



REPORT

PROVISIONAL SUSPENSION FROM OFFICE OF A MAGISTRATE: MR C M DUMANI, MAGISTRATE GRAAFF REINET

1. PURPOSE

The purpose of this document is to inform Parliament on the provisional suspension from office of Mr C M Dumani, a magistrate at Graaff Reinet pending the outcome of an investigation into his 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 Mr Dumani is a magistrate and he was appointed the Judicial Head of the District Court, Graaff Reinet. He was duly admitted as an Attorney of the High Court on 15 May 1997. Mr Dumani was appointed as an acting magistrate by the Minister with effect from 1 November 2008. He is currently serving as an acting magistrate for a probationary period of twelve months.

2.2 The investigation instituted by the Commission confirmed that four (4) complaints by four (4) female employees, employed at the Graaff Reinet Court House, were filed against Mr Dumani. It is alleged that Mr Dumani during the period December 2008 and January 2009 on different occasions

conducted himself in an unbecoming and embarrassing manner by stroking the cheek of a cleaner and a security officer with the back of his hand and tickling the back of the neck of a cleaner. He also stuck his hand between the clerk of the court's breasts. Mr Dumani denies all the allegations against him.

2.3 On 5 March 2009 the Executive Committee of the Magistrates Commission resolved to charge Mr Dumani with four counts of misconduct. Arrangements were made for the misconduct inquiry to commence on 14 May 2009. Due to technicalities this could not materialise. The inquiry is now set down to commence on 5 and 6 August 2009.

3. DISCUSSION

3.1 On 6 March 2009 the Commission asked Mr Dumani to show cause why a decision to provisionally suspend him from duty pending the outcome of an investigation into his fitness to hold office, should not be taken. On 26 March 2009, his attorney, acting on his behalf, indicated that his client does not wish to make any representations to the Commission with regard to his provisional suspension.

3.2 At its meeting held on 29 and 30 July 2009 the Commission considered the matter and resolved to advise you to provisionally suspend Mr Dumani from office in terms of section 13(3)(a) of the Act. The following considerations weighed with the Commission.

3.2.1 Allegations against Mr Dumani are of such a serious nature as to make it inappropriate for him to perform

his functions while the allegations are being investigated and that should the allegations be proved true, he would be liable to be removed from office.

3.2.2 Given the current public outcry against the abuse of women by men, Mr Dumani's continued service on the Bench would severely damage the image of the judiciary. His continued service may be construed as some indication of insensitivity.

3.2.3 Judicial Officers are expected to be exemplary in order to inspire confidence in the administration of justice. Although the accusations are still to be proved, the sheer moral depravity of the allegations is such that Mr Dumani should be taken off the bench in the meantime. He has only recently been appointed as Judicial Head of the Graaff Reinett Court House. The matter has received publicity in the media.

3.2.4 The alleged conduct was at the workplace involving junior staff members. The complainants had to receive counselling. They all experience a tense working relationship and try to avoid having to make contact with him whatsoever. It would be appropriate to keep Mr Dumani away from that office in the meantime.

Allegations of this nature are notoriously difficult to prove sometimes, given the fact that there are seldom witnesses; there is also a vehement denial by Mr Dumani. The recommendation is therefore that he be provisionally suspended from office.

4. 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 7 (seven) days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 7(seven) days after the commencement of its next ensuing session (section 13(3)(b) of the Act).

5. CONCLUSION

In the light of the foregoing, I decided to provisionally suspend Mr Dumani, Magistrate at Graaff Reinet from office with immediate effect, pending the outcome of an investigation into his fitness to hold the office of a Magistrate.

6. This report is hereby submitted for consideration by Parliament in terms of section 13(3)(c) of the Magistrates Act, 1994.

Given under my hand at CAPE TOWN on this 16th day of September two thousand and nine.

J - Raabe
MR J T RADEBE, MP
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT



MINISTER
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Mr C M Dumani
c/o Magistrate's Court: Graaff Reinet
Private Bag X691
GRAAFF REINET
6280

Dear Mr Dumani

PROVISIONAL SUSPENSION FROM OFFICE

I regret to inform you that after having considered the advice of the Magistrates Commission, I have, in terms of section 13(3)(a) of the Magistrates Act, 1993 (Act No 90 of 1993), decided to provisionally suspend you from office pending the inquiry into your fitness to hold office as a Magistrate with immediate effect.

A report to this effect is in the process of being tabled in Parliament in compliance with the provisions of section 13(3)(b) of the Act.

As soon as Parliament has taken a decision in this regard, you will be informed.

With kind regards

Handwritten signature of Jeff Radebe in cursive.

JEFF RADEBE, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DATE: 16/09/01



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The Honourable Mr Justice B M Ngoepe
Chairperson: Magistrates Commission
P O Box 9086
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0001

Dear Judge President

**PROVISIONAL SUSPENSION FROM OFFICE: MR C M DUMANI, MAGISTRATE AT GRAAFF
REINET**

With reference to your recent letter (under your reference 6/5/5/2(11/09), I wish to inform you that I, after having considered the Commission's advice, decided to provisionally suspend Mr C M Dumani, Magistrate at Graaff Reiniet, 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 Dumani is also enclosed.

With kind regards


JEFF RADEBE, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
* Annexure

DATE: 16/09/09