



MINISTER  
JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA



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

Dear Mr Sisulu

**SUBJECT: PROGRESS REPORT: PROVISIONAL SUSPENSION OF A  
MAGISTRATE:MR C M DUMANI**

The purpose of this report is to inform Parliament about progress made in respect of the provisional suspension of Mr C M Dumani, the Magistrate and Judicial Head at Graaff Reinet in terms of section 13 (3) (f) of the Magistrates Act, No. 90 of 1993 (Act No 90 of 1993).

Kind regards

*J. Radu*

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

DATE: 29/03/12



## **PROGRESS REPORT DATED 26 MARCH 2012 TO PARLIAMENT: PROVISIONAL SUSPENSION FROM OFFICE, MAGISTRATE C M DUMANI, GRAAFF-REINET**

### **1. INTRODUCTION**

The Magistrates Commission must in terms of section 13(3)(f) of the Magistrates Act, No. 90 of 1993 (Act) cause a report on the progress made in respect of inquiries against magistrates who have been provisionally suspended from office to be submitted to Parliament every three months.

Section 13(3)(e) of the Act provides that the provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegations concerned to be served on the magistrate.

### **2. DISCUSSION**

2.1 The Minister, on the advice of the Commission, provisionally suspended Mr Dumani from office with effect from 16 September 2009 which suspension was confirmed by both Houses of Parliament on 12 and 17 November 2009 respectively.

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- 2.2 Mr Dumani was charged with four (4) counts of misconduct. He denied all the allegations against him. At the conclusion of the misconduct inquiry he was found guilty of three (3) of the four (4) charges of sexual harassment against female clerks at the Graaff-Reinet Magistrate's Office. The Commission commenced leading evidence at the inquiry on 5 August 2009.
- 2.3 On 24 May 2010 the presiding officer at the misconduct inquiry recommended that Mr Dumani be removed from office in terms of section 13(4)(a)(i) of the Act. Mr Dumani was legally represented throughout the inquiry. Mr Dumani elected not to make any submissions with regard to the imposition of sanction.
- 2.4 Mr Dumani was given the opportunity to lodge written representations with the Commission. Representations in respect of his conviction on the three counts of misconduct were received on his behalf from Peter Daubermann Attorneys.
- 2.5 Having considered his representations and the documents as required by regulation 26(22) of the Regulations for Judicial Officers in the Lower Courts, 1994 read with section 13(4)(a)(i) of the Magistrates Act, No. 90 of 1993, the Commission at its meeting held on 26 and 27 August 2010 resolved to support the recommendation that Mr Dumani be removed from office on grounds of misconduct.
- 2.6 On 2 September 2010 the Magistrates Commission appraised the Minister of Justice and Constitutional Development of the circumstances which moved it to

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make such a recommendation. The Commission also advised Mr Dumani of its recommendation to the Minister to remove him from office in writing.

- 2.7 On 13 September 2010 Mr Dumani filed a motion application with the Registrar of the Eastern Cape High Court, requesting the Court to interdict and restrain the Minister of Justice and Constitutional Development from taking any further action against him, pending the final determination of another application before the Court to review and set aside the Presiding Officer's decision in the disciplinary proceedings, convicting Mr Dumani on three (3) counts of misconduct.
- 2.8 The Minister did not oppose the application. On 21 October 2010 the High Court granted the order in favour of Mr Dumani, interdicting and restraining the Minister from taking any further action against him.
- 2.9 The review application was opposed. The application was due to be heard on 24 March 2011 but was postponed due to administrative problems at the Grahamstown High Court. The matter was heard on 29 July 2011. On 12 August 2011 the review application was dismissed by the High Court with costs.
- 2.10 On 16 August 2011 the Magistrates Commission invited Mr Dumani to show cause why the Commission should not determine to withhold Mr Dumani's remuneration, and determined to do so at its meeting held during September 2011. Mr Dumani is therefore not receiving any remuneration. This resolution was confirmed by Parliament on 24 November 2011.

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- 2.11 When Mr Dumani's application for leave to appeal against the Grahamstown High Court's order was dismissed, he petitioned to the Judge President of the Supreme Court of Appeal. On 21 February 2012 leave to appeal to the Supreme Court was granted. A date for this appeal to be heard is still to be determined.
- 2.12 The Commission appeared before the Portfolio Committee and the Select Committee on 19 and 26 October 2011 respectively, requesting both Committees to hold Mr Dumani's matter in abeyance, pending the finalisation of the appeal.