



REPORT

SUSPENSION OF A MAGISTRATE: MS A MAHARAJ: ADDITIONAL MAGISTRATE AT GEORGE

1. PURPOSE

The purpose of this report is to inform Parliament of the suspension of Ms A Maharaj, an additional magistrate on probation at George pending consideration by Parliament of a recommendation by the Magistrates Commission for her removal from office in terms of section 13(4)(a)(i) of the Magistrates Act no 90 of 1993.

2. BACKGROUND

- 2.1 Ms Maharaj is serving as additional magistrate at the Magistrate George, on probation. Based on the charges of misconduct set out in a charge sheet dated 8 March 2007, the misconduct inquiry against Ms Maharaj, initially commenced on 20 March 2007 at George and was postponed at the request of the defence to obtain further instructions. On 24 July 2007 the inquiry resumed at Durban and was postponed *sine die* pending submissions to be made by Ms Maharaj to the Commission regarding the charges preferred against her. Upon receipt of Ms Maharaj's written submissions, the Commission in a letter dated 20 September 2007 indicated to her that it would only proceed with the first two (2) of the eight (8) charges preferred against her and that it accepted her written explanation on the remaining counts.

2.2 Further complaints of misconduct against Ms Maharaj were in the meanwhile received and the Commission resolved to add further charges of misconduct against her. She acknowledged receipt of the second charge sheet dated 17 July 2008 containing counts 9 – 13 on 21 July 2008.

3. DISCUSSION

3.1 The inquiry eventually resumed on 12 March 2009 at Durban. Ms Maharaj was on sick leave for a period of time prior to this date. Ms Maharaj was represented by counsel throughout the proceedings. She pleaded not guilty to all the counts of misconduct. Various points *in limine* and special pleas were raised by the defence which resulted in the Commission only being able to start leading the evidence on 18 August 2009. The Presiding Officer found Ms Maharaj guilty on counts 1, 2, 9, 10 and 12. No evidence was led in respect of count 11. She was therefore acquitted on this count. She was also acquitted on count 13.

3.2 With regard to count 1, Ms Maharaj conceded in her evidence in chief and under cross-examination that the two (2) statements she made in response to the allegations, during the investigation, prior to the misconduct inquiry, were false. It is common cause that the National Prosecuting Authority is investigating a criminal charge of

perjury against her. In regard to count 10, the Presiding Officer found Ms Maharaj's conduct towards Ms Venter more a matter of intimidation than of violence.

3.3 On 15 April 2010 the Presiding Officer when imposing a sanction, concluded that each count on which Ms Maharaj was found guilty *"hits at the integrity of a judicial officer". "Integrity is characteristic of a judicial officer and one would have expected of you to be honest in all your utterances and actions in order to gain the respect and honour while in office."* She found the following response pertaining to the false statements from Ms Maharaj in respect of count one (1) namely that *"it is easier to lie on paper than in front of people"* not to hold water and found that she exposed herself to be a liar.

3.4 Having had regard to all the facts placed before her during the inquiry, the Presiding Officer recommended that Ms Maharaj be removed from office as contemplated in section 13 of the Act.

3.5 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 her findings in relation to the aggravating and mitigating

factors,

- the representations submitted by ms Maharaj,
- 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 subsequently resolved to recommend to the Minister of Justice and Constitutional Development to remove Ms A Maharaj 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 his/her 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, once the Magistrates Commission has recommended that a Magistrate be removed from office on the ground of misconduct, the Minister must suspend that Magistrate from office.

4.6 On this basis I have suspended Ms Maharaj 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 THIS 4th DAY OF November2010.

J. Raade
MR J T RADEBE, MP

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT



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The Honourable Mr Justice B M Ngoepe
Chairperson: Magistrates Commission
P O Box 9086
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Fax No: 012 - 325 3957

Dear Judge President

**SUSPENSION PENDING REMOVAL FROM OFFICE: MS A MAHARAJ, ADDITIONAL
MAGISTRATE AT GEORGE**

With reference to your letter dated 2 September 2010 (under your reference 6/5/5/2(52/06 and 285/06), I wish to inform you that on the basis of the Commission's recommendation that Ms Maharaj's be removed from office on the ground of misconduct, I have suspended her 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. Raedebe
JEFF RADEBE, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
Annexure

DATE: 04/11/10



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Ms A Maharaj
Magistrate's Office: George
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GEORGE
6530

Fax No: 044 – 802 5861

Dear Ms Maharaj

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