



**MINISTER
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REPUBLIC OF SOUTH AFRICA**

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Speaker of the National Assembly
Honourable Mr M V Sisulu
Parliament of the RSA
Cape Town
8001

Dear Honourable Mr Sisulu

**SUBJECT: WITHHOLDING OF REMUNERATION: MR C M DUMANI,
MAGISTRATE AT GRAAFF-REINET**

The purpose of this report is to inform Parliament of the decision taken by the Magistrates Commission to withhold the remuneration of Mr C M Dumani, the Magistrate and Judicial Head at Graaff Reinet, in terms of section 13 (4A) (a) of the Magistrates Act, 1993 (Act No 90 of 1993). Mr Dumani is currently under suspension / provisionally suspension.

Kind regards

J. Raedebe

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

DATE: 29/09/11

REPORT



**REPORT IN TERMS OF SECTION 13(4A) (b) OF THE
MAGISTRATES ACT, 1993: WITHHOLDING OF
REMUNERATION, MAGISTRATE C M DUMANI**

1. PURPOSE

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission to withhold the remuneration of Mr Dumani, the Magistrate at Graaff-Reinet, who has been provisionally suspended with remuneration with effect from 16 September 2009 and to provide Parliament with the reasons therefor.

2. BACKGROUND

On 26 August 2010 the Commission resolved to recommend that Mr Dumani be removed from office on the ground of misconduct. In terms of section 13(4) (a) (i) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act).

Mr Dumani however filed a Notice of Motion in the Grahamstown High Court, interdicting and restraining me from taking any further action against him, pending another application to have his conviction of misconduct reviewed and set aside. The urgent application was not opposed and the High Court granted the order in favour of Mr Dumani on 21 October 2010. On 12 August 2011 Mr Dumani's application to review and set aside the Presiding Officer's finding of guilty of 3(three) charges of misconduct was however dismissed with costs. The State Attorney, Grahamstown has subsequently been served with a Notice of

Application for Leave to Appeal to the Supreme Court of Appeal by Mr Dumani's attorneys.

3. **DISCUSSION**

Having considered the Commission's recommendation as contained in its letter to me dated 23 August 2011, to confirm Mr Dumani's provisional suspension from office, I on 15 September 2011 suspended Mr Dumani from office and tabled a report in this regard in Parliament.

The Commission is of the view that the withholding of Mr Dumani's remuneration, pending the consideration by Parliament of a recommendation by the Magistrates Commission for his removal from office, is justified. There seems to be no reason why a magistrate, on suspension, or provisional suspension for that matter, who is not fit to hold office, and is being removed from office for that reason, should be paid for the period during which he or she is suspended prior to his/her removal.

Mr Dumani, through his legal representative, was invited to show cause why the Commission should not determine to withhold his remuneration in terms of section 13(4A) (a) of the Act.

Despite a reminder dated 2 September 2011 sent to Daubermann Attorneys, no response has been received to date.

4. **LEGAL POSITION**

If the Commission determines that the remuneration of a magistrate shall be reduced or withheld, a report regarding that determination and the reason therefor must be tabled in Parliament by the Minister within 7 days of such determination if Parliament is in session, or, if Parliament is not then in session, within 7 days after the commencement of its next ensuing session (Section 13(4A) (b) of the Act).

5. **CONCLUSION**

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

Given under my hand at PORT ELIZABETH on this 29 day of SEPTEMBER of SEPTEMBER 2011.


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



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Speaker of the National Assembly
Honourable Mr M V Sisulu
Parliament of the RSA
Cape Town
8001

Dear Honourable Mr Sisulu

**SUBJECT: PROVISIONAL SUSPENSION OF A MAGISTRATE: MR P S HOLE
REGIONAL MAGISTRATE AT KIMBERLEY**

The purpose of this report is to inform Parliament of the recommendation by the Magistrates Commission to provisionally suspend Mr Hole, Regional Magistrate at Kimberley from office in terms of section 13 (3) (a) of the Magistrates Act, 1993 (Act No 90 of 1993).

Kind regards

J. Raabe

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

DATE: 29/09/14



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Ref: 3/26/5/5 (n260901)
Enq: X1770
Email: Ministry@justice.gov.za

The Honourable Mr Justice M F Legodi
Chairperson: Magistrates Commission
P O Box 9096
PRETORIA
0001

Fax No: 012 – 325 3957

Dear Judge

***PROVISIONAL SUSPENSION FROM OFFICE: MR P S HOLE, REGIONAL MAGISTRATE AT
KIMBERLEY***

With reference to your letter dated 26 September 2011 (under your reference 6/5/5/2(50/2011), I wish to inform you that I, after having considered the Commission's advice, decided to provisionally suspend Mr Hole, a Regional Magistrate at Kimberley, 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 Hole is also enclosed.

With kind regards

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

DATE: 29/09/11



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

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Ref: 3/26/5/5 (n260901)
Enq: X1770
Email: Ministry@justice.gov.za

Mr P S Hole
Regional Magistrate: Kimberley
Private Bag X5014
KIMBERLEY
8300

Dear Mr Hole

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

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

DATE:.....29/09/16



PROVISIONAL SUSPENSION OF A MAGISTRATE: MR P S HOLE, REGIONAL MAGISTRATE AT KIMBERLEY

1. PURPOSE

The purpose of this report is to inform Parliament on the provisional suspension from office of Mr P Hole, Regional Magistrate at Kimberley 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

Mr Hole is a Regional Magistrate at Kimberley. He is 48 years of age and has served the Department of Justice and Constitutional Development as an acting judge of the former Transkei High Court from October 2004 to July 2006. He was appointed a magistrate in December 2006 and in March 2007 appointed as a Regional Magistrate.

2.1 On the 17th May 2011, the Regional Court President of the Northern Cape region, having received enquiries *via* the Chief Magistrate, Kimberley, from Social Worker Liesel Vermeulen of Molehe Mampe Secure Care Centre about progress on certain cases, including cases RCZ856/2009 and RCZ641/2010, forwarded copies of the said enquiries to Mr Hole and all other regional court magistrates within his region. Mr Hole took an objection to the disclosure of these enquiries to him.

2.2 On 7 June 2011 Mr Hole caused a matter which was no longer on his roll to be placed before him. In a manner that might be construed as abuse of power, he made an order to have the Regional Court President to be subpoenaed in a case where he could not provide any evidence in respect of the charge on which the accused were appearing.

2.3 The Magistrates Commission at its meeting on 22 July 2011 considered the contents of various complaints received during July 2011 from the Regional Court President, Kimberley. The complaints refer *inter alia* to the following:

- A transcript of the court proceedings in case no. RCZ856/2009 – **State v P Loeto and others** in which Mr Hole presided on 7 July 2011, when Mr K M Nqadala was summoned to appear in his court.
- A transcript of the court proceedings in case RCZ641/2010 – **State v Mbalula and Others** in which Mr Hole presided on 7 June 2011 in the absence of the accused. The transcript indicates that Magistrate V S Smith remanded the case on 6 June 2011 to 20 June 2011. There is, however, no indication on the transcribed record as to why the case was enrolled on his court roll on 7 June 2011.
- The transcript of the court proceedings in case RCZ 641/2010 further indicates that Mr Hole presided in the matter on 7 July 2011 while Magistrate V Smith remanded the case on 20 June 2011 to 11 July 2011. There is, again however, no indication on the transcribed record as to why the case was enrolled on his court roll on 7 July 2011.
- The transcript of the court proceedings in case RCZ 641/2010 furthermore indicates that Mr Hole presided in the matter on 12 July 2011 while the case was remanded on 11 July 2011 to 14 and 15 December 2011 by Magistrate V Smith. There is no indication on the transcribed record as to why the case was enrolled on his court roll on 12 July 2011 when he had

formally recused himself from the case while the case was not properly before him for trial.

2.4 The transcriptions in case no. RCZ 856/2009 – State v P Loeto and Others and case no. RCZ 641/2010 – State v Mbalula and Others contain various remarks, utterances and discussions by Mr Hole which, in the Commission's view, *inter alia* displayed an abuse of judicial power as well as discussions, remarks and comments on matters pertaining to the magistrate's profession in a manner which brought the judiciary into disrepute and which is detrimental to the image of the office of magistrate and which does not uphold and promote the good name, dignity and esteem of the office of magistrate and the administration of justice. This also includes in causing the Regional Court President Mr Nqadala to be ridiculed in public, by using the court as the platform to do so.

2.5 In case RCZ 856/2009 – State v P Loeto in which Mr Nqadala was subpoenaed to appear in the criminal proceedings on 7 July 2011, the following extracts from the typed record of proceedings give an indication of Mr Hole's conduct:

- When Mr Nqadala objected because he felt the prosecutor had no basis to think he had any information about the rape case before the court proceedings the following transpired:
"Court: Please don't try and lead us astray. Your objections have no substance whatsoever. I shall not waste this Court's time by hearing that any further." [Page 22 line 13 to 15)
"Nqadala: So I should not even raise the second objection your worship?" [Page 22 line 16 to 17]
"Court: I'm not interested." [Page 22 line 18]

- By taking up a matter with his Head of Office in court by asking Mr Nqadala to read from the disputed letter and stating to Mr Nqadala the following:

"Court: You will recall Mr Nqadala, that I objected to you writing to me among other persons in this fashion" (Page 23 line 6 to 7)
- By questioning his Head of Office's qualifications and on whether he knew the meaning of an accused's right to a fair trial the following transpired:

"Court: Mr Nqadala, what qualifications do you hold?" (Page 26 line 11)

"Court: And your knowledge of fair trial rights of Accused includes or does not exclude the possibility of a Regional Court President writing to a junior Magistrate under him and saying things like these about the people that I try?" [Page 26 line 16 to 19]

"Court: ... do you know anything about the residual rights of an Accused person to a fair trial?" [Page 29 line 6 to 7]
- By stating to Mr Nqadala about a letter regarding the fast tracking of juvenile accused:

"Court: Do you think your inclusion of a letter which discloses information that paints the Accused in a bad light amounts to an abomination?"

Nqadala: A what?

Court: An abomination.

Nqadala: Abomination of what?

Court: Do you need an Interpreter?" [Page 27 line 22 to 24 and Page 28 line 1 and 2]
- By saying the following to Mr Nqadala:

"Court: We come back to square one. Why did you do it?"

Nqadala: I told you that I did not disclose that information to you ... (interjection)

Court: You will not – I'm sorry, you will not say you to me, you understand.

Nqadala What should I say?

Court: You don't know what to say?

Nqadala: Maybe.

Court: And you call yourself a Regional Court President.

Nqadala: Your Worship ... (interjection).

Court: Please, please, please.

Nqadala: I don't think it – I don't think it will help ... (interjection).

Court: Please Mr Nqadala, you will show absolute respect for this court. You understand Sir? Don't come here with an attitude. Do you understand Sir? You will address me properly as a judicial officer sitting in this case. And please, wipe that small off your face."

[Page 30 line 8 to 20]

- At a later stage posing the following question to Mr Nqadala:
"Court: Don't you think Mr Nqadala, you are a disgrace to the profession"
 and
"Court: You see Mr Nqadala, you will agree that over the past year there have been complaints against you about abuse of office some of which emanated from myself. Isn't that correct?" [Page 31 line 9 and 14 to 16]
- The court further questioned Mr Nqadala about his right to allocate or re-allocate cases to magistrates and thereafter said the following to Mr Nqadala:
"Court: Very well. What I will do Mr Nqadala, I will stand down. I will allow you to go to your junior officers and find out how it came about that a trial that I'm seized with, suddenly found its way before another Magistrate." [Page 34 to 35]

- The proceedings were apparently held in open court while according to the charge sheet two of the accused are under the age of 18 years and the proceedings should have been held *in camera* in terms of section 153 of the Criminal Procedure Act, No. 51 of 1977.

2.6 In case RCZ641/10 – State v Mbalula and Others the following transpired:

- The matter appeared before Magistrate C Kgopa on 27 May 2011 and the magistrate recorded the following:

"PP: Reason that matter is on roll bcos accuseds where requisitioned for today by control – PP. According to her Mr Smith from N – Court indicated case will be tried in N – Court as K – Court was not able to do it."

- The matter was then remanded to 6 June 2011 on which date it was further remanded to 20 June 2011 before Magistrate V Smith.
- On 7 June 2011 the matter appeared before Magistrate Hole, with no indication as to why the case was on his court roll as the case was, as indicated *supra*, on 6 June 2011 transferred to N – Court, and the following was recorded:

"M Recorded.

All accused absent.

Only Mr Bergh present as Attorney (in respect of the Loeto matter)

All R in absentia for 7/7/11.

Order: Mr Khandilizwe Matherson to be subpoenaed for 7/7/11."

- On 20 June 2011 the matter appeared before magistrate V Smith who further remanded the case to 11 July 2011.

- On 7 July 2011 Magistrate Hole noted the following on the record:

"M Recorded.

Matter not in K court roll anymore. On 28/5/11 was moved to N Court without the knowledge of the presiding officer."

- On 11 July 2011 the matter appeared before magistrate V Smith who further remanded the case to 14 and 15 December 2011.

2.7 The Commission in the circumstances resolved to extend the mandate of Messrs H Louw and J Baloyi, both regional magistrates at Johannesburg, who have been designated by the Ethics Committee of the Magistrates Commission to conduct a preliminary investigation following separate complaints lodged with the Commission by Mr Nqadala against Mr Hole on 22 April 2010 and various dates thereafter. The investigating team were requested to include the further complaints received from Mr Nqadala as part of the preliminary investigation and to as soon as possible report to the Commission in accordance with the provisions of regulation 26(3) of the Regulations for Judicial Officers in the Lower Courts, 1994.

3. DISCUSSION

3.1 In order to advise the Minister on his provisional suspension from office pending the outcome of the investigation, Mr Hole was afforded the opportunity to comment on the desirability of such provisional suspension. A letter dated 18 August 2011, addressed to Mr Hole is attached. **(Annexure A)**

3.2 Mr Hole responded in writing on 29 August 2011, a copy of which is attached for your convenience. **(Annexure B)**

3.3 At its meeting held on 17 September 2011, the Commission, having considered Mr Hole's response dated 29 August 2011, resolved to recommend that Mr Hole be provisionally suspended from office in terms of section 13(3)(a)

of the Magistrates Act, 1993, pending the investigation into his fitness to hold office. The Commission is of the view that the transcribed court proceedings present reliable evidence indicating that the allegations against Mr Hole are 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.

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

In the light of the foregoing, I decided to provisionally suspend Mr Hole, Regional Magistrate at Kimberley from office with immediate effect, pending the outcome of an investigation into his fitness to hold the office of a Magistrate.

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 PORT ELIZABETH on this day of 29 SEPTEMBER 2011.

J. Raude
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MR J T RADEBE, MP

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT