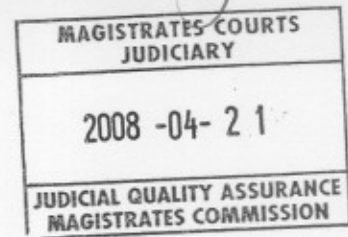


08/12 SC Security



REPORT

SUSPENSION OF A MAGISTRATE: MR X R I MASIMINI, ADDITIONAL MAGISTRATE AT QUEENSTOWN

1. PURPOSE

The purpose of this report is to inform Parliament of the suspension of Mr X R I Masimini, an additional magistrate at Queenstown, pending consideration by Parliament of a recommendation by the Magistrates Commission for his removal from office as a Magistrate in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act No. 90 of 1993).

2. BACKGROUND

- 2.1 Having been advised by the Commission that Mr Masimini, aged 40, has been convicted by the Ezibeleni Court on a charge of assault with intent to do grievous bodily harm on 24 November 2006, I, acting on the advice of the Commission, provisionally suspended Mr Masimini from office in terms of section 13(3)(a) of the Act on 13 March 2007. I tabled a report in Parliament in compliance with the provisions of section 13(3)(b) of the Act, which report, so I have been informed, has been considered by Parliament, confirming Mr Masimini's provisional suspension from office.
- 2.2 Following his conviction by a court of law and having been provisionally suspended from office, the Commission at its meeting held on 17 to 19 April 2007 determined to withhold Mr Masimini's remuneration in terms of section 13(4A)(a) of the Act and recommended that I table a report in Parliament for consideration in terms of section 13(4A)(b) of the Act. I have been advised that Parliament considered the report and passed a resolution, confirming the determination concerned.

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3. AUTHORITY

- 3.1 In terms of section 13(4)(a) of the Magistrates Act, 1993 (Act No. 90 of 1993), the Minister, if the Magistrates Commission would recommend that a Magistrate be removed from office on *inter alia* the basis of misconduct, must suspend that Magistrate from office or if the Magistrate is at that stage provisionally suspended in terms of the Act, confirm the suspension.
- 3.2 The report in which such suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 14 days of that suspension, if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of the next ensuing session.
- 3.3 Parliament must then, as soon as it is reasonably possible, pass a resolution as to whether or not the restoration to his/her office of the Magistrate so suspended is recommended.
- 3.4 After the resolution has been passed by Parliament as contemplated in paragraph 3.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.

4. DISCUSSION

- 4.1 The Commission concluded its second misconduct inquiry against Mr Masimini which inquiry commenced during 2006 and was finalised on 20 April 2007. The Presiding Officer at the misconduct inquiry found Mr Masimini guilty on both counts of misconduct to wit that he was found guilty of an offence by a court of law and that he made a false or incorrect statement when on 1 November 2006 he applied for an appointment to the Regional Court Bench, by failing to disclose in his application that there was a criminal case pending against him and that he had appeared as an accused in a court of law. The Presiding Officer recommended that Mr Masimini be removed from office on the ground of misconduct as contemplated in section 13 of the Act. Mr Masimini was informed of his right to

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lodge representations with the Commission within 21 working days in terms of regulation 26(20) of the Regulations for Judicial Officers in Lower Courts, 1994.

- 4.2 The Ethics Committee of the Commission at its meeting held on 12 July 2007 considered the Presiding Officer's findings and recommendations and resolved to recommend to the Commission that the recommendation from the Presiding Officer in terms of regulation 26(17)(b) of the said Regulations that Mr Masimini be removed from office, be accepted.
- 4.3 At its meeting held on 23 August 2007 the Commission, however, noted that Mr Masimini during the misconduct inquiry informed the presiding officer that he intended appealing against the conviction on the criminal charge of assault with intent to do grievous bodily harm in the matter that was heard at Ezibeleni court on 24 November 2006 and that the matter had been remanded for sentence to 28 September 2007. The Commission therefore resolved not to deal with the matter at that stage but to consider it once Mr Masimini had been sentenced and exhausted his appeal rights.
- 4.4 At its meeting held on 5 to 7 March 2008 the Commission was informed that sentence was imposed on 30 November 2007. Mr Masimini was sentenced to R3 000.00 or six (6) months imprisonment. A further six (6) months imprisonment has been suspended for a period of three (3) years on certain conditions. The Commission was further informed that no application for leave to appeal against his conviction has been filed by Mr Masimini as yet and that the time for him to do so has lapsed.
- 4.5 The Commission considered the relevant documents referred to it in terms of regulation 26(22) of the Regulations for Judicial Officers in Lower Courts, 1994 read with regulation 26(19) of the said Regulations and resolved to recommend that Mr Masimini be removed from office on the grounds of misconduct in terms of section 13(4)(a)(i) of the Act. Despite having been afforded the opportunity to do

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so, Mr Masimini did not lodge any representations in terms of regulation 26(20) of the Regulations.

4.6 The Commission is of the view that Mr Masimini's conduct as set out in the charges of which he was found guilty, is so serious that it justifies his removal from office. His conduct renders him unfit to hold the office of Magistrate any longer, especially having regard to the time frame in which the incidents occurred and the fact that he has been found guilty of misconduct before.

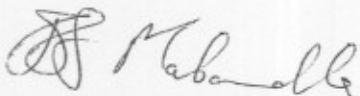
4.7 As indicated above, if the Magistrates Commission has recommended that a Magistrate be removed from office on the basis of misconduct, the Minister must suspend that Magistrate from office. Furthermore, the Minister must table a report in Parliament making known the suspension and the reasons therefore.

4.8 On this basis I have suspended Mr Masimini from office.

5. CONCLUSION

This report as required by section 13(4)(b) of the Magistrates Act, 1993 is submitted herewith for Parliament's consideration.

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



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

**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

[
The Honourable Mrs B S Mabandla, MP]
The Minister of Justice and
Constitutional Development
Private Bag X276
PRETORIA
0001
L]

Reference: 6/5/5/2 (16/04)


Enquiries: A P Louw / J Meijer

Date: ~~19/2/2007~~

Dear Minister

~~PROVISIONAL SUSPENSION FROM OFFICE OF MR X MASIMINI, ADDITIONAL
MAGISTRATE, QUEENSTOWN~~

1. The purpose of this memorandum is to appraise you of the circumstances which moved the Magistrates Commission to resolve to again recommend that Mr Masimini be provisionally suspended from duty pending the outcome of an investigation into his 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, No. 90 of 1993 (hereinafter the Act).
2. Mr Masimini, age 39, is an additional Magistrate at the Queenstown District Court. He was previously an additional magistrate at Johannesburg and was at his request transferred to Queenstown. The Commission has instituted an investigation which confirmed that Mr Masimini appeared before Court at Ezibeleni on 24 March 2006 and on several occasions thereafter, on a charge of assault with the intent to do grievous bodily harm.
3. Acting on the advice of the Commission you provisionally suspended Mr Masimini from office on 17 August 2006 and tabled a report in this regard in Parliament. Copies of our letter dated 21 July 2006 and your responding letter dated 17 August 2006 are attached for your information. On 7 November 2006,


M. M. O. T.
S. K. T.

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Parliament, however, did not confirm the provisional suspension. Parliament remarked : "in those instances where a misconduct inquiry is instituted following criminal charges against a Magistrate, the misconduct inquiry not to be proceeded with pending the outcome of the criminal case..... extremely unfortunate".

4. The criminal case against Mr Masimini has in the meanwhile been concluded. He was convicted by the Ezibeleni Court on a charge of assault with intent to do grievous bodily harm on 24 November 2006. The matter stands postponed to 23 March 2007 for sentence.
5. On 2 January 2007 Mr Masimini was again, in writing, invited, to show cause why the Commission should not advise the Minister to again provisionally suspend him from office in terms of section 13(3)(a) of the Act. Copies of the letter to Mr Masimini, dated 2 January 2007, as well as his response thereto dated 15 January 2007, are also attached.
6. After considering the allegations and Mr Masimini's representations, the Commission at its meeting held on 28 February 2007 and 1 March 2007 resolved as follows:
 - to advise the Minister to again provisionally suspend Mr Masimini from office in terms of section 13(3)(a) of the Magistrates Act; and
 - to determine to withhold Mr Masimini's remuneration with immediate effect in terms of section 13(4A)(a) of the Act once the Minister has taken the decision that he be provisionally suspended from office.
- 7.1 The Commission holds the view that, without anticipating the outcome of the investigation into his fitness to hold the office of magistrate, the existing evidence against Mr Masimini is of such a serious nature that it would justify his removal from office, should he be found guilty of the misconduct charges preferred

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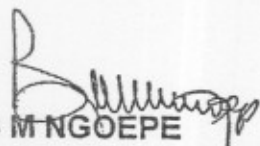
against him.

- 7.2 The allegations of assault with intent to do grievous bodily harm on which he has been found guilty by a court of law is of such a serious nature as to make it inappropriate for him to perform the functions of a magistrate while the said allegations are being investigated. It would be inappropriate for a judicial officer, convicted of assault with the intent to do grievous bodily harm, to sit on the Bench. The dignity and image of the Bench would be undermined. It is therefore necessary to effect a new suspension, based on his conviction referred to in paragraph 4 above.
8. As a result of his conviction on 24 November 2006, the previous charge sheet had to be replaced. A reformulated charge sheet was drawn up and served on Mr Masimini on 13 February 2007.
9. An additional charge has been added to the reformulated charge sheet as count 2. The second charge is that he made a false or incorrect statement when he applied for an appointment to the Regional Court Bench, by failing to disclose in his application the fact that there was a criminal case pending against him and that he had appeared as an accused in a court of law.
10. The misconduct inquiry in respect of the two charges commenced on 16 February 2007. Mr Masimini applied for a postponement to enable him to instruct counsel. The inquiry was subsequently postponed for the period 16 to 20 April 2007 for this purpose.
11. In the circumstances, it is recommended that you provisionally suspend Mr I X Masimini, an additional magistrate at Queenstown, from office with immediate effect, pending an investigation into his fitness to hold the office of magistrate.

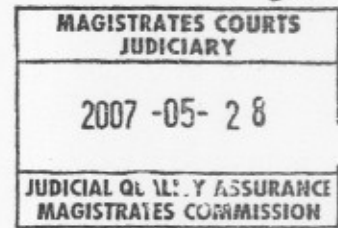
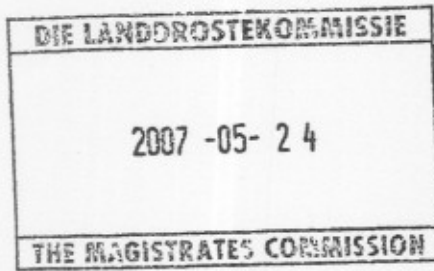
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12. Once you have suspended Mr Masimini from office, the Commission will request you to table before Parliament a report on its determination referred to in paragraph 6 above to withhold remuneration.
13. It is further recommended that you table a report in Parliament for consideration in terms of section 13(3)(b) of the Act. A draft report is attached for your assistance.

Yours sincerely


B MNGOEPE
CHAIRPERSON OF THE MAGISTRATES COMMISSION
JUDGE PRESIDENT OF THE TRANSVAAL PROVINCIAL
DIVISION OF THE HIGH COURT

M. Botha
SMC
24.5.07.



MINISTRY: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

The Honourable Mr Justice B M Ngoepe
Chairperson: Magistrates Commission
P O Box 9096
PRETORIA
0001

Dear Judge President

PROVISIONAL SUSPENSION FROM OFFICE: MR I X MASIMINI, AN ADDITIONAL MAGISTRATE AT QUEENSTOWN

With reference to your letter dated 2 March 2007 (under your reference 6/5/5/2(16/04), I wish to inform you that I, after having considered the Commission's advice, decided to provisionally suspend Mr I X Masimini, additional Magistrate at Queenstown, from office pending the outcome of the inquiry into his fitness to hold office as a Magistrate.

A copy of the report tabled in Parliament in compliance with the provisions of section 13(3)(b) of the Magistrates Act, 1993 is enclosed herewith for your records. A copy of my letter to Mr Masimini is also enclosed.

With kind regards

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

* Annexure

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DATE:.....

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DIE LANDDROSTKOMMISSIE
2007 -05- 11
THE MAGISTRATES COMMISSION



REPORT IN TERMS OF SECTION 13(4A)(b) OF THE MAGISTRATES ACT, 1993:
WITHHOLDING OF REMUNERATION, MAGISTRATE I X MASIMINI

1. Purpose

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission on 19 April 2007 to withhold the remuneration of Mr Masimini, an additional Magistrate in Queenstown who is under provisional suspension, and to provide Parliament with the reasons therefor.

2. Background

1st hearing / charge

2.1 On 17 November 2005, Mr Masimini, an additional Magistrate at Queenstown, was found guilty on three counts of misconduct in the sense that he had used foul and/or injudicious language in court. The misconduct tribunal imposed a sanction which was postponed for a period of 12 months, i.e. under the regulations for Judicial Officers in the Lower Courts, 1994. Furthermore, he was ordered to subject himself to psychological counselling and therapy sessions.

2nd hearing / charge

2.2 Three days after the misconduct inquiry was finalized, Mr Masimini assaulted a woman at Ezibeleni outside Queenstown "by pulling her with her hair and hitting her with a glass tumbler on her chin, causing an open wound". As a result Mr Masimini was charged with assault with the intent to do grievous bodily harm. He appeared before Court at Ezibeleni on several occasions and was convicted as charged on 24 November 2006. The matter was postponed to 23 March 2007 for sentence and on that day against postponed until 18 May 2007 for this purpose.

2.3 On 13 March 2007, The Minister for Justice and Constitutional Development, provisionally suspended Mr Masimini from Office pending the outcome of the inquiry into his fitness to hold office. A report in terms of section 13(3)(b) of the Magistrates Act, 1993 was tabled in Parliament shortly thereafter.

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3. Legislative Requirements

In terms of section 13(4A)(a) of the Magistrates Act, 1993, the remuneration of a magistrate is not affected during the period of his or her provisional suspension unless the Magistrates Commission determines otherwise. If the Commission determines that the remuneration of a Magistrate shall be reduced or withheld, a report regarding the determination and the reason therefor must be tabled in Parliament by the Minister within 7 days of such determination, if Parliament is then in session, or, if Parliament is not then in session, within 7 days after the commencement of its next ensuing session.

4. Discussion

- 4.1 On 02 January 2007 the Commission, subject to Mr Masimini being provisionally suspended, informed him in terms of section 13(4A)(b) of the Magistrates Act, 1993 of the Commission's intention to withhold his remuneration. He was requested to show cause in writing on or before 15 January 2007, why such a determination should not be considered. In his response dated 15 January 2007 Mr Masimini indicated that he considered it to be unfair and unjust to withhold remuneration pending the decision of Parliament to provisionally suspend him from office. On 15 March 2007, after Mr Masimini was provisionally suspended from office, he was once again afforded the opportunity to furnish the Commission with representations as to why the Commission should not determine that his remuneration be withheld. He had until 23 March 2007 to respond, but to date, has not availed himself of the opportunity.
- 4.2 After considering the matter at its meeting held on 17-19 April 2007 the Magistrates Commission determined to withhold Mr Masimini's remuneration with immediate effect in terms of section 13(4A)(a) of the Act. The Commission's determination was based on the following facts:
- (a) The Commission holds the view that without anticipating the outcome of the investigation into Mr Masimini's fitness to hold the office of Magistrate, there is reliable evidence against Mr Masimini which also shows that the nature of the allegations are of such a serious nature that it would justify his removal

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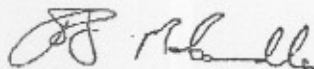
from office, should he be found guilty after the inquiry. The allegation of assault with the intent to do grievous bodily harm on which he has been found guilty by a court of law and the allegation that he made a false or incorrect statement when he applied for an appointment to the Regional Court Bench, by failing to disclose in his application that there was a criminal case pending against him and that he had appeared as an accused in a court of law, are of such a serious nature that it would justify his removal from office, should he be found guilty after the inquiry. All these allegations are of such a serious nature as to make it inappropriate for him to perform the functions of a magistrate and still receive remuneration while they are being investigated.

- (b) For the foregoing reasons, remuneration should be withheld; bearing in mind also that he has already been convicted as stated above.

5. Conclusion

The report as required by section 13(4A)(b) of the Magistrates Act, 1983 is submitted herewith for Parliament's consideration.

Given under my hand at *Pretoria* on this *8th* day of *May* 2007.


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