

P. O. Box 689

**Garsfontein 0042**

14<sup>th</sup> August 2012

Ref No:3/26/5/5(no 30801)

The Minister of Justice and Constitutional Development

P/Bag X276

**Pretoria**

**0001**

**ATTENTION: HON. MIN JEFF RADEBE**

Dear Sir

**SUSPENSION FROM OFFICE: MYSELF**

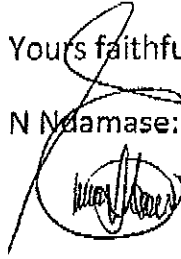
I am in receipt of your letter dated the 08<sup>th</sup> August 2012 in which I am informed of the recommendation from the Magstrates Commission that I be removed from office. However, I have not been furnished with any reasons to that effect as this is my constitutional right. I have written to the Commission about this (see copy of my letter dated 14/08/201).

In terms of section 13(4)(b) of the Magistrates Act 90 of 1993 you must table this matter in Parliament within 14 days of my suspension. This is to inform you that on my side I have decided to take the proceedings of the misconduct hearing on which this suspension is based on review by the High Court as soon as possible. I therefore request you Sir to convey my intentions to Parliament in order to avoid perhaps any conflicting decisions regarding this matter.

I also faxed herewith my letter dated the 29<sup>th</sup> June 2012 for your further consideration of my (our) problems as magistrate(s) in Pretoria. I never received any acknowledgement of receipt from your good office.

Yours faithfully

N Ndumase: add magistrate Pretoria

 2012/08/14

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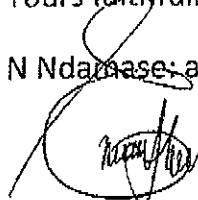
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Yours faithfully

N Ndamease; add magistrate Pretoria

 2012/08/14

*M. J. Joubert*

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Magistrates Office

P/Bag X61

Pretoria 0001

14<sup>th</sup> August 2012

Your Ref: 6/5/5/2(117/2008)

The Secretary

Magistrates Commission

P. O. Box 9096

Pretoria

0001

**ATTENTION: MR D SCHOEMAN**

Dear Sir

**SUSPENSION FROM OFFICE: MS N NDAMASE, ADDITIONAL MAGISTRATES,  
PRETORIA**

1. This is to inform you that I am in receipt of your letter dated the 13<sup>th</sup> August 2012 together with another one from the office of the Minister dated the 08<sup>th</sup> August 2012. Both letters inform me about the recommendation of the Magistrates Commission that I have to be removed from office. This has completed the cause of action.
2. I have on numerous occasions indicated to the Commission that from the date the misconduct allegations were reported to it, both the Commission and the Ethics Committee had acted negligently and in a biased fashion in dealing with this matter. The Commission has violated its own law, namely the Magistrates Act No 90 of 1993 and its Regulations. In doing so, it has never considered the Constitution of this country as well.

I further informed the Commission that the proceedings of the misconduct hearing were completely unfair towards me. The reasons on which I based this were forwarded to the Ethics Committee. Unfortunately they were purposely overlooked.

Section 33 of Act 108 of 1996, the Constitution reads as follows:-

- (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

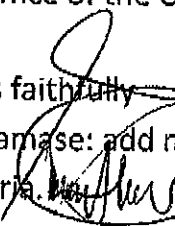
Based on the contents of this section, I therefore request that I be furnished with all the reasons that the Ethics Committee and the Magistrates Commission considered in arriving at the recommendation that I have to be removed from the office.

3. Last, as I have already indicated that the recommendation that I have to be removed from the office has completed the cause of action, the Commission must be informed that as an external remedy, I am intending to take the misconduct hearing proceedings on review by the High Court as soon as possible. The Minister may also be informed about this as it may have an impact on the resolution of Parliament.
4. I am on suspension. Kindly channel the response to my letters through the office of the Chief Magistrate, Pretoria.

Yours faithfully

N Ndumase: add magistrate

Pretoria.



2012/08/14

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P. O. Box 689

Garsfontein 0042

29<sup>th</sup> June 2012

The Honourable Minister of Justice

Department of Justice and Constitutional development

P/Bag X81

Pretoria

0001

**ATTENTION: HON. JEFF RADEBE**

Dear Sir

**REQUEST FOR PROTECTION FROM VICTIMISATION, ABUSE AND PREJUDICE BY THE MEMBERS OF ETHICS COMMITTEE, A DIVISION OF THE MAGISTRATE COMMISSION AND MR DESMOND NAIR, THE CHIEF MAGISTRATE OF PRETORIA: MAGISTRATE NDILEKA NDAMASE, PRETORIA**

With regard to the abovementioned matter I wish to refer you to section 4 of the Magistrates Act 90 of 1993 as a whole, and specifically to subsections (a) and (b) which reads as follows:-

- (a) To ensure that the appointment, promotion, transfer, or discharge of, or disciplinary steps against judicial officers in the lower courts take place without favour or prejudice and that the applicable laws and administrative directions in connection with such action are applied uniformly and correctly and
- (b) To ensure that no influencing or victimization of judicial officers in the lower courts takes place.

## 1. THE MANNER OF VICTIMIZATION IMPOSED ON ME FOR YEARS

It is in the interest of the administration of justice to see to it that magistrates receive continuous training for their work for the purposes of efficiency and competency in the discharge of their duties. That form of training includes theory and practice by placing magistrates in different sections and their relevant courts like the Civil, Criminal and Family sections so as to be optimally utilised there. We black magistrates were systematically deprived of such opportunities but three three of us persevere in making requests to be considered for working in different sections too. That action alone made us to be unwanted by those people who think that we were politically appointed to watch over and take their positions.

In order to give an account of what I have said, shortly after our formal appointments in the year 1999, Ms Tebogo Mafafo, Mr Joseph Setlhabi and I were utilised in the Criminal section. After we felt that we were conversant and knowledgeable of our duties and the work there we made requests to be transferred to the civil section in order to gain knowledge of our work also there. We further (and on different occasions) made requests to be afforded acting posts in the Regional court. For clarity, I am going to separated myself from them and give an account of bad things that happened to me. I will include what occurred to them where it is necessary. I personally wrote a letter in which I requested for an internal transfer to the civil section. I also sent several reminders because there was no response to my letters. After sometime I was verbally informed by Mr Mouldenhauer that I would not be transferred to the civil section because I had no knowledge of the Afrikaans language. That statement was a ceiling yet I knew that there was more work that was drafted in English not only by black attorneys and advocates but also by Firms of white attorneys and advocates.

In addition to that, I knew that there were freelance interpreters that were and are still assisting in the civil section courts during trials. Despite this information, we were refused permission to work in the civil section. Although I am not speaking for Mr Setlhabi now, the Honourable Minister should know that this magistrate knows the Afrikaans language like his mother tongue if not more than it because he did his law degrees

in that language. yet his life at work is made difficult too I was never apprised of any reason for not giving me an acting post in the Regional court. In short we were deprived of opportunities to expand knowledge in our work and of any chances to be promotable. I will revert to these issues later on.

## **2. SELECTIVE MANNER OF INVESTIGATING COMPLAINTS OF IMPROPER CONDUCT**

Section 4 (a) of the Magistrates Act 90 of 1993 I have quoted here above provides:- The objects of the Commission shall (this is compulsory) be to ensure that the appointment, promotion, ..., or disciplinary steps against judicial officers in the lower courts take place without favour or prejudice, and that applicable laws and administrative directions in connection with such action are applied uniformly and correctly.

I am now going to narrate an incident where the Ethics committee of the Magistrates Commission deliberately deviated from complying with the provisions of this section. At the period when magistrates were receiving merit awards as an incentive for their 'good work', Mr Bernard Swart a magistrate in Pretoria compiled a report for the merit award. In his report he wrote that at the time I was working at the Traffic court in Visagie Metro Police offices, I did not do my work as expected of me. As a result he was sent to relieve me because there was a period of a week in which I was absent from work without the knowledge of the senior magistrate, Mr Kenneth Chauke who was acting in the place of the late Mr Ngubo who was the senior magistrate. He went on to say that he had to leave the office very late in the evenings around 16hr30 and 17hr30 in all that period of my alleged absence as he was working to dispose of the piles and piles of traffic fines which I did not attend to. This was the report that was compiled by this magistrate with the purpose of being considered for a merit award. The Magistrates commission should have this record in its archives.

Pursuant to this report, the Ethics committee sent Mr Raulinga, who is now a judge and the late Ms Belinda Molamu to come and investigate me. After that investigation, a finding was taken that Magistrate Bernard Swart lied about me in his merit award report which he compiled in order to get an award. I wrote a letter to the Commission wherein I

requested that Magistrate Swart be charged with misconduct as he attempted to defraud the government of its money through false accusations he levelled against me. The Commission's response was that it would not do that as it was enough that Mr Swart did not receive the merit award. That unfair differentiation if not unequal treatment, hurt me. I had to lick my wounds as it was clear to me that the law was upheld only when it has a sting to a certain colour of the skin. To substantiate on this I have to mention hereunder the names of magistrates in Pretoria who had been put on the side of the prong of the law by the Ethics committee. They are:-

- (i) Ms Mpho Monyemore;
- (ii) Ms Marupeng;
- (iii) Ms Tebogo Mafafo;
- (iv) Ms Ndileka Ndamase;
- (v) Mr Kenneth Chauke;
- (vi) Mr Clifford Khoza; and
- (vii) Mr Joseph Setlhabi.

In some instances petty things would be blown out of proportion, made an issue that was to be investigated solely with the purpose of tarnishing our reputation and to make us not promotable as black magistrates. When I was falsely accused as indicated by Mr Swart, there were Regional court posts that were advertised. I applied but because of the blemish attached to my name I was not even shortlisted.

Recently, I think in the year 2010 Mr Bernard Swart insulted Ms Sophie Jiyane right in court using the F-words. The matter was reported to Ms Anette Ndlovu the then senior magistrate in the civil section. It reached the office



By mentioning these things, I am showing you the selective way of investigating of complaints by the Ethics Committee which is damaging to my (our) reputation as black magistrate (s); the selective manner that makes me to be unpromotable and the manner how the applicable laws and administrative directions in connection with such actions were applied not uniformly and incorrectly.

### **3. HOW MS TEBOGO MAFAFO AND I WERE ABUSED BY MR NAIR – THE CHIEF MAGISTRATE OF PRETORIA**

First of all I indicated at the end of Point 1 that I will revert to the issues I discussed therein to expatiate on certain things. We three magistrates persevered and insisted on the internal transfer to the civil section and also to be considered for an exposure in the Regional Court. Eventually we were reluctantly transferred to the Civil section. Ms Tebogo Mafafo and Mr Joseph Sethlabi were considered first. The latter is not an issue. I got a transfer to the civil section on the 1<sup>st</sup> September 2006. I personally worked nicely and with dignity with Mrs Rademan for a period of a year. She made my work easier in that I got a lot of work in the English language. In court and during trial we magistrates of different colour and language were helped by freelance interpreters in order to understand the languages spoken by witnesses. Although it was enjoyable to work with Ms Rademan, it is not that there were no problems. The first major problem I personally observed was that white attorneys especially and white advocates were undermining us black magistrates. For instance, if I gave judgements that were not favourable to their clients, I was on several times confronted by the white attorneys in the corridors telling me that I did not know what I was doing and according to them was not suitable to work in the civil section. To be precise, those confrontations indicated that I was correct in my judgements. If not, the correct procedure is to take the magistrate whose judgment you are not happy with on review or appeal. Such confrontations left me assuming that those attorneys were used to getting favours.

However, I kept on reporting those incidents to Ms Rademan, my senior. My mentor was Ms Anita Myambo. As the time went on white people refused to appear before me. I reported not only the confrontations that

were made in the corridors but also reported their refusal to appear before me. Her response was that I should not worry as those things were happening to Ms Tebogo Mafafo and Mr Joseph Setlhabi as well. I took her words as solace and as a result never reported anything done wrong by attorneys to me to the Law Society. Failure to report those incidents to the Law Society was also occasioned by the fact that Ms Mafafo and Mr Setlhabi admitted that ever since they started to work in the Civil section they were treated in the same bad and inferior fashion by the white court officials.

Things fell apart when Mr Nair arrived in our office. He sided with the white people in that there were many letters of false accusations that we were served with that were coming direct from his office. White attorneys mostly were complaining about non-existent things which they accused us of having done them. We were served with 3 to 4 letters of false accusations on each day of our lives in the civil section. That affected our health negatively. There was nobody to cry to as Ms Rademan had also turned against us too She became very hostile and was writing letters of false accusations against us. Mr Nair was boastingly telling us that he had opened his door for complaints to be sent direct to his office. In other words he reversed every attempts made to transform the office back to square one which is oppression of the blacks. He did that purposely to destroy us, black magistrates. With due respect, I base what I have said on the fact that while Mr Nair was still new in the office, Ms Anita Myambo wrote him a letter dated the 15<sup>th</sup> June 2007 (see annexure "C"). In that letter she informed Mr Nair that "white attorneys were reluctant to have their matters heard by a black magistrate. Once a black magistrate has been allocated to their matter they either postpone or settle the matter." On page 2 of the letter Ms Myambo says the following:- "In general attorneys and advocates are quick to criticise predominantly black magistrates be that with our colleague or with the senior. The civil section is a difficult section to work in. This difficulty is compounded by the fact that only recently black magistrates were assigned to the section. Problems are to be expected."

Mr Nair has a duty as the chief of office to see to it that transformation is implemented in terms of languages, colour of the skin etc. This is a compulsory constitutional duty for everyone in power otherwise there is no democracy for us black people. Instead of engaging himself in transforming the situation as he was informed timeously about it, he entertained, encouraged and promoted racism (treating of black magistrates as inferiors by white court officials including the clerks). He cannot be heard to deny that he had knowledge of how black magistrates were and are treated by white court officials and colleagues in Pretoria district courts. In defiance of the reality, also the biased presiding officer in my misconduct hearing said that racism is in my mind. I take that as an offence for him to dispute what I know better because I work in Pretoria Magistrates office.

In addition to that knowledge Mr Nair gained from Ms Anita Myambo's letter, the Magistrates Commission has knowledge of the irreconcilable relationship between white court officials, white colleagues and black magistrates (see Annexure "B"). We are always suffering racial prejudice and that is our daily bread. Therefore, the Magistrates Commission had a duty to train and coach Mr Nair in order for him to be able to curb the existence and continuation of these racial problems in our office.

Before Mr Nair took the letters of false accusations against me and Ms Mafafo up with the Magistrates Commission, we gave him our letters of grievances that we had against him. He never forwarded them to the Magistrates Commission until today. Rather on the 04/12/2008 he took all the complaints against us to the Magistrates Commission. On the same date a blanket resolution that Ms Mafafo and I had to be charged with misconduct summarily was taken. There was no investigation of the complaints as the law requires, that is Regulation 26(1) to the Magistrates Act 90 of 1993; the provisions of section 33(2) of the Constitution, Act 108 of 1996 was deliberately violated. The members of the Ethics Committee are magistrates and they know what is required of them when they receive complaints. They know the common law basis of our law, namely the audi alteram rule and the provisions of section 4(a) and (b) of Act 90 of 1993. As I observed things especially during my hearing I have no doubt that the Magistrates Commission is working in collaboration with Mr Nair to destroy our career. The aim is to destroy us and if not we would never mount to any upper level in our careers. One of the

questions that were put to me by Ms Gail Pretorius the prosecutor was why did I not resign my job. That all means that Mr Nair did very well to cause Ms Tebogo Mafafo to lose her job through ill-treating us. Those people have studied the politicians and have come to the conclusion that there is perhaps nothing they can do to protect and save us as most of them do not know the law. Thus, it is easier for the Commission to frustrate the system of democracy by misleading either the Minister of Justice up to the members of Parliament. If given an opportunity, I can elaborate more on this.

In January 2009 we were made to sit in the office doing nothing as Mr Nair instructed Ms Anita Myambo not to give us work. We were excluded from the Civil section daily roster. What a frustrating experience to be placed in a solitary confinement with no work to do and without being consulted. The pressure that was put to us was too heavy to endure hence Ms Mafafo decided to resign. I remained but I am still targeted. When I phoned Ms Myambo to enquire from her the reason for excluding us from the daily roster, she told me that she received instructions to do so from Mr Nair. I am still convinced that Mr Nair gave instruction that we had to be given no work because he was strengthened by the fact that there was already a resolution that we had to be charged with misconduct. Kindly take notice of the fact that Mr Nair took the complaints to the Magistrates Commission shortly before the 26 Regional court posts were about to be advertised in February 2009. I applied but I was not even shortlisted because of the dark cloud of misconduct that was hanging over my head which was "The resolution to charge us with misconduct summarily. My reputation as a magistrate was at stake and that rendered me unpromotable. At that time I was long overdue for promotion. Mr Nair's words to me that he would make sure that I will never be promoted were satisfied.

#### **4. HOW I WAS VERBALLY ABUSED BY MR DESMOND NAIR, OUR CHIEF OF OFFICE**

On a certain day in August 2007 Ms Rademan came to me in court while I was busy with a trial. She gave me a note that Mr Nair wanted to see me in his office. I adjourned the court proceedings immediately and went to his office. On my arrival at his office, Mr Nair told me that there was a lot of work in Atteridgeville and magistrates there could not cope. He asked me to go and assist there. He told me that I was going to do maintenance and civil work. He asked me to go and assist there for a period of six months starting from the next day. He qualified his request by saying that Advocate Pinky Mogale (not sure of the surname), a friend of Ms Mamosebo was going to act in my position in the Civil section. He told me that she was a good advocate who knew her work very well. The latter statement was

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regarding them. I caught them red handed twice. In the first instance the chairperson was present in the conference room we were using for the proceedings. He was sitting near the prosecutor and the witness while the prosecutor was interviewing the witness. On the second occasion he permitted the prosecutor and the witness under oath to listen to the evidence of the previous witness she was there to corroborate. All these are not allowed in law. Thus the presiding officer was part of the conspiracy to destroy my career. I am certain that was the reason he refused to recuse him when I made such

an implication and telling him that all my accusers were white people. On the