**Report of the Portfolio Committee on Justice and Correctional Services on the removal from office of Ms JF van Schalkwyk, Chief Magistrate at Kempton Park, in terms of section 13(4) of the Magistrates Act, 1993, dated 1 June 2022.**

The Portfolio Committee on Justice and Correctional Services, having considered the Minister of Justice and Correctional Services’ report, dated 27 July 2021, on the removal from office of magistrate of Ms JF van Schalkwyk, Chief Magistrate at Kempton Park, tabled in terms of section 13(4) of the Magistrates Act, 1993 (Act No 90 of 1993), reports as follows:

1. Ms JF van Schalkwyk is Chief Magistrate at Kempton Park, Johannesburg. She has held this position since 2004.
2. After a preliminary investigation, the Magistrates Commission (the Commission) charged Ms Van Schalkwyk with 18 counts of misconduct. The Commission, at its meeting held on 11 May 2013, agreed to provisionally suspend Ms van Schalkwyk pending an investigation into her fitness to hold office as contemplated in terms of section 13(3)(a) of the Magistrates Act, No 90 of 1993 (the Act). The Minister provisionally suspended her from office on 4 June 2013 and Parliament confirmed Ms Van Schalkwyk's provisional suspension from office in November 2013.
3. On 18 September 2013, the Commission appointed a Presiding Officer and a Person to Lead the Evidence (PLE) at the hearing, informing Ms van Schalkwyk in writing. The misconduct inquiry was postponed several times at the request of the defence and to allow the defence an opportunity to file an application at the High Court challenging the validity of the Regulations for Judicial Officers and the Code of Conduct for Magistrates and for the State to oppose the application. The misconduct inquiry against Ms Van Schalkwyk was kept in abeyance pending the finalisation of the application.
4. The application was heard on 15 March 2017 and judgment was reserved. On 1 August 2017, the High Court delivered its judgment and dismissed the application with costs.
5. The Applicant filed a Notice of Application for leave to appeal on 29 August 2017 but, having heard both parties on 8 November 2017, the High Court dismissed the application with costs (on 10 November 2017).
6. The Commission was of the view that Ms Van Schalkwyk was deliberately delaying the disciplinary process against her and determined to withhold Ms Van Schalkwyk's remuneration in terms of section 13(4A)(a) of the Act with immediate effect, pending the conclusion of the disciplinary inquiry against her. Subsequently, having considered the Minister’s report on the matter, Parliament resolved to confirm the determination to withhold Ms van Schalkwyk’s remuneration.
7. Despite numerous challenges encountered during the misconduct proceedings, evidence was eventually led and both parties were given the opportunity to submit their respective heads of argument on the merits and orally amplify them before the Presiding Officer on 17 and 18 September 2020. Ms van Schalkwyk elected not to testify at the inquiry. The Presiding Officer postponed the inquiry to 1 and 2 October 2020 for judgement and imposition of a sanction. The Presiding Officer delivered his judgment and found Ms van Schalkwyk guilty on 13 of the 22 remaining counts of misconduct preferred against her.
8. After having given both parties an opportunity to present any aggravating or mitigating factors to him on the imposition of an appropriate sanction, the Presiding Officer recommended that Ms van Schalkwyk be removed from office as contemplated n section 13 of the Magistrates Act.
9. Having considered all the relevant documentation, the Commission resolved to recommend that Ms van Schalkwyk be removed from office on the ground of misconduct. On 27 July 2021, the Minister of Justice and Correctional Services confirmed the removal from office.
10. The Committee was briefed on the matter on 26 August 2021. At the meeting, the Commission informed the Committee that Ms J van Schalkwyk has applied to have the Commission’s decision to recommend her removal from office set aside.
11. On 30 August 2021, the Committee received a letter from Ms van Schalkwyk, through her attorneys, informing it that she had instituted proceedings to review the decision of the Commission. She requested that the Committee hold the matter in abeyance pending the review application.
12. The Committee requested a legal opinion and was informed that there was no recourse sought against Parliament and that there was no justifiable basis in law to prevent Parliament from carrying out its positive legal obligations imposed by the Act.
13. The Committee wrote to Ms van Schalkwyk, through her attorneys, to inform her that it intended to deliberate on the matter on 31 May 2022. Ms van Schalkwyk’s attorneys wrote back, in a letter dated 31 May 2022, informing the Committee of the progress of the review application and requesting that the Committee postpone its deliberations until the review application is finalised.
14. At its meeting on 31 May 2022, the Committee was briefed by the Commission and also considered the contents of Ms van Schalkwyk’s letter. The Committee is of the view that there is no justifiable basis in law for it to postpone its deliberations. Furthermore, Ms van Schalkwyk holds a senior position within the magistracy and the suspension prevents the position from being filled on a permanent basis to the detriment of the administration of justice.

**Recommendation**

1. The Committee, having considered the report from the Magistrates Commission, the Minister’s suspension and removal of Ms JF van Schalkwyk from the Office of Magistrate, reports that it concurs with the suspension and recommends that the National Assembly resolve not to restore Ms van Schalkwyk to office.

**Report to be considered**