



## REPORT

### PROVISIONAL SUSPENSION FROM OFFICE OF A MAGISTRATE: MRS N E NDAMASE, ADDITIONAL MAGISTRATE, PRETORIA

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#### 1. PURPOSE

The purpose of this document is to inform Parliament on the provisional suspension from office of Mrs N E Ndamase, an additional magistrate at Pretoria 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

Ms Ndamase is an additional magistrate at the Pretoria District Court. She has been a prosecutor at Pretoria before being appointed to the district court bench. She was appointed on 1 July 1999 as a magistrate.

- 2.1 Mr D Nair, the Chief Magistrate, Pretoria filed complaints with the Commission against both Ms T E Mafafo and Ms N N E Ndamase, additional magistrates at the Pretoria District Court. The Ethics Committee of the Commission at its meeting held on 4 December 2008 gave Mr Nair the opportunity to orally brief the Committee on the contents of his affidavit dated 4 December 2008 and the supporting documents attached thereto, in which he fully set out the complaints. Mr Nair dealt with the complaints against both magistrates in his affidavit. Since Ms Mafafo has in the meantime resigned, any reference to her alleged conduct in Mr Nair's affidavit should be ignored. (Specifically paragraphs 9 –

18 of his affidavit).

- 2.2 With regard to the conduct of Ms Ndamase, Mr Nair is of the opinion that steps be taken against her for insubordination and indolent/negligent execution of duties. He alleged that her conduct is contrary to the Code of Conduct for Magistrates and unbecoming of a judicial officer.
- 2.3 Ms Ndamase was on her request rotated from the Criminal to the Civil Section in Pretoria, prior to Mr Nair's appointment as Chief Magistrate, Pretoria. On 15 January 2007 according to an affidavit filed by Ms Rademan, the Senior Magistrate in control of the Civil Section at Pretoria, Ms Ndamase did her full civil training at Justice College and attended various courses. Magistrate Myambo was appointed as her tutor for a period of 3 months. They both tried their best with her training.
- 2.4 It is alleged that Ms Ndamase seldom grants default judgments and that she is sending them all back with a lot of unfound enquiries. When attorneys attempt to address these queries with Ms Ndamase in chambers, an audience is summarily refused. Correspondence directed to her by attorneys in this regard is left unanswered. In an effort to assist, Ms Rademan wrote Ms Ndamase a letter dated 29 May 2008 wherein she kindly requested Ms Ndamase to look into a few matters. She concluded her letter "*I hope you find this helpful. If you have any other problems feel free to discuss it with me*". Ms Ndamase responded by stating "*explicitly and in no uncertain terms that she does not want*" Ms Rademan's training.
- 2.5 Ms Myambo in her statement dated 3 December 2008 indicates that civil trials allocated to Ms Ndamase would be returned after the civil roll has been called with either a postponement or a

settlement. She mentions that "trial matters are not the only cases that have been problematic. Magistrate Ndamase has been requested in the past to deal with *ex parte* matters. On numerous occasions she would refer her *ex parte* applications to me on the grounds that the papers were in Afrikaans or that she did not understand the rule or act applicable to the application. At a certain point I refused to assist and referred the matters back to her". The other magistrates in the civil section had to deal with the trials that were allocated to Ms Ndamase.

- 2.6 Mr Nair states that Ms Ndamase is conducting herself in an insubordinate manner. She *inter alia* refused to go to his office when requested to do so on 1 December 2008. She further refused to attend a meeting on 2 December 2008 without her legal representative being present.
- 2.7 When requested to attend to inquests, Ms Ndamase indicated to Ms Rademan that she refuses to work under Mrs Raphalela, the Senior Magistrate, Quasi Judicial matters, or Ms Mamosebo, the Senior Magistrate heading the Criminal Section.
- 2.8 When Ms Ndamase, after a short absence, returned to the Civil Section, she indicated to Ms Rademan that she is no longer able to do *ex parte* applications and/or any matter where the new National Credit Act is applicable. She indicated that her handbooks were at the Atteridgeville Court and that she was therefore unable to do civil work. She was referred to one of her colleagues to use her text books but responded that her office was too far away. The result was that the other magistrates in the Civil Section had to deal with the applications.
- 2.9 When she was placed in the section 65 Court, to enable her to be slowly integrated back into the Civil Section again, she objected to

it stating that she regards the Section 65 Court as inferior work.

- 2.10 On 29 May 2008, Ms Rademan, in her letter to the Chief Magistrate, reports that she "is still prepared to do her utmost to give Ms Ndamase the necessary training, but for the training to be successful, Ms Ndamase will have to change her attitude and willing to accept training and guidance and not to regard it as persecution and placing curses on her supervisors".
- 2.11 Ms Rademan in a further statement dated 3 February 2009 is of the view that Ms Ndamase "is not competent to do civil work....., despite the fact that she received extensive training from Justice College....Numerous times she refused to do the work allocated to her, without any valid reason.
- 2.12 Having been briefed by Mr Nair the Ethics Committee at its meeting held on 4 December 2008 resolved that Ms Ndamase be charged with misconduct in terms of regulation 26(1) of the Regulations for Judicial Officers in Lower Courts, 1994 without conducting a preliminary investigation. The Committee is of the opinion that there is prima facie evidence to support a charge(s) of misconduct. The Ethics Division is in the process of obtaining further statements and consulting with possible witnesses. Due to the extent and nature of the complaints this is a time consuming process. New complaints against her are also furnished almost on a weekly basis.
- 2.13 When the Chief Magistrate, Pretoria was advised of the Committee's resolution, he on 30 January 2009 deemed it necessary and in the interest of the operational efficiency of the Private Law Courts and the general administration of justice to direct Ms Ndamase in writing to, with effect from 2 February 2009, commence duty under the guidance and supervision of Ms

Mamosebo, the Head of the Criminal Section. In a letter dated 3 February 2009 Mr Nair reports to the Commission that Ms Ndamase has failed to report to Ms Mamosebo and that she refused to carry out the instruction. He is no longer able to communicate sensibly with Ms Ndamase. He reports that her conduct "has reached a stage where it is causing a tremendous negative impact on the operation of the Court and causing great embarrassment to the Judiciary". He requested the Commission to take steps to have her suspended as she is totally unapproachable and refuses to carry out any instruction. Ms Ndamase responded on 3 February 2009 in writing to the Chief Magistrate indicating that she regards his instructions as unlawful and based on false accusations.

- 2.14 Ms Ndamase also filed criminal charges of perjury with the South African Police Services against Mr Nair and Ms Rademan. The Director of Public Prosecutions declined to prosecute against Mr Nair. A decision in regard to Ms Rademan is still awaited.

### 3. DISCUSSION

On 27 February 2009 Ms Ndamase was requested in writing to show cause why the Commission should not advise the Minister of Justice and Constitutional Development to provisionally suspend her from office in terms of section 13(3)(a) of the Magistrates Act, 1993 (Act 90 of 1993).

- 3.1 Ms Ndamase, in her response dated 2 March 2009 is of the view that the Ethics Committee was misled by Mr Nair, that the accusations against her are false, and interfering with her judicial independence. She claims that the Commission did not comply with the *audi alteram partem* rule. She further queried Mr Nair's decision to rotate her to the Criminal Section, claiming that his decision was without substance. She is of the view that the

Commission's contemplated consideration to provisionally suspend her from office is premature.

- 3.2 The Ethics Committee at its meeting held on 5 March 2009 considered Ms Ndamase's representations and granted her extension of 14 days to respond. She was informed about this decision in writing on 19 March 2009. The Committee requested her to respond to the information she requested, on 20 February 2009.
- 3.3 She in her letter dated 17 April 2009 acknowledged receipt of some of the information which led the Ethics Committee to resolve to charge her with misconduct.
- 3.4 In a letter dated 20 April 2009 she requested the Commission to "tabulate clearly those reasons" why she should be provisionally suspended from office and requested the members of the Ethics Committee to recuse themselves from the matter.
- 3.5 The Ethics Committee at its meeting held on 21 May 2009 considered the documentation referred to it and found no basis to recuse itself from dealing with the matter.
- 3.6 Ms Ndamase has in the meantime been allocated to do admission of guilt work. She however refused to do so and requested to be left alone. Ms Mamosebo reported this to the Chief Magistrate on 17 June 2009.
- 3.7 Mr Nair reports that Ms Ndamase is doing what she pleases. She leaves the office without permission and has recently been booked off sick on several occasions. She however fails/refuses to complete the prescribed leave form and fails/refuses to inform her seniors about it. She still on numerous occasions refuses to

execute lawful instructions given to her.

The Magistrates Commission at its meeting held on 29 and 30 July 2009 considered all the documentation presented before it and is satisfied that reliable evidence exist indicating that the allegations against Ms Ndamase are of such a serious nature as to make it inappropriate for her to perform the functions of a magistrate while the allegations are being investigated.

#### 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**

On the basis indicated above, I have decided to suspend Mrs Ndamase, an additional Magistrate at Pretoria from office with immediate effect pending the outcome of an investigation into her fitness to hold the office of Magistrate.

6. The 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 *CAPE TOWN* on this *16<sup>th</sup>* day of *September* two thousand and nine.

*J - Radde*

**MR J T RADEBE, MP**

**MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT**







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Ms N G Beshe  
Vice Chairperson of the Magistrates Commission  
P O Box 9096  
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Dear Ms Beshe

**PROVISIONAL SUSPENSION FROM OFFICE: MRS N E NDAMASE, ADDITIONAL  
MAGISTRATE AT PRETORIA**

With reference to your recent letter (under your reference 6/5/5/2(117/08), I wish to inform you that I, after having considered the Commission's advice, decided to provisionally suspend Mrs N E Ndamase, additional Magistrate at Pretoria, from office pending the outcome of the inquiry into her 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 Mrs Ndamase is also enclosed.

With kind regards

*J. Raedebe*

JEFF RADEBE, MP  
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Annexure

DATE: 18/09/09