as official trips.

27.2 The workshops are usually held over a few days at a time and SAJEI pays for the accommodation and meals of magistrates for the duration of the workshop. The travel expenditure incurred to travel to the venue (and return trips) are claimed by magistrates in the normal course at office level, as they would claim for any other official journey undertaken to surrounding courts.

27.3 The actual distances for the 3 trips from Mossel Bay to Cape Town and return as alleged in the charge sheet are not in dispute. In Count 27, Ms Freeman claimed 204 kilometres in excess of the actual distance, in Count 28 she claimed 207 kilometres excess and in Count 29 she claimed 178 kilometres excess. In total, she claimed 589 excess kilometres for these 3 trips. The duration of the courses / workshops in Counts 27 and 28 were 4 days each, and in Count 29, 3 days.

27.4 Her explanation that she usually gets lost in Cape Town, goes out to buy meals in the evening when she is tired of the hotel food and goes to the chemist, must be viewed in the context of her claims being a huge deviation from the actual distances.

27.5 Whilst it is conceivable that one may get lost in Cape Town, but to travel 200 kilometres extra each trip because of the reasons furnished by her is highly improbable. What makes it even more improbable is her version that she got lost on all 3 occasions that she happened to travel to Cape Town. Trips to the chemist and even if one is benevolent to make allowance for travelling to the garage, in a city like Cape Town, is usually a matter of travelling a few kilometres only. I simply cannot envisage her getting lost in the city of Cape Town for a couple hundred kilometres at a time which would involve a travelling time of a couple of hours in covering such a huge distance. This by itself is so highly improbable that it cannot be supposed to be the truth, alternatively, is unreasonable.

27.6 If Ms Freeman preferred to go for supper outside the hotel, it was for her own account as her meals were paid for in advance by SAJEI. Presumably, this is the reason why she did not submit any claims for meals in the 3 trips undertaken to Cape Town. Had she claimed, it would likely have been regarded as a fruitless and wasteful expenditure.

27.7 In terms of Paragraph 5.1 (vi) of the Norms and Standards issued by the Chief Justice, which came into effect on 28 February 2014, Judicial Officers are always

enjoined to prevent fruitless and wasteful expenditure. This obligation can obviously not exclude travel claims.

27.8 In the circumstances, the travel expenditure incurred in buying meals outside the hotel (if indeed this was so), must be regarded as travelling for private purposes and ought to have been deducted from her travel claims. As alluded to above, the DFI obligates a magistrate where part of the journey is utilized for private purposes, to deduct the distance involved from the kilometres claimed. In any event, the DFI provides for each traveller to exercise good and ethical judgment when incurring travel expenses.

[Paragraphs 8.4.10.10.4.1 and 8.4.10.7 of the DFI]

Count 21

27.9 When queried on this claim for claiming 20 kilometres in excess of the threshold distance, by her own version, she admitted that she ex post facto endorsed the claim form as *"inspection in loco"* when in fact no inspection in loco took place or was scheduled for the day in question.

27.10 Given her considerable experience, her explanation that she was influenced by Mrs Van Staden to write something on the claim form cannot be sustained. The

further purported justification that she needed the monies and intended the claims to be processed without further delay, can also not justify her conduct. It is simply inexcusable.

27.11 In effect, Ms Freeman, by her own admission, committed fraud in this regard. This at a time in June 2017 when she was already appointed Senior Magistrate and Head of Court, Mossel Bay. Her admitted conduct must reflect adversely on her integrity.

Count 22

27.12 Ms Freeman's explanation that she made a mistake with the dates when claiming for travelling in her Audi A4 when it was her Uno motor vehicle that she likely used, must be viewed in the context that there were suspicions that this occurred previously. Certain officials were requested to keep a look-out, namely Ms Khumalo and Mr Taylor as to what motor vehicle Ms Freeman used when travelling to Stillbaai and affidavits were procured from them to the effect that when she claimed for using her Audi A4 for trips undertaken on 8 and 15 November 2016, she in fact used her Uno motor vehicle. Mr Taylor was not challenged on this when he testified.

27.13 When Mrs Van Staden discussed this issue with Ms Freeman in December 2016, upon the request of Ms Freeman she furnished her with the names of the 2 officials who deposed to affidavits. Ms Khumalo in a subsequent affidavit, withdrew her initial affidavit. Ms Freeman at the meeting with Mrs Van Staden, denied the allegations.

27.14 As Ms Freeman needed the monies yet again, she adopted the suggestion by Mrs Van Staden that she splits the claims she submitted on 29 November 2016 into two, namely, one for the days not in dispute and one for the 2 days in dispute, namely, 8 and 15 November 2016.

27.15 About 3 days later, on 9 December 2016, Ms Freeman did exactly this and submitted an amended claim form in which the trips of 8 and 15 November 2016 were omitted. To date, she has not claimed for these 2 trips and by her conduct, appears to have acquiesced to having used her Uno motor vehicle. This is also in keeping with her evidence that whenever she used her Uno motor vehicle in undertaking official journeys, it was not worth the effort claiming because of the smaller engine capacity. Had the claims for these 2 trips been processed it would have resulted in an overpayment to Ms Freeman.

Count 23

27.16 Her version is that she did not know what she signed when she signed the registration form as Director and Co- Founder of the company. She thought it was to merely establish the project for the benefit of the community. As the project did not take-off and collapsed 2 or 3 months later, she thought it was the end of it and hence did not disclose it in her application form for appointment as Senior Magistrate. She admitted that she attended 2 or 3 meetings pertaining to the venture.

27.17 The company was registered on 15 December 2015 and her application form for the post of Senior Magistrate is dated 26 May 2016, that is some 5 months later. Her version that she did not know what she was signing having attended 2 or 3 meetings pertaining to the venture is improbable. The registration form she signed is clearly headed "*application form for registration of the co-operative.*"

27.18 Her version becomes even more improbable given her considerable legal experience spanning almost 20 years as public prosecutor and magistrate. One wonders what was discussed at the meetings she attended if the registration of the Co-operative was not. It is highly improbable for one to be simply confronted with forms to sign and not understand what one's signature on the form is meant to signify, especially when such a version is alleged by a trained legal person with considerable experience.

Counts 24 and 25

27.19 Ms Freeman's explanation that she could not recall her previous conviction of theft when completing her application forms for appointment as both magistrate in December 2005 and Senior Magistrate in May 2016, must be assessed in the light of the undermentioned circumstances: -

- (a) She was 17 years old and in her first year of studies at the time of the conviction of theft on 16 May 1993 (3 months short of turning 18 years);
- (b) She completed her application form for appointment as magistrate some 12 years later in 2005;
- (c) She could however remember another unrelated incident which also occurred in 1993 when she was 17 years old. This was disclosed in paragraph 34 of her Founding Affidavit dated 25 July 2018 in her application to the High Court to compel discovery under case number 1324/2018. This incident related to a student prank, when senior students at the boarding hostel instructed her and other first year students to collect roadwork cones and triangles. This led to her arrest and appearance in court where neither her parents nor attorney was present on her behalf. She could vaguely remember an agreement was reached between her hostel- father and an official at court which led to her release;

- (d) Other than this student prank, she could not recall any other incident involving her arrest and appearance in court;
- (e) It was only after she was provided with a copy of the relevant docket and court book, that Ms Freeman admitted that she was in fact convicted of theft in the same year as her arrest for the student prank;
- (f) Although claiming that she could not remember what transpired in court in the theft conviction, she could remember that she was 17 years of age at the time and it occurred 1 month after her enrolment as a university student. She described the incident as traumatic. She did not dispute that she appeared in court on 3 occasions in the theft conviction. She could however only remember standing in the accused dock;
- (g) A closer inspection of the undisputed documents pertaining to the theft conviction reveals that she was convicted of theft for stealing 1 radox bath oil, omo washing powder, salami, spaghetti, margarine and 1 perfume from a store;
- (h) From the first page of the docket on page 389 of Exhibit "KK", it is evident that she was arrested on 24 March 1993. She appeared in court and the case was postponed until 21 April 1993. On this day the case was further

postponed until 6 May 1993 and on which day she was found guilty of theft and the imposition of sentence was postponed for 5 years;

- (i) Her personal details, including her hostel address, room number, place of birth, occupation, date of birth and identification numbers were supplied to the police and reflected in the docket on the form SAP3. She was alone at the time of her arrest and this personal information could have been obtained only from her;
- (j) The arresting statement by Van Rensburg indicates that Ms Freeman was followed as she exited the store and was arrested;
- (k) Following the conviction, her fingerprints were taken on the form SAP 69 (list of previous convictions), which form is signed by both the magistrate and clerk of court; and
- (l) From the time of her arrest on 24 March 1993 until the finalisation of her case on 6 May 1993, 1½ months lapsed and it involved 3 court appearances.

27.20 That the theft was a traumatic experience for her and endured for a period of 1½ months, as opposed to a few days, militates against Ms Freeman's version that she could not recall the incident, particularly in the absence of any explanation.

27.21 The fact that she could remember another less serious incident which occurred in the same year when she was arrested and released for the cone incident, adds to the improbability of her version that she could not recall the theft conviction.

27.22 Her version, moreover, does not explain why she did not disclose in both her application forms, her arrest for the cone matter which she remembered and alluded to in her Founding Affidavit in the High Court application. In the application form for appointment as magistrate dated 1 December 2005, question 10 (iii) reads: *"Have you ever appeared in court as an accused?"* to which she replied *"NO"*. On her own version, she did not answer this question truthfully in not disclosing the cone incident which it is clear she remembered without difficulty. She certified by her signature that the particulars she supplied in her application for were complete and correct, and further that if she gave any false information, she may be found guilty of misconduct.

27.23 In her application form for the post of Senior Magistrate completed by her on 26 May 2016, a similar declaration is signed.

27.24 A further fact which militates against her version is that in both her application forms for appointment of magistrate and senior magistrate, she provided full and detailed information regarding: -

- Particulars of employment since 1994 when she was still a student at university;
- Particulars of her studies at school and university;
- Particulars of membership of legal and other organizations;
- Particulars of community involvement;
- Particulars of managerial experience as prosecutor and magistrate;
- Her contribution to the law and pursuit of justice in South Africa.
- Particulars of courses attended; and
- History of cases she was involved in as a prosecutor and magistrate.

27.25 The above is indicative of the fact that there was no problem with Ms Freeman recalling specific incidents in her earlier years but could not remember one of the most traumatic experiences in her life which involved 3 court appearances and endured for 1½ months. In the absence of any explanation for this lapse of memory, it makes her version highly improbable. Quite apart from completing this information in the two application forms for magistrate, she also conceded that these questions were routinely asked at the commencement of her two interviews. She accordingly would have had four opportunities to answer correctly but did not.

27.26 From the totality of the evidence, there is an inescapable inference, consistent with the facts that are common cause and not in dispute, that Ms Freeman deliberately made false statements to the Commission in failing to disclose her previous conviction and appearances in court as an accused in both the theft and cone cases, which she knew or ought reasonably to have known are relevant in the

consideration of her appointment as both magistrate in 2005 and later Senior magistrate in 2016.

[Katz v Katz 2004 (4) ALL SALR at page 95]

27.27 In the statement of the Chairperson of the Appointments Committee of the Magistrates Commission, Ms Ikaneng, dated 25 March 2019, and handed in by consent as Exhibit "PP", she alluded in paragraph 14 to how seriously it is considered if a candidate has a previous conviction of a common law offence. She goes further to state that in view of the criteria and qualities required as magistrate, such a person would not be recommended for appointment.

27.28 It would be remiss, I think, not to mention that according to the Chairperson of the Appointments Committee, there exists no vetting system to screen an applicant's background for, inter alia, criminal records. Reliance is placed on the honesty and integrity of applicants in answering the questions in the application form and interviews. It is plainly unacceptable that in important a position as magistrate which is in the national interest, no vetting of applicants take place. Conceivably then and depending on for how long this has been the position, there may be persons who have been appointed as magistrate at various levels, with previous convictions who have not disclosed same. Such a situation is untenable and needs correction urgently lest confidence in the judiciary is further eroded. The legitimacy of the judiciary, it must be accepted by now, is dependent on the public's acceptance of its moral standing.

Count 26

27.29 In failing to attend to the 6 Inquest cases, she testified that Inquests were not a priority in the Mossel Bay office. She alluded to other magistrates having Inquest cases outstanding for a long time and that Mr Vermeulen did not bother to enquire about long outstanding Inquest cases. Mr Vermeulen himself testified that Inquests were attended to when magistrates could find the time and confirmed Ms Freeman's version that it was not a priority. No reasons were given why this was so.

27.30 Of the 6 Inquest cases allocated to Ms Freeman, the first was received by her in October 2016, one in January 2017, three in March 2017 and last one on 19 June 2017. It is common cause that she returned these Inquest cases on 29 June 2018, at a time when she was suspended from duty, without any indication that she dealt with the cases.

27.31 She delayed for a time period of between 1 year to 1 year 8 months in dealing with the Inquest cases. She alluded to travelling extensively and being inundated with other judicial work as reasons why they were not attended to.

27.32 She was appointed Senior Magistrate and Head of Court on 1 May 2017. She accordingly had a further 11 months after her promotion as Head of Court and Senior Magistrate to finalize the Inquests but failed to do so.

27.33 The importance of Inquest cases is that every unnatural death is the subject matter of an Inquest where no criminal charges have been preferred. Family members and loved ones often await the outcome of such findings to finalize matters such as insurance claims and administration of Deceased Estates and perhaps more importantly, to learn of whether any person could be held responsible for the death of the Deceased by either an act or omission amounting to an offence. The underlying purpose of an Inquest is to reassure members of the public that all unnatural deaths will receive due and proper attention.

27.34 Her failure to attend to the Inquests within a reasonable time, (in the absence of any time limits imposed by the Head of Court or agreed upon) shows her indifference, even as Head of Court, in the execution of her duties. Her generalized reasons in not attending to the Inquests timeously, are so weak to my mind, that it simply amounts to no explanation at all, especially given the considerable period that they remained outstanding.

27.35 She was suspended from duty on 27 March 2018 yet chose to return the Inquests to the Clerk more than 3 months later on 29 June 2018. No explanation has been submitted for this further delay of more than 3 months. As a Senior magistrate and Head of Court, it was expected of her to lead by example. Even if it was the norm at Mossel Bay court that magistrates take a long time to attend to Inquest cases, a local office norm cannot outweigh other constitutional and statutory

imperatives pertaining to the execution of one's duty as magistrate. If nothing else, she was obligated to have corrected this as Head of Court and had almost a year as leader to do so. Under paragraph 4 of the Norms and Standards issued by the Chief Justice, it is the responsibility of the Head of Court to ensure that all judicial officers perform their judicial functions efficiently and expeditiously.

27.36 This is reiterated in terms of paragraph 5.1.(ii) of the Norms and Standards that every Judicial Officer is obligated to dispose of his or her cases efficiently, effectively and expeditiously. In paragraph 5.2.1 (i) of the Norms and Standards, judicial officers are obligated to deliver quality justice as expeditiously as possible in all cases. This is further reinforced in paragraph 5.2.5 of the Norms and Standards and underlies its importance. This Ms Freeman failed to do. It makes little difference, if any at all, that Inquest cases at her office were not a priority. In the final analysis, a magistrate is accountable to the law and the Constitution in the execution of judicial functions.

28.

Ms Freeman did not make a good impression as a witness. She was evasive in answering questions. Her evidence was also littered with excuses such as that she was unaware of the DFI, her selective memory in not recalling her previous conviction, she was not aware that she was a Founding Member and Director of a company, and not remembering with which car she used in regard to certain travel claims. I am satisfied that not much reliance can be placed on her evidence.

29.

Even in the travel claim where she falsely indicated "*inspection in loco*", an excuse was proffered that she did so because she needed the monies. That she attempted to apportion blame for her reprehensible conduct at the feet of Mrs Van Staden, is most unfortunate.

30.

She was on prior occasions spoken to about her travel claims by the Administrative Staff. She refused to use the Guide of distances to surrounding Courts issued by the Head of Court. It only emerged late in her cross- examination that the odometer in her motor vehicle was faulty and used this to justify her improvising her travel distances. I must confess to some difficulty in understanding, despite her attempted explanation, of what she exactly meant by improvising.

31.

There is no correlation between tensions at the office and the charges preferred against Ms Freeman. The charges in respect of the travel claims relate to the period 2015 and 2016 in the main. In 2017 the excess distances claimed by her generally reduced substantially. Ms Freeman was perhaps not given the administrative support that she was entitled to upon being appointed as Head of Court. This cannot however justify her conduct in the various charges, the majority of which relate to

events that occurred long before the publication of the shortlist of candidates for the post of Senior Magistrate, Mossel Bay and her subsequent appointment to such post in May 2017. She accused various persons, including the Chief Magistrate, as being friends with Mr Vermeulen, and as being opposed to her being appointed Head of Court.

32.

Not disclosing her previous conviction and Directorship are events that took place in 2005 and 2016. Throughout her evidence she hinted at the investigation and charges against her as being racially motivated, without laying a basis at all for such conclusion. To my mind, her conduct has little to do with tensions at the office and everything to do with integrity.

33.

In the application form for the post of Senior Magistrate, completed on 26 May 2016, she put up the names of both Mr Vermeulen and Ms Alman as referees or references. It is highly improbable that she would use their names if she believed they were prejudicial towards her. She was after all appointed to the position she applied for and was never questioned on any of the allegations during the interview. If there was any conspiracy against her, one would have expected the complaints to have been lodged with the Magistrates Commission. Due to the seriousness of the allegations, one would also have expected this to have been brought up during her interview for the vacant post of Senior Magistrate. However, none of this happened.

34.

In fact, Mrs Van Staden testified that she encouraged Ms Freeman to apply for the post of Senior Magistrate. This was not disputed.

35.

Mr Vermeulen, came across as a good witness who exhibited no prejudice towards Ms Freeman. It is not in dispute that he guided her and assisted in her development as Magistrate. If anything, as the Acting Head of Court, he came across as being too accommodating of Ms Freeman, particularly in relation to long outstanding Inquest cases and her numerous excessive travel claims. That he adopted a supine approach towards her is unfortunate. He gave reasons why he initially did not vacate his office. These were matters to be attended to by the Chief Magistrate. It does not follow that because of this, he is racist.

36.

It is common cause that all claims submitted by Ms Freeman as well as the applications to undertake the official trips were completed by her. The odometer reading from start to finish, as well as the kilometre distances travelled were completed by her and she declared under her signature that the information in the claim forms was true and correct. The over-claimed kilometres formed a pattern over a long period and accordingly cannot be regarded as isolated incidents.

37.

Notwithstanding being involved in the administration of justice as Magistrate for many years and having previously claimed travel expenditure, she failed to keep herself informed of the applicable prescripts.

38.

Ms Freeman was the only person that could certify the information in her claim forms as correct. I agree with Mr Louw that the Administration has no authority to condone claims for excessive kilometres. The ultimate responsibility to justify as reasonable what is claimed must be on the person who asserts, particularly where the distances claimed exceed the actual and threshold distances. This Ms Freeman failed to do.

39.

Judicial integrity and personal character are perhaps two of the most important aspects that bear on claims for transport reimbursement. Judicial integrity requires a magistrate to observe and uphold the highest ethical standards. Ms Freeman's conduct fell short of this standard in various respects and used tensions at the office, with racial undertones, to attempt to explain the investigations against her and subsequent charges herein. She resorted to this without any justification. The consequent hurt and embarrassment it may have caused to those she levelled such allegations against, is regrettable.


40.

In light of the foregoing, I am satisfied that the documentary and circumstantial evidence in support of the charges, when considered in the totality of the evidence discussed above, establishes more than on a balance of probabilities, that Ms Freeman is guilty on all 29 charges of misconduct as follows:

COUNTS 1 TO 22 - GUILTY AS CHARGED

COUNTS 23 TO 26 - GUILTY AS CHARGED ON THE MAIN COUNTS; AND

COUNTS 27 TO 29 - GUILTY AS CHARGED



I KHALLIL

CHAIRPERSON

ACTING CHIEF MAGISTRATE: INANDA (VERULAM)

24 JULY 2019

MAGISTRATES COMMISSION REFERENCE NO: 6/5/5/2 - 27/2016 and 32/2018

IN THE MISCONDUCT HEARING BETWEEN:

THE MAGISTRATES COMMISSION

and

MS. L.B. FREEMAN, SENIOR MAGISTRATE: MOSSEL BAY

(held at Mossel Bay Municipal Court, Mossel Bay)

SANCTIONS

1.

Introduction

The imposition of an appropriate sanction is perhaps the most difficult task faced by a presiding officer in a misconduct hearing. It involves a thorough consideration of various disparate factors in arriving at a fair and just conclusion. In the overall assessment of factors, I am mindful of the constitutional imperative in section 174(7) of Constitution of The Republic of South Africa Act 108 Of 1996 (the Constitution), which commands that disciplinary steps against judicial officers take place without favour or prejudice.

2.

Apart from the findings of fact made in the Judgement on the merits, which should be specifically incorporated herein insofar as they are relevant to the imposition of sanctions, primary amongst the factors to be considered are: -

- 2.1. The nature, extent and gravity of the charges convicted of;**
- 2.2. The qualities expected of a Judicial Officer seen in the light of the Oath of Office and Code of Conduct applicable to magistrates;**
- 2.3. Ms Freeman's personal circumstances;**
- 2.4. Mitigatory and aggravating circumstances; and**
- 2.5. The protection of the esteem and confidence in the Office of Magistrate.**

3.

In terms of Section 174(1) of the Constitution, any appropriately qualified woman or man who is a fit and proper person may be appointed as Judicial Officer.

4.

Once appointed, a magistrate enjoys security of tenure and may be removed from Office only if he or she suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct.

**(Section 174(7) of Constitution and section 13 of the Magistrates Act 90 of 1993
read with Regulation 26 of the Regulations thereunder)**

5.

The Charges Convicted Of

Ms Freeman has been found guilty on all 29 charges of misconduct preferred against her. Counts 1 to 20 and 27 to 29 relate to false and incorrect statements she made in regard to transport re-imbursments she claimed in respect of official journeys that she had undertaken as magistrate. In these counts, totalling 23 of the total 29 charges, it is common cause that she claimed for more kilometres than the actual threshold distances to the various destinations.

6.

In **Count 21**, she also claimed excessive kilometres for an official journey and when queried thereon, she ex post facto, motivated the claim by endorsing on the claim form that she had conducted an inspection in loco when in fact no such inspection had taken place.

7.

In **Count 22**, she misrepresented that she had used a motor vehicle with a higher engine capacity than that actually used when claiming transport re-imbusement for an official journey undertaken. The higher the engine capacity of the motor vehicle used, the higher the rate at which the kilometres travelled is computed for re-imbusement purposes.

8.

In **Count 23**, she was found guilty of making a false or incorrect statement, knowing it to be false or incorrect, when she did not disclose in her application form for appointment as Senior Magistrate in 2016, that she was a Director and Founding Member of a company. Her false and incorrect statement was in direct response to a question in the application form where she was required to list all directorships, she held and other interests in business.

9.

In **Count 24**, she was found guilty of making a false or incorrect statement, knowing it to be false or incorrect, with a view to obtaining an advantage, in not disclosing her previous criminal conviction of theft in her application form for appointment as Senior Magistrate in 2016. Her false statement was in direct response to a question in the application form, namely: *Have you ever been convicted of any offence or crime?* To this question she dishonestly responded in the negative.

10.

In **Count 25** not dissimilar to **Count 24**, she was found guilty of making a false or incorrect statement in her application form for appointment as magistrate in 2005, in not disclosing her previous conviction of theft where the imposition of sentence was deferred. Her false statements were in direct response to 3 questions in the application form, namely, *"Have you ever been found guilty of a criminal offence? Have you ever appeared in Court as an accused? and Was the imposition of sentence ever deferred in your case?"* She answered in the negative when in truth and fact she ought to have responded in the affirmative to all 3 questions.

11.

In **Count 26**, she was found guilty of being negligent or indolent in the execution of her duties as Magistrate and later Senior Magistrate, in not attending to 6 inquest

cases allocated to her, the first of which was allocated in October 2016, one in January 2017, three in March 2017 and the last of which June 2017. The time delay in attending to these cases ranged between 1 year and 1 year and 8 months. The cases were returned by her on 29 June 2018, at a time when she was suspended from duty, and without any indication that she dealt with the cases.

12.

Ms Freeman elected not to testify in mitigation and chose to place mitigatory factors, albeit late, before this Tribunal by way of Heads of Argument dated 28 August 2019.

13.

Mitigating Circumstances

- 13.1) Ms Freeman is 44 years of age. She began her legal career as a Prosecutrix for 7½ years before her appointment in October 2016, as magistrate;
- 13.2) After a period of 4½ years she was transferred to Mossel Bay Magistrate's Court in April 2017;
- 13.3) She was promoted, with effect from 1 May 2017 to Senior Magistrate and Judicial Head of Court at Mossel Bay;

- 13.4) Arising from the investigations against her, she was suspended from duty 11 months after her promotion as senior magistrate on 27 March 2018. She is currently still on suspension on full pay with benefits;
- 13.5) In total, she has almost 13 years' experience as magistrate and 7½ years as prosecutor, totalling some 21 years legal experience;
- 13.6) She holds B Proc degree from Northwest University and over the years attended a number of training courses and seminars on a variety of legal subjects;
- 13.7) She is single and the eldest of 4 siblings. Apart from financially supporting herself, she also supports her elderly parents who are sickly and both of whom receive older persons government grants. Accommodation and financial assistance is also provided for her youngest sibling. Her financial commitments include repayment of a bond, motor vehicle finance and clothing accounts. These expenses are over and above her normal living expenses;
- 13.8) Ms Freeman involves herself in community related projects, particularly for children through her church;
- 13.9) Her financial position has been constrained by litigation costs incurred in obtaining the services of an attorney and counsel in representing her at the misconduct hearing herein and further in applying to the High Court to compel the Magistrates Commission to discover documentation to enable her to adequately defend the charges herein. As a result she had to take a number of loans. The source and extent of these loans have not been disclosed;

- 13.10) Although she contends her conduct aforesaid holds no direct and inherent danger to the community, in paragraph 69 of her Heads of Argument, she alludes to being ostracised by certain colleagues at work and members of the community, particularly since her suspension;
- 13.11) Ms Freeman regrets her conduct and in paragraph 14 of her Heads of Argument, she expressed deep remorse for same. In effect, she alludes to her judgement being clouded in the various incidents convicted of;
- 13.12) She contends that removal from Office will be an overreaching sanction given the emotional strain, stress and turmoil she endured as well as financial expenses incurred;
- 13.13) She is willing to repay the monies received in respect of the excess kilometres paid to her and requests to undergo training pertaining to travel related prescripts;
- 13.14) It is suggested by Ms Freeman that a demotion, reduction of salary and/or suspension on salary increase for a period, as well as training and supervision are suitable sanctions; and
- 13.15) Apart from the Findings of guilt herein on 29 charges of misconduct and a criminal conviction of theft in 1993, she has a clean track record.

Aggravating Circumstances

Mr Louw for the Magistrates Commission has contended that in 28 of the 29 charges Ms Freeman has been found guilty of, her actions took the form of gross dishonesty, to wit, fraud in the employment context justifying dismissal at first instance;

14.1 In respect of Count 26, it is contended that Ms Freeman was grossly negligent and indolent in the execution of her duties as magistrate and that such dereliction of duty, by itself, also justifies her removal from Office.

14.2 Mr Louw has disputed that Ms Freeman showed remorse for her actions and alluded to various parts in her testimony where she blamed others and made excuses in an effort to justify her wrongdoing in all 29 charges of misconduct.

14.3 She hinted at the charges against her being racially motivated, without justification, with the latter being a finding of fact made in the main judgement on the merits;

14.4 The only fair sanction, Mr Louw submitted, is a recommendation to the Magistrates Commission, in terms of Regulation 26(17)(b) of the Regulations,

that Ms Freeman be removed from Office as contemplated in Section 13 of the Magistrates Act 90 of 1993.

15.

15.1) The Constitution in section 174(2) demands that a Judicial Officer (Magistrate or Judge) must be appropriately qualified and a fit and proper person.

15.2) Judicial integrity and personal character are perhaps two of the most important aspects of the requirement of being a fit and proper person for appointment. Yet what exactly a *“fit and proper”* person is, is not defined or described in Legislation or Regulations despite the fact that it is a stringent requirement. Case law abounds with decisions pertaining to the removal of attorneys and advocates from the respective rolls, if the Court is satisfied that a person is not a fit and proper person to continue practise as such. Similarly, applications for re-admission are also a useful guide. Notwithstanding the fact that magistrates are not strictly speaking employees as the term is understood in the labour context, a reference to relevant labour law cases is also helpful.

(Jassat v Natal Law Society 2000 (2) ALL SA 310 (SCA))

(Swartzberg v Law Society, Northern Province 2008 ALL SA 438 (SCA))

15.3) It commonly accepted that in order to be "*fit and proper*", a person must show integrity, reliability and honesty. It appears to be essentially a discretionary value judgement. I bear in mind however that in *Maian and Another v The Law Society, Northern Province 2009 (1) ALL SA 133 (SCA)*, Harms J, as the President of the Supreme Court of Appeal stated the following in paragraph 21:

"The exercising of this discretion is not bound by rules, and precedents consequently have a limited value. All they do is to indicate how other courts have exercised their discretion in the circumstances of a particular case. Facts are never identical, and the exercise of a discretion need not be the same in similar cases. If a Court were bound to follow a precedent in the exercise of its discretion, it would mean that the Court has no real discretion."

(See also *Naylor and Another v Jansen 2007(1) SA 16 (SCA)*, paragraph 21)

16.

What is clear is that judicial integrity requires a magistrate to observe and uphold the highest ethical standards. Whilst I do not think it can be expected that the character of a magistrate be free of all lapses or blemishes, at a minimum, a magistrate should not contravene the Code of Judicial Conduct, which requires that magistrates always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.

17.

Upon assuming office, a Magistrate is required to take an Oath or affirm that he or she 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"

(Section 9(2) (a) of the Magistrates Court Act 32 of 1944)

18.

To fulfil its constitutional role, the judiciary needs public acceptance of its moral authority and integrity. It is for this reason, if nothing else, that magistrates must not only seek, but are required to maintain, protect and enhance the status of the Judiciary.

19.

It is against this background, taking into account both mitigatory and aggravating circumstances, that Ms Freeman's misconduct in the 29 charges should be considered, in coming to a fair and just sanction.

20.

Regulation 26(17) of the Regulations for Judicial Officers in the Lower Courts, 1994 (The Regulations) provides for the following sanctions: -

- 20.1 Caution or reprimand the magistrate;
- 20.2 Specify the manner in which the magistrate should be cautioned or reprimanded;
- 20.3 Direct the magistrate to tender an apology in a manner specified by the Presiding Officer;
- 20.4 Postpone the imposition of a sanction for a period not exceeding 12 months with or without conditions which may include counselling, treatment or attendance of a training programme; or
- 20.5 Recommend to the Commission that the Magistrate concerned be removed from Office.

21.

Neither the Act nor the Regulations give any indication of whether the sanction to be imposed should be in respect of each count or for that matter whether several counts may, in appropriate circumstances, be taken as one for the purpose of imposing a fair sanction. I propose to be guided in this regard by Section 33 of the Constitution which provides for fair and just administrative action, which by implication, is or should equally be applicable to the sanction to be imposed.

22.

The excessive travel claims in counts 1 to 20 and 27 to 29, involved 110 official trips spanning a period of 2 years from March 2015 until March 2017. A total of over 2200 excessive kilometres was claimed and paid out. The excessive kilometres claimed in 110 instances over a 2-year period cannot be regarded as isolated incidents and clearly formed a pattern of wrongful conduct over an extended period. This is an aggravating factor.

(In Re Brown 626 M.W. 2d 403 2001, Michigan Court)

23.

The fact that Ms Freeman refused to be bound by the guide of distances issued by the Acting Head of Court is a further aggravating circumstance. Her dissatisfaction with the Guide, was a compelling reason by itself, for her to have discussed her concerns with the Acting Head of Court. Inexplicably, she chose not to do so.

24.

In the Supreme Court of the State of Washington in Re Discipline Proceedings against John G Ritchie, Judge of the King County District Court J.D Number 9 En BAN C, April 6 1994, the Commission found Judge Ritchie's request for reimbursement of travel claim expenses for Judicial Business exhibiting a pattern of

conduct which involved dishonesty for personal gain, defrauding the state and misrepresenting facts and circumstances. He was charged with submitting 4 travel vouchers to King County which contained false and misleading statements in connection with official trips. Judge Ritchie's behaviour was found to be improper and a violation of the Code of Judicial Conduct. He was removed from Office.

25.

25.1 The defences Ms Freeman raised to the various charges were spurious. As an experienced magistrate, she by her own reckoning testified that she unaware of prescripts relating to travel reimbursements. She resorted to pleading ignorance as some form of justification for the excessive claims. Only late under cross-examination did she allude to the odometer in her motor vehicle as being faulty causing her to improvise the distances claimed. As such, she did not accept responsibility for her wrongful conduct.

25.2 As mentioned in the main Judgement in S-vs-Du Toit, 1981 (920 SA 33(E) at 42, it was stated:

"Anyone engaging in any activity which to his knowledge is governed by regulations or law designed to achieve a known object and which may carry penalties for infringement is expected to acquaint himself with these regulations or laws."

Ms Freemans conduct fell short of this expectation, particularly regard being had to the fact that she is an experienced magistrate.

26.

In the 3 trips to Cape Town in Counts 27, 28, and 29, she claimed a total of 589 kilometre in excess of the actual distances. Her explanation was that she usually gets lost in Cape Town, goes out to buy meals when she was tired of the hotel food, and goes to the chemist. This was rejected as being so highly improbable that it could not supposedly be the truth. The Findings in the main judgment on the merits allude to this in greater detail and are specifically incorporated herein.

27.

In Count 21, by her own admission, she in effect committed fraud by ex post facto endorsing on the claim form that an inspection in loco was held when in fact there was no such inspection. She blamed Mrs Van Staden for having influenced her to write something on the claim forms. Again, she apportioned blame for her actions to someone else and did not accept personal responsibility.

28.

In Count 22, she misrepresented that she used her Audi A4 in 2 official trips. It was only when she came to have knowledge of affidavits filed by 2 employees alluding to the fact that she used her Uno motor vehicle which has a smaller engine capacity, did she resubmit her claims omitting the claims for these trips.

29.

In Count 23, because the project did not take-off, she thought it was the end of it and did not disclose her Directorship in the company. She alluded to not being aware of what she signed when signing the registration form. Again, she appeared not to accept responsibility for her actions.

30.

In Counts 24 and 25 she alluded to not being able to recall her previous conviction for theft in her application forms for appointment as both magistrate in 2005 and senior magistrate in 2016. This criminal conviction by her reckoning was a traumatic experience, but she gave no explanation why she could not recall this incident. Notwithstanding the fact that she, by her own admission, remembered being arrested and appearing in court for the cone incident, and which incident was disclosed by her under oath in her High court application in 2018, she still answered dishonestly or falsely in not responding in the affirmative to the question in the application form, namely *"have you ever appeared in court as an accused?"*

31.

Apart from non – disclosure of her previous conviction in both application forms, she conceded that during the 2 interviews she attended for the positions of magistrate and senior magistrate, questions pertaining to previous convictions are routinely asked at the commencement of the interviews. She accordingly would have had at least 4 opportunities to disclose her previous conviction but chose not to. Again I gained the impression that she did not accept responsibility for her dishonesty.

32.

In regard to the Inquest cases allocated to her, apart from the considerable delay of between 1 year and 1 year and 8 months in attending to these cases , she did not offer any explanation why she delayed for 11 months after her appointment as senior magistrate and as Head of Court, in dealing with the cases. As Judicial Head of Court, she was under a duty to lead by example. In not attending to the Inquests, she also contravened various provisions of the Norms and Standards Issued by the Chief Justice, pertaining to the exercising of judicial functions. Her conduct shows a blatant disregard of such Norms and Standards in multiple respects as alluded to in the main judgment.

33.

Her reasons for the non-attendance of the Inquest cases were that she travelled extensively and was inundated with other judicial work. She however had time to travel for coffee and for lunches in Courts 1 to 20 on 107 occasions that she served at surrounding courts, but appears to have had no time over a period of 1 to 1½ years to attend to the Inquest cases. Again, this shows a total disregard or indifference to the family of the deceased and other affected parties in the Inquest cases. She attempted to justify her conduct by alluding to Inquest cases not being a priority at the office. .Once again, she appeared not to accept responsibility for her actions.

34.

Moreover, no explanation was tendered for why she further delayed by more than 3 months after her suspension in returning the Inquest cases.

35.

She without justification blamed racial tensions at the office as the reason why she had been charged herein. Her contention of being deeply remorseful must accordingly be considered in the light of the circumstances described above.

36.

Ms Freeman has not taken this Tribunal into her confidence. I have difficulty in understanding what led to her showing such blatant indifference to claiming excessive

kilometres on so many occasions over an extended period of time and her reasons for non-disclosure, despite many opportunities, of her previous criminal conviction and Directorship she held.

37.

What is clear from the Heads of Argument is that Ms Freeman has expressed her regret for her misconduct in the various counts (see paragraphs 36, 42, 49 and 57 of the Heads of Argument). In *State versus Matyityi* 2011 (1) SACR 40 (SCA), Ponnann JA, with regard to remorse, said the following in paragraph 13:

"There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus, genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: What motivated

the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions."

38.

None of these attributes referred to by Ponnan JA as to what genuine remorse is, were displayed by Ms Freeman. If anything, she persisted in her Heads of Argument of downplaying the seriousness of her misconduct by referring to her dishonesty in the travel claims as *"non-administrative compliance of Guidelines."*

39.

Surely it must by now be apparent to Ms Freeman that a lack of integrity and dishonesty in over a hundred instances over a two-year period, rather than *"non-administrative compliance of guidelines"* lies at the heart of the findings of guilt in 28 of the 29 counts.

40.

In view of the above, I am not persuaded that Ms Freeman is genuinely remorseful for her actions. At best for her, it seems that she is regretful of having been found guilty on so many counts of misconduct.

41.

In 28 of the 29 charges, she was found guilty of a contravention of Regulation 25(i) of the Regulations in that she made false or incorrect statements, knowing it to be false or incorrect, with a view to obtaining a privilege or advantage in relation to her official position or her duties or to the prejudice of the administration of justice. In the 29th instance, she was found guilty of a contravention of Regulation 25 (d) of the Regulations in that she was negligent or indolent in the execution of her duties. These are indeed very serious offences over an extended period of time and cannot be regarded as isolated incidents. Her actions were grossly dishonest and her dereliction of duty in not attending to the 6 Inquest cases was equally gross, given the considerable delay.

42.

Her previous criminal conviction of theft is not at issue. It is rather her lack of honesty and integrity in failing to disclose same in both her application forms for appointment as magistrate. She had 4 opportunities to come clean but chose not to. She knew it would likely affect her prospects of being appointed as magistrate and later senior magistrate. She concealed her criminal conviction for almost 13 years as magistrate.

43.

In recommending her for appointment, initially as magistrate and later senior magistrate, the Commission placed reliance on the honesty and integrity in her truthfully answering the question in the application forms and interviews. In effect, she betrayed the trust placed in her.

44.

The Labour Appeal Court made it clear that there is seldom a way back if gross dishonesty is involved. In the case of **G45 Secure Solutions (SA) (PTY) LTD versus Ruggiero N.O and Others (CA 2/2015) (2016) ZALAC 55 (25 September 2016)**, a dishonest employee who worked for a security company was dismissed. When he applied for the job as security officer in 1996, he was asked in a written application: "Have you ever been convicted of a criminal offence?" He replied "No" and the company employed him as a security guard. Fourteen years later, he applied for a promotion. The company conducted a criminal record check at that stage and it revealed that the employee had 2 previous criminal convictions. One was for rape in 1982 for which he got 6 lashes as a 17 - year old juvenile. The other was for assault with intent to do grievously bodily harm in 1991, for which he paid a fine of R200-00.

45.

The employee's defence was that as a lay person he did not know that he had been convicted of a criminal offence because he had not gone to jail. Concerning his rape conviction, he stated that he was 17 years old, the complainant was his girlfriend and he did not understand the law. Following a disciplinary enquiry, the company dismissed him for misrepresentation and / or dishonesty. The Arbitrator found the dismissal to be substantially unfair and ordered reinstatement. The Labour Court agreed with the Arbitrator's decision.

46.

The case finally found its way to the Labour Appeal Court where Judge Savage AJA upheld the employee's appeal and said the following in paragraph 26:

"The employment relationship by its nature obliges an employee to act honestly, in good faith and to protect the interests of the employer. The high premium placed on honesty in the workplace has led our courts repeatedly to find that the presence of dishonesty makes the restoration of trust, which is at the core of the employment relationship, unlikely."

47.

Obtaining or inducing employment by false pretences whether by misrepresenting qualifications, skills, experience or prior work history, has been found to justify dismissal. From a perusal of labour law cases, a sanction short of dismissal it seems is inappropriate for dishonesty committed whilst in a position of trust, irrespective of the amount involved, as such an approach appears to reward dishonesty.

Auret V Eskom Pension and Provident Fund (1995) 16 ILJ 462

Boss Logistics S V Phop and Others (2010) 5 BLLR 525 (LC)

48.

An employer is entitled to full disclosure of all relevant information when a decision is made to employ a person in a particular position, moreso, where trust is implicit in the nature of the position. Accordingly, when Ms Freeman was expressly asked questions regarding any previous criminal convictions and business interests, the Commission was entitled to expect honest answers. By deliberately misleading the Commission on 4 occasions, she thereby denied other deserving candidates the opportunity to serve as magistrate.

49.

Ms Freeman years of service as a magistrate and clean disciplinary record must of course be taken into account in determining an appropriate sanction. However, in *Toyota SA Motors (PTY) LTD versus Radebe and Others (2000) 3BLLR 243(LAC)*, the following was stated in paragraph 13:-

“Although a long period of service of an employee will usually be a mitigating factor where such employee is guilty of misconduct, the point must be made that there are certain acts of misconduct which are of such a serious nature that no length of service can save an employee who is guilty of them from dismissal. To my mind, one such clear act of misconduct is gross dishonesty....”

50.

When confronted with evidence of her misconduct relating to the non-disclosure of her criminal conviction, Ms Freeman did not express any remorse but blamed her dishonestly on being unable to remember the incident and later her belief that she did not realise it was a conviction. Her dishonesty clearly induced the Commission to recommend her appointment as magistrate on two occasions. This makes her conduct aggravating.

51.

Magistrates fulfil a vital role in the administration of justice and daily perform both judicial and administrative duties to ensure the maintenance of law and order. Most people, in their quest for justice, will first come into contact with the Magistrate's Court. Against the vital role that they fulfil, it is imperative that magistrates uphold the highest ethical standards and that their conduct be beyond reproach.

52.

Magistrates are after all entrusted, day after day, with the exercise of considerable power which at times, has a dramatic effect upon the lives and fortunes of those that appear before them. Members of the public would surely not wish such power to be reposed in a magistrate whose honesty, integrity and standards are questionable. The work of a magistrate is such that it requires a person of almost unimpeachable moral and ethical fibre

53.

If certain minimum standards are not effectively maintained, public confidence in the independence and trustworthiness of magistrates will surely erode and the administration of justice will be undermined. It is often said that magistrates tend to shape the impressions and perceptions of litigants, witnesses and onlookers of the administration of justice. As such, it is in the magistrate's court that admiration is earned and respect is lost.

54.

Of recent, there have been many highly publicized cases of misconduct involving magistrates. Statistics from the Magistrates Commission reveal that since 2001 there have been over 50 cases of misconduct by magistrates of various ranks including Chief Magistrates and Regional Court Presidents that have been referred to Parliament. These range for offences such as theft, corruption, fraud, murder, sexual assault, sexual harassment, attempted murder, defeating the ends of justice and payments in exchange for appointments as acting magistrates. This has brought much shame and disgrace to the Magistracy.

**(Parliamentary Monitoring Group(PMG)- Briefings By Magistrates Commission
To The Justice and Correctional Services Portfolio Committee)**

The above figure does not include all magistrates who are currently under investigation or who are facing a misconduct enquiry. The high number of magistrates in conflict with the law or Code of Conduct is perhaps a reflection of an inadequate appointments process when candidates are assessed to determine their suitability particularly, for senior and leadership positions in the Lower Courts Judiciary. It is common cause that no verification of details such as a candidate's previous criminal conviction is even conducted prior to appointment. There appears to be a large degree of trust inherent in the process and the level of scrutiny is perhaps not as intense as it should be.

Magistrates must accept by now that the nature of Office they hold exposes them to considerable public scrutiny. The legitimacy of the judiciary is largely dependent on the public's acceptance of its moral standing. Honesty, integrity and trustworthiness are innate qualities which are rooted in the moral consciousness of one's make-up. Such qualities are indispensable requisites of being a fit and proper person to hold Office as magistrate.

Considering the foregoing, Ms Freeman clearly acted to the detriment of the administration of justice. She has shown herself to have acted dishonestly and without integrity in the various counts. Having regard to the various factors alluded to above, I am of the view that certain counts, because they are closely related in place, method and circumstance, may be taken as one for the purpose of imposing a fair sanction. Alternatively, I think it may be too harsh to impose a separate sanction for each count as the cumulative effect thereof may render the sanction unfair. I accordingly recommend the following: -

57.1 That Counts 1 to 22 and 27 to 29 be taken as one for the purpose of imposing a sanction, and it is recommended in terms of Regulation 26(17) (b) of the Regulations, that Ms Freeman be removed from Office as contemplated in Section 13 of the Magistrates Act 90 of 1993;

57.2 That Counts 23, 24 and 25 be taken as one for the purpose of imposing a sanction, and it is recommended in terms of Regulation 26(17) (b) of the Regulations, that Ms Freeman be removed from Office as contemplated in Section 13 of the Magistrates Act 90 of 1993; and

57.3 In respect of Count 26, it is recommended in terms of Regulation 26(17) (b) of the Regulations, that Ms Freeman be removed from Office as contemplated in Section 13 of the Magistrates Act 90 of 1993.

A handwritten signature in black ink, appearing to be 'I Khallil', written over a horizontal line.

I KHALLIL

CHAIRPERSON / PRESIDING OFFICER

ACTING CHIEF MAGISTRATE: INANDA (VERULAM)

12 SEPTEMBER 2019

Submissions to Magistrates Commission regarding sanctions delivered on 12/09/2019 - L.B Freeman: Senior Magistrate Mossel bay. Western Cape.

Sanction

On the 24 July 2019 I was found guilty of 29 counts of misconduct and on the 12 September 2019, the Presiding Officer Mr Kahlil recommended my removal from office. Herewith are my submissions for reconsideration of these sanctions. I'm of the opinion that in the light of the circumstances the sanctions were harsh and unfair.

Background

I was transferred to Mossel bay Western Cape in April 2011 as an additional magistrate. I worked under the supervision of Mr B. Vermeulen who was the Sub-Cluster Head of the Mossel bay region at that stage. Part of my duties was to help out in neighboring one-man station offices where magistrates sometimes have to recuse themselves from certain cases. This duty I shared with my colleague and fellow magistrate Ms R Pretorius.

During 2016 a Senior Magistrate position was created and advertised in Mossel bay and in 2016 I together with Mr B Vermeulen applied for the position. In March 2017 I was informed that I was appointed in the position and started May 2017.

It serves well to mention at this stage that the problems started around the time that the shortlist for the position came out. Also that the first complaint to the Chief Magistrate Mrs Alman, was lodged exactly four days after the shortlist revealed that both me and Mr Vermeulen will be interviewed for the position.

Regardless of the Commission's knowledge of the complaint I was still appointed. Which gave me hope that the Commission also realized that the complaint was born out of fear for transformation in the office. The management composition in the Mossel bay office at that stage was all white with Mrs Johlene van Staden as acting Admin manager and Mr B Vermeulen as the Judicial head.

The initial charges was also lodged via the two of them to Mrs Alman the Chief Magistrate.

One week after I started in the position I learned that the Commission is sending a Magistrate to do a preliminary investigation into the allegations. This was of course at the most difficult time, when the office was in the beginning of a transition period. Emotions and racial tensions in the office was running high and the office was split in two camps after my appointment.

When I started in the Senior position May 2017, I had no office, because Mr Vermeulen did not evacuate the office. I spoke to Mrs Alman beforehand and ask her to be there on my first day because I expected problems. She said she couldn't make it but will send Mr Pierre Woeke instead. Mr Woeke indeed arrived there but after a talk with Mr Vermeulen, decided to side with Mr Vermeulen regarding the office space and ask that I use another office, which I refused.

I spoke to the Administration Manager to sort out the issue regarding office space but they refused to get involved and said that I should take the matter up with my Chief Magistrate. I knew that it would send out the wrong message to the office and the public if I allowed Mr Vermeulen to stay in that office and decided to take matters in my own hands to get Mr Vermeulen to vacate the office.

Mr Vermeulen then removed all the furniture out of the office. Leaving me with an empty office and scouting for furniture in court rooms and the board room or

wherever I could find a chair or a table. That caused even more trouble with the admin personnel and Mrs van Staden rudely confronted me in the corridors because I removed the boardroom table for my office.

Mr Vermeulen even refused to give up the designated parking space which was according to the Area Court manager assigned to the most Senior Magistrate. While all these things were going on at the office, the Commission was opening a full scale investigation on me, resulting back as far as 26 years back.

This was just a few of the challenges I had to face when I started in the Senior position. I got no support from my Chief Magistrate or the Commission during this time. I was also aware of the personal relationship that Mr Vermeulen shared with Mrs Alman and where her loyalties lied so I didn't even bother to ask her to intervene.

The Commission served me with a charge sheet in November 2017 containing 24 charges and later on joined an additional 5 charges in 2019 bringing it to a total of 29 charges. I would like to discuss the circumstances of all these charges to give the Commission an idea of the circumstances under which each one occurred.

Charges

The bulk of the charges concerned are with regard to travel claims. The allegation was that I exceeded the threshold set by my supervisor Mr Vermeulen. In this regard the following should be taken into consideration. In September 2015 a list of guidelines for kilos that magistrates should consider when they put in their travel claims was distributed by the former Admin manager Mrs Gericke. These guidelines were never discussed with any of the Magistrates by Mr Vermeulen. I was not the only magistrate who worked in the outside offices. Ms Pretorius also did a lot of the driving.

Ms Pretorius and I claimed the same amount of kilos to the outside towns and we treated the list for what it was. Just guidelines. As far as my understanding the kilos on there was not cast in stone. At the end of the day I could and can account for every one of the kilos I drove and I would have explained that if anyone in the office had asked or confronted me about it but no one ever bothered to ask me or discuss it with any of us.

Which of course gave me the impression that there was nothing wrong with my claims because for all these years my claims where authorized, signed and payed out without any issues raised until I was shortlisted for this position.

My claims went through a checking officer, Admin Manager and Mr Vermeulen every month and no one bothered to inform me that there were any problems.

To complicate matters further when Mrs Van Staden wrote her letter of complaint to Mr Vermeulen and Mrs Alman she indicated that she made a thorough study of all the Magistrates claims and that mine was the only in excess of the guidelines. This of course is not true. As Senior Magistrate I had access to all the Magistrates claims and I know for a fact that Ms Pretorius' claims were the same as mine and at some instances she claimed even more than me and no complaint was laid against her either from Mrs Van Staden or Mr Vermeulen's side.

In fact after the Commission send the preliminary investigator to our offices in May, Ms Pretorius was afforded the opportunity by Mrs Van Staden to pay back what she claimed in excess according to Mrs Van Staden. Which Ms Pretorius did during July 2017 after witnessing what was happening to me. So the question remains, in the light of fairness, why was I never granted the same courtesy.

The Commission was well aware of Ms Pretorius' conduct because they admitted it during the inquiry yet never investigated or charged her. Just like Mrs Van Staden or Mr Vermeulen never laid a charge against her as well. So why did we

not receive that same treatment if according to the P.O nothing underhand was going on.

If the Commission had any intension of charging Ms Pretorius why has nothing been done the past three years?

With regard to my trips to Cape Town which I was also found guilty of, I find it difficult to understand that someone can put a guideline on kilos to claim in a big city like Cape Town? No two magistrates stay in the same hotel or in the same suburb every time they attend a course and they stay there for different amounts of time. Not everyone is familiar with the city and like me, get lost frequently which would result in a lot of extra kilos. Plus if you are in a place for a week, is it really expected from you to never leave the hotel for anything. I admit that I regularly left the hotel for various reasons and that I indeed exceeded the guidelines but I thought it was well within my rights which I now find out was mistakenly so.

What is also a big point of concern is that the Commission charged me for the travel claims from January 2015. The charges with regard to the travel claims read that I exceeded the threshold set by my supervisor, when the evidence during the inquiry was clear that Mrs Gericke was the one who distributed the guidelines and that only happened in September 2015. So what threshold was set and exceeded from January to September 2015?

In the light of all these circumstances regarding the travel claims, I am of the opinion that removal from office for that conduct is harsh and unfair.

The Uno/Audi charge the P.O mention its concern with the fact that I never submit the claim for the 8th and the 15th of Nov 2016 after I have split the claims on suggestion of Mr Vermeulen who was my supervisor at that stage.

It has been my understanding back then that the two dates were under investigation and the only reason for the splitting of the claims was so the rest of the claim could be paid out so I could continue my official duties. I had no idea that I had to put in a claim for that 2 dates that was not gonna be paid out anyway. It was definitely not because I dismissed of the claims. I just thought I could claim it again once the issue has been sorted.

The Commission also never lead any evidence with regard to the 15th except the hearsay which was provisionally allowed in order for them to call the witness which they never did. Yet I was also found guilty of that charge as well.

There was never a dispute that I used my Uno vehicle once in that month. I mistakenly thought it was the 1st of November and that is why I didn't claim for that day. The court rejected my explanation that there was simply a bona fide mix up between the 1st and the 8th of November 2016 but how does it explain the fact that there was no claim for the 1st of November when there was no dispute that I was indeed working in Grootbrak that day. It was a bona fide mistake simply resulting me in claiming for the 8th instead of the 1st of November. There was no financial gain so what would be the motive for that otherwise?

The charge about the inspection in loco, I would ask the Commission to consider the circumstances and that here there was no financial gain as well. I did work in Stilbaai on the day of the 9th of June 2017 and I claimed the same amount of kilos I did on a normal day. There was no extra kilos added for an inspection in loco and therefor no extra money claimed. Mrs Van Staden in a process to frustrate me still wanted to enforce guidelines that was set when there was another Judicial head. She simply refused to send my claims for processing if it didn't adhere to those guidelines.

When the claim was originally submitted there was nothing written on it and if Mrs van Staden processed the claim as she received it there would not have been any repercussions. Did I make a mistake for writing it on afterwards, yes. But I didn't gain anything by it and I hope the Commission will see that it is no reason for dismissal.

With regard to the non disclosure of the directorship charge. When I was approached by the Pastor of our church in 2015 to get involved in the Community project, my only goal was to help the community. This project however was short lived and never even got off the ground. We attended a few meetings and that was it. When we received the email from Mr Pedro that the project didn't realize, I've never even anticipated the fact that a company was registered.

We never heard from them again and I never even gave it a second thought. Even though it was the P.O's opinion that I should have known what I have signed when the papers for the directorship was signed, please keep in mind that I am not an expert on Company Law. All I knew was that me together with my Pastor was on the Committee and we did sign things which we all thought was part of getting the project off the ground.

I ask the Commission to consider that according to all of us and as Past Leon Prinsloo also testified, the whole thing seized to exist when we heard that it didn't get off the ground. When I filled in my application for the senior position, I had no idea that the project ever existed or that a company was registered.

There was no evidence that I was an **active** director in a company that I didn't even now existed. I was more than willing to give the Commission access to my bank accounts to see if even there was any financial gain out of this supposed directorship.

The inquests I have no excuse for except that I followed the trend that was set in the office due to our workload. But I know that it doesn't make it right. Once again I'm the only one unfortunate enough to be charged. Not only in my office but all over the country, where there is no designated courts for inquest, there is huge backlogs on inquests because we try to deal with the immediate stuff like our various courts where there are witnesses waiting to be heard.

The inquests were at my house as all of us had to deal with it after hours due to our workload. After my suspension I thought I could still finalize it before I take it back to the office but soon realized that it could cause me problems as I had no more judicial powers and decided to return it.

I went to see Mr Vemeulen about it the day when I returned it but he was unavailable to see me so I ask the clerk working with the inquests to give it to him as I couldn't wait. Once again where is the fairness in this. Mr Louw even indicated in his argument that due to Mr Vermeulen's evidence on the inquest issue that he will not take the matter any further but the P.O refused to consider the circumstances of this charge.

The register of inquests of the office, that was part of the evidence shows how almost all Magistrates who sits in busy, active courts all day had long overdue inquests outstanding but none of them were investigated or charged. Once again I'm the only one who was charged. Where is the fairness in that?

The previous conviction charge I need to sketch a picture of what happened back then. I was 17years old when I started my 1st year of study. Except for the difficult adaption process, we also had to go through initiation during the first few months and as any 1st year student I got into a lot of trouble. Some of which resulted in the Police being involved and one time a court appearance.

When I learned about the previous conviction, we tried several times to get the necessary information from the Commission without any success until we had to approach the High Court. The court file shows that the incident happened in March 1993. Approximately one month after I arrived at the University of Potchefstroom as a 1st year student.

At the court appearance I was alone, unrepresented and without my parents present. I was a scared child who don't remember anything that happened in that court room. The P.O argued that I could not have forgotten something that was that traumatizing. But couldn't that be the exact reason why I could not remember what happened? Because of the trauma.

I always thought I only got warned because back at the hostel our hostel father told me that I was lucky that I got of that lightly and that I should forget about the incident and concentrate on my studies. That was the end of it for me. I never thought that I was convicted that day or had a conviction on my name. I can only ask consideration of the fact that at that stage I was a minor who had no idea what was happening to her.

When I was a prosecutor the State did regular security checks where we had to give our fingerprints for purposes to check for previous convictions and nothing ever came up. It would also have been the easiest thing for me to expunge of the conviction after 10 years and yet I walked around with it for 26 years.

I hope that all these circumstances would be considered. I'm willing to offer more information on anything if needed to get the Commission to make an informed decision.

I don't think I was treated fairly by the Commission up to now. Not only by being singled out with certain charges but also in the report back to the Parliament. The

information that was given to Parliament did not reflect the truth. I had to listen on National tv how I was sentenced to imprisonment for theft. I had to read how I maliciously delayed the finalization of the matter with my High court applications.

After constant refusal by the Commission I was forced to approach the High Court for document copies. The first time we got an order from Judge Fortuin but because there was not full compliance with the order we were forced to go back to the High Court where Judge Henney agreed with us and handed a second court order compelling the Commission to avail all documents.

I did all that to actually speed up the process because without the documents we couldn't prepare for the hearing. No mention was made to Parliament that the Commission changed Preciding Officers at hearing stage already and joined late charges which resulted in further delays.

I ask that this case be looked at objectively and that I will get the fair treatment I deserve.

This year marks 20 years of me working for the Dept of Justice. I've been a Magistrate for 13 years. To say I love my job is putting it lightly. In fact to me it was more than a job. It was calling, a labor of love because helping people has always been my purpose in life. I have grown up in difficult circumstances and I was always of the opinion that what I went through in life shaped me for my job.

I listened to the judgement that made me out to be someone without integrity but I can't accept that because that is not who or what I am. I am a good Magistrate who applied for a Senior position solely because it would've giving me a platform to reach and help people I couldn't before.

Is it fair in the light of these circumstances that I should lose my job, my whole career? All because I dared to apply for a management position. Because that is where it all started. I take full responsibility for the things I did do wrong and I,m more than willing to be disciplined for that but surely it doesn't justify my removal from office.

At age 44 this will leave me jobless and without any career prospects. I ask that mercy, logic and understanding will triumph over judgement. Thank you.

L.B Freeman.