

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

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13 APRIL 2012

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

Dear Honourable Sisulu

**SUBJECT: REMOVAL FROM OFFICE OF A MAGISTRATE: MR M TYULU:  
ADDITIONAL MAGISTRATE AT CAPE TOWN**

The purpose of this tabling is to inform Parliament of removal from office of Mr M Tyulu on the ground of misconduct.

Kind regards

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

**DATE:** 13/04/12.



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**URGENT MEMORANDUM**  
(For action)

To: Llewellynn Claassen, Office of the Clerk of the Papers  
Yasmine Curnow  
From: Marina Nel  
Re: Report informing Parliament of suspension of magistrate  
Date: 17 April 2012

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Please ensure the tabling of the attached report, as follows:

**National Assembly and National Council of Provinces**

**Tablings**

**The Minister of Justice and Constitutional Development**

- (1) Report on the suspension from office on the grounds of misconduct of Mr M Tyulu, additional magistrate at Cape Town, tabled in terms of section 13(4)(b) of the Magistrates Act, No 90 of 1993.



## REPORT

### REMOVAL FROM OFFICE ON THE GROUND OF MISCONDUCT: MR M TYULU, ADDITIONAL MAGISTRATE AT CAPE TOWN

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#### 1. PURPOSE

The purpose of this report is to inform Parliament of the suspension of Mr Tyulu, an additional magistrate at Cape Town, pending consideration by Parliament of a recommendation by the Magistrates Commission for his removal from office in terms of section 13(4)(a)(i) of the Magistrates Act, No. 90 of 1993 (hereinafter the Act).

#### 2. BACKGROUND

- 2.1 Mr Tyulu is 53 years of age. He served the Department of Justice and Constitutional Development as a prosecutor from 1991, prior to his appointment as a magistrate at Seymour in 1994. He was transferred to Malmesbury shortly thereafter. Subsequently an inquiry into Mr Tyulu's fitness to hold the office of Magistrate was conducted. Mr Tyulu was found guilty of 4 counts of misconduct. On recommendation of the Magistrates Commission, Mr Tyulu was during 2000 transferred to Cape Town where he could perform his duties under direct supervision.

2.2 Mr Tyulu was charged with two (2) counts of misconduct. He denied the allegations against him. At the conclusion of the misconduct inquiry he was found guilty of one (1) of the two (2) charges to wit one of sexual harassment involving a female accused who appeared before him in a pending criminal case at the Cape Town Magistrate's Office.

2.3 The Presiding Officer at the misconduct inquiry on 17 October 2011 recommended that Mr Tyulu be removed from office in terms of section 13(4)(a)(i) of the Act. Mr Tyulu elected to conduct his own defence and was only legally represented in respect of sanction. Mr Tyulu's representative made submissions in mitigation with regard to the imposition of sanction. The Presiding Officer took into account the fact that Mr Tyulu was found guilty of misconduct previously and that he was severely reprimanded by the then Presiding Officer. Mr Tyulu was at the time found guilty of 4 counts of misconduct *inter alia* that he approached a member of the public, an applicant in a domestic violence matter at the Cape Town Court House and called her into his office in an attempt to borrow money from her. This resulted in the complainant to be deeply disappointed in the legal system. The other counts were in respect of civil debt.

### **3. DISCUSSION**

3.1 Mr Tyulu was given the opportunity to lodge written representations in respect of the recommended sanction with the Commission in terms of

regulation 26(20) of the Regulations for Judicial Officers in Lower Courts, 1994 (hereinafter the Regulations). Representations were received on his behalf from Adv JAB Nel on 10 November 2011. The Presiding Officer elected not to forward any additional reasons for his recommendation to the Commission.

3.2 Mr Tyulu argues that the alternative sanctions set out in the Regulations, other than a sanction of removal from office should have been considered in his circumstances.

3.3 At its meeting held on 25 February 2012, the Executive Committee of the Commission considered the content of the documents as required by regulation 26(19) of the Regulations including the Presiding Officer's findings and recommendation as well as the representations submitted on Mr Tyulu's behalf. It was resolved to support the recommendation of the Presiding Officer in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 that Mr Tyulu be removed from office. The Commission is of the view that Mr Tyulu's conduct as set out in the charge of which he was found guilty is so serious that it justifies his removal from office in terms of section 13(4)(a)(i) of the Act. His conduct renders him unfit to hold the office of Magistrate any longer.

#### 4. LEGISLATIVE REQUIREMENTS

- 4.1 In terms of section 13(4) (a) of the Act, if the Magistrates Commission recommends that a Magistrate be removed from office on *inter alia* the basis of misconduct, the Minister for Justice and Constitutional Development must suspend that Magistrate from office, or, if the Magistrate is at that stage provisionally suspended in terms of the Act, confirm the suspension.
- 4.2 A report in which such suspension and the reason therefore are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.
- 4.3 Parliament must then, as soon as it is reasonable, pass a resolution as to whether or not the restoration of his/her office of the Magistrate so suspended is recommended.
- 4.4 After a resolution has been passed by Parliament as contemplated in paragraph 4.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.
- 4.5 As indicated above, once the Magistrates Commission has recommended that a Magistrate be removed from office on the ground of misconduct, the Minister must suspend the Magistrate from office.
- 4.6 On this basis I have suspended Mr Tyulu from office.

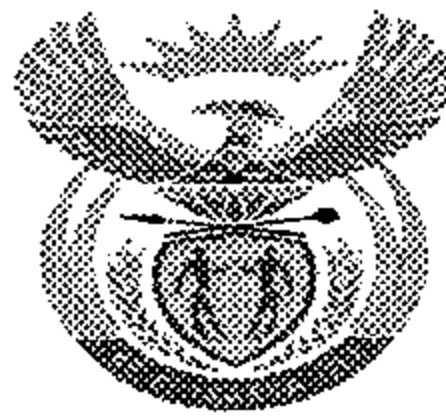
5. CONCLUSION

This report is submitted for consideration by Parliament in terms of section 13(4)(b) of the Magistrates Act, 1993.

Given under my hand at CAPE TOWN on this 13<sup>th</sup> day of APRIL 2012.

*J. Raedebe*

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



**MAGISTRATES  
COMMISSION**

**LANDDROSTE-  
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001

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The Honourable Mr J T Radebe, MP  
The Minister of Justice and  
Constitutional Development  
Private Bag X276  
**PRETORIA**  
0001

Reference : 6/5/5/2 (131/10)  
Verwysing

Enquiries : Mr. A Louw  
Navrae

Date : 29 February 2012  
Datum

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Dear Minister

**REMOVAL FROM OFFICE ON THE GROUND OF MISCONDUCT: MR M TYULU,  
ADDITIONAL MAGISTRATE, CAPE TOWN**

1. The purpose of this memorandum is to appraise you of the circumstances which moved the Magistrates Commission to resolve to recommend that Mr Tyulu be removed from office on grounds of misconduct in terms of section 13(4)(a)(i) of the Magistrates Act, No. 90 of 1993 (hereinafter the Act).
2. Mr Tyulu is 53 years of age. He served the Department of Justice and Constitutional Development as a prosecutor from 1991, prior to his appointment as a magistrate at Seymour in 1994. He was transferred to Malmesbury shortly thereafter. Subsequently an inquiry into Mr Tyulu's fitness to hold the office of Magistrate was conducted. Mr Tyulu was found guilty of 4 counts of misconduct. On recommendation of the Magistrates Commission, Mr Tyulu was during 2000 transferred to Cape Town where he could perform his duties under direct supervision.



3. Mr Tyulu was charged with two (2) counts of misconduct. He denied the allegations against him. At the conclusion of the misconduct inquiry he was found guilty of one (1) of the two (2) charges to wit one of sexual harassment involving a female accused who appeared before him in a pending criminal case at the Cape Town Magistrate's Office.
4. The Presiding Officer at the misconduct inquiry on 17 October 2011 recommended that Mr Tyulu be removed from office in terms of section 13(4)(a)(i) of the Act. Mr Tyulu elected to conduct his own defence and was only legally represented in respect of sanction. Mr Tyulu's representative made submissions in mitigation with regard to the imposition of sanction. The Presiding Officer took into account the fact that Mr Tyulu was found guilty of misconduct previously and that he was severely reprimanded by the then Presiding Officer. Mr Tyulu was at the time found guilty of 4 counts of misconduct *inter alia* that he approached a member of the public, an applicant in a domestic violence matter at the Cape Town Court House and called her into his office in an attempt to borrow money from her. This resulted in the complainant to be deeply disappointed in the legal system. The other counts were in respect of civil debt.
5. Mr Tyulu was given the opportunity to lodge written representations in respect of the recommended sanction with the Commission in terms of regulation 26(20) of the Regulations for Judicial Officers in Lower Courts, 1994 (hereinafter the Regulations). Representations were received on his behalf from Adv JAB Nel on 10 November 2011. The Presiding Officer elected not to forward any additional reasons for his recommendation to the Commission.
6. Mr Tyulu argues that the alternative sanctions set out in the Regulations, other than a sanction of removal from office should have been considered in his circumstances.

7. At its meeting held on 25 February 2012, the Executive Committee of the Commission considered the content of the documents as required by regulation 26(19) of the Regulations including the Presiding Officer's findings and recommendation as well as the representations submitted on Mr Tyulu's behalf and resolved to support the recommendation of the Presiding Officer in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 that Mr Tyulu be removed from office and to recommend to the Minister accordingly. The Commission is of the view that Mr Tyulu's conduct as set out in the charge of which he was found guilty is so serious that it justifies his removal from office in terms of section 13(4)(a)(i) of the Act. His conduct renders him unfit to hold the office of Magistrate any longer.
8. In terms of section 13(4) (a) of the Magistrates Act, No. 90 of 1993, if the Magistrates Commission recommends that a Magistrate be removed from office on *inter alia* the basis of misconduct, the Minister for Justice and Constitutional Development must suspend that Magistrate from office, or if the Magistrate is at that stage provisionally suspended in terms of the Act, confirm the suspension.
9. A report in which such suspension and the reason therefore are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.
10. In terms of section 13(4) (a) of the Act, once the Commission recommends that a Magistrate be removed from office, you must suspend that Magistrate from office, or if the Magistrate is at that stage provisionally suspended from office in terms of section 13(3)(a) of the Act, confirm the suspension. Mr Tyulu has not been provisionally suspended from office.
11. In the circumstances, it is recommended that you:
  - suspend Mr Tyulu from office in terms of section 13(4)(a)(i) of the

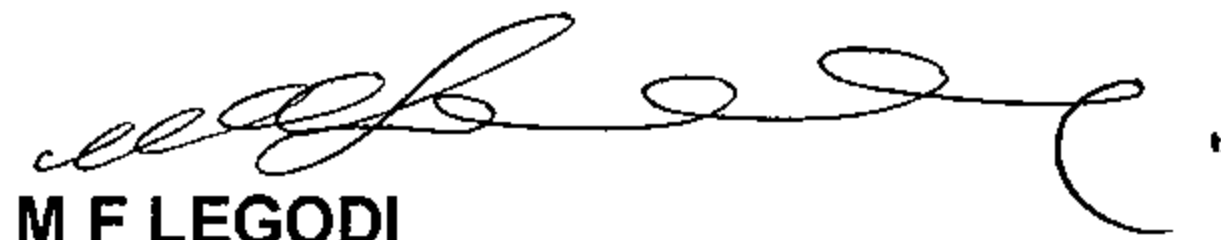
Magistrates Act, and

- table a report in Parliament within fourteen (14) days of such suspension in terms of section 13(4) (b) of the Act.

12. A process will be set in motion for the Commission to consider the possible withholding of Mr Tyulu's remuneration in terms of section 13(4A) (a) of the Act, once you have suspended him from office.

13. A draft report for Parliament is attached for your convenience.

Yours sincerely



**M F LEGODI**

**CHAIRPERSON OF THE MAGISTRATES COMMISSION**



**MINISTRY: JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA**

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**INTERNAL MEMO**

<b>DATE:</b>	28 March 2012	<b>FILE NR:</b>	3/26/5/5
<b>TO:</b>	MINISTER	<b>FROM:</b>	CLR (n190302)
<b>CC:</b>			

<b>SUBJECT:</b>	SUSPENSION OF A MAGISTRATE: MR M M TYULU , ADDITIONAL MAGISTRATE AT CAPE TOWN
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1. Purpose

The purpose of the memorandum is to advise the Minister to suspend Mr M M Tyulu, a Magistrate at Cape Town, from office pending consideration by Parliament of a recommendation by the Magistrates Commission for his removal from office in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act 90 of 1993) and to table a report in Parliament to make known the suspension and the reasons therefor.

2. Background

2.1 Mr Tyulu is 53 years of age. He served the Department of Justice and Constitutional Development as a prosecutor from 1991, prior to his appointment as a magistrate at Seymore in 1994. He was transferred to Malmesbury shortly thereafter. An inquiry into Mr Tyulu's fitness to hold the office of Magistrate was conducted which resulted in him being requested to serve in Cape Town in 2000.

2.2 Mr Tyulu was charged with two (2) counts of misconduct. He denied the allegations against him. At the conclusion of the misconduct inquiry he was found guilty of one (1) of the two (2) charges to wit one of sexual harassment involving a female accused who appeared before him in a pending criminal case at the Cape Town Magistrate's Office.

2.3 The Presiding Officer at the misconduct inquiry on 17 October 2011 recommended that Mr Tyulu be removed from office in terms of section 13(4)(a)(i) of the Act. Mr Tyulu elected to conduct his own defence and was only legally represented in respect of sanction. Mr Tyulu's representative made submissions in mitigation with regard to the imposition of sanction. The Presiding Officer took into account the fact that Mr Tyulu was found guilty of misconduct previously and that he was severely reprimanded by the then Presiding Officer. Mr Tyulu was at the time found guilty of 4 counts of misconduct *inter alia* that he approached a member of the public, an applicant in a domestic violence matter at the Cape Town Court House and called her into his office in an attempt to borrow money from her. This resulted in the complainant to be deeply disappointed in the legal system. The other counts were in respect of civil debt.

2.4 Mr Tyulu was given the opportunity to lodge written representations in respect of the recommended sanction with the Commission in terms of regulation 26(20) of the Regulations for Judicial Officers in Lower Courts, 1994 (hereinafter the Regulations). Representations were received on his behalf from Adv J A B Nel on 10 November 2011. The Presiding Officer elected not to forward any additional reasons for his recommendation to the Commission.

2.5 At its meeting held on 25 February 2012, the Executive Committee of the Commission considered the content of the documents as required by regulation 26(19) of the Regulations including the Presiding Officer's findings and recommendation as well as the representations submitted on Mr Tyulu's behalf and resolved to recommend to the Minister that the recommendation from the Presiding Officer in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 that Mr Tyulu be removed from office, be accepted. The Commission is of the view that Mr Tyulu's conduct as set out in the charge of which he was found guilty is so serious that it justifies his removal from office in terms of section 13(4)(a)(i) of the Act. His conduct renders him unfit to hold the office of Magistrate any longer.

### 3. Authority

3.1 In terms of section 13(4)(a) of the Magistrates Act, No 90 of 1993, the Minister for Justice and Constitutional Development, if the Magistrates Commission would recommend that a Magistrate be removed from office on *inter alia* the ground of misconduct, must suspend that Magistrate from office or if the Magistrate is at that stage provisionally suspended in terms of the Act, confirm the suspension.

3.2 A report in which such suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

3.3 Parliament must then, as soon as it is reasonably possible, pass a resolution as to whether or not the restoration to his/her office of the Magistrate so suspended is recommended.

3.4 After the resolution has been passed by Parliament as contemplated in paragraph 3.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.

### 4. Discussion

4.1 Based on the evidence placed before the Presiding Officer at the misconduct hearing, the latter's finding and reasons therefore, the Commission holds the view that Mr Tyulu be removed from office on the ground of misconduct. The process in terms of the Magistrates Act and the Regulations for Judicial Officers in Lower Courts, 1994 seem to have been duly followed.

4.2 In terms of section 13(4)(a) of the Act, the Minister, if the Commission would recommend that a Magistrate be removed from office, must suspend that Magistrate from office. The Minister is not left with any discretion in this regard. On the same basis, the Minister must table a report in Parliament on the suspension and the reasons of the suspension of the Magistrate concerned.

5. Recommendation

The Commission's recommendation that Mr Tyulu be removed from office on the grounds of misconduct is supported. Accordingly, it is recommended that the Minister suspend Mr Tyulu from office and that the report in the cover be tabled in Parliament for consideration in terms of section 13(4)(b) of the Magistrates Act, 1993.

  
**CHIEF LEGAL RESEARCH**

- (A) Mr Tyulu SUSPENSION CONFIRMED/~~NOT CONFIRMED~~
- (B) Report in the cover TO BE TABLED/~~NOT TO BE TABLED~~ in Parliament.

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

DATE: 29/03/12