



**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 T M MASINGA,
MAGISTRATE AT EMLAZI**

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

Kind regards

J. Raube

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

DATE: 29/09/16

REPORT



**REPORT IN TERMS OF SECTION 13(4A) (b) OF THE
MAGISTRATES ACT, 1993: WITHHOLDING OF
REMUNERATION, MAGISTRATE MR T M MASINGA,
MAGISTRATE AT EMLAZI**

1. PURPOSE

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

2. BACKGROUND

At its meeting held on 26 November 2009 the Magistrates Commission resolved to recommend that Mr Masinga 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 11 December 2009. **(Annexure A)**

Mr Masinga was convicted by the Regional Court, Durban on a charge of attempted murder on 23 May 2011. The criminal case stands postponed to 4 October 2011 for sentence. The Commission based its recommendations for Mr Masinga'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 4 June 2010 confirmed Mr Masinga's provisional suspension from office. His provisional suspension is currently with remuneration.

It is Mr Masinga's intention to challenge the findings of the Regional Court by way of an appeal, alternatively review proceedings.

3. DISCUSSION

On 08 February 2010 the Commission charged Mr Masinga with three (3) counts of misconduct. A notice in terms of section 13(3)(e) containing the allegations against him, was served on Mr Masinga. The National Education Health and Allied Workers Union (NEHAWU) informed the Commission in a letter received on 02 March 2010 that it acts on behalf of Mr Masinga.

The misconduct inquiry was set down to commence on 26 August 2010. NEHAWU, acting on behalf of Mr Masinga, requested a postponement to appoint a legal representative. They were further instructed to argue that the disciplinary hearing should not be proceeded with until the finalization of the criminal case against Mr Masinga. The hearing /inquiry was postponed to 21 October 2010 on which date the representative of NEHAWU was absent. The Presiding Officer postponed the proceedings to 4 February 2011 to *inter alia* enable Mr Masinga to obtain finality in respect of legal representation.

Neither Mr Masinga nor the representative of NEHAWU presented themselves at the inquiry on 4 February 2011. The Presiding Officer in terms of regulation 26(14) of the Regulations for Judicial Officers in Lower Courts, 1994 postponed the inquiry in Mr Masinga's absence to 28 March 2011 and requested the Commission to endeavour to serve a notice of hearing on Mr Masinga afresh. Such a notice was served on Mr Masinga on 24 February 2011. NEHAWU on 28 March 2011 informed the Presiding Officer at the misconduct inquiry that they finally

had been able to instruct Mr Brett Purdon Attorneys to represent Mr Masinga at the inquiry. On 24 May 2011 Mr Purdon raised various points *in limine*. The Presiding Officer wanted to be addressed on the issues raised. This was done on 22 August 2011. The inquiry has been postponed to 31 October and 1 November 2011 for evidence to be lead.

In terms of section 13(4A)(a) of the Act, the remuneration of a magistrate is not affected during a period of provisional suspension, or suspension, unless the Commission determines otherwise.

Mr Masinga has been provisionally suspended from office since 03 February 2010 pending an investigation into his fitness to hold office (the misconduct inquiry). He is still receiving remuneration. He intends to take his criminal conviction of attempted murder on appeal or review once a sentence has been imposed.

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 Masinga, 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 Brett Purdon in a letter dated 12 August 2011, forwarded Mr Masinga's representations to the Commission. The Commission is of the view that the heads of argument to which reference is made, do not take the matter any further and do not address the issue why the Commission should not determine to withhold Mr Masinga's remuneration.

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.

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 SEPTEMBER day of
.....2011.


.....
MR J T RADEBE, MP
MINISTER FOR JUSTICE AND CONSITUTIONAL 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: WITHHOLDING OF REMUNERATION: MR L B MARUWA,
MAGISTRATE AT BENONI (DAVEYTON)**

The purpose of this report is to inform Parliament of the decision taken by the Magistrates Commission to withhold the remuneration of Mr L B Maruwa, the Magistrate at Benoni (Daveyton), in terms of section 13 (4A) (a) of the Magistrates Act, 1993 (Act No 90 of 1993). Mr Maruwa 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 L B MARUWA**

1. PURPOSE

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission to withhold the remuneration of Mr Maruwa, the Magistrate at Benoni (Daveyton), who is on provisional suspension with remuneration since 3 February 2010 and to provide Parliament with the reasons therefor.

2. BACKGROUND

At its meeting held on 26 November 2009 the Magistrates Commission resolved to recommend that Mr Maruwa be provisionally suspended from office in terms of section 13(3) (a) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act) and advised me accordingly on 11 December 2009.

Mr Maruwa was convicted by the Regional Court on 11(eleven) counts of fraud on 29 September 2009. The Court on 9 November 2009 sentenced Mr Maruwa to a fine of R5000-00 or 12(twelve) months imprisonment. The Commission based its recommendations for Mr Maruwa'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 4 June 2010 confirmed Mr Maruwa's provisional suspension from office. His provisional suspension is currently with remuneration.

Mr Maruwa appealed to the South Gauteng High Court against his criminal conviction and sentence. The judges on appeal did not give judgment but referred the appeal to the full bench of the North Gauteng High Court, Pretoria, which on 29 July 2011 dismissed Mr Maruwa's appeal against his conviction and sentence.

3. DISCUSSION

The Commission charged Mr Maruwa with misconduct in terms of regulation 25(a) of the Regulations for Judicial Officers in Lower Courts, 1994 in that he was found guilty of an offence. The misconduct inquiry commenced on 4 June 2010 but was postponed *sine die* at the request of the defence, pending the outcome of the criminal matter on appeal. This was in accordance with the Commission's initial resolution to wit: "*that in those instances where a misconduct inquiry is instituted following criminal charges against a magistrate, the misconduct inquiry not be proceeded with pending the outcome of the criminal case*".

On 10 March 2011 the Commission resolved to in future proceed with misconduct inquiries against magistrates notwithstanding any pending criminal proceedings. Mr Maruwa is of the view that the inquiry should not continue pending his further application for leave to appeal to the Supreme Court of Appeal. This will be opposed in line with the latest resolution of the Commission at the next date of the hearing which is to be determined in consultation with Mr Maruwa's attorney.

In terms of section 13(4A)(a) of the Act, the remuneration of a magistrate is not affected during a period of provisional suspension, or suspension, unless the Commission determines otherwise.

Mr Maruwa has been provisionally suspended from office since 03 February 2010 pending an investigation into his fitness to hold office (the misconduct inquiry). He is still receiving remuneration. His criminal conviction of fraud (11 counts) by the Regional Court was confirmed by the full bench of the North Gauteng High Court. He intends to take this decision further on appeal and also to request that the misconduct inquiry to be further postponed, pending the outcome of his appeal to the Supreme Court, whenever this is to be heard. The latter request will be opposed at the next date set for the hearing.

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 Maruwa, 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 Alan C Knight in a letter dated 31 August 2011, forwarded Mr Maruwa's representations.

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).

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 SEPTEMBER2011.



MR J T RADEBE, MP

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT