

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

THURSDAY, 16 OCTOBER 2014

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ANNOUNCEMENTS

National Assembly and National Council of Provinces

The Speaker and the Chairperson

1. Membership of Committees

- (a) Mr MS Motimele from the National Assembly and Mr EM Mlambo from the National Council of Provinces have been elected as Co-Chairpersons of the Joint Standing Committee on Defence with effect from 15 October 2014.

COMMITTEE REPORTS

National Council of Provinces

1. Report of the Select Committee on Security and Justice on the Convention on Cluster Munitions, referred to it in terms of section 231(2) of the Constitution, dated 16 October 2014:

The Select Committee on Security and Justice, having considered the request for ratification by Parliament of the Convention on Cluster Munitions, with its accompanying explanatory memorandum, tabled in terms of Section 231(2) of the Constitution, 1996, recommends that the National Council of Provinces ratify the Convention.

Report to be considered.

2. Report of the Select Committee on Security and Justice on the Convention on United Nations Arms Trade Treaty, referred to it in terms of section 231(2) of the Constitution, dated 16 October 2014:

The Select Committee on Security and Justice, having considered the request for ratification by Parliament of the United Nations Arms Trade Treaty, with its accompanying explanatory memorandum, tabled in terms of Section 231(2) of the Constitution, 1996, recommends that the National Council of Provinces ratify the Treaty.

Report to be considered.

1. Report of the Select Committee on Security and Justice on the Provisional Suspension from Office of Magistrate R M Malahlela, dated 16 October 2014

1. Introduction

The Select Committee on Security and Constitutional Development, having considered the report on the provisional suspension from office of Magistrate Mrs R M Malahlela, an aspirant additional magistrate at Delmas, tabled by the Minister for Justice and Constitutional Development in terms of section 13(3)(b) of the Magistrates Act, 1993 (Act no 90 of 1993), reports as follows:

- 1.1. The Select Committee, on 17 September 2014, heard evidence from the representatives of the Magistrates Commission (the Commission) concerning the matter of the provisional suspension from office of Magistrate Mrs R M Malahlela.
- 1.2. Mrs Malahlela, an aspirant additional magistrate at the Delmas District Court received her appointment to the lower court bench on 01 November 2004.
- 1.3. The Commission did not approve her permanent appointment due to poor performance, irregularities in her work, absenteeism, refusal to execute lawful orders, major delays in judgments, failure to finalize matters and poor utilization of court time. Her evaluation reports indicated that she is not a fit and proper person for appointment as a magistrate.

2. Background

- 2.1. On 25 May 2009, the Ethics Committee, considered the alleged strained relationship between Mrs Malahlela and her Judicial Head of Office. The Judicial Head of Office laid allegations of poor performance; alleged misconduct and prejudice against Mrs Malahlela.
- 2.2. The Ethics Committee resolved to convene meetings at the Delmas Court between Mrs Malahlela and her Judicial Head of Office to resolve the strained relationship instead of charging Mrs Malahlela with misconduct. The Ethics Committee scheduled two meetings with Mrs Malahlela without any success.
- 2.3. On 30 September 2010, Mr C J Barnard, Chief Magistrate and Head of the National Judicial Quality Assurance Office in Pretoria laid further allegations against Mrs Malahlela, alleging that she was absent for considerable periods from work and could not satisfactorily explain her absence.
- 2.4. The Magistrates Commission indicated they were not satisfied that Mrs Malahlela was a fit and proper person for the appointment as magistrate.

- 2.4.1. Medical reports indicated that Mrs Malahlela suffered from major depressive disorders and panic disorders. The psychiatric reports indicated that her condition did not render her unfit for work, but that she had to continue with monthly psychotherapy and medication.
- 2.4.2. A report dated 18 October 2011 recommended that she does not have the capacity to carry out her duties of office in an efficient manner due to continued ill health.
- 2.4.3. The Ethics Committee resolved on 1 December 2011 to refer the matter to the Appointments Committee of the Commission to recommend to the Minister not to appoint Mrs Malahlela on a permanent basis.
- 2.4.4. The Commission's Executive Committee referred the matter back to the Ethics Committee to consider whether the Ethics Committee should rather institute misconduct charges against Mrs Malahlela and request a separate investigation in terms of Regulation 29 of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations).
- 2.4.5. The Ethics Committee requested a Judicial Quality Assurance Report on the judicial work of the magistrate for consideration.

2.4.6. Judicial Quality Assurance Report

- 2.4.6.1. The Judicial Quality Assurance Report covered the period 2010 to August 2012 and raised the following concerns:
 - 2.4.6.1.1. Mrs Malahlela made mistakes in the Criminal Court that were not in line with her experience on the bench and had a negative impact on the right to a fair trial;
 - 2.4.6.1.2. She made mistakes in the Family Court that did not reflect her years of experience;
 - 2.4.6.1.3. She has a long outstanding debt for private phone calls made from the land line of the office amounting to R30 000.00;
 - 2.4.6.1.4. Various complaints resulted in her allocation to the reception court;
 - 2.4.6.1.5. Partly heard matters prior to 2010 took years to finalize;
 - 2.4.6.1.6. There was a history of strained relations between Mrs Malahlela and the local attorneys; prosecutors and administrative staff;

- 2.4.7. On 6 September 2012, the Ethics Committee resolved that it expose Mrs Malahlela to an additional six months of probation under the guidance of a board mentor, namely the acting Judicial Head of Office.
- 2.4.8. The Ethics Committee submitted the report to Mrs Malahlela on 18 April 2013 for her comments. She responded to the report on 28 June 2013.

2.5. Report by the acting Judicial Head of Office

- 2.5.1. The acting Judicial Head of Office reported that Mrs Malahlela was evaluated on her work done in the reception court and reported the following:
 - 2.5.1.1. The magistrate, during the period of extended probation, was absent for 39 days; ie 31 days for vacation leave and 8 days for sick leave.
 - 2.5.1.2. The magistrate often arrived late for work.
 - 2.5.1.3. The statistics she provided raised many questions as to her productivity.
 - 2.5.1.4. She did not attend to circulars and official correspondence requiring a signature in time.
 - 2.5.1.5. She did not finalise the traffic court roll on the allocated court day, amongst other matters.
- 2.5.2. The Commission received new allegations and complaints against Mrs Malahlela indicating mistakes made during court judgments, absenteeism and non-compliance with deadlines.
- 2.5.3. A letter from the acting Judicial Head of Office and the sub-cluster Head dated 20 May 2013 requested the Commission to consider whether Mrs Malahlela is indeed a fit and proper person to be appointed as a magistrate;
- 2.5.4. The Ethics Committee on 22 May 2013 agreed on the following:
 - 2.5.4.1. To conduct a preliminary investigation in terms of Regulation 26(1) of the Regulations to obtain evidence in order to determine whether there were any grounds for a charge of misconduct against Mrs Malahlela; and
 - 2.5.4.2. To investigate the feasibility of re-opening the previous four charges of misconduct against her.

- 2.5.5. The preliminary investigation report recommended charging Mrs Malahlela with misconduct. The Commission, on 5 March 2014, served a charge sheet comprising 29 counts of alleged misconduct on her.
- 2.5.6. On 18 June 2014, Mrs Malahlela filed a Notice of Motion at the North Gauteng High Court applying for an order of the Court *inter alia* to declare the Commission's decision to charge her with misconduct to be wrongful and unlawful. The court must still hear the application.

2.6. **DISCUSSION**

- 2.6.1. In order to determine her provisional suspension from office pending the outcome of the investigation and misconduct hearing, the Magistrates Commission afforded Mrs Malahlela the opportunity to comment on the desirability of the provisional suspension.
- 2.6.2. The Magistrates Commission considered Mrs Malahlela's response dated 09 April 2014, and noted that she had filed a Notice of Motion in the High Court. The Commission on 11 July 2014 resolved to recommend to the Minister for Justice and Constitutional Development that he provisionally suspend Mrs Malahlela from office in terms of section 13(3)(a) of the Magistrates Act No 90 of 1993 (the Act), pending the investigation and misconduct hearing into her fitness to hold office.
- 2.6.3. The Commission was of the view that the existing evidence against Mrs Malahlela was of such a serious nature as to make it inappropriate for her to perform the functions of a Magistrate whilst the Commission investigated the allegations. The Commission noted there was doubt for many years as to her fitness to hold the position of magistrate. Her conduct in both her private and professional capacity reflected negatively on her integrity.

Committee recommendation

The Select Committee on Security and Justice, having considered the report on the provisional suspension from office of Magistrate R M Malahlela, recommends that the National Council of Provinces confirm the provisional suspension from office of Magistrate pending the outcome of the investigation and misconduct hearing.

Report to be considered.

2. Report of the Select Committee on Security and Justice on the Suspension from Office of Magistrate M T Masinga, dated 16 October 2014

1. Introduction

- 1.1. The Select Committee on Security and Constitutional Development, having considered evidence relating to the report on the suspension from office of Magistrate Mr M T Masinga, an additional Magistrate at Emlazi, KwaZulu-Natal, tabled by the Minister for Justice and Constitutional Development in terms of section 13(3)(b) of the Magistrates Act, 1993 (Act no 90 of 1993), reports as follows:
- 1.2. The Select Committee heard evidence from representatives of the Magistrates Commission concerning the matter of the provisional suspension from office of Magistrate Mr M T Masinga on 17 September 2014.

2. Background

- 2.1. The Chief Magistrate, Durban, in a letter dated 2 April 2009 reported that Mr Masinga on 19 March 2009 appeared in the Durban Magistrates Court on a charge of contravening section 17(a), read with section 7 of the Domestic Violence Act (Act No 116 of 1998). The charge 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 daughters.

- 2.2. The court remanded the criminal proceedings to 14 April 2009. The Court granted Mr Masinga bail of R1 000.00. The criminal case was then transferred to the Regional Court Durban, where Mr Masinga appeared on additional charges of attempted murder and two counts of assault.
- 2.3. On 14 July 2009, the Ethics Committee of the Magistrates Commission informed Mr Masinga in writing that the Commission was considering recommending his provisional suspension from office, pending the outcome of an investigation into his fitness to hold office. The Magistrates Commission requested he show cause, in writing, why they should not take such a decision.
- 2.4. At its meeting held on 26 November 2009, the Commission considered the matter and recommended Mr Masinga's provisional suspension from office in terms of section 13(3)(a) of the Magistrates Act, Act No 90 of 1993 (the Act).
- 2.5. On 8 February 2010, the Commission charged Mr Masinga with three counts of misconduct. The Commission served a notice on Mr Masinga in terms of section 13(3)(e) of the Act containing the allegations against him.
- 2.6. The National Council of Provinces on 4 June 2010 confirmed the provisional suspension of Mr Masinga from the office of Magistrate pending the outcome of the investigation and misconduct inquiry.
- 2.7. The misconduct inquiry commenced on 26 August 2010. Various requests for postponement by the defence caused a serious delay in the finalization of the misconduct inquiry against Mr Masinga. Mr Masinga raised various points *in limine*.
- 2.8. The Regional Court Durban convicted Mr Masinga on a charge of attempted murder on 23 May 2011.
- 2.9. The National Council of Provinces on 24 November 2011 confirmed the withholding of remuneration of Mr Masinga.

- 2.10. On 16 January 2012, the Regional Court Durban sentenced Mr Masinga to ten years imprisonment. Mr Masinga appealed against his conviction and sentence.
- 2.11. The Pietermaritzburg High Court on 28 March 2013 ordered the appeal to be adjourned *sine die* and granted Mr Masinga leave to bring the matter under review. He had to file review proceedings by no later than 20 April 2013.
- 2.12. On 8 November 2013, the Commission placed the evidence on record before the Presiding Officer. The Presiding Officer postponed the hearing to 12 December 2013 for both parties to address him on the merits.
- 2.13. The Presiding Officer on 28 February 2014 found Mr Masinga guilty on two of the three charges of misconduct. On 22 April 2014 the Presiding Officer recommended in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations) that Mr Masinga be removed from office as contemplated in section 13(4) of the Act.
- 2.14. The Registrar of the High Court advised the Commission on 13 June 2014 that the review proceedings were, at the request of Mr Masinga's attorney, removed from the roll on 22 May 2014, as he had not filed a Replying Affidavit.
- 2.15. The Director of Public Prosecutions, KwaZulu-Natal, on 22 May 2014 filed a Notice of Bar in the event of Mr Masinga not filing his Replying Affidavit by 9 June 2014. The Commission awaits an update on this matter.
- 2.16. Mr Masinga was, in terms of regulation 26(20) of the Regulations, given the opportunity to lodge written representations with the Commission within 21 working days after the findings of the Presiding Officer. Although out of time, Mr Masinga lodged his representations with the Commission in terms of regulation 26(20) of the Regulations on 2 July 2014.

- 2.17. Having considered Mr Masinga's representations in terms of regulation 26(21) of the Regulations, the Presiding Officer indicated that he had no additional reasons for his recommendation to submit to the Commission.
- 2.18. At its meeting held on 11 July 2014, the Magistrates Commission considered the documents as required by the Regulations for Judicial Officers in the Lower Courts and recommended to the Minister that Mr Masinga be suspended and removed from office on the grounds of misconduct in terms of section 13(4)(a)(i) of the Act.
- 2.19. The Commission is of the view that Mr Masinga's conduct was so serious that it justified his removal from office. The Commission noted Mr Masinga's apparent failure to prosecute his appeal against his criminal conviction of attempted murder might result in the office of the Director of Public Prosecutions applying to cancel Mr Masinga's bail. This would result in his incarceration.
- 2.20. Mr Masinga is currently provisionally suspended from office without remuneration.

3. Committee recommendation

- 3.1. The Select Committee on Security and Justice having considered the Commission's report on the suspension from office of Magistrate M T Masinga, recommends that the National Council of Provinces confirm Mr Masinga's suspension and removal from office.

Report to be considered.