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MAGISTRATES COURTS JUDICIARY
2008 -04- 2 1
JUDICIAL QUALITY ASSURANCE MAGISTRATES COMMISSION

REPORT

PROVISIONAL SUSPENSION FROM OFFICE OF A MAGISTRATE: MS A BACHARAM, ADDITIONAL MAGISTRATE, SCOTTBURGH

1. PURPOSE

The purpose of this document is to report to Parliament on the provisional suspension from office of Ms A Bacharam, an additional magistrate at Scottburgh, 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, 1993 (Act No. 90 of 1993).

2. BACKGROUND

2.1 Ms Bacharam, aged 39, is an additional Magistrate at the Scottburgh District Court. She joined the Department of Justice and Constitutional Development on 1 April 1995 and served *inter alia* as a prosecutor before her appointment to the bench on 1 April 2001. Ms Bacharam appeared before court at Scottburgh on 2 November 2007. A trial date was set and the matter stands postponed until 31 March 2008. The 1st April 2008 is also reserved for this trial.

2.2 The charge against Ms Bacharam is that of defeating or obstructing the Administration of Justice. It is alleged that Ms Bacharam was charged for a traffic offence. She was summoned to appear in court on 13 December 2005. She had an option to pay an admission of guilt fine of R300.00 (three hundred rand). On 27 October 2005 she was approached in her office by the sheriff for service of the summons. Instead of accepting service she called an interpreter, one Faith Mpungose to her office and requested her to accept service of the summons on her behalf. Ms Mpungose subsequently signed on the return of service and left

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her office. On 13 December 2005, the date of trial, all traffic summonses were brought before Ms Bacharam. She dealt with the cases, including her own. She herself struck case number B7309/05 in which she was the accused, from the roll. It is further alleged that the case was thereafter filed. She did not pay the admission of guilt fine.

3. AUTHORITY TO PROVISIONALLY SUSPEND

In terms of section 13(3)(a) of the Magistrates Act, 1993 (Act No. 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.”.

A report in which the provisional suspension and the reasons therefore 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 (section 13(3)(b) of the Act).

4. DISCUSSION

- 4.1 On 13 September 2007 Ms Bacharam was in writing, invited, to show cause why the Commission should not advise the Minister to provisionally suspend her from office, pending the outcome of an investigation into her fitness to hold office in terms of section 13(3)(a) of the Act. Copies of this letter as well as the response filed on her behalf by the Public Servants Association of South Africa, dated 5 November 2007 are attached for your information.

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4.2 After considering the allegations against her and the representations, filed on her behalf, the Commission at its meeting held on 5 – 7 March 2008 resolved to advise me to provisionally suspend Ms Bacharam from office in terms of section 13(3)(a) of the Magistrates Act.

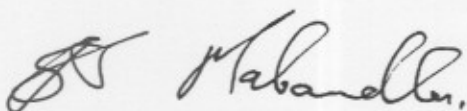
4.3 The Commission holds the view that, without anticipating the outcome of the investigation into her fitness to hold the office of magistrate (a written notice containing the allegations concerned will be served on her shortly), the existing evidence against Ms Bacharam is of such a serious nature that it would be inappropriate for her to perform the functions of a magistrate while the allegations are being investigated. It would, according to the Commission, be inappropriate for a judicial officer, accused of defeating or obstructing the Administration of Justice, to sit on the Bench, whether at Scottburgh or any other court of law. The dignity, impartiality and image of the Bench would be undermined.

4.4 On the basis indicated above I have decided to suspend Ms Bacharam provisionally pending the outcome of the investigation into her fitness to hold office as a Magistrate.

5. CONCLUSION

This report is hereby submitted for consideration by Parliament in terms of section 13(3)(c) of the Magistrates Act, 1993.

Given under my Hand at *Pretoria* on this *16th* day of *April* Two Thousand and Eight.



MRS B S MABANDLA, MP
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**



┌
Ms A Bacharam
Private bag X5510
SCOTTBURGH
4180
└

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Reference : 6/5/5/2 : 147/06
Verwysing

Enquiries : Mr A P Louw
Navrae

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Date : 13 September 2007
Datum

Dear Madam

POSSIBLE PROVISIONAL SUSPENSION: YOURSELF


It has come to the notice that you on 2 July 2007 and 7 September 2007 appeared before the court at Scottburgh on a charge of defeating or obstructing the Administration of Justice and that the matter has been postponed to 2 November 2007.

In the light of the afore-going, the Commission contemplates to in terms of section 13(3)(a) of the Magistrates Act, 1993 (Act 90 of 1993) provisionally suspend you from duty, with or without remuneration, pending the outcome of an investigation into your fitness to hold office.

You are therefore requested to show cause, in writing, why such a decision should not be taken.

Your submission, if any, should reach us within 7 days after receipt of this letter.

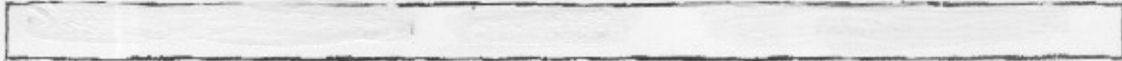
Yours faithfully


1 SECRETARY: MAGISTRATES COMMISSION

RETURN OF SERVICE

**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**



F Ms A Bacharam Private bag X5510 SCOTTBURGH 4180 L	7 J	Reference : 8/5/52 : 147/06 Verwysing Enquiries : Mr A P Louw Navrae Date : 13 September 2007 Datum
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Yours faithfully

[Handwritten signature]



SECRETARY: MAGISTRATES COMMISSION

Received

The original of this letter was handed to Mr. Bacharam by me personally on 27/9/07 at 08:00. He signed in my presence. 27/9/07

[Handwritten signature]

L.P.P. RADYN
SENIOR MAGISTRATE
AREA CLUSTER HEAD: JUDICIARY

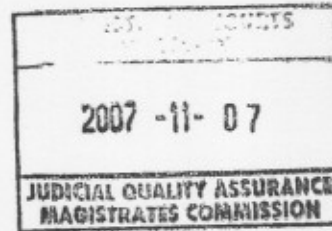
27/9/07



URGENT FACSIMILE

5 November 2007

The Secretary
Magistrate's Commission
P O Box 9096
Pretoria
0001
For Attention : Mr AP Louw



Dear Sir

RE ; CONTEMPLATED PROVISIONAL SUSPENSION – MRS A BACHARAM

Your letter under reference 6/5/52; 147/06 dated 13 September 2007 refers.

Mrs Bacharam is a bone fide member of the Public Servants Association and she has mandated the Union to respond to your letter on her behalf.

It is noted that the Commission is contemplating the provisional suspension of Mrs Bacharam in terms of Section 13(3)(a) of the Magistrate's Court Act.

Section 13(3)(a)(i) provides:

"The Minister, on the advise of the Commission, may provisionally suspend a Magistrate from office if 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 the Magistrate is of such a serious nature so as to make it inappropriate for the Magistrate to perform the functions of a Magistrate while the allegation is being investigated."

The following representations are submitted in regard to the contemplated suspension:

- It is important for the Commission to understand firstly that the offence in question was allegedly committed on 13 December 2005 which is almost two years ago.

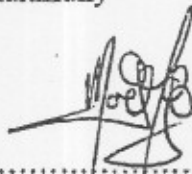
- The investigation of this matter commenced in June 2006 when Mrs Bacharam's Head Of Office at Scottburgh became aware of the allegations and initiated the investigation. The matter has been under investigation by the police and the Director of Public Prosecutions for well over a year. Investigations have been completed.
- The Area Head of the cluster in which Mrs Bacharam performs her duties have also been fully aware of the allegations, investigations and the available evidence.
- Notwithstanding the above, Mrs Bacharam has performed her duties as a Magistrate during the period since 13 December 2005 and has done so competently without incident or complaint.
- It follows that it is not only unnecessary but will also be improper to provisionally suspend Mrs Bacharam on the grounds provided for in Section 13(3)(1)(i) of the Magistrate's Court Act in the light of the following:
 1. She has performed her duties as a Magistrate for well over a year after the allegations were made and these duties have been performed without incident.
 2. The investigations are now complete and it is entirely unnecessary to suspend her for purposes of the investigation.
 3. She will be contesting the allegations against her and has the right to be presumed innocent until proven guilty.
 4. She is no longer serving at the Scottburgh Magistrate's Court where the allegations arose and has been transferred to the Umlazi Magistrate's Court where she has no contact whatsoever with the Witnesses or staff who featured in the investigation.
 5. It is understood that Mrs Bacharam's services at the Umlazi Magistrate's Court are necessary and the Area Head of the relevant cluster, Mr Radyn, may be contacted in this regard.

6. There is absolutely no necessity to disturb the *status quo* which has prevailed since the investigations commenced and which was implemented by the Department of Justice.

- In addition to all of the above, Mrs Bacharam has important financial commitments which include maintaining her two minor children and servicing payments towards her motor vehicle under the Magistrate's Motor Finance Scheme.
- It should further be noted that Mrs Bacharam logged a grievance against her head of office at Scottburgh on 3 August 2006 and this grievance is currently pending. The grievance has some relevance to the allegations against Mrs Bacharam in that her Head Of Office conducted the preliminary investigations which initiated the allegations against her.

In all the circumstances it is submitted that the *status quo* be maintained while the relevant legal procedures take their proper course. It is unnecessary, based on the allegations and the investigations, to provisionally suspend Mrs Bacharam from office.

Yours faithfully



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(FOR) PROVINCIAL MANAGER