



**MINISTER
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
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 D JACOBS,
MAGISTRATE AT CLOCOLAN**

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

Kind regards

J - Raadebe

**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 D JACOBS**

1. **PURPOSE**

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission to withhold the remuneration of Mr Jacobs, the Magistrate at Clocolan, who has been provisionally suspended with remuneration with effect from 30 March 2010, and to provide Parliament with the reasons therefor.

2. **BACKGROUND**

The Magistrates Commission conducted an investigation into Mr Jacobs' capacity to carry out his duties of office efficiently. He was found not to have the capacity to perform his functions as a magistrate any longer.

At its meeting held on 21 and 22 July 2011 the Commission resolved to recommend that Mr Jacobs be removed from office in terms of Section 13(4)(a)(iii) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act) and advised me accordingly on 4 August 2011.

Having considered the Commission's recommendation, I confirmed Mr Jacobs' provisional suspension from office and suspended him from office in terms of section 13(4) (a) of the Act. I, in terms of section 13(4) (b) of the Act tabled a report in this regard in Parliament on 15 August 2011.

3. DISCUSSION

The Commission is of the view that the withholding of Mr Jacobs' 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, 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 Jacobs, 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.

Attorneys Adrian's and Claasen in a letter dated 5 September 2011 responded on Mr Jacobs' behalf.

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 PORI ELIZABETH on this 29 day of SEPTEMBER
.....2011



MR J T RADEBE, MP

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT



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8001

Dear Honourable Mr Sisulu

**SUBJECT: WITHHOLDING OF REMUNERATION: MR I W O M MORAKE,
MAGISTRATE AT LICHTENBURG**

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

Kind regards

J - Raedebe

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

DATE: 29/09/14

REPORT



**REPORT IN TERMS OF SECTION 13(4A) (b) OF THE
MAGISTRATES ACT, 1993: WITHHOLDING OF
REMUNERATION, MAGISTRATE MR I W O M MORAKE,
MAGISTRATE AT LICHTENBURG**

1. PURPOSE

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission to withhold the remuneration of Mr Morake, the Magistrate at Lichtenburg, who is currently on suspension, (although provisionally), and to provide Parliament with the reasons therefor.

2. At its meeting held on 26 August 2010 the Magistrates Commission resolved to recommend that Mr Morake be provisionally suspended from office in terms of section 13(3)(a) of the Magistrates Act, 1993 (Act 90 of 1993) and advised me accordingly on 6 September 2010.

Mr Morake was convicted by the Lichtenburg Regional Court on 2 (two) counts of theft on 18 October 2010. The Court on 21 June 2011 sentenced Mr Morake to 4(four) years imprisonment on each count in terms of section 276(i) of the Criminal Procedure Act. The Commission based its recommendations for Mr Morake's provisional suspension on the serious nature of the allegations against him as well as to protect the image of the Bench.

Having considered my report which I tabled in this regard, Parliament on 24 November 2010 confirmed Mr Morake's provisional suspension from office. His provisional suspension is currently with remuneration.

Mr Morake filed an application for leave to appeal against this criminal conviction with the Clerk of the Court, Lichtenburg on 19 July 2011.

3. DISCUSSION

The Magistrates Commission charged Mr Morake with several counts of misconduct which are contained in a charge sheet which was served on Mr Morake on 29 December 2010. The inquiry into Mr Morake's alleged misconduct commenced on 11 April 2011. Mr Morake's representative requested the Presiding Officer to postpone the disciplinary proceedings against Mr Morake. They argued that Mr Morake will appeal against his conviction once a sentence has been imposed and requested that the inquiry be kept in abeyance until after the outcome of the criminal case on appeal. The Presiding Officer granted a postponement until 24 June 2011, provided that Mr Morake should submit proof of the fact that he indeed filed an appeal against his criminal conviction of theft. On 24 June 2011 the Presiding Officer granted Mr Morake a further request for postponement until 11 July 2011 to give him the opportunity to file his appeal against his conviction and furnish him with proof thereof. As indicated *supra*, Mr Morake filed an application for leave to appeal against his conviction with the Clerk of the Court on 19 July 2011. This application is still to be considered.

The inquiry as ruled on 29 August 2011 will proceed on 26 September 2011.

There seems to be no reason why a magistrate, who is on provisional suspension and who has been convicted of a serious offence(s) by a Court of Law, should still be paid for the period during which he or she is provisionally suspended or suspended from office pending the outcome of the misconduct inquiry against him/her.

Mr Morake 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.

Mr Morake furnished the Commission with representations dated 12 July 2011.

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 then 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)

2. 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*2011.

J. Tradebe
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MR J TRADEBE, MP
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT