



MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

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The Honourable Mr N A Masondo, MP
Chairperson of the National Council of Provinces
P O Box 15
CAPE TOWN
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Dear Honourable Chairperson

***PROVISIONAL SUSPENSION FROM OFFICE: MS K BODLANI, ACTING REGIONAL
MAGISTRATE, UMLAZI: KZN***

The purpose of this letter is to provide Parliament with a report to be tabled in Parliament in terms of section 13(3)(b) of the Magistrates Act, No 90 of 1993. The report is attached.

Yours sincerely

MR R. O. LAMOLA, MP
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
DATE: 21/07/2020



PROVISIONAL SUSPENSION FROM OFFICE: MS K BODLANI, ACTING REGIONAL MAGISTRATE, UMLAZI

1. PURPOSE

1.1. The purpose of this report is to inform Parliament on the provisional suspension from office of Ms K Bodlani, an acting Regional Magistrate at Umlazi, pending the outcome of an investigation into her fitness to hold office as a magistrate, as required by section 13(3)(b) of the Magistrates Act, 90 of 1993 (the Act); and

1.2. For Parliament to pass a resolution in terms of section 13(3)(c) as soon as reasonably possible, as to whether or not the provisional suspension of Ms Bodlani is confirmed. If Parliament passes a resolution that the provisional suspension is not confirmed, the suspension lapses.

2. BACKGROUND

2.1. Ms Bodlani is 59 years of age. She was appointed to the office of magistrate on 01 October 1996 and has been acting in the Regional Court, Umlazi, Kwazulu-Natal as an aspirant Regional Magistrate since being appointed by the Minister on 4 November 2013. She has mostly been presiding in the Sexual Offences Court, Umlazi. Ms Bodlani is still an aspirant acting Regional Magistrate on probation. She has approximately 23 years of experience on the bench. Ms Bodlani's probation period has been extended on a number of times by the Magistrates Commission (the Commission). Before a recommendation of the permanent appointment of Ms Bodlani could be considered, the Commission informed the Minister that they are investigating allegations of misconduct against her.

3. **DISCUSSION**

3.1. Having received, and considered a number of complaints against Ms Bodlani, the Commission's Ethics Committee, at its meeting held on 05 April 2019, resolved to conduct a preliminary investigation in terms of regulation 26(1) of the Regulations and that a quality assurance assessment of all the cases finalized by Ms Bodlani over the past year or so, be conducted.

3.2. A Regional Magistrate at Johannesburg and a Senior Magistrate at the Judicial Quality Assurance Component of the Commission, were respectively appointed to conduct the preliminary investigation and the judicial quality assessment on 14 May 2019. Ms Bodlani was advised accordingly in writing.

3.3. The allegations of misconduct against Ms Bodlani, inter alia, are that:

3.3.1 Ms Bodlani sent e-mail messages to a number of her peers which contained racial remarks, allegations of racism and allegations of favouritism against the duly appointed Acting Regional Court President, KZN and one of her colleagues.

3.3.2 Ms Bodlani on several occasions acted in a manner unbecoming of judicial office by sending out e-mail messages, in which derogatory and insulting comments were made about one of her colleagues at the Umlazi Court House, which e-mail messages were copied to several persons as well as the Magistrate's Commission.

3.3.3 Ms Bodlani during January 2019, after returning from annual leave, was to preside over a priority case, Umlazi case number, RC161/18 *S v Ncwane*. Although the parties were ready to proceed and the witnesses present, she invited the prosecutor and the defence attorney into her chambers and discussed with them her reasons for not being ready, able and willing to proceed with the trial in

the said case. The reason being that she was looking for her diary and that she needed to be emotionally stable before she could proceed with any trials. She thereafter, on record, postponed the case, repeating her reasons for the postponement. There was no valid reason for the postponement of this priority case. She acted against the principals laid down in the case flow management directives and postponed the case to 26 February 2019, indicating to the witnesses that the case might not even proceed on that day.

3.3.4 Ms Bodlani presided in Umlazi case number RC 191/19; *S v Ndelu*. Ms Maharaj was the attorney on record for the accused since December 2017. Ms Maharaj, since June 2018, knew that Dr Badal, an expert witness, would be testifying in the case as the only remaining witness for the State. Ms Bodlani allowed Ms Maharaj to shout at, and address Dr Badal directly in a discourteous, demeaning and rude manner in open court. She failed to maintain good order in court and acted in contrast to the commonly accepted decorum of the court. Ms Bodlani thereafter granted a postponement at the request of Ms Maharaj on unreasonable grounds.

3.3.5 Ms Bodlani presided in Umlazi Case Number RC46/14 *S v Mbuyisa* and made derogatory, sexist and gratuitous remarks and displayed prejudicial conduct towards the accused.

3.3.6 Ms Bodlani, on several occasions, indicated in writing that she would not comply with an order, duly given to her by her Judicial head of Office and the acting Regional Court President, KwaZulu Natal, to furnish the latter with various case records and her reasons, to be sent on special review in terms of section 304(4) of the Criminal Procedure Act, No 51 of 1977. Ms Bodlani, in an email to the Commission, indicated that she would not comply with lawful instructions given to her by the acting Regional Court President, thereby challenging the authority of the acting Regional Court President to give her official and work related instructions. She thereafter attempted to send the case records on special review, without submitting them to the acting Regional Court President, as instructed.

3.4 The judicial quality assessment of Ms Bodlani's work revealed the following

serious irregularities and obvious shortcomings:

3.4.1 A number of her cases had to be sent on special review in terms of section 304(4) of the Criminal Procedure Act, No 51 of 1977 ("the CPA") as several serious shortcomings and incompetent sentences were imposed. She was allocated to the Sexual Offences Court and dealt with many child victims being raped by adults where the prescribed minimum sentence is life imprisonment. In almost all the finalized cases which were assessed, Ms Bodlani imposed sentences where either the accused were cautioned or strongly reprimanded or wholly suspended. The suspended sentences she imposed were both incompetent and incomplete.

3.4.2 Ms Bodlani disregarded the procedures prescribed by sections 77 and 78 of the CPA and made nonsensical findings contra to those prescribed by the CPA and case law.

3.4.3 The provisions of several sections of the CPA , relating to child witnesses, were often not followed.

3.4.4 In many cases where the Child Justice Act, No 75 of 2008 was applicable, the provisions of the Act were not complied with.

3.4.5 The Investigating Officers informed the acting Regional Court President and the Commission accordingly, suggesting that the Commission should consider also conducting an investigation into Ms Bodlani's capacity to carry out her duties of office efficiently in terms of regulation 27 of the Regulations. The matter was referred to the Commission's Ethics Committee, which, at its meeting held on 02 August 2019, resolved that such investigation be conducted. Ms Bodlani was advised accordingly.

3.4.6 The acting Regional Court President and the Investigating Officers subsequently sent a substantial number of Ms Bodlani's judgments, which she delivered since her acting appointment in 2013, on special review to the High Court. The accused in these matters were charged with rape of complainants which were under the age of 16 (from 6 to 15) at the time of the commission of the

offences.

3.4.7 The reviewing Judges raised serious questions as to her suitability for judicial office and found the sentences she imposed: *"incorrect for incompleteness, incompetent, outrageous, disturbing to the extreme, shockingly inappropriate and completely contrary to the very factors relevant to sentencing; deviating disproportionately from the prescribed minimum sentence; having the potential to undermine the administration of justice and fearing that the community and the public in general will lose faith in the ability of the courts to dispense fair and appropriate justice"*.

3.4.8 Ms Bodlani's mentor advised that *"her mentorship took about 6 years. This was due to her failing to supply him with enough judgments to prepare her evaluation reports to the Commission in time"*. He further reports that he *"noted quite a lot of shortcomings in her judgments which were brought to her attention"*.

3.5 The incapacity investigation is based on what was discovered during the quality assurance assessment of Ms Bodlani's cases since 2013. Those, that were glaringly found, on face value, not to be in accordance with the principles of natural justice were identified and accordingly sent on special review. It is important to note that the Honourable reviewing Judges set aside all of the sentences imposed. The Investigators further identified other cases for assessment, once the mechanically recorded court proceedings had been transcribed. Accordingly, in the circumstances, the incapacity investigation has therefore not been concluded as yet. Further it must be noted that some of the reviews judgements are still outstanding, whilst others were only recently received from the Pietermaritzburg High Court.

3.6 In the circumstances, it follows that a recommendation for the provisional suspension of Ms Bodlani from office is based on the allegations of misconduct only, and it is submitted that the incapacity investigation, in terms of regulation 27 of the Regulations, will be dealt with separately once it has been concluded, and

the Investigating Officers have submitted their findings to the Commission.

3.7 On 28 January 2020, Ms Bodlani was, in compliance with the rules of natural justice, invited in writing to show cause why the Commission should not recommend to the Minister that she be provisionally suspended from office without remuneration in terms of section 13(3)(a) of the Act, pending the outcome of an investigation into her fitness to hold the office of magistrate, a copy of which is attached hereto, marked as Annexure "A". (A)

3.8 Attorneys Rakesh Maharaj & Company, acting on behalf of Ms Bodlani, responded on 03 February 2020, denying the allegations of misconduct against her. She further denies that she is incapacitated to carry out her duties of office efficiently and in amplification avers that, since the Commission's "*ghost hunt*" began she has indeed remained in office and carried out her duties in line with her oath of office. Save to maintain that she is neither guilty of misconduct nor that she is incompetent to hold office, her representations are mainly directed on the procedures which the Commission followed thus far and why her remuneration should not be withheld. Her representations are attached hereto and marked as Annexure "B". (B)

3.9 On 10 February 2020 the Commission wrote to her attorney wherein it clarified the procedural position, to which there was no response. A copy of the Commission's letter is attached hereto and marked as Annexure "C". (C)

3.10 Having due regard to the serious nature of the allegations, the totality of the information at hand and Ms Bodlani's representations, the Commission resolved to recommend that she be provisionally suspended from office in terms section 13(3)(a) of the Act.

3.11 The Commission is of the view that the existing evidence against Ms Bodlani is of such a serious nature, as to make it inappropriate for her to perform the

functions of a Magistrate whilst the allegations are being investigated. Ms Bodlani's conduct tarnishes the good name, dignity and esteem of the office of magistrate and the administration of justice, is embarrassing and tarnishes the image of the judiciary at large. The Commission holds the view that, without anticipating the outcome of the investigation into her fitness to hold the office of Magistrate, the existing evidence against Ms Bodlani is of such a serious nature that it would justify her removal from office, should she be found guilty of the misconduct charges which are to be preferred against her.

4. AUTHORITY TO PROVISIONALLY SUSPEND

4.1 In terms of section 13(3)(a) of the Act, the Minister, on the advice of the Magistrates Commission, may provisionally suspend a magistrate from office if-

- “(i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and
- (ii) an investigation has been instituted by the Commission into such magistrate's fitness to hold office.”

4.2 A report in which the provisional suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 7 (seven) days of such suspension, if Parliament is then in session, or if Parliament is not then in session, within 7 (seven) days after the commencement of its next ensuing session (section 13(3)(b) of the Act).

4.3 Parliament must as soon as reasonably possible, pass a resolution as to whether or not the provisional suspension is confirmed (section 13(3)(c) of the Act). If Parliament passes a resolution that the provisional suspension is not confirmed, the suspension lapses (section 13(3)(d) of the Act).

4.4 The remuneration of a magistrate is not affected during the period of suspension unless the Commission determines otherwise (section 13(4A)(a) of the Act). Although the Commission has requested Ms Bodlani to provide reasons why he should not be provisionally suspended without remuneration it is important to mention that following the representations by Ms Bodlani, the Commission did not make any determination in this regard.

(Section 13)

5. CONCLUSION

5.1 In light of the above, I decided to provisionally suspend Ms K Bodlani, an acting Regional Magistrate at Umlazi from the office of Magistrate with immediate effect, pending the outcome of an investigation into her fitness to hold such office.

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

Given under my hand at Tshwane on this 21st day of July 2020.


MR RO LAMOLA, MP

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

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The Honourable Mr RO Lamola, MP
The Minister of Justice and
Constitutional Development
Private Bag X276
Pretoria
0001

Reference : 6/5/5/2 (28/2018)
Verwysing

Enquiries : J Meijer
Navrae

Date : 13 July 2020
Datum

Dear Minister

**PROVISIONAL SUSPENSION FROM OFFICE: MS K BODLANI, REGIONAL MAGISTRATE,
UMLAZI (eMLAZI).**

1. The purpose of this letter is to appraise you of the circumstances which moved the Magistrates Commission's Executive Committee ("the Commission") to resolve to recommend that Ms K Bodlani, a Regional Magistrate, Umlazi (eMlazi), be provisionally suspended from office pending the outcome of an investigation/misconduct hearing into her fitness to hold office and to enable you to table a report in Parliament in terms of section 13(3)(b) of the Magistrates Act, 90 of 1993 ("the Act").
2. Ms Bodlani is 59 years of age. She was appointed to the office of magistrate on 01 October 1996 and has been acting in the Regional Court, Umlazi (eMlazi), KwaZulu-Natal as an aspirant Regional Magistrate since 04 November 2013. Ms Bodlani is still an acting Regional Magistrate on probation. She has approximately 23 years of experience on the bench. She was, since the commencing of her probation period as acting Regional Magistrate on 04 November 2013, mostly presiding in the Sexual Offences Court, Umlazi (eMlazi).
3. Having received, and considered a number of complaints against Ms Bodlani, the Commission's Ethics Committee, at its meeting held on 05 April 2019, resolved to conduct a preliminary investigation in terms of regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994 ("the Regulations") and that a quality assurance

assessment of all the cases finalized by Ms Bodlani over the past year or so, be conducted. The investigation was conducted by a Regional Magistrate and the judicial quality assessment by an experienced magistrate.

4. A Regional Magistrate at Johannesburg and a Senior Magistrate at the Judicial Quality Assurance Component of the Commission, were respectively appointed to conduct the preliminary investigation and the judicial quality assessment on 14 May 2019. Ms Bodlani was advised accordingly in writing.
5. The allegations of misconduct against Ms Bodlani inter alia are that:
 - 5.1 she sent e-mail messages to a number of her peers which contained racial remarks, allegations of racism and allegations of favouritism against the duly appointed Acting Regional Court President, KZN and one of her colleagues.
 - 5.2 she on several occasions acted in a manner unbefitting of judicial office by sending out e-mail messages, in which derogatory and insulting comments were made about one of her colleagues at the Umlazi (eMlazi) Court House, which e-mail messages were copied to several persons as well as the Magistrate's Commission.
 - 5.3 she during January 2019, after returning from annual leave, was to preside over a priority case, Umlazi (eMlazi) case number, RC161/18 *S v Ncwane*. Although the parties were ready to proceed and the witnesses present, she invited the prosecutor and the defence attorney into her chambers and discussed with them her reasons for not being ready, able and willing to proceed with the trial in the said case. The reason being that she was looking for her diary and that she needed to be emotionally stable before she could proceed with any trials. She thereafter, on record, postponed the case, repeating her reasons for the postponement. There was no valid reason for the postponement of this priority case. She acted against the principles laid down in the case flow management directives and postponed the case to 26 February 2019, indicating to the witnesses that the case might not even proceed on that day.
 - 5.4 she presided in Umlazi (eMlazi) case number RC 191/19; *S v Ndelu*. Ms Maharaj was the attorney on record for the accused since December 2017. Ms Maharaj, since June 2018, knew that Dr Badal, an expert witness, would be testifying in the case as the only remaining witness for the State. Ms Bodlani allowed Ms Maharaj to shout at, and address Dr Badal directly in a discourteous, demeaning and rude manner in open court. She failed to maintain good order in court and acted in contrast to the commonly accepted decorum of the court. Ms Bodlani thereafter granted a postponement at the request of Ms Maharaj on unreasonable grounds.

- 5.5 she presided in Umlazi (eMlazi) Case Number RC46/14 *S v Mbuyisa* and made derogatory, sexist and gratuitous remarks and displayed prejudicial conduct towards the accused.
- 5.6 she, on several occasions, indicated in writing that she would not comply with an order, duly given to her by her Judicial head of Office and the acting Regional Court President, KwaZulu Natal, to furnish the latter with various case records and her reasons, to be sent on special review in terms of section 304(4) of the Criminal Procedure Act, No 51 of 1977. Ms Bodlani, in an email to the Commission, indicated that she would not comply with lawful instructions given to her by the acting Regional Court President, thereby challenging the authority of the acting Regional Court President to give her official and work related instructions. She thereafter attempted to send the case records on special review, without submitting them to the acting Regional Court President, as instructed.
6. The judicial quality assessment of Ms Bodlani's work revealed the following serious irregularities and obvious shortcomings:
 - 6.1 a number of her cases had to be sent on special review in terms of section 304(4) of the Criminal Procedure Act, No 51 of 1977 ("the CPA") as several serious shortcomings and incompetent sentences were imposed. She was allocated to the Sexual Offences Court and dealt with many child victims being raped by adults where the prescribed minimum sentence is life imprisonment. In almost all the finalized cases which were assessed, Ms Bodlani imposed sentences where either the accused were cautioned or strongly reprimanded or wholly suspended. The suspended sentences she imposed were both incompetent and incomplete.
 - 6.2 she disregarded the procedures prescribed by sections 77 and 78 of the CPA and made nonsensical findings contra to those prescribed by the CPA and case law.
 - 6.3 the provisions of several sections of the CPA , relating to child witnesses were often not followed.
 - 6.4 in many cases where the Child Justice Act, No 75 of 2008 was applicable, the provisions of the Act were not complied with.
7. The Investigating Officers informed the acting Regional Court President and the Commission accordingly, suggesting that the Commission should consider also conducting an investigation into Ms Bodlani's capacity to carry out her duties of office efficiently in terms of regulation 27 of the Regulations. The matter was referred to the Commission's Ethics Committee, which, at its meeting held on 02 August 2019, resolved that such investigation be conducted. Ms Bodlani was advised accordingly.

8. The acting Regional Court President and the Investigating Officers subsequently sent a substantial number of Ms Bodlani's judgments, which she delivered since her acting appointment in 2013, on special review to the High Court. The accused in these matters were charged with rape of complainants which were under the age of 16 (from 6 to 15) at the time of the commission of the offences.
9. The reviewing Judges raised serious questions as to her suitability for judicial office and found the sentences she imposed: *"incorrect for incompleteness, incompetent, outrageous, disturbing to the extreme, shockingly inappropriate and completely contrary to the very factors relevant to sentencing; deviating disproportionately from the prescribed minimum sentence; having the potential to undermine the administration of justice and fearing that the community and the public in general will lose faith in the ability of the courts to dispense fair and appropriate justice"*.
10. Ms Bodlani's mentor advised that *"her mentorship took about 6 years. This was due to her failing to supply him with enough judgments to prepare her evaluation reports to the Commission in time"*. He further reports that he *"noted quite a lot of shortcomings in her judgments which were brought to her attention"*.
11. *The incapacity investigation is based on what Ms Smith and Mr Botha discovered during the quality assurance assessment of Ms Bodlani's cases since 2013. Those, that were glaringly found, on face value, not to be in accordance with the principles of natural justice were identified and accordingly sent on special review. It is important to note that the Honourable reviewing Judges set aside all of the sentences imposed. The Investigators further identified other cases for assessment, once the mechanically recorded court proceedings had been transcribed. Accordingly, in the circumstances, the incapacity investigation has therefore not been concluded as yet. Further it must be noted that some of the reviews judgements are still outstanding, whilst others were only recently received from the Pietermaritzburg High Court.*
12. In the circumstances, it follows that a recommendation for her provisional suspension from office is based on the allegations of misconduct only, and it is submitted that the incapacity investigation, in terms of regulation 27 of the Regulations, will be dealt with separately once it has been concluded, and the Investigating Officers have submitted their findings to the Commission.


13. On 28 January 2020, Ms Bodlani was, in compliance with the rules of natural justice, invited in writing to show cause why the Commission should not recommend to the Minister that she be provisionally suspended from office in terms of section 13(3)(a) of the Act, pending the outcome of an investigation into her fitness to hold the office of magistrate, a copy of which is attached hereto, marked as Annexure "A". **(A, 28 January 2020)**
14. Attorneys Rakesh Maharaj & Company, acting on behalf of Ms Bodlani, responded on 03 February 2020, denying the allegations of misconduct against her. She further denies that she is incapacitated to carry out her duties of office efficiently and in amplification avers that, since the Commission's "*ghost hunt*" began she has indeed remained in office and carried out her duties in line with her oath of office. Save to maintain that she is neither guilty of misconduct nor that she is incompetent to hold office, her representations are mainly directed on the procedures which the Commission followed thus far. It is clear that she is totally confused in this regard. Her representations are attached hereto and marked as Annexure "B". **(B, 03 February 2020)**
15. On 10 February 2020 the Commission wrote to her attorney wherein it clarified the procedural position, to which there was no response. A copy of the Commissions letter is attached hereto and marked as Annexure "C". **(C, 10 February 2020)**
16. Having due regard to the serious nature of the allegations, the totality of the information at hand and Ms Bodlani's representations, the Commission resolved to recommend to you that she be provisionally suspended from office in terms section 13(3)(a) of the Act.
17. The Commission is of the view that the existing evidence against Ms Bodlani is of such a serious nature, as to make it inappropriate for her to perform the functions of a Magistrate whilst the allegations are being investigated. Ms Bodlani's conduct tarnishes the good name, dignity and esteem of the office of magistrate and the administration of justice, is embarrassing and tarnishes the image of the judiciary at large. The Commission holds the view that, without anticipating the outcome of the investigation into her fitness to hold the office of Magistrate, the existing evidence against Ms Bodlani is of such a serious nature that it would justify her removal from office, should she be found guilty of the misconduct charges which are to be preferred against her.
18. In light of the aforementioned, the Commission recommends that Ms Bodlani, acting Regional Magistrate for the Regional Division, KwaZulu Natal be provisionally suspended

from the office of Magistrate with immediate effect, with retention of remuneration, pending the outcome of an investigation into her fitness to hold such office.

19. In terms of section 13(3)(a) of the Magistrates Act, 90 of 1993, the Minister, on the advice of the Magistrates Commission, may provisionally suspend a magistrate from office if - "(i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and ii) an investigation has been instituted by the Commission into such magistrate's fitness to hold office."
20. A report in which the provisional suspension and the reasons therefore are made known, must, in terms section 13(3)(b) of the Act, be tabled in Parliament by the Minister within 7 (seven) days of such suspension, if Parliament is then in session, or if Parliament is not then in session, within 7 (seven) days after the commencement of its next ensuing session.
21. It is recommended that you provisionally suspend Ms Bodlani from office with immediate effect and that you table the required report in Parliament for consideration in terms of section 13(3)(b) of the Act. A draft report is attached for your convenience.

(Draft report)

Yours sincerely



AP LEDWABA
CHAIRPERSON: MAGISTRATES COMMISSION

A



MAGISTRATES COMMISSION

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┌
Ms K Bodlani
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└

┐ Reference : 6/5/5/2 – 28/2018
Verwysing 39/2018

Enquiries
Navrae : A Louw

Date
Datum : 28 January 2020
┘

Dear Ms Bodlani

PROVISIONAL SUSPENSION FROM OFFICE: YOURSELF

1. You have been appointed as magistrate with effect from 1 January 1993 while you have been appointed as an acting regional magistrate on probation with effect from 04 October 2013.
2. An investigation has already been instituted by the Magistrates Commission (Commission) into your fitness to hold office of which you were informed on 18 June 2019.
3. Reliable *prima facie* evidence, of which you have continuously been informed of, exists indicating that the allegations against you are of such a serious nature as to make it inappropriate for you to perform the functions of a magistrate while the investigation is being finalized and a misconduct charge sheet be prepared and approved. Reliable *prima facie* evidence exists indicating that you are incapacitated to carry out your duties of office efficiently.
4. In view hereof you are requested to show cause why the Commission should not recommend to the Minister that you be provisionally suspended from office without remuneration in terms of section 13(3)(a) of the Magistrates Act, No. 90 of 1993 read with the judgment of the Constitutional Court in the case of Van Rooyen and Others v S and Others 2002 (8) BCLR 810 (CC) – para 175, pending the finalization of the inquiry into your fitness to hold office as Magistrate.

2.

5. Your written submission, if any, is to be made to the Secretary, Magistrates Commission, Pretoria by means of an e-mail to madawood@justice.gov.za on or before 3 February 2020
6. Should you fail to reply within the stipulated period it will be deemed that you do not wish to submit any representations.

Yours faithfully


SECRETARY: MAGISTRATES COMMISSION

28/1/2020

Rakesh Maharaj & Company

VAT REG NO : 4850218894

Rakesh Ajay Mahara]
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Roshinee Roopnarian
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THE MAGISTRATES COURTS JUDICIARY
2020 -02- 04
JUDICIAL QUALITY ASSURANCE MAGISTRATES COMMISSION

04/02/2020

Our Ref: RM/MH/ASHIKA M.
6/5/5/2-28/2018

Your Ref:

THE SECRETARY
THE MAGISTRATE'S COMMISSION

3 FEBRUARY 2020

PER EMAIL: madawood@justice.gov.za

ATTENTION: DAWOOD MAHOMED

DEAR SIR,

RE: MAGISTRATE BODLANI KOLEKA

1. We act on the instructions of Magistrate Bodlani Koleka.
2. We refer to your letter addressed to our Client dated 28th January 2020.
- 3.1 Our Client denies that she has been continuously informed of the so called "reliable prima facie evidence" that you referenced. In amplification of her denial we refer you to our letter prior letter dated 24 November 2019 wherein we specifically requested that you provide copies of the complaints and the supporting documents that supposedly implicate our Client. To date you have failed/neglected to comply with our request.

- 3.2. Our Client denies that she is incapacitated to "carry out her duties of office efficiently" and in amplification of her denial avers that, since your ghost hunt began she has indeed remained in office and carried out her duties in line with her oath of office.
- 4.1 In term of 13 (3) (a) The Minister may suspend a magistrate on the recommendation of the Commission and, subject to the provisions of this subsection, remove him from office-
- (i) for misconduct;
 - (ii) on account of continued ill-health; or
 - (iii) on account of incapacity to carry out his duties of office efficiently.
- 4.2 We presume that your Intended recommendation is based on (i) and (iii). Irrespective of the content of your "reliable prima facie evidence" and the content of your intended charge sheet our Client maintains that she is neither guilty of misconduct nor is she incompetent to hold office.
5. Consequent, of the foregoing, our Client motivates against your Intended recommendation of suspension without remuneration in accordance with S13 (3)(b) [and not S13 (3)(a)] as stated hereunder:
- 5.1 S and Others v Van Rooyen and Others (General Council of the Bar of South Africa Intervening) (CCT21/01) [2002] ZACC 8; 2002 (5) SA 246; 2002 (8) BCLR 810 (11 June 2002)
- [175] Suspension is, however, only competent where there is an investigation into the "fitness" of a magistrate to hold office. The decision to investigate has to be taken by the Commission and that will be competent only when the allegations, if established, are sufficiently serious to warrant removal from office. Such allegations are likely to be made only rarely. If they are, and if good reason exists for suspension, a withholding of salary during suspension is not necessarily disproportionate. That is so even if the withholding of salary can take place from the time of a provisional suspension.

There is no reason why a magistrate who is not fit to hold office, and is removed from office for that reason, should be paid for the period during which she or he is under suspension prior to removal. If the magistrate is not removed from office the salary withheld has to be paid.

- 5.2 Our Client is adamant that in line with the cited caselaw that the decision to Investigate has to be taken by the Commission and that will be competent only when the allegations, if established, are sufficiently serious to warrant removal from office. Such allegations are likely to be made only rarely. On instruction we advise that you have failed to play open cards and advise our Client of the nature and extent of the allegations. Consequently, we aver that there is no merit to the allegations being investigated.
- 5.3 In the aforementioned case the Constitutional Court adopted the approach of "no remuneration" consequent of the that magistrate already being found guilty of gross misconduct. This is not the position with our Client.
- 5.4 It is respectfully submitted that our Client is still being investigated. The Magistrates Commission has not to date even compiled a charge sheet.
- 5.5 The proposed intended recommendation of "no remuneration" is unfair; unjustified and a punishment in itself which is unwarranted.
- 5.6 We implore you to exercise the principle of *audi alteram partem* as opposed to being judge and jury.
6. On instructions we advise that our Clients persona circumstances are as follows:
 - 6.1 She is the sole breadwinner.
 - 6.2 She is solely responsible for the upkeep; day to day maintenance, medical aid, tertiary fees; books and stationery, travel costs and all every other expense incurred by her children. Two of whom are at university and third which is in school.

- 6.3 She is solely responsible for her personal upkeep and all associated living expenses.
- 7.1 Our Client does not control the amount of time that such intended action by the Magistrates commission will take before same is finalized.
- 7.2 In terms of s 13 (2) of the Act a magistrate shall not be suspended or removed from office except in accordance with the provisions of subsections (1), (2), (3), (4) and (5). The relevant provisions in subsection (4) (a) read:

"If the Commission recommended that a Magistrate be removed from office-

(i) On the ground of misconduct,

(ii) ...

(iii) ...

the Minister must suspend that Magistrate from office or, if the Magistrate is at that stage provisionally suspended in terms of section (1) (a), confirm the suspension.

(b) A report in which the suspension in terms of paragraphs (a) of the Magistrate Act and the reason thereof 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.

(c) Parliament must, as soon as reasonably possible, pass a resolution as to whether or not the restoration to his or her office of a Magistrate so suspended is recommended.

(d) After a resolution has been passed by Parliament as contemplated in paragraph (c), the Minister shall restore the Magistrate concerned to his or her office or remove him or her from office, as the same may be.

(4A) (a) The remuneration of a Magistrate is not affected during a period of suspension in terms of subsection (3) (a) or in (4) (a), unless the Commission determines otherwise.

(b) If the Commission determines that the remuneration of a Magistrate shall be reduced or withheld in terms of paragraph (a), a report regarding that determination and the reasons thereof must be tabled in Parliament by the Minister within seven (7) days of such determination, if the Parliament is not then in session within seven (7) days after the commencement of its next ensuing session.

(c) Parliament must as soon as is reasonably possible, consider that report and pass a resolution as to whether or not the determination concerned is confirmed, or with or without commandment or set aside.

(d) If Parliament passes a resolution as contemplated in paragraph (c) that the determination is set aside, that determination shall lapse with effect from the date when the determination was first made.

- 7.3 The process is drawn out and has several procedures that could take months if not years to complete. If our Client is deprived of her income, during this time she will not be able to sustain normal living standards. She will be severely prejudiced by such a drastic step of no remuneration.
8. Our Client is precluded from seeking alternate employment and an income by virtue of the Magistrates Act and by virtue of her age.
9. Our Client's length of service and exemplary conduct to date warrants that at least if indeed her suspension is sanctioned by parliament that same be with remuneration.

YOURS FAITHFULLY


RAKESH MAHARAJ & COMPANY



**REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA**

**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

P. O. Box 0096, PRETORIA, 0001 • Centre Well, Building, co Pretorius and Thabo Sebeane Streets, PRETORIA • Tel (012) 325 3951, Fax (012) (012) 326 0094

[
Messrs/Mmes Rakesh Maharaj
and Company
P.O Box 219
Kwa Dukuza
4450
]

Reference: 8/5/5/2 (28/2018)

Enquiries: J J Meijer

10 February 2020

Dear Messrs/Mmes Rakesh Maharaj and Company

PROVISIONAL SUSPENSION FROM OFFICE: MAGISTRATE K BODLANI, EMLAZI

1. The contents of your letter RM/MH/ASHIKA M. dated 3 February 2020 and received via an e-mail message on 4 February 2020 have been noted.
2. Without dwelling into the detail of the contents of your letter, it is clear that you anticipate the process and confused it in view of your reference in paragraph 4.1. The provisions you refer to relate to a process after the conclusion of a

misconduct hearing where a magistrate has been found guilty of misconduct and where a removal from office is recommended, and not a provisional suspension.

3. Section 13(3)(a) of the Magistrates Act, 1993, (the Act) provides that the Minister, on the advice of the Magistrates Commission (the Commission), may provisionally suspend a magistrate from office if the Commission is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated. No decision has been taken by the Commission to remove Ms. Bodlani from office for misconduct, nor incapacity to carry out her duties of office efficiently.
4. The quote from the case of *S and Others v Van Rooyen and Others 2002 (5) SA 246 (CC)* in the letter to Ms. Bodlani dated 28 January 2020 relates to a provisional suspension in terms of section 13(3)(a) of the Act and not a removal from office as a result of misconduct or incapacity to carry out her duties of office as contained in section 13(4)(a) of the Act which you are referring to.
5. The Commission evaluated the available allegations and evidence and found it to be reliable and of such a serious nature as to make it inappropriate for Ms. Bodlani to perform her functions of a magistrate. Your attention is drawn to the provisions of regulation 26(11) of the Regulations issued in terms of the Act (the Regulations) which relate to privilege at this stage.

6. If the Commission, after the conclusion of the preliminary investigation, of which Ms. Bodlani has been informed of, is of the opinion that there are sufficient grounds (based on the allegations) for a charge of misconduct against her, she will be served with a charge sheet, containing sufficient detail in order to fully understand the allegations against her. She will be given an opportunity to furnish the Commission with a written explanation regarding the misconduct with which she is charged in order to establish which allegations are admitted and which are disputed. It should be re-iterated at this stage that there is a distinction between detailed allegations and evidence whereas she is only entitled to be provided with the former at this stage.
7. It is furthermore deemed necessary to draw your attention to the case of *Long v South African Breweries (Pty) Ltd and Others CCT 61/18 [2019] ZACC 07* in which the Constitutional Court held that the employer is not required to give an employee an opportunity to make representations before a precautionary suspension. The envisaged suspension of Ms. Bodlani is a provisional (precautionary) measure and not a disciplinary (punitive) one.
8. It is not clear why Ms. Bodlani denies that she has been informed of the allegations containing evidence upon which the Commission acted. The preliminary allegations were brought to her attention where after she objected against the process. The legal framework of the process has thereafter been explained to her. Ms. Bodlani was informed that the Commission resolved to

institute a preliminary investigation against her in terms of the provisions of regulation 26(1) of the Regulations in order to determine whether there are any grounds for a charge of misconduct against her. Ms. Bodlani has furthermore been informed that the Commission ordered an investigation to be held into her capacity to carry out her duties of office efficiently. Ms. Bodlani is aware of the particulars of a number of cases disposed of by her in which *inter alia* the orders and sentences imposed were set aside on review by the High Court. A number of these cases have been brought to her attention for comments before submission to the High Court. Furthermore, although not required, the magistrate (Investigating Officer) appointed to conduct the preliminary investigation made a number of appointments with Ms. Bodlani to discuss the allegations with her and to give her an opportunity to furnish the Investigating Officer with her comments. Ms. Bodlani did however not attend these appointments without prior excuse or in a few instances with an excuse that she is not available.

9. The Commission will be approached to consider Ms Bodlani's representations and to decide whether or not to recommend to the Minister that she be provisionally suspended from office in terms of section 13(3)(a) of the Act.
10. We trust that the information provided above will be of some assistance to clarify your concerns.

Yours faithfully



M DAWOOD
SECRETATRY: MAGISTRATES COMMISSION

Sec 13

(5) (a) If any magistrate is appointed in an acting or temporary capacity to any other judicial office-

- (i) for a continuous period exceeding one day; and
- (ii) the remuneration attached to that office exceeds the remuneration attached to the office ordinarily held by the magistrate,

he or she shall, for the duration of such appointment, be entitled to such additional remuneration as determined from time to time by the Minister.

(b) For the purpose of paragraph (a) additional remuneration must be calculated by the day, and any part of a day must be reckoned as a day.

(6) The remuneration of magistrates shall not be reduced except by an Act of Parliament.

(7) If an officer or employee in the public service is appointed as a magistrate, the period of his or her service as a magistrate shall be reckoned as part of and continuous with his or her service in the public service for the purposes of leave, pension and any other condition of service.

[S. 12 amended by s. 4 of Act 18 of 1996 (wef 1 April 1997), by s. 8 (g) of Act 35 of 1996 (wef 1 October 1998), by s. 19 of Act 104 of 1996 (wef 14 February 1997) and by s. 35 (1) of Act 47 of 1997 (wef 1 July 1999) and substituted by s. 3 of Act 28 of 2003 (wef 1 November 2003).]

[Date of commencement of s. 12: 11 March 1994.]

13 Vacation of office and discharge of magistrates

(1) A magistrate shall, subject to the provisions of subsection (1A), vacate his or her office on attaining the age of 65 years: Provided that if he or she attains the said age after the first day of any month, he or she shall be deemed to attain that age on the first day of the next ensuing month.

[Sub-s. (1) amended by s. 8 (c) and (g) of Act 35 of 1996 (wef 1 October 1998) and substituted by s. 11 of Act 122 of 1998 (wef 1 April 1999) and by s. 24 (a) of Act 8 of 2017 (wef 1 December 2017).]

(1A) (a) A magistrate holding office as such may, before attaining the age of 65 years, in written notice to the Commission, indicate his or her intention to continue to serve in such office for such further period specified in the written notice: Provided that a magistrate must vacate his or her office on attaining the age of 70 years: Provided further that if he or she attains the said age after the first day of any month, he or she shall be deemed to attain that age on the first day of the next ensuing month.

(b) A magistrate who intends to continue to serve in such office as contemplated in paragraph (a) must timeously give notice thereof in writing to the Commission before he or she attains the age of 65 years.

[Sub-s. (1A) inserted by s. 24 (b) of the Act 8 of 2017 (wef 1 December 2017).]

(2) A magistrate shall not be suspended or removed from office except in accordance with the provisions of subsections (1), (3), (4) and (5).

(3)(a) The Minister, on the advice of the Commission, may provisionally suspend a magistrate from office if-

- (i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and
- (ii) an investigation has been instituted by the Commission into such magistrate's fitness to hold office.

(b) A report in which the provisional suspension in terms of paragraph (a) of a

magistrate and the reasons therefor are made known, must be tabled in Parliament by the Minister within seven days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.

(c) Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed.

(d) If Parliament passes a resolution as contemplated in paragraph (c) that the provisional suspension is not confirmed, the suspension lapses.

(e) The provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of the suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegation concerned to be served on the magistrate.

(f) An inquiry referred to in paragraph (e) must be concluded as soon as possible, and the Commission must cause a report on the progress in respect of that inquiry to be submitted to Parliament every three months.

(g) Parliament may, at any stage pending-

(i) the conclusion of an inquiry referred to in paragraph (e); or

(ii) a resolution referred to in subsection (4) (c),

pass a resolution setting aside the suspension of the magistrate concerned, whereupon the suspension shall lapse forthwith.

[Sub-s. (3) amended by s. 6 of Act 35 of 1996 (wef 1 October 1998) and substituted by s. 4 of Act 28 of 2003 (wef 1 November 2003).]

(4)(a) If the Commission recommends that a magistrate be removed from office-

(i) on the ground of misconduct;

(ii) on account of continued ill-health; or

(iii) on account of incapacity to carry out the duties of his or her office efficiently,

the Minister must suspend that magistrate from office or, if the magistrate is at that stage provisionally suspended in terms of subsection (1) (a), confirm the suspension.

(b) A report in which the suspension in terms of paragraph (a) of a magistrate and the reason therefor are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(c) Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the restoration to his or her office of a magistrate so suspended is recommended.

(d) After a resolution has been passed by Parliament as contemplated in paragraph (c), the Minister shall restore the magistrate concerned to his or her office or remove him or her from office, as the case may be.

[Sub-s. (4) amended by s. 8 (g) of Act 35 of 1996 (wef 1 October 1998) and substituted by s. 4 of Act 28 of 2003 (wef 1 November 2003).]

(4A) (a) The remuneration of a magistrate is not affected during a period of suspension in terms of subsection (3) (a) or (4) (a), unless the Commission determines otherwise.

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

(c) Parliament must, as soon as is reasonably possible, consider that report and pass a resolution as to whether or not the determination concerned is confirmed, either with or without amendment, or set aside.