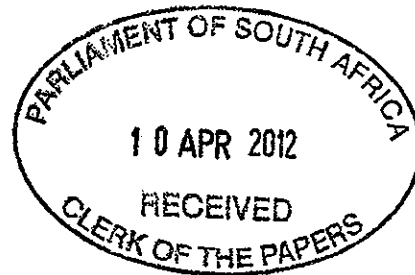




MINISTER
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

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

**SUBJECT: PROGRESS REPORT: PROVISIONAL SUSPENSION OF A
MAGISTRATE:MR M T MASINGA**

The purpose of this report is to inform Parliament about progress made in respect of the provisional suspension of Mr M T Masinga, the Magistrate at Umlazi in terms of section 13 (3) (f) of the Magistrates Act, No. 90 of 1993 (Act No 90 of 1993).

Kind regards

J. Raude

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 M T MASINGA, UMLAZI**

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 Mr Masinga on 19 March 2009 appeared in the Durban Magistrate's Court on a charge of contravening section 17(a), read with section 7 of the Domestic Violence Act, No. 116 of 1998. It is alleged that he assaulted his wife with a blunt axe, that he kicked her, hit her with open hands and threatened to kill her. He also assaulted his

2.

daughters.

- 2.2 The criminal proceedings were initially remanded to 14 April 2009. Mr Masinga was granted bail of an amount of R1 000.00. The criminal case was thereafter transferred to the Regional Court, Durban, where Mr Masinga appeared on additional charges of attempted murder and two counts of assault.
- 2.3 The criminal case was postponed on various occasions at the request of the defence. An application by Mr Masinga for the recusal of the presiding officer was later abandoned. The State closed its case on 24 February 2011. The Regional Court, Durban convicted Mr Masinga on a charge of attempted murder on 23 May 2011. On 16 January 2012 he was sentenced to ten (10) years imprisonment. He has appealed against his conviction and sentence. The appeal is still pending.
- 2.4 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. NEHAWU requested the Commission to communicate directly with them regarding the disciplinary matter.
- 2.5 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

3.

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.

- 2.6 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.
- 2.7 The inquiry proceeded on 28 March 2011 on which date he requested another remand to enable NEHAWU to instruct an attorney. On 24 May 2011, Mr. Masinga was represented by an attorney. Various points *in limine* were raised to which the presiding officer wanted to be addressed on 22 August 2011. He made a ruling at the points *in limine* and postponed the matter for plea and the leading of evidence to 31 October 2011 and 01 November 2011.
- 2.8 On 31 October 2011 Mr Masinga indicated that he considers resigning. The inquiry was kept in abeyance until the next day. Witnesses for the Commission were all present. On 1 November 2011 Mr Masinga opted not to tender his resignation. His attorney of record withdrew. Mr Masinga requested a postponement to again approach Cosatu/NEHAWU for representation.

4.

- 2.9 On 5 December 2011 Mr Masinga placed on record that his attempts to approach Cosatu were not successful. He again requested a postponement. The Presiding Officer granted him the postponement, provided that the inquiry would proceed for trial either with or without any representation.
- 2.10 On 18 January 2012 Mr Masinga placed on record that he would conduct his own defence. He however reserved his right to be represented at any time of the proceedings. He requested a postponement since, so he alleged, he had no access to the documents in the possession of his erstwhile attorney and was not able to prepare himself. Copies of relevant documents he requested were given to him shortly thereafter.
- 2.11 On 9 February 2012, the matter did not proceed. The Commission's witnesses were all present. Mr Masinga placed on record that he had lost his spectacles in a taxi the evening before and that he would not be in a position to take notes and cross-examine the witnesses. The Presiding Officer again granted him a postponement as requested. The matter was postponed to 5 March 2012.
- 2.12 On 5 March 2012 the inquiry commenced late. Mr Masinga did not present himself. He instead, sent a relative to submit a medical certificate indicating that he was ill. Witnesses for the Commission were again present. The matter did not proceed and was postponed to 23 March 2012. Mr Masinga was notified about this postponement per SMS. Attempts to serve a notice at his house were not successful.
- 2.13 Mr Masinga was again absent on 23 March 2012. He, just prior to the

5.

commencement of the inquiry, sent his fiancé to present a medical certificate. According to the certificate, issued by the same doctor, he was unfit to perform work from 22-24 March 2012. The witnesses were again present. At the request of the representatives for the Commission, the Presiding Officer ordered to continue with the inquiry in Mr Masinga's absence in terms of regulation 26(14) of the Regulations for Judicial Officers in Lower Courts, 1994. The evidence of three (3) witnesses was lead. The matter is now partly-heard and stands postponed to 20 April 2012 for further evidence.

The Commission's determination to withhold Mr Masinga's remuneration in terms of section 13(4A)(a) of the Magistrats Act was confirmed by Parliament on 24 November 2011. Mr Masinga does not receive any remuneration.