



REPORT

UPLIFTMENT OF PROVISIONAL SUSPENSION FROM OFFICE OF A MAGISTRATE: MR M K CHAUKE, ADDITIONAL MAGISTRATE, PRETORIA

1. PURPOSE

The purpose of this report is to inform Parliament of a decision taken by the Minister of Justice and Constitutional Development to uplift the provisional suspension of a Magistrate, Mr M K Chauke from Pretoria, with immediate effect.

2. BACKGROUND

- 2.1 The Minister, on the advice of the Commission, provisionally suspended Mr Chauke from office with effect from 05 February 2010 which suspension was confirmed by both Houses of Parliament on 01 and 04 June 2010, respectively.
- 2.2 Mr Chauke's first appearance before the Specialized Commercial Crime Court, Pretoria, on a charge of theft which emanated from the theft of a number of containers from Vitamine Laboratories in Midrand was on 16 September 2004.
- 2.3 On 08 November 2007 the Specialized Commercial Crime Court, Pretoria convicted Mr Chauke, his wife and his son of contravening section 37 of the General Law Amendment Act, No. 62 of 1955 (receiving of stolen property). On 16 November 2007 they were all sentenced to 12 months imprisonment, suspended for a period of 5 years on condition that they were not again convicted of contravening section 37 of Act 62 of 1955 committed during the period of suspension.
- 2.4 After Messrs Mohlaba and Moshwana Attorneys, acting on Mr Chauke's behalf, advised the Commission on 20 November 2007 that they had been

instructed to appeal against Mr Chauke's criminal conviction, the Commission decided not to proceed with the misconduct inquiry against him, pending the outcome of the appeal.

3. DISCUSSION

- 3.1 After a postponement occasioned by Mr Chauke, the appeal was eventually heard on 15 June 2010. Mr Chauke's conviction and sentence were set aside. The Commission, after studying the judgment, decided not to proceed with the misconduct charge based on the criminal charges.
- 3.2 In the meantime the Commission commenced with a misconduct inquiry against Mr Chauke in respect of the remaining two (2) charges of misconduct. The charges were not related to the criminal case referred to above. It was alleged that Mr Chauke contravened the Regulations for Judicial Officers in the Lower Courts, 1994 and the Code of Conduct for Magistrates in that he, during the period October 2002 to July 2004 during and after official office hours, retained and forwarded e-mails to other persons containing explicit pornographic material on and from a computer supplied to him by the Department of Justice and Constitutional Development for the exclusive use in the execution of his official duties as a magistrate and that he used the said computer to access internet sites containing explicit pornographic or obscene material.
- 3.3 After considering the evidence placed before him at the misconduct inquiry, the Presiding Officer, on 5 July 2010, found Mr Chauke guilty of misconduct in respect of the charge referred to in the previous paragraph; that he failed to act at all times in a manner which upholds and promotes the good name, dignity and esteem of the office of magistrate and the administration of justice. He was acquitted on the other count as it was found to be a duplication. The Presiding Officer postponed the imposition of a sanction for a period of twelve (12) months on certain conditions in terms of regulation 26(17)(a) of the Regulations for Judicial Officers in the Lower Courts, 1994.
- 3.4 Since the criminal conviction of theft, which formed the basis of Mr Chauke's provisional suspension, has been set aside by the High Court, Mr Chauke's

further provisional suspension would not be justified. The nature and seriousness of the charge of misconduct on which he was found guilty does not warrant a provisional suspension either, since the sentence imposed does not impact upon his fitness to hold office.

4. CONCLUSION

- 4.1 Since the basis on which Mr Chauke was provisionally suspended fell away, there was no reason to uphold his provisional suspension. Accordingly, his provisional suspension was uplifted upon receipt of the Commission's recommendation in this regard.

Given under my hand at Cape Town on this 2nd day of November 2010.

J. Raedebe
MR J T RADEBE, MP
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT