

REPORT

PROVISIONAL SUSPENSION OF A MAGISTRATE: MR I W O M MORAKE, MAGISTRATE AT LICHTENBURG

1. PURPOSE

The purpose of this report is to inform Parliament on the provisional suspension from office of Mr I W O M Morake, the magistrate and Judicial Head at Lichtenburg 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 90 of 1993).

2. BACKGROUND

2. Mr Morake is the Magistrate and Judicial Head at Lichtenburg. Several complaints have been lodged with the Commission against Mr Morake during the past months. They are summarised below.

- 2.1 Attorneys Ranamane Phungo Incorporated, acting on behalf of Moeder Moraine Tirano, filed a complaint with the Commission. The allegations are that Mr Morake instructed their client to vacate the property she was occupying without any application being placed before him. The instruction was not based on any Court process nor was there a court order or any consent to vacate the premises from Ms Tirano in this regard. It is alleged that Mr Morake called Ms Tirano to his office on Friday, 11 September 2009 and personally instructed her that she had to vacate her premises.

- 2.2 The Provincial Head of the South African Police Detective Service, North West requested the Commission to Investigate a complaint against Mr Morake forwarded to him by one of its members. The investigating officer attached to the Stock Theft Unit at Sannieshof, in a stock theft case, arrested a suspect in the Lichtenburg district and seized the livestock to be impounded. The suspect was formally charged and appeared before the Lichtenburg District Court. The case was subsequently postponed for further investigation to 31 August 2009 and the accused was released on bail. The investigating officer alleged that he was phoned by the magistrate, Mr Morake, a week prior to the remand date and that he was ordered to report to his office that day at 11:00 and that should he not attend, a warrant will be issued for his arrest. He honoured the appointment and a meeting did indeed take place that day at the office of Mr Morake. The accused was also present. The investigating Officer felt very uncomfortable in discussing the matter and informed Mr Morake that the accused had already appeared in Court and that the matter had been postponed to 31 August 2009. Mr Morake asked him how he could help the accused. He responded by saying that the matter was in court and that he could not help. He felt Mr Morake's conduct as unusual and threatening.
- 2.3 The Chief Magistrate of the North West Administrative Region forwarded a matter to the Commission which was reported to her by Legal and Tax Services (Pty) Ltd, a legal Expenses Insurance Corporation. It is alleged that Mr Morake agreed to assist one of their client's with a loan agreement. The allegation is that R950.00 was forwarded to Mr Morake in order to secure the loan. However, since no assistance was forthcoming, they requested to be refunded.

- 2.4 It is further alleged that Mr Morake interfered in a private matter to such an extent that the complainant had to approach the court for relief. It is alleged that Mr Morake on 11 December 2009 phoned a businessman, a certain Mr Shohag and ordered him to come to his office right away. When Mr Morake was informed that Mr Shohag could not make it within an hour, he was threatened with arrest. Mr Shohag was advised to ignore the instruction of Mr Morake. Later that day three (3) police officers arrived at his shop. He was informed that another person, who was in Mr Shohag employment, had a problem with him and that he had to go and see the Magistrate regarding this matter on 14 December 2009 before 10:00. Mr Shohag and his two partners reported as instructed and found the other person in Mr Morake's office. He was asked what the problem was between him and the employee. He was told by Mr Morake to see to it to do business with him and was forced to sign an agreement to that effect. He was furthermore threatened by the Magistrate that if he did not listen to him, he, Mr Morake, would have him sent back to Bangladesh. Mr Shohag was humiliated, harassed and felt threatened and intimidated by Mr Morake's conduct. When he explained that he wanted to talk to a lawyer, Mr Morake allegedly lost his temper again and said that he would put them both in jail. Mr Morake's conduct caused Mr Shohag to instruct an attorney to file an *ex parte* application in court to grant an order to stop Mr Morake to contact him by any means, to forbid Mr Morake to send any member of the SAPS or any other person to him at all and to forbid Mr Morake to interfere with his business practice in any way at all. The *ex parte* order was granted on 24 March 2010. The matter has been reported to the SAPS Organized Crime Unit for investigation.
- 2.5 On 13 July 2007 Mr Morake appeared in the Lichtenburg District Court on three (3) charges of theft. The case stands postponed to 18 October 2010 for judgment.

2.6 It is further alleged that Mr Morake visited a lady at her workplace regarding a rental dispute she had with another person. He ordered her to come to his office with her husband, a pastor, to discuss the matter. She acceded to his request and they found the other person, the complainant, in his office. The dispute was about an electricity account to the amount of R1 173.00 which was in arrears and which had to be paid to the Municipality. When she tried to explain to Mr Morake why the amount was not paid, she was told to keep quiet and instructed to pay the R1 173.00 to him. When he was asked whether they could not make payment to the Municipality, he insisted that the money be paid to him. He threatened them to lock them up if they do not comply with his instruction. She, a few days later, did put the money in an envelope and handed it over to Mr Morake personally in his office. He would give the money to the other party. A few weeks later she was summoned to appear in the Small Claims Court for payment of the R1 173.00. The other party did not receive the money from Mr Morake and was unaware that it had already been paid to Mr Morake some weeks ago as he had instructed. The other party was informed that the money was paid to Mr Morake. When she tried to follow this up with Mr Morake he gave all sorts of excuses. He finally informed them that somebody took the money from his office and could only show them the empty envelope. Both parties viewed the conduct of the magistrate as threatening and unbecoming.

3. DISCUSSION

3.1 On 10 February 2010 the Magistrates Commission informed Mr Morake in writing that the Commission contemplates to recommend that he be provisionally suspended from office (with or without remuneration), pending the outcome of an investigation into his fitness to hold office. He was requested to show cause, in writing, why such a decision should not be taken.

3.2 At its meeting held on 26 August 2010, the Commission, having considered Mr Morake's response which was received on 25 February 2010, resolved to advise the Minister to again provisionally suspend Mr Morake from office in terms of section 13(3)(a) of the Act. The Commission is of the view that the existing evidence against Mr Morake is of such a serious nature as to make it inappropriate for him to perform the functions of a Magistrate while the allegations are being investigated.

3.3 It would furthermore be inappropriate for a judicial officer, appearing as an accused before a court of law on charges of theft, emanating from complaints within the district he is serving, to still sit on the Bench.

3.4 The Commission holds the view that, without anticipating the outcome of the investigation into his fitness to hold the office of Magistrate, the existing evidence against Mr Morake is of such a serious nature that it would justify his removal from office, should he be found guilty of the misconduct charges which are to be preferred against him.

4. AUTHORITY TO PROVISIONALLY SUSPEND

4.1 In terms of section 13(3)(a) of the Magistrates 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."*

4.2 A report in which the provisional suspension and the reasons therefor 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

5.1 In the light of the foregoing, I decided to provisionally suspend Mr Morake, the Magistrate and Judicial Head at Lichtenburg from office with immediate effect, pending the outcome of an investigation into his fitness to hold the office of a Magistrate.

5.2 This report is 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 *4th* day of *November* 2010.

J. Radebe

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
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Fax No: 012 – 325 3957

Dear Judge President

**PROVISIONAL SUSPENSION FROM OFFICE: MR I W O M MORAKE, MAGISTRATE AT
LICHTENBURG**

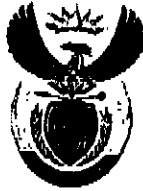
With reference to your letter dated 8 September 2010 (under your reference 6/5/5/2(207/07; 82/09;88/09; 19/10; 20/10; 89/10), I wish to inform you that I, after having considered the Commission's advice, decided to provisionally suspend Mr I W O M Morake, a Magistrate at Lichtenburg, from office pending the outcome of the inquiry into his fitness to hold office as a Magistrate.

A copy of the report to be 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 Morake is also enclosed.

With kind regards

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

DATE: 04/11/10



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Mr I W O M Morake
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LICHTENBURG
4855

Dear Mr Morake

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

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

DATE: 04/11/10