



MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

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Ms N Mapisa-Nqakula
The Honourable Speaker of the National Assembly
Parliament of the Republic of South Africa
PO Box 15
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8000

Email: speaker@parliament.gov.za

Dear Honourable Speaker

**REPORT TO BE TABLED IN PARLIAMENT IN TERMS OF SECTION 13(4)(b) OF THE
MAGISTRATES ACT, 1993 (ACT 90 OF 1993) REGARDING THE SUSPENSION ON THE GROUND
OF MISCONDUCT OF MR HC RAATH: ADDITIONAL MAGISTRATE, OBERHOLZER**

I have in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act 90 of 1993), suspended from office with immediate effect, Mr HC Raath: Additional Magistrate, Oberholzer, pending Parliament's decision to restore or not to restore him to the Office of Magistrate,

I hereby submit the attached report of the Magistrates Commission for tabling in terms of section 13(4)(b) of the Act.

Yours respectfully

MR RO LAMOLA, MP
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Date:

23/1/2023



REPORT IN TERMS OF SECTION 13(4)(b) OF THE MAGISTRATES ACT, 90 OF 1993: SUSPENSION FROM OFFICE ON THE GROUND OF MISCONDUCT: MR HC RAATH, ADDITIONAL MAGISTRATE, OBERHOLZER

1. PURPOSE

The purpose of this report is to inform Parliament of the suspension from office of Mr HC Raath, an additional magistrate at Oberholzer, and the reasons therefor, pending a resolution by Parliament whether or not to restore Mr Raath to office in terms of section 13(4)c) of the Magistrates Act, 1993 (Act 90 of 1993) (Hereinafter referred to as the Act).

2. BACKGROUND

2.1 A number of complaints relating to Mr Raath's conduct, were on different occasions reported to the Magistrates Commission. The complainants claim that they were approached by Mr Raath to invest money in a property development in the Ivory Coast whereby huge returns, within a short period of time, could be made. They were thereafter introduced to a certain Mr Visagie, who happened to be Mr Raath's brother in law, as a potential investor. Mr Raath was acting as the Head of Court at Oberholzer at the time. The complainants were aware that he is a magistrate and on the faith and trust they had in him were induced to invest in the property development. The complainants invested huge amounts of money in the scheme. However, it has since been found to be a scam as no documentation exists to support the existence of any such development.

2.2. Mr Raath further signed a "Memorandum van Borgstelling/sekerheidstelling" between himself and the aforesaid Mr Visagie as debtors, and a Company, represented by a Mr McCrate as creditor. In the surety document certain properties in the name of a Family Trust were given as surety. When signing the document, Mr Raath knew that the properties did not belong to him or Mr Visagie and that the properties were in fact sold due to the insolvency of the said Family Trust.

2.3. Mr Morake, a prosecutor at Oberholzer, also filed complaints against Mr Raath in that the latter, on at least two occasions, one in open court and the other in the presence of the Control Prosecutor, referred to him as an "aap" and "apie", meaning ape. This caused Mr Morake to feel degraded, low and worthless.

2.4. The Magistrates Commission regarded the allegations against Mr Raath as very serious and 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).

3. DISCUSSION

3.1 Based on the evidence gathered during the preliminary investigation, the Commission charged Mr Raath with six (6) counts of misconduct in that he contravened regulations 25(c) and 25(i) of the Regulations read items 1, 3 and 4 with the Code of Conduct for Magistrates and the Bill of Rights as contained in the Constitution, in that he did not act with integrity and or failed to execute his duties with dignity, courtesy and self-control and or acted 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 in that he made a false or incorrect statement, knowing it to be false or incorrect to the prejudice of the administration of justice.

3.2 A charge sheet, dated 02 July 2018 was duly served on Mr Raath on 23 July 2018. Mr Raath is 63 years of age.

3.3 The misconduct inquiry eventually commenced on 17 March 2021 and was concluded on 29 November 2021. Having given both parties the opportunity to address him on the merits of the matter, the Presiding Officer found Mr Raath guilty of all six misconduct charges preferred against him.

3.4 After hearing the respective parties' address on any mitigating and aggravating factors for purpose of the imposition of a sanction, the Presiding Officer on 29 November 2021 imposed a sanction and in terms of regulation 26(17)(b) of the

Regulations recommended that Mr Raath be removed from office as contemplated in section 13(4)(a)(i) of the Act.

(Judgment; Sanction)

3.5 Despite having been notified of his right to lodge representations in terms of regulation 26(20) of the Regulations in respect of the imposed sanction, Mr Raath elected not to do so.

3.6 Having considered all the relevant documentation, as is required in terms of regulation 26(19) of the Regulations, the Commission resolved to recommend that Mr Raath be removed from office on the ground of misconduct as contemplated in section 13(4)(a)(i) of the Act. The majority of the members of the Commission is of the view that Mr Raath's conduct of which he was found guilty is so serious that it justifies his removal from office. His conduct displays dishonesty which puts his integrity as a judicial officer in serious doubt and renders him unfit to hold the office of Magistrate any longer.

(Letter from the Chairperson of the Magistrates Commission)

4. AUTHORITY TO SUSPEND AND TABLE A REPORT IN PARLIAMENT

4.1 If the Commission recommends that a magistrate be removed from office on the ground of misconduct the Minister, in terms of section 13(4)(a)(i) of the Act, must suspend that magistrate from office, or if the magistrate is at that stage provisionally suspended, confirm the suspension. I have not at any stage before this recommendation received advice from the Magistrates Commission to provisionally suspend Magistrate Raath.

4.2 A report in which such suspension and the reasons therefore are made known, must, in terms of section 13(4)(b) of the Act, 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 in terms of section 13(4)(c) of the Act Parliament must, 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 in paragraph 4.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.

5. CONCLUSION

5.1 In light of the Magistrates Commission's recommendation that Mr Raath be removed from office as contemplated in section 13(4)(a)(i) of the Act, and the reasons therefor, including the aggravating circumstances mentioned by the Presiding Officer, I herewith suspend Mr HC Raath, additional magistrate, Oberholzer from office with immediate effect, pending Parliament's decision to restore or not to restore him to the Office of Magistrate.

5.2 This report is submitted for consideration by Parliament in terms of section 13(4)(b) of the Magistrates Act, No 90 of 1993.

Given under my hand at...*Pretoria*.....on this...*23^d*.....day of November 2023.



MR ROLAMOLA, MP

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

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The Honourable Mr R Lamola, MP
The Minister of Justice and
Correctional Services
Private Bag X276
Pretoria
0001

Reference
Verwysing : 6/5/5/2 (03/2017)

Enquiries
Navrae : J Meijer

Date
Datum : 14 Sept 2023

Dear Minister

REMOVAL FROM OFFICE: MR H C RAATH, ADDITIONAL MAGISTRATE, OBERHOLZER

1. The purpose of this letter is to appraise you of the circumstances which moved the Magistrates Commission (hereinafter the Commission) to resolve to recommend that Mr H C Raath be removed from office 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. A number of complaints relating to Mr Raath's conduct, were on different occasions reported to the Magistrates Commission. The complainants claim that they were approached by Mr Raath to invest money in a property development in the Ivory Coast whereby huge returns, within a short period of time, could be made. They were thereafter introduced to a certain Mr Visagie, who happened to be Mr Raath's brother in law, as a potential investor. Mr Raath was acting as the Head of Court at Oberholzer at the time. The complainants were aware that he is a magistrate and on the faith and trust they had in him were induced to invest in the property development. The complainants invested huge amounts of money in the scheme. However, it has since been found to be a scam as no documentation exists to support the existence of any such development.

3. Mr Raath further signed a "Memorandum van Borgstelling/sekerheidstelling" between himself and the aforesaid Mr Visagie as debtors, and a Company, represented by a Mr McCrate as creditor. In the surety document certain properties in the name of a Family Trust were given as surety. When signing the document, Mr Raath knew that the properties did not belong to him or Mr Visagie and that the properties were in fact sold due to the insolvency of the said Family Trust.
4. Mr Morake, a prosecutor at Oberholzer, also filed complaints against Mr Raath in that the latter, on at least two occasions, one in open court and the other in the presence of the Control Prosecutor, referred to him as an "aap" and "apie", meaning ape. This caused Mr Morake to feel degraded, low and worthless.
5. The Magistrates Commission regarded the allegations against Mr Raath as very serious and 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).
6. Based on the evidence gathered during the preliminary investigation, the Commission charged Mr Raath with six (6) counts of misconduct in that he contravened regulations 25(c) and 25(i) of the Regulations read items 1, 3 and 4 with the Code of Conduct for Magistrates and the Bill of Rights as contained in the Constitution, in that he did not act with integrity and or failed to execute his duties with dignity, courtesy and self-control and or acted 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 in that he made a false or incorrect statement, knowing it to be false or incorrect to the prejudice of the administration of justice.
7. A charge sheet, dated 02 July 2018 was duly served on Mr Raath on 23 July 2018. Mr Raath is 63 years of age.
8. The misconduct inquiry eventually commenced on 17 March 2021 and was concluded on 29 November 2021. Having given both parties the opportunity to address him on the merits of the matter, the PO found Mr Raath guilty of all six misconduct charges preferred against him.
9. After hearing the respective parties' address on any mitigating and aggravating factors for purpose of the imposition of a sanction, the PO on 29 November 2021 imposed a sanction and in terms of regulation 26(17)(b) of the Regulations recommended that Mr Raath be removed

from office as contemplated in section 13(4)(a)(i) of the Magistrates Act, 90 of 1993.

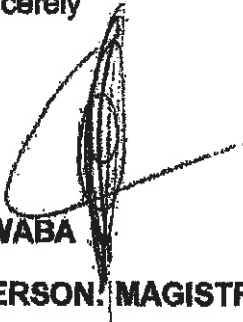
(Judgment; Sanction)

10. Despite having been notified of his right to lodge representations in terms of regulation 26(20) of the Regulations in respect of the imposed sanction, Mr Raath elected not to do so.
11. Having considered all the relevant documentation, as is required in terms of regulation 26(19) of the Regulations, the Commission's members were invited to comment on the Presiding Officer's findings/judgment and the sanction, recommending that Mr Raath be removed from office and had to submit their recommendations and the reasons therefore. The members unanimously agreed with the Presiding Officer's finding that Mr Raath is guilty of the misconduct of which he was charged with. The majority of the members are in agreement with the Presiding Officer's recommendation that Mr Raath be removed from office on the ground of misconduct as contemplated in section 13(4)(a)(i) of the Act. A minority of the Commission's members however, are of the opinion that Mr Raath not be removed from office and recommended that the Commission should impose a "lesser" sanction. These members were invited to submit their reasons for such recommendation but did not respond.
12. Mr Raath's conduct of which he was found guilty is so serious that it justifies his removal from office. His conduct displays dishonesty which puts his integrity as a judicial officer in serious doubt and renders him unfit to hold the office of Magistrate any longer.
12. Once the Commission, in terms of section 13(4)(a) of the Act, recommends that a magistrate be removed from office, you must suspend that magistrate from office and, in terms of section 13(4)(b) of the Act, table a report in Parliament within fourteen (14) days of such suspension.
13. In the circumstances, it is recommended that you:
 - a) suspend Mr HC Raath from office in terms of section 13(4)(a) of the Magistrates Act, No 90 of 1993 with immediate effect, pending her removal from office, and
 - b) table a report in Parliament within fourteen (14) days of such suspension in terms of section 13(4)(b) of the Act.

14. A draft report is attached for your convenience.

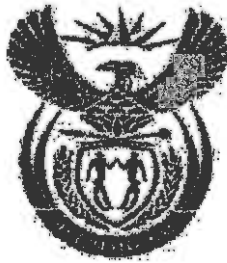
(Draft report)

Yours sincerely

A handwritten signature in black ink, appearing to be 'AP LEDWABA', written over a vertical line.

AP LEDWABA

CHAIRPERSON, MAGISTRATES COMMISSION



MISCONDUCT ENQUIRY IN TERMS OF REGULATION 25 (C) OF THE REGULATIONS (IN THE LOWER COURTS), NO R.361 OF 11 MARCH 1994 r/w ITEMS 1 AND 4 OF THE CODE OF CONDUCT FOR MAGISTRATES

(HELD IN THE NORTH WEST PROVINCE, OBELHOLZER MAGISTRATE COURT)

File reference no: 6/5/2/2-03/2017

Introduction

[1] Mr. Raath is duly appointed as a magistrate in terms of section 10 of the Magistrate Court Act 90 of 1993 (the Act) read with section 9 of the Magistrates' Courts 32 of 1944 and the Judicial Matters Amendment Act 85 of 1995. As at the period of the alleged misconduct he was and even today he is attached to the office of the district court magistrate in Obelholser. He is charged with contravention of regulation 25 (c) of the Regulations for Judicial Officers in the Lower Courts, No R.361 of 11 March 1994 (the regulations) r/w items 1 and or 4 of the Code of Conduct for Magistrates in respect of all six counts. He was served with a notice of misconduct hearing in terms of regulation 26(7) (a) of the regulations on the 26th February 2021 which detailed the allegations against him as well as his procedural rights. The appointment letters of the chair as well as the evidence leader were handed in as exhibits "A" & "B"

[2] On counts 1, 2&3 the charges relates to failing to act with integrity and upholding the good name, dignity and esteem of the office of magistrate and the administration of justice in that he during December 2005 and January 2006 induced the complainants who were aware of his status as a magistrate and as a result had trust and faith in him to invest in a scheme he alleged would yield huge returns thereby causing the victims prejudice as they lost the invested money. The allegations in count 4 are that he on the 1st September 2014 signed a "Memorandum van Borgstelling/Sekerheidstelling" together with Hendrik Visagie as debtors and M&L consultant (as a creditor) presenting the properties "ERWE 5264, 5265 EN 5268 Carletonville in die naam van MARX FAMILIE TRUST" as surety while he was aware that the said properties did not belong

to him or Mr. Visagle. He did that while also aware that the said properties were already sold due to the insolvency of "Marx of Marx Familie Trust."

In count 5 & 6 he is charged with failing to act with integrity and upholding the good name, dignity and esteem of the office of magistrate and the administration of justice on or about 1st December 2017 and the 29th December 2017 by referring to a Prosecutor as an ape "appie".

He pleaded not guilty to all the charges and elected to remain silent. He made no admissions. He was defended by Adv. Viljoen who withdrew when Mr. Raath was under cross examination. The matter got postponed to enable him to look for another lawyer and now he is defended by Mr. Van Wyk.

Facts in brief

Counts 1, 2, & 3

[3] Mr. Raath was at times acting as head of the district court magistrate office herein Oberholser during 2005 when he approached the complainants and informed them that his brother in law Mr. Visagle was involved in the profit-making investment scheme together with the Ivory Coast government. The whole business was worth €800-00m and Mr. Raath's brother in law was to gain €98-00m. According to Mr. Hendrik Albertus Stephanus, Mr. Raath was also involved in the business of buying and selling motor vehicles and together they would discuss issues around financial markets. Mr. Pieterse was called in the evening but further discussions about investment opportunity took place the following day during working hours. He called and recruited the complainants to invest in what he called a bridging capital venture investment. Mr. Raath also said to the victims that he was going to invest a lot of money. He informed them that they will get four times the capital they shall have invested within 14 days. Mr. Visagle raised a concern that the transaction was a pyramid scheme but Mr. Raath and his brother in law assured him that it was not. The complainants' evidence is that they knew Mr. Raath to be a reputable magistrate in the district and they thought that there is nothing untoward.

[4] Mr. Pieterse an attorney herein Carletonville Invested R200 000-00 from his revolving credit account and a further R50 000-00 was deposited after the witness was told that a target of €2.6m or €2.8m could not be attained during the agreed period and more money was needed for them to receive their quadrupled returns. The money was deposited in to Mr. Raath's brother in law's wife account. At that stage Mr. Raath was the witness's mouth piece (agent). He was acting as the negotiator between his brother in law and the clients. Mr. Raath informed the witness about the need to pay in more money in order for Mr. Visagle make headway. When the time came for the returns to be paid Mr. Raath came up with various explanations *inter alia* alleging a *coupe detat* but maintained until today despite the fact that he got charged by the magistrate commission that the complainants should remain patient as the "dividends" will still be paid. The excuses also included expired revenue certificates. He also kept on assuring the investors that the money will be paid on a Friday of each week in the eight months

of the clients enquiries. Mr Visagie was phoned ten to eleven months down the line and he also came up with different excuses as to why the returns were not paid and he would even write incorrect dates on the cheques so as to buy time. Ultimately the witness got his R250 000-00 without returns from Mr. Visagie. When the witness laid a criminal charge against Mr. Visagie, Mr. Raath voiced his dissatisfaction about being questioned by the police regarding the investment scheme but he never told Mr. Pieterse to go and demand his money from Mr. Visagie. Mr. Raath at some stage introduced the late Mr. Andre Marks as one of his best investors to Mr. Pieterse. Later on when the witness told Mr. Raath the Mr. Marks was sequestered because of the amount he put in as an investment, Mr. Raath replied by saying Mr. Marks was sequestered because of a luxurious life style he led. Mr. Marks was a close friend of Mr. Raath.

[6] Mr. J.E. Erasmus Pieterse a businessman in Carletonville invested R200 000-00, Mr. J.F. Van Staden who used to be a businessman in Carletonville and now deceased invested R100 000-00, Mr. A. Marx who also used to be a businessman herein Carletonville invested an amount of R7.9 million. All these amounts were deposited around December 2005 and early 2006.

[7] In February 2008 Mr. H. A.S. Pieterse laid a charge of Fraud (Carletonville MAS: 255/02/2008) and the State declined to Prosecute. The complainant followed it up and ultimately Mr. Visagie was convicted on the 18/04/2017 after plea and sentence agreement in terms of sec 105A of Act 51 of 1977. In that plea and sentence agreement Mr. Visagie is said to have admitted that he made misrepresentations that he will invest the money into a development scheme from which the investors were to receive 400% return on their investment within a month and that he will pay back the money. Needless to say that nothing has been payed up till today. He admitted that he can't show any proof of the investments despite the fact that he had before maintained that the money will be paid out in a week.

[8] The paper trail show that the Mr. Raath and his brother in law made some deposits of R500, R1000, R2000, R25000 and R50000 into Yed's account whom they alleged is in Ivory Coast and it was difficult to find while in actual fact Mr. Desmond Yed is said to be staying in South Africa. It is not known why the two were depositing money into Mr. Yed's account. Up till today Mr. Raath is not prepared to give an explain. It is accepted that he may not incriminate himself.

Count 4

[9] Mr. McCrate is a partner in ML consultant. Mr Visagie approached the partners with the information of making a "quite nice return on a short term investment". He told them that he has a partner Denos Yed in the Ivory Coast and they were busy putting up medical clinics throughout Africa and that they were in the final stages as they had procured funds from Singapore bank for the clinics. They needed short term funding to get the money released, The other money was for Mr. Yed to travel to Singapore, stay in the hotel and personally ensure that all the documents are signed. He promised them

huge returns which were to be paid through a bank account they opened in Mauritius. The returns were astronomical, an investment of R1m would yield a return of €3.4 million in eight days. The initial payment €2m was to be paid the last day of September 2014 and a further €1.5m would be paid on the last day of November 2014. Mr McCrate wanted a guarantee before paying out the money which was needed speedily. They needed a R1m and a further R40 000-00 which had to be cleared immediately for Mr. Yed's expenses in Singapore. He agreed on the payment of the amounts but he demanded surety in return. The first R1m and R40 000-00 was transferred on the 29th August 2014 as they were in a rush to get the money before they could present the surety documents. He deposited the money because he had spoken to Mr. Yed, Mr. Visagie, the magistrate Mr. Howard Raath would cosign the surety agreement and also that they would put property as surety or security for the funds. Messers Visagie and Raath would hurry them to make deposits on Fridays. These are the reasons why he deposited the requested money even before he could get the surety documents. Mr McCrate also says the returns were tempting. Mr. Visagie and Mr. Raath together with their lawyer presented a surety document wherein they offered stands worth R1800 000 as security. The two signed as sureties jointly and severally. The surety documents were faxed on Monday 1st September 2014. The fax ID on the fax sheet showed magistrate Oberholzer. He however never talked with Mr. Raath the magistrate. All these factors made him comfortable that he was dealing with professionals and that his money was safe especially after he received surety document cosigned by Mr. Raath who had also attached a copy of his identity document even though the surety document no longer included a house as initially agreed. The "biggest positive" thing was that the surety was cosigned by a professional, a sitting magistrate, otherwise he wouldn't have made any deposit. The witness understanding of the surety document was that should the two not pay back the returns as agreed he would be in a position to sell the properties and recoup their money as the properties belonged to either Hendrik Visagie or Howard Raath or alternatively they had permission to give up the said properties.

[10] The witness does not know Mr. Marks at all. When the first payment was due 10-11 days thereafter the witness started to communicate with Mr. Visagie about payment of the returns. The latter said a further R180 000-00 was needed to cover some costs and the said amount was transferred on Friday of the 12th September. Later on the witness and his partner were pressurized to make a further payment of the amount of R400 000-00, resulting in a total payment of R1.62M. The witness at that point he was together with his partner fearing that they may lose everything so they made further payments which were covered by the same surety document. When they realized that they were defrauded of the sum of R1.62m, they immediately wanted to get the title deeds. They wanted to sell the properties and recoup their money. That is when they received information that the said properties were sold in an auction by ABSA in 2008. Which meant that the properties were not supposed to be used as sureties. That is when they laid charges against both Mr. Raath and Visagie at Valeria police station in Pretoria CAS 84/03/2016. The witness then sent a WhatsApp message to Mr. Raath

notifying him about that criminal charge as well as the intention to lay a complaint with the magistrate commission. On the 31/01/2017 he received an email from Dannie van zyl attorneys' acting on behalf of both Messer's Raath and Visagie offering to make a settlement at the rate of R5000-00 a month which was rejected by the witness. See exhibits H & I. That's when the witness started to receive threats of a legal suit from Mr. Raath. Except for promises, no repayment was ever made by Messer's Raath and or Visagie. The witness felt very bad because a magistrate who was part of a scam which defrauded him an amount of R1.62m is still on the bench presiding over cases.

Counts 5&6

[11] Mr. Morake the public prosecutor used to respect Mr. Raath as a magistrate. On the 1/12/2017 Mr. Raath adjourned his court as a presiding officer. On resuming the interpreter came in late finding the presiding officer already in court. Mr. Raath wanted to know who had excused the interpreter. In reply the interpreter, Mr. Mohale said he was excused by Mr. Morake (the public prosecutor). Mr. Raath who happened to be the only white person amongst other black court officials said loudly that " *jy kan nie verskoon word deur daardie appie*" (you can't be excused from my court by that ape). When Mr. Raath uttered those words he was angry and his voice was raised. The Prosecutor said he was dumbfounded, he felt degraded, low and worthless, he felt that he does not even deserve to be a father to his kids. He became withdrawn. He only knew Mr. Raath at a professional level and he was starting to see him in that state of fit of anger. Before that they would just walk past each other without exchanging greetings. They never joked with each other. He asked himself that if Mr. Raath thinks of Prosecutor as an ape what more about all the other Africans he is presiding over their cases. Prior to that Mr. Raath would refer to the black people whose physical addresses are not reflected in the charge sheets as follows " *hulle bly op taak seve boom agt*" (they are staying on branch seven tree number eight). Mr. Morake wouldn't apply his mind to that until the day he got referred to as an ape. That is when he connected the dots.

[12] Again on the 29/12/2017 at about 12h50pm Mr. Raath found Mr. Morake in the office of Ms. Maseme. Before he could talk to Ms. Maseme he said to Mr. Morake " *Ja appie*" interpreted by Mr. Morake to mean "Yes ape" and the Prosecutor felt very low to the extent that he undertook never to prosecute in his court as he is not seen as a human being. Ms. Maseme also confirmed under oath that Mr. Raath did say " *Ja appie*" to Mr. Morake. Mr. Morake asked Mr. Raath to stop calling him names. Later on, Mr. Raath followed the Prosecutor and said "you also said something to me" which the prosecutor denied. Mr. Morake said the words " *Ja appie*" were uttered inside a court room, in the office of Ms. Maseme and between the 1st and 18th of January 2018.

[13] Mr. Morake worked in Khutsong during January 2018 but he would come to the magistrate Oberholzer office on some days. As an when the two meet in the corridors, Mr. Raath would keep on saying to him " *Ja appie*" (in two words) thus intimidating and belittling him further.

[14] After the magistrate's commission charged Mr Raath, he then approached a number of court officials including Mr. Nagel and Tsoetsi and one Kruger asking them to write affidavits about his conduct. This prompted Mr. Nagel to come to Mr. Morake and asked him what was happening between them. Mr. Morake was not prepared to say anything about that.

Mr. Raath's version

[15] Mr. Raath has been an additional magistrate for the past 36 years. He took the oath of office in 1987 as well as after the 1994 election in the new dispensation. In this period he also acted as a senior magistrate and head of office on several occasions including during the period of the alleged incidents. Mr Visagie is his brother in law. Regarding counts 1, 2 & 3 Mr. Visagie informed him about investment opportunities in Ivory Coast. As at 2005 houses were being built and the proposals for building clinics were not yet finalized. Mr Visagie asked him to look for people who would invest and get four times their initial capital in returns in a period of 1-3 months. The money was to be deposited so that they could get a loan from Singapore. A Blue Bell letter marked as exhibit "M" was to be used to recruit potential investors. He invested amounts of R500 000-00 on the 20/12/2005, R100 000-00 on the 20/12/2005 and 1/12/2005. His son also made an investment. Messers Marx, Bert Pieterse, Soppie Pieterse and Mr. Van Staden whom he had recruited, told him that they also made investments around December 2005 and early January 2006. He never accepted money from anyone of the four. There were no returns paid up after 1-3 months. Mr. Visagie told him that there were hiccups regarding government guarantees. Mr Marx was regularly making enquiries from Mr. Visagie. Regarding count 4 he said it is correct that he signed the exhibit which is a memorandum of *borg stelling* (surety). As at the time of signing in 2014 the promised returns were not yet paid out. Mr Visagie had informed him that he was assisted by a lawyer to draft the memorandum of a guarantee as money was needed. On counts 5 & 6 he does not deny that he spoke to the complainant inside a court room as well as in Ms. Masems's office. He however says he said "Jappie" to the complainant and not "ja appie" and this was because the complainant had earlier on said "Whitty" to him. He maintains that *Jappie* means arrogance and not an ape.

Issue

[16] Whether Mr. Raath is guilty of misconduct as alleged in all six counts.

Common cause

[17] Mr. Raath is a magistrate who is duly appointed in terms of the Magistrate court's Act. He is a presiding in the Oberholser magistrate's court.

Counts 1, 2 & 3

[18] Mr. Raath recruited the victims in counts 1, 2 & 3 to join a scheme which he said it was for investment purposes. He said he was asked by Mr. Visagie to look for investors who would invest in the Ivory Coast investment project where houses were built. The

clinics were to be build afterwards. In recruiting investors he said each investor would get an amount equal to four times his her investment capital in about 2 weeks' time

Count 4

[19]Mr. Raath signed the document together with Mr. Visagie as surety's .They used stands which were not their property as sureties

Counts 5 & 6

[20] Mr. Raath uttered some words to the complainant on the dates and place alleged.

Legal Principles

Onus

[21] The onus is on the evidence leader to proof the allegations on a balance of probabilities.

[22]Section 3, Part 11 of the Magistrate Act no 90 of 1993, Regulations No.R361 of 16 stipulates that;

3. (1) No person shall be appointed as a magistrate, unless he-
- (b) is fit and proper person;

Section 23 (1) of the Constitution guarantees a right to fair labor practice.Sec.4 of the magistrates Act provides for the appointment,promotion,discharge of or disciplinary steps taken against magistrates without favor or prejudice.

A magistrate takes an oath of office before assumption of his/her duties

The oath

[23] The magistrates Oath of office is set out in section 9 (2) (a)¹

"I ... (full name) ... do hereby swear/ solemnly affirm that in my capacity as a judicial officer I 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."

Evaluation of the evidence.

Counts 1, 2 & 3

[24]Mr. Raath was a friend to the victims. What one can immediately notice from exhibit "M" alleged to be Blue Bell health is that although this is alleged to be an international

¹ section 9 (2) (a) of the Magistrates' Courts Act 32 of 1944

transaction with the companies based in Ivory coast the communication is in Afrikaans. Andries Marx the complainant in count 1 passed on the 30th November 2019 and his original death certificate was handed in as exhibit "O"

Sec. 3(1)(c)2 of the Law of Evidence Amendment Act 45 of 1988 (LEAA).

(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless-

(a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;

(b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or

(c) the court, having regard to-

(i) the nature of the proceedings;

(ii) the nature of the evidence;

(iii) the purpose for which the evidence is tendered;

(iv) the probative value of the evidence;

(v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;

(vi) any prejudice to a party which the admission of such evidence might entail; and

(vii) any other factor which should in the opinion of the court be taken into account.

is of the opinion that such evidence should be admitted in the interests of justice.'

[25] Failure to respect an accused person's fair trial rights has rightly been viewed as having the potential to undermine the 'fundamental adversarial nature of judicial proceedings' which also imperils their legitimacy. The Constitutional Court in *S v Molimi*, stated:

'This court has said that the right to a fair trial requires a substantive rather than a formal or textual approach and that "It has to instill confidence in the criminal justice system with the public, including those close to the accused, as well as those distressed by the audacity and horror of crime". It is not open to question that a ruling on the admissibility of evidence after the accused has testified is likely to have an adverse effect on the accused's right to a fair trial. It may also have a chilling effect on the public

discourse in respect of critical issues regarding criminal proceedings. More importantly, proceedings in which little or no respect is accorded to the fair trial rights of the accused have the potential to undermine the fundamental adversarial nature of judicial proceedings and may threaten their legitimacy.'

The Constitutional Court expressed the statement referred to above in a matter where Ndhlovu's case had been brought under scrutiny. Whilst acknowledging that Ndhlovu was indeed to be understood as narrowing an accused's right to challenge hearsay evidence tendered in terms of s 3, that court preferred to express no view on the correctness of the Ndhlovu rationale based on its view that this was not challenged in the appeal to this court in that matter (Molimi).¹⁶

15 2008 2008 (2) SACR 76 (CC) para 42.

Looking at the nature of the proceedings, the nature of the evidence, the purpose for which the evidence is tendered and the probative value of the evidence;

It is in the interest of justice that the statement of Mr. Marx be handed in as evidence as he has now passed on and cannot come and testify. Mr. Pieterse is said to be fragile because of covid-19 and old age, with the injuries and the trauma he went through after being shot at. It is also in the interest of justice that the statement of Mr Pieterse in count 3 be admitted. The other reason for admitting those complainants' statements is that the parts which are not deleted are in any event admitted and are therefore common course. The deleted parts are not admitted as they needed cross examination. The allegations are not entirely denied. Mr. Raath does not dispute that he did recruit people into what he calls a development project. He however denies having benefitted. The question of whether Mr. Raath benefitted or not is not much of an issue.

[26] The ratio of the magistrate to that of the South African population and or those they may have jurisdiction over is very small. Respect for the law and for the orders made by the magistrates in that circumstances depends *inter alia* on the conduct of the magistrates. Therefore magistrates are expected to lead by example. They are not supposed to be seen to be on other side of the law. This is because magistrates are seen as courts even if they act in their private capacity. For the courts fulfil an important function in the community. *S v Banda*²

The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favor and prejudice³. Becoming a magistrate is a choice. That choice involves what in can call a straight forward life, not getting involved in a questionable conduct.

² *S v Banda* 1990 (3) SA 466 (B) at 500-1

³ Sec. 165(2) of The Constitution of the Republic of South Africa, Act 108 of 1996

The country is experiencing loss of confidence by members of the public on the judiciary because of lack of integrity. The general understanding of integrity which is required from a presiding officer is the quality of being honest, having values and also having strong moral principles. While honesty is being truthful, sincere and free of deceit. A person with integrity behaves ethically, does the right thing even behind closed doors or in the dark, it is about doing a right thing in the reliable way even you are alone. It is also an important trait for a presiding officer to be trustworthy. The concept of 'fit and proper' is fundamental to a judicial officer and it determines a person's honesty, integrity and reputation in order to confirm that he/she is fit for purpose. It *inter alia* involves good listening and communicating skill. When to say what and how to say it especially when one is on duty as the face of the judiciary.

[27] Mr. Raath does not deny that Mr. Visagle was criminally charged for the offences and that he pleaded guilty but he shies away from acknowledging that. If Mr. Raath has integrity and is honest why does he continue to misrepresent to the victims and this forum that the dividends will still be paid even after years have passed after the period he said dividends will be paid and also after his brother in law had entered into a plea and sentence agreement. The returns were to be paid within a stipulated period which has long passed.

[28] He is also not honest about the allegations against him and the time he wrote a letter to Mr. Matric Lufhondo the manager of Mr Morake. For a magistrate to be found to have lied under oath is on its own a serious matter. I am aware that he is not charged with perjury. He wrote a letter of complaint against Mr. Morake one year and half after the alleged incident of racial remarks. This was meant to cover himself. It would not be necessary to do so had he only said *Jappie* (arrogant). He wants this forum to believe that Mr. Morake was so problematic that he complained to Matric Lufhondo and never got assisted. Clearly if he wrote something it was because the magistrate charged him after Mr. Morake laid a complaint. It cannot not be that Mr. Morake is or was problematic. An honest or a person with integrity would not go around asking staff members to be his witnesses. Especially when he is in a position of power as against those he is asking for assistance.

Definition of a scam and a pyramid scheme.

[29] A scam may be defined as a wrongful and intentional deceptive scheme or trick used to cheat someone out of money or something. It is a way of defrauding someone money or something. A pyramid scheme is a fraudulent system or business model that recruits members by a promise of payments or services for enrolling. In this matter there are no documents shown like Memorandum of understanding, a business plan, stocks, bonds e.t.c. There was nothing to warn the investors as to whether that was a form of a risky investment e.g. futures and options, equity crowd funding or not. Only a letter alleged to be from Blue Bell was used. Members were promised four times their capital

investment in two weeks. Come the two weeks they were urged to deposit more as a target could be reached. The whole process has the characteristics of scamming people into a pyramid scheme.

[30] It is interesting that Mr. Raath wants to be viewed and treated as a magistrate when it comes to the quality of his evidence in the witness stand. He distances himself from this title when it comes to how his friends viewed him when he so recruited them. How his friends or the victims viewed him is subjective but one can use objective factors to draw inference. The evidence shows that Mr. Raath was a known magistrate and a friend. The district is relatively small and some of the discussions took place in the court premises. He was actively involved in recruiting people to invest in the scheme. He was even interested to see that the invested money was deposited in an account he was prepared to provide in addition to the account reflected on the Blue Bell letter.

[31] He went out of his way to sign as surety using properties which did not belong to him. He stuck to these activities even when his brother in law was already criminally charged. He says he suffered a loss of about R800 000-00. This is the money he loaned against the house bond and from his policy. It is not probable that with a salary of a magistrate he would just make loans, lose money and just leave it like that not being interested to recover even a cent. He says it is not a scene to give a person who had defrauded him another R30 000-00 and pay his cell phone accounts. Why would he be that indebted because he said he is not afraid of Mr. Visagie and he was not threaten and or subjected to him? He up to today has done nothing to recoup the money he allegedly lost. There is also no sign that he intends do so. His son also invested and lost the money. Clearly Mr. Raath and Visagie were partners in scamming the victims even though he wants the court to believe that he was not an active participant. I am conscious that this is just a misconduct enquiry. If it was a criminal trial of fraud, Mr. Raath would probably be guilty as a co-perpetrator. He in counts 1, 2 & 3 made and or consciously associated himself with the conduct of his brother in law. They made misrepresentations which caused the victims to suffer a serious loss.

[32] It is surprising that Mr. Raath is not criminally charged or even suspended. The defense argument is that in as much as there was no evidence to charge him criminally and in a civil case, there is no evidence in this proceedings. This forum does not know whether the kind of evidence we have now is what those forums had or not. Secondly what happened there may not have a bearing on what is happening or what is put before us. Even if he tried to spin it around when cross examined it is clear that his victims and friends are still expected to appear before him. In count 4 his partner clearly made a misrepresentation and pressurized Mr. McCrate to make a payment into their account even before he could receive and read the surety agreement. Today the defense says that is not a letter of suretyship but it is more of acknowledgment of debt to a lawyer. The complainant is not a lawyer. He entirely depended on what he was told and what he knew. Even if he is a business consultant and he runs a business of cash loans, he did not invest only because of the position of a magistrate held by Mr. Raath.

He invested because of the temptation of huge returns and the strategic time frames. That is why he said the money was always needed urgently on Fridays. Mr. McCreate was surprised to hear about the suspensive clause in court because clearly he was lured to deposit money before receiving the surety. Even when the contract was verbally discussed with Mr. McCreate to make payment, it appeared so attractive that he could not wait. It should be remembered that we do not have evidence of what took place in the VBS and Steinhoff matters referred to in argument by the defense. Therefore what happened here may not necessarily be what happened in those cases.

Count 4

[33] In exhibit 'Q1' the late Mr. Andries Marx said at one stage he gave Mr. Raath the title deeds of his properties as they wanted to use them as surety but Mr. Marx never signed any document to that effect. At the end of 2008, the beginning of 2009 ABSA sold those properties in auction. He got sequestered and his companies got liquidated. Mr. Raath knew about his financial position as a friend and because the insolvency meetings were held in this office.

Mr. Raath said he signed as surety with Visagie and they were jointly and severally liable to pay the amount. He also says he was only liable for R40000-00. He gave more than three contradicting versions of why he signed as surety. His reasons range from I do not know why I signed, I was told by Visagie to sign. He said he signed because there was a suspensive clause. Then he signed because he was guaranteeing payment of R40000-00 and not a million rand. That when he signed he did not know that Mr. McCreate had already seen (imagined) dollars and paid.

He just decided to sign a memorandum of bond stating on the mere saying so of his brother-in-law whose promises were not coming to fruition. Mr. Visagie was also criminally charged. He was not satisfied with the amount reflected. Mr. Raath said he signed the sureties without even seeing the title deeds. He says he just signed without knowing or having the details of the plots. He also did not know whether the Marks family trust was in existence or wound up or not. With the kind of a relationship he had with Mr. Marx, the active role he was planning to amass funds, his position in this small office, this can't be.

Counts 5 & 6

[34] The Oxford Dictionary defines racism as, "Prejudice, discrimination, or antagonism directed against someone of a different race based on the belief that one's race is superior."

'Race' is strongly linked to skin color. Racism can be better understood if one looks at the historical relation of a person accused of racism and the accuser or victim. The history of whites and blacks in South Africa regarding this topic is well documented and known. Institutions like courts are also known to can perpetuate racism. Power or authority can also be a fertile ground to perpetuate racism. 'Macroaggression can also

be another form of casual or subtle racism. Racism can also be direct like if a person accused of racism acts or utters racial remarks intentionally and consciously.

[36]The problem with racism is that it *inter alia* makes people of a different ethnic group feel unwelcome, isolated, degraded and humiliated. Racial harassment can be when someone is continuously bothering another, passing racial jokes, threatening or treating another unfairly because of race, color, ethnic origin, creed etc.

In Mr. Raath words, he uttered a word "Jappie" inside court room, three times in the corridors and in Ms. Maseme's office. According to how Mr. Raath described the personality of Ms. Maseme and the nature of the evidence, Ms. Maseme is found to be a neutral and objective witness. He also said after that he followed him to where he was drinking beers where he only talked about a new car. If Morake wanted to exaggerate he could have added this outside the building instance too.

Mr. Morake says he felt very low and worthless to the extent that he undertook no longer to Prosecute before someone who does not see him as a human being. This remark made him reflect on his status as a father.

[37]Mr. Raath says for him to utter those words for the first time it was on the spur of the moment but he did that again weeks after that. Not only was he heard by Mr. Morake to have said "ja appie" Mr. Mogale who later said he may not have understood Mr. Raath well. He said he might have not heard or understood and that does not mean that it did not happen. This is just a piece of evidence which needs independent corroboration. Meaning it may not stand alone. In count 5 Mr. Mogale heard Mr. Raath. In count 6 Ms. Maseme also heard Mr. Raath to have said 'Ja appie'. Here again were heard them uttered repeatedly and boldly. That Mr. Morake had earlier on said "Whitty" or that you will have to sort out cases yourself was withheld from Mr. Mogale. Meaning that piece of evidence was not tested. Today the defense is playing with words and putting it in a different context by saying Jappie, skappie appie, dorp or plaas appie instead of bloody appie or *onnoosel* appie. *That taak sewe boom agt* comes from a police manual. This is not evidence before us. Mr Smit can't even be cross examined on that because what he is saying is not evidence but arguments aimed at persuading the court to rule in favour of Mr. Raath. At no stage did Mr. Raath seek to clarify himself to the complainant. This is just an afterthought. Instead he alleges another racial under tone allegedly made by Mr. Morake that he said "Whitty" to him. He seeks to justify having said appie. Exhibit "E" written by Evans Mogale says (*verakoon van daai aap nie*). of course this must be approached with caution after under intense cross examination Mogale had said he may have done a mistake. The fact is he is not a single witness. No amount of utterances can justify such remarks from a magistrate. Magistrate are expected to act with restraint, not to avenge if they perceive provocation where there is a remedy. Magistrates are expected to act honorably and with integrity. They are expected to know that certain rights are entrenched and to have regard to the constitution and its values. They are sworn to uphold the constitution.

[38] Even in the absence of a golden threat a once of utterance or a slip of a tongue can easily be what is embedded in someone's subconscious mind. In this instance that could be interpreted as racism. If one looks at the golden threat running through this case attitude amounting to racism is imbedded.

Raath says he did not say *Jappie*. Instead he maintains that he said *Jappie* which according to him speaks to arrogance. Further that those who do not know Afrikaans well may mistake that for "*appie*". The witnesses say they clearly heard him saying *Ja appie*. Two words being uttered i.e. *Ja appie* not one word *Jappie* on at least five occasions. It is significant that the words were uttered on several occasions. That must have made the listener time to hear and reflect of what was said, equally so it allowed Mr. Raath not to continue with that habit. If he regarded that as a misunderstanding it is then surprising that he never approached the witnesses to clarify that instead of recruiting witnesses. The whole issue is further compounded by other utterance to black people whose residential addresses would not be known the Public Prosecutor at the time of the drafting of the charge sheets. This indicates a habit of degrading a certain class of people not only Prosecutor. Racism is practiced boldly even from the bench.

Conclusion

[39] I am satisfied that the witnesses' evidence is trustworthy and reliable. In counts 1, 2, 3 and 4 there is direct and circumstantial evidence. The admissions of Mr. Raath are also taken into account as they greatly narrowed the issues. The evidence leader has succeeded to prove the allegations on a balance of probability. Mr Raath just went out of his way to show that he does not have integrity and self-control as a magistrate. He took an oath twice but he is not just acting accordingly. He just have a total disregard for the oath of his office and the constitution which is a supreme law of the country. He in many ways, does not act ethically as a magistrate. He gets involved in scamming people and he has his way of looking at and treating black accused people in general and Mr Morake in an open court. Surely, this conduct brings courts into disrepute. It can not be correct to have a court used to treat black people as apes. This can't be in line with dignity and esteem of the office of the magistrate and also it can't be said to be an error on his part taking into consideration the time he had, the way he repeatedly conducted himself in all the counts he is charged of. He is simply acting above the constitution he is sworn to.

Finding:

[40] Mr. Raath has contravened regulation 25(c) of the Regulations for the Judicial Officers in the Lower Courts, No R 361 of 11 March 1994/r/w items 1 and 4 of the Code of Conduct for the Magistrates as he has failed to act with integrity and also failed to uphold and promote the good name, dignity and esteem of the magistrate's office and administration of justice and thus he is found guilty of misconduct as charged in counts 1, 2, 3, 4, 5 & 6.

Sanction

Introduction

[41] Mr. Raath has just been convicted of six counts of misconduct. It is not only difficult from a lawyer's perspective. A balance must be struck between his interest, that of the complainants or victims and the employer. The nature and the seriousness of this misconduct can also have an impact on the society or those Mr. Raath as a magistrate is accountable to. Mercy must also be shown where it is befitting.

Personal circumstances

[42] Mr. Raath believe in his innocene. He is about two years into his retirement. He can't be heard to be saying he is sorry but he is sorry that people, his friends and the children of his friends lost money. He should not be sorry because he also lost money. We never addressed the issue of race because Mr. Raath is not a racist. He has been on the bench for over 30 years. Only two sentences he delivered, were altered by a high court. He is married. His children are majors. It's him and his wife. Mr. Raath has a right to believe in his innocence and conduct his defense vigorously. Fight to the bitter end and he can't be faulted for that. It is not expected of him to say I am sorry when he is not. Let me come back to this issue of remorse at a later stage.

Mitigating circumstances

[43] Mr. Raath has not been found guilty of a misconduct before. There are no criminal, civil and or any other charge of a pending misconduct that I am aware of. That Bert Pieterse was later paid would just be a mitigating factor.

Aggravating Circumstances

[44] The seriousness of each charge or count needs to be reflected in the sanction. Counts 1, 2, 3 & 4 involve dishonesty. Count 5 & 6 is about going against the right to equality and dignity. These rights are entrenched in the Constitution of the Republic of South Africa 108 of 1996 (The Constitution). The complainants suffered a lot financially and emotionally. The evidence leader was approached by Mr. Marx's children asking for compensation or settlement. The estate can't be winded up as they have to search themselves. The victims and their family members should understand that this is a misconduct enquiry. It is not a civil suit or a criminal charge. It relates to employer and employee relationship.

[45] Being on the bench is about protecting the rights of the members of our society not to prey on the vulnerable regardless of whether they are friends or not.

In so far as counts 5 & 6 are concerned, this is how interpersonal relationship can affect service delivery which is much needed by our community. The public prosecutor is no longer prepared to appear before Mr. Raath. It again raises a question of whether a person of such attitude can do justice to the cases of those he does not see as fellow human beings. Even if it can be argued that he will be able to interpret the law and apply it equally, the question of whether justice will be seen to be done would still remain because that is equally concerning.

[46] "In the light of the important role magistrates fulfil and the image they represent to the public, it is imperative that the public confidence in the judicial system are fostered and promoted."⁴ South Africa is still battling to achieve equality and eradication of the concepts of white superiority. Racism like corruption or crime is endemic. It should be nipped in the bud wherever it is found. It is a matter of concern if the two are found in the judiciary.

The question remains whether justice can be seen to be done by those who are still embedded in the regrettable historical practices.

[47] Mr. Raath is a public office bearer, the face of the government, a manager and a leader in this office representing the Department of justice. As a public officer bearer, it is expected of Mr. Raath to have been aware of the founding provisions of the Constitution section of which reads as follows;

"1. The Republic of South Africa is one Sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism
- (c) Supremacy of the constitution and the rule of the law.
That chapter 2 section 7 thereof;
 - (1)... enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom and that
 - (2) The state must respect, protect, promote and fulfil the rights in the Bill of rights

[48] Magistrates are accountable to the members of the public. They are paid by the tax payers. It would therefore make sense to say the tax payer must trust them and the decisions they make.

Being on the bench as a judicial officer goes with power. How one exercises that power can be disastrous. Mr. Raath conducted himself with impunity in total disregard of the magistrates' regulations and code of conduct for years. He ran the scam in the office of the department of justice during working hours, using time and the resources of the

⁴ Ms. L. Deidrick's "Disciplinary processes for South African Magistrates: Reflections on the Magistrates Act 90 of 1993 and the Labour Relations Act 66 of 1995

department. He has attitude towards people of colour. Needless to say most of these people are vulnerable. They may be less educated because of historical factors and defenceless. They could be ignorant of their rights or not resourced to enforce same. He conducted himself in such unbecoming manner from December 2005 until he appeared before this enquiry in 2017. He had ample chance to reflect and stop yet he chose not to do that. He is gainfully employed and therefore had no reason whatsoever to conduct himself in that manner.

[49] Scamming people is mostly preceded by planning. His conduct had a severe negative impact not only on the finances of their victims but also on the image and running of the office of the magistrate and the image of the administration of justice. Once a magistrate conducts himself in a disgraceful manner as it happened in this case such conduct tarnishes the whole magistracy in the eyes of the public. Any conduct which brings the magistracy and or the department of justice into disrepute amounts to bridging of trust and or biting a hand which feeds an employee.

Remorse

[50] Coming back to remorse it can be defined as a feeling of a deep, bitter regret for wrong doing while regret can be defined as being sorry for the loss of something like a lost opportunity of something like being unable to offer help. The two are not exactly the same but they can be indicative of self-introspection. Which could be a path of rehabilitation and a mitigating factor. He does not show remorse or regret or empathy for his victims. This is borne out by statements like nothing is in a written form, meaning I have covered my tracks and you may do whatever. The defense suggests a warning or suspended sentence or anger management on count 5. The problem is that huge sums of money amounting to millions were taken in a dishonest manner and that racial remarks were uttered from the bench, offices and corridors of the magistrates office. The Prosecutor was reduced to nothing. Is this what the employer means by a fit and proper judicial officer? obviously not.

Conclusion

[51] In the circumstances, I am satisfied that if a judicial officer can repeatedly grossly go against his oath of office and or the Constitution like Mr. Raath did, he is not fit and proper to be a magistrate. I have looked at all available sanctions and only one is proportional to each charge and appropriate.

Recommendation:

[52] I therefore recommend to the Magistrate's commission that he be removed from office as contemplated in section (17)(b) of the Magistrate's court Act 90 of 1993 Regulations dated 11 March 1994 r/w section 13 of the Act

X

D.D. Mogotsi

D.D. Mogotsi (Regional court Magistrate, North West appointed as a presiding officer in terms of minute ref: 6/5/5/2 (52/2014 dated 21/11/2018)

Appearance

DATE OF HEARING: 17/03/2021

DATE OF VERDICT: 29/11/2021

DATE OF SANCTION: 29/11/2021

INVESTIGATOR: Mrs. Du Plesane (Magistrate)

EVIDENCE LEADER: Ms. B Lesufi (Magistrate acting on behalf of the Magistrates commission and appointed in terms of the minute ref: 6/5/5/2(11/2017 dated 21/11/2018)

FOR MR RAATH: Adv. Viljoen (Instructed by Dannie Van Zyl Prokureurs). Later on Mr. Van Wyk.