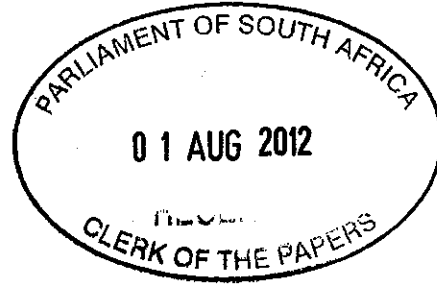




MINISTRY
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA



Enq: Lungisile Pakati (Mr)
Tel: 021 467 1725
Mobile: 082 905 2651
Fax: 021 467 1715



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

Dear Mr Sisulu

**SUBJECT: WITHHOLDING OF REMUNERATION: MR M M TYULU,
ADDITIONAL MAGISTRATE AT CAPE TOWN**

Mr J T Radebe, Minister for Justice and Constitutional Development wishes to inform Parliament about a determination by the Magistrates Commission to withhold the remuneration of Mr M M Tyulu, an additional Magistrate at Cape Town who has been suspended from office with effect from 29 March 2012 and to provide Parliament with the reasons thereof.

Kind regards

MR L PAKATI
MINISTRY FOR JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

DATE: 01/08/12.



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

1. **PURPOSE**

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission to withhold the remuneration of Mr Tyulu, an additional Magistrate at Cape Town, who has been suspended from office with effect from 29 March 2012 and to provide Parliament with the reasons therefor.

2. **BACKGROUND**

On 25 February 2012 the Commission resolved to recommend that Mr Tyulu 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).

3. **DISCUSSION**

Having considered the Commission's recommendation as contained in its letter to me dated 29 February 2012, to suspend Mr Tyulu from

office, I on 29 March 2012 suspended Mr Tyulu from office and tabled a report in this regard in Parliament.

Mr Tyulu, 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.

Having considered Mr Tyulu's representations, submitted by Messrs Le Roux Attorneys, on his behalf, the Commission determined to withhold Mr Tyulu's remuneration in terms of section 13(4A)(a) of the Magistrates Act.

The Commission is of the view that the withholding of Mr Tyulu'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.

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...PRETORIA.....on this...30th.....day of
JULY.....2012.

J. Raudebe
MR J T RADEBE, MP

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001

(012) 325 3951

FAX/FAKS (012) 326 0094

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

Reference : 6/5/5/2 (131/2010)
 Verwysing

Enquiries : Mr J Meijer
 Navrae

Date : 23 July 2012
 Datum

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Dear Minister

**WITHHOLDING OF REMUNERATION: MR M M TYULU, MAGISTRATE AT
CAPE TOWN**

1. The purpose of this letter is to appraise you of the circumstances which moved the Magistrates Commission to determine to withhold the remuneration of Mr Tyulu, Magistrate at Cape Town, in terms of section 13(4A)(a) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act). Mr Tyulu has been suspended from office, pending Parliament's consideration to remove him from office, with effect from 29 March 2012.
2. On 25 February 2012 the Commission resolved to recommend that Mr Tyulu be removed from office on the ground of misconduct and advised you accordingly in writing on 29 February 2012, a copy of which is attached.

(Annexure A)

3. Having considered the Commission's recommendation as contained in its letter to you dated 29 February 2012, to suspend Mr Tyulu from office, you on 29 March 2012 suspended Mr Tyulu from office and tabled a report in this regard in Parliament.
4. Mr Tyulu, 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. A copy of our letters dated 2 and 12 March 2012 addressed to Mr Tyulu are attached.

(Annexure B)

5. At its meeting held on 20 and 21 July 2012, the Magistrates Commission considered Mr Tyulu's representations dated 8 March 2012, forwarded by Messrs Le Roux Attorneys on his behalf in this regard, a copy of which is also attached.

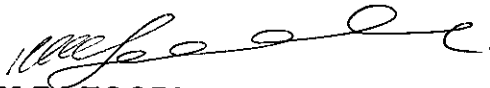
(Annexure C)

6. The Commission is of the view that the withholding of Mr Tyulu'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.
7. 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.

8. It is recommended that you table a report in Parliament for consideration in terms of section 13(4A) (b) of the Act. A draft report in this regard is attached for your convenience.

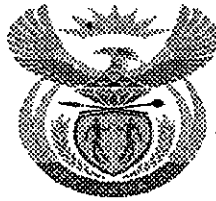
(Annexure D)

Yours sincerely



M F LEGODI

CHAIRPERSON: MAGISTRATES COMMISSION



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001

☎ (012) 326 3951

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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

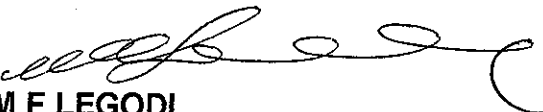
Magistrates Act, and

- 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


**MAGISTRATES
COMMISSION**
**LANDDROSTE-
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001

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 F
 Mr MM Tyulu
 C/o The Chief Magistrate
 Private Bag X9017
CAPE TOWN
 8000
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 Reference : 6/5/5/2 (131/2010)
 Verwysing

 Enquiries : Mr. J Meijer
 Navrae

 Date : 2 March 2012
 Datum

Dear Mr Tyulu

RECOMMENDATION FOR YOUR REMOVAL FROM OFFICE AND THE WITHHOLDING OF YOUR REMUNERATION

With reference to the Presiding Officer's finding and recommendation in respect of the misconduct inquiry held against you, kindly be advised that, at its meeting held on 25 February 2012, the Executive Committee of the Magistrates Commission considered the matter as well as the representations submitted on your behalf by Advocate J A B Nel in terms of regulation 26(20) of the Regulations for Judicial Officers in Lower Courts, 1994.

I regret to inform you that the Commission resolved to recommend to the Minister of Justice and Constitutional Development that you 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).

The Commission is in the process of advising the Minister to suspend you from office, and table a report in this regard in Parliament in terms of section 13(4)(b) of the Act.

In the circumstances, the Commission is of the view that the withholding of your remuneration, once the Minister has suspended you from office, is justified.

You are hereby invited to show cause, in writing, within 7(seven) days from date of receipt hereof, why the Commission should not determine to withhold your remuneration in terms of section 13(4A) (a) of the Act with immediate effect, once confirmation has been received that the Minister has suspended you from office.

Yours faithfully

SECRETARY: MAGISTRATES COMMISSION



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

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┌
Mnr Hennie Le Roux
Le Roux Prokureurs
Posbus 911
MALMESBURY
7300

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Reference : 6/5/5/2 (131/2010)
Verwysing

Enquiries : Mnr A Louw
Navrae

Date : 12 Maart 2012
Datum

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Geagte Meneer

WANGEDRAG: LANDDROS TYULU, KAAPSTAD

U skrywe gedateer 8 Maart 2012 het betrekking

Dit wil voorkom asof u kliënt die proses soos uiteengesit in die Regulasies vir Regterlike Beampptes in die Laerhowe asook die bepalings van die Wet op Landdroste in hierdie verband nie duidelik verstaan nie.

In terme van regulasie 26(20) van die Regulasies is Mnr Tyulu die geleentheid gebied om via sy regsverteenvoerder skriftelik verhoër in verband met die Voorsittendebeampte se bevinding aan die Kommissie voor te lê.

Die Landdrostekommissie het op sy vergadering van 25 Februarie 2012 al die tersaaklike stukke, insluitende u kliënt se verhoër soos voorgeskryf in regulasie 26(22) van die Regulasies, oorweeg.

Die Kommissie het besluit om in terme van artikel 13(4)(a) aan te beveel dat Mnr Tyulu van sy amp onthef moet word op grond van wangedrag.

Ingevolge artikel 13(4)(a) moet die Minister so 'n landdroos in sy/haar amp skors en 'n verslag aan die Parlement ter tafel lê.

U kliënt is op 2 Maart 2012 skriftelik van hierdie besluit in kennis gestel.

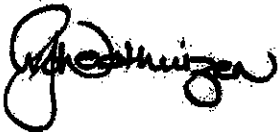
Ten opsigte van die terughou van Mnr Tyulu se salaris word u kliënt in die skrywe van 2 Maart 2012 ook die geleentheid gebied om redes aan te voer waarom die Kommissie nie ingevolge artikel 13(4A)(a) moet bepaal dat sy salaris teruggehou moet word nie. Hierdie artikel maak daarvoor voorsiening dat 'n landdroos se salaris teruggehou kan word selfs al is hy/sy slegs voorlopig gekors.

U word in hierdie verband ook verwys na die uitspraak van die Grondwetlike Hof in Van Rooyen en ander teen die Staat CCT 21/01 van 11 Junie 2002 waar die Hof die grondwetlikheid van artikel 13 van die Wet op Landdroste behandel. Die Hof gee genoegsame redes waarom die terughou van salaris voor ontheffing uit die amp geregverdig is.

U kliënt se verhoë waarom sy salaris nie op hierdie stadium teruggehou moet word nie sal aan die Kommissie by ontvangs voorgelê word. Indien u enige verdere verhoë buite dié vervat in u skrywe van 8 Maart 2012 in hierdie verband aan die Kommissie wil voorlê, moet sodanige verdere verhoë asseblief ons nie later nie as 26 Maart 2012 bereik.

Dit word vertrou dat bovermelde inligting die aangeleentheid in perspektief sal plaas.

Die uwe



✓SEKRETARIS: LANDDROSTEKOMMISSIE

MAGISTRATES COURTS
JUDICIARY

2012 -03- 08

JUDICIAL QUALITY ASSURANCE
MAGISTRATES COMMISSION

LE ROUX PROKUREURS

PROKUREURS ATTORNEYS
h/v Mark en Bocard straat
6D (3)
Posbus/P O Box 911
MALMESBURY 7300
Tel (022) 482 4447
Fax: (022) 482 4455

8 Maart 2012

Die voorsitter van landdroste kommissie
PRETORIA
Faks: (012) 3260094

Vir Aandag: Mnr Meijer

Geagte Mnr

INSAKE LANDDROS TYULU

U korrespondensie gedateer 2 Maart 2012 verwys.

Geliewe kennis te neem ons hou steeds instruksies om namens ons klient op te tree in hierdie aangeleentheid.

Geliewe verder kennis te neem, dan u versoek vir landdros Tyulu se redes waarom sy vergoeding nie opgeskort moet word nie.

Dit is ons instruksies om die volgende redes namens landdros Tyulu aan te voer.

1. Ons klient het tot dusver nog geen antwoord by u kantoor ontvang vir skorsing van amp nie, nie teenstaande is ons klient se motivering, dat hy steeds in diens aangehou word, hangende finansiering van aangeleentheid. Aangesien mnr Tyulu vir 'n hele aantal jare amp van landdros bekleed, hy 'n gesinsman is en hy uitgawes het wat betaal moet word en dat hy nie voldoende tyd gegun is vir so bevel dat hy nie vergoeding sou ontvang nie. Aangeheg vind 'n aanhangsel van ons klient se huidige stand van inkomste en uitgawes. Inhoud daarvan is selfverduidelikend. Hy sal nie in staat kan wees om sy verpligtinge na te kom nie, indien hy nie betaling kry nie.
2. Dit is ons submisie namens ons klient dat dit nie net onbillik sal wees nie, maar ook baie onregverdig sal wees teenoor hom en sy gesin, as sy salaris skielik gestaak word, voordat finale uitsluitel verkry word, dat hy uit sy amp ontslaan is.
3. Ons hou ook verder instruksies dat ons klient indien nodig, van plan is om die hoë hof te nader vir regshelp, sou hy nie in hierdie verband geakkommodeer sou word nie.

Ons vertrou u vind bogenoemde in orde, en verneem graag van u

Die Uwe

(Elektroniese afskrif nie geteken nie)

Hennie Le Roux

Le Roux Prokureurs

MONTHLY INCOME AND EXPENDITURE

INCOME: R24570-11

	INSTALMENT	BALANCE
1. Bond	R5028-00 (Stop Order)	R460 000-00
2. Vehicle	R5500-00	R200 000-00
3. Car Insurance	R747-90	
4. Multichoice	R556-79	
5. Woolworths	R800-00	
6. Life Insurance	R280-50	
7. Cell Phone Contract	R299-00	

LOANS

8. African Bank	R2805-05	R70 000-00
9. African Bank	R2804-78	R70 000-00
10. Credit Card	R455-00	
11. Old Mutual Fin	R3576-48	
12. Old Mutual Fin	R1651-13	

SCHOOL FEES

13. Child 1 University	R1400-00
Child 2 High School	R1400-00
Child 3 High School	R800-00
Child 4 Primary School	R800-00

(R29 877-58)

I am the only breadwinner of my home. My wife is unemployed. I have to skip some of the payments some months and double them to next month. My accounts are up to date and would not like to see them falling in arrears.

M M TYULU
 06/03/2012
 M M TYULU