

REPORT

SUSPENSION OF A MAGISTRATE: M N JASSIEM, ADDITIONAL MAGISTRATE AT MITCHELLS PLAIN

1. PURPOSE

The purpose of this report is to inform Parliament on the provisional suspension from office of M N Jassiem, an additional magistrate at Mitchells Plain 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 On 9 October 2006, 28 August 2007 and again on 23 November 2009, Mr Jassiem wrote to the Magistrates Commission for approval to run his practice as an attorney whilst permanently appointed as a Magistrate.
- 2.2 In a letter dated 17 July 2007, Mr Jassiem was informed that the Service Conditions Committee of the Commission, at its meeting held on 23 May 2007, had resolved to refer the matter to the Magistrates Commission for consideration whether to refer the matter to the Cape Law Society for investigation.
- 2.3 At its meeting held on 23 August 2007, the Magistrates Commission resolved not to approve Mr Jassiem's request to be allowed to practise as an attorney. His Judicial Head of the

Administrative Region, the Chief Magistrate, Wynberg was informed about the Commission's resolution in writing on 12 September 2007 and was requested to inform him accordingly.

2.4 From a note on a letter dated 21 September 2007 from the Chief Magistrate, Wynberg and directed to the Magistrate, Mitchells Plain, it appears that Mr Jassiem was duly notified of the Commission's resolution. The Commission has, however, noted with concern that Mr Jassiem is apparently still practising as an attorney and that he is therefore deliberately in defiance of a decision by the Commission that he is not allowed to practise as an attorney whilst holding the office of Magistrate.

2.5 It appeared from the contents of an affidavit dated 17 September 2009, received from the Senior Legal Officer of the Cape Law Society that:

- Mr Jassiem ceased practising as an attorney on 09 October 2000 but that he thereafter recommenced to practise for own account as M N Jassiem and Associates from 1 November 2006;
- he is the sole partner in the firm
- there are no other practitioners at the firm and that he personally applied for a Fidelity Fund Certificate for 2007, 2008, 2009 and 2010. Further that he is in possession of a 2010 Fidelity Fund Certificate and that he submitted an unqualified trust account audit for the period ending 28 February 2009 for his firm M N Jassiem and Associates.

2.6 After considering the contents of the affidavit and further correspondence received from the Cape Law Society, the Chairperson of the Commission, the Honourable Judge President B M Ngoepe, directed the Secretariat to request Mr Jassiem to give reasons why he should not be charged with misconduct for deliberately defying a

decision taken by the Magistrates Commission on 23 August 2007. The Secretariat wrote to Mr Jassiem on 12 November 2009.

2.7 At its meeting held on 26 November 2009:

2.7.1 The Commission endorsed the Chairpersons's decision and steps taken in paragraph 2.6 above and

2.7.2 considered Mr Jassiem's response to its letter dated 12 November 2009 and resolved that Mr Jassiem be charged with misconduct.

3. DISCUSSION

3.1 Mr Jassiem was subsequently charged with misconduct on 11 December 2009, the charge sheet of which he acknowledged receipt of the same day.

3.2 The misconduct inquiry against Mr Jassiem commenced on 06 April 2010 at Mitchells Plain. He elected to conduct his own defence.

3.3 Although Mr Jassiem initially pleaded guilty to the main charge, his plea was altered to one of not guilty as he indicated that he never ran any practice as an attorney but was doing conveyancing and estate administration. The Commission therefore led oral evidence of four (4) witnesses and submitted letters of correspondence between the Commission and Mr Jassiem as Exhibits.

In his judgment, the Presiding Officer found Mr Jassiem dishonest in that he on 08 October 2006 misled the Cape Law Society indicating in writing that he had the Magistrates Commission's permission to practise as an attorney whilst in actual fact he knew that he did not have such written permission and only requested the Commission's permission on 09 October 2006. He further found that Mr Jassiem misled his Judicial Head of office, the acting

Chief Magistrate, Mitchells Plain and that his conduct showed lack of integrity as an officer of the court.

3.4 After considering all the facts and submissions from both parties, the Presiding Officer made the following findings:

- That Mr Jassiem contravened the provisions of section 15 of the Magistrates Act, No. 90 of 1993, by performing work outside his duties of office without the consent of the Minister.
- That Mr Jassiem made misrepresentation of facts by –
 - (a) informing the Law Society that the Magistrates Commission permitted him to practise as an attorney;
 - (b) giving a cellphone number to the Acting Chief Magistrate, Mr Loots, instead of giving him a proper fax number; and
 - (c) requesting Mr Loots to use his cellphone number as a fax whereas it was his wife who had access to such cellphone number.
- That Mr Jassiem ignored serious concerns raised by the Magistrates Commission by continuing to practise as an attorney while a magistrate.

3.5 After considering all the evidence presented before him, the Presiding Officer found Mr Jassiem guilty of misconduct on the main count.

3.6 The findings show Mr Jassiem's lack of integrity and honesty, and therefore unsuited to hold the office of Magistrate.

3.7 When considering the imposition of a sanction, the Presiding Officer found the following to be aggravating factors. He addressed Mr Jassiem as follows:

"That the conduct that you have been found guilty of is of a very serious nature; that you were made aware that the Commission had some

serious concerns regarding your practice as an attorney; that you continued to practise as an attorney whilst being a magistrate from the year 2006; that by so practising as an attorney you were defying the Magistrates Commission resolution for a period of about four years; that you misled the Cape Law Society by writing a letter stipulating that you have permission from the Commission well knowing that it is a lie. That you were dishonest; that you misled the Commission by continuing to practise as an attorney and by so doing it shows that you did not show any remorse. It is an aggravating factor the fact that you had been serving two masters for a period of about four (4) years and the fact that you had not been honest to both of them. Once more I would like to talk about your honesty and integrity. Your misleading behaviour of denying knowledge of some of the things really clashes with your duty of absolute honesty and integrity to the Court. I have no doubt also that such actions in other forms can be found to be unprofessional conduct."

On this basis the Presiding Officer, on 20 July 2010, recommended in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 that Mr Jassiem be removed from office as contemplated in section 13 of the Magistrates Act.

- 3.8 Mr Jassiem was given the opportunity to furnish the Commission with written representations in respect of the sanction recommended by the Presiding Officer.
- 3.9 Mr Jassiem is of the view that the "so-called reply from the Commission" dated 12 September 2007, in which the Commission resolved not to approve his request to be allowed to practise as an attorney "is to be considered as *pro non scripto* as it grossly violates my constitutional rights. (1) The right to a speedy hearing (2) the right to act, to act fairly. The right to equality ... The right to a fair labour practice."
- 3.10 At its meeting held on 26 August 2010 the Commission considered the contents of the following documents as required

by regulation 26(22) read with regulation 26(19) of the Regulations for Judicial Officers in Lower Courts, 1994:

- a copy of the charge sheets in respect of the misconduct inquiry, the presiding officer's findings in relation to the charges and the reasons therefor, which includes his findings in relation to the aggravating and mitigating factors,
- the representations submitted by Mr Jassiem,
- the presiding officer's recommendation in terms of regulation 26(17)(b) of the Regulations and the reasons therefor, and
- a copy of the record of proceedings.

The Commission resolved, at the same meeting, to accept the findings of the Presiding Officer and to recommend to the Minister for Justice and Constitutional Development to remove Mr Jassiem from office on grounds of misconduct in terms of section 13(4)(a)(i) of the Magistrates Act, 1993.

4. LEGISLATIVE REQUIREMENTS

- 4.1 In terms of section 13(4)(a) of the Magistrates Act, No. 90 of 1993, the Minister for Justice and Constitutional Development, 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.
- 4.2 A report in which such suspension and the reason therefor are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

- 4.3 Parliament must then, as soon as it is reasonably possible, pass a resolution as to whether or not the restoration to office of the Magistrate so suspended is recommended.
- 4.4 After a resolution has been passed by Parliament as contemplated in paragraph 4.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.
- 4.5 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 therefor.
- 4.6 On this basis I have suspended Mr Jassiem from office.

5. CONCLUSION

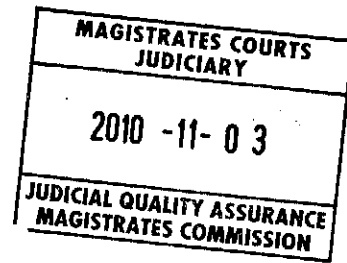
This report as required by section 13(4)(b) of the Magistrates Act, 1993 is submitted for Parliament's consideration.

Given under my hand at Cape Town on this 4th day of November 2010

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



**MINISTER
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA**



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

Fax No: 012 – 326 3957

Dear Judge President

**SUSPENSION PENDING REMOVAL FROM OFFICE: MR M N JASSIEM, ADDITIONAL
MAGISTRATE AT MITCHELL'S PLAIN**

With reference to your letter dated 2 September 2010 (under your reference 8/5/5/2(98/2009), I wish to inform you that on the basis of the Commission's recommendation that Mr Jassiem be removed from office on the ground of misconduct, I have suspended him from office in terms of section 13(4)(a) of the Magistrates Act, 1993.

A copy of the Report tabled in Parliament in accordance with the provisions of section 13(4)(b) of the Magistrates Act, 1993 is enclosed herewith for your records

With kind regards

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

DATE: 04/11/10



MINISTER
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MITCHELL'S PLAIN
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Fax No: 086 5077 293

Dear Mr Jassiem

SUSPENSION FROM OFFICE

I regret to inform you that after having received a recommendation from the Magistrates Commission for you to be removed from office, I have, in terms of section 13(4)(a) of the Magistrates Act, 1993 (Act No 90 of 1993), suspended you from office with immediate effect pending a resolution by Parliament in terms of section 13(4)(c) of the Act.

A report to this effect is in the process of being tabled in Parliament in compliance with the provisions of section 13(4)(b) of the Act.

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

With kind regards

J. Radebe
JEFF RADEBE, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DATE: 04/11/10