



**MINISTRY
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Ref: 2/1/3 (Nov 2017)
Enq: X1700
Email: Ministry@justice.gov.za

Mr L Claasen
Parliament of the RSA
P O Box 15
CapeTown
8000



Dear Mr Claasen

**PROVISIONAL SUSPENSION FROM OFFICE: MR M D HINXA, CHIEF MAGISTRATE,
BLOEMFONTEIN**

The purpose of this letter is to provide Parliament with a report to be tabled in Parliament in terms of section 13(3)(b) of the Magistrates Act, No 90 of 1993. The report is attached.

Yours sincerely

Ms Judith Tshabalala
Parliamentary Liaison Officer

Date: 29/11/2017

Cell: 0718524919
Email: JudTshabalala@justice.gov.za



**MINISTER
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Ref: 3/26/5/5 (n271101)
Enq: X1700
Email: Ministry@justice.gov.za

The Honourable Ms B Mbete
Speaker of the National Assembly
Parliament of the RSA
CAPE TOWN
8000



Dear Ms Mbete

***PROVISIONAL SUSPENSION FROM OFFICE: MR M D HINXA, CHIEF MAGISTRATE,
BLOEMFONTEIN***

The purpose of this letter is to provide Parliament with a report to be tabled in Parliament in terms of section 13(3)(b) of the Magistrates Act, No 90 of 1993. The report is attached.

With kind regards

**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE: 29/11/2017



**MINISTER
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REPUBLIC OF SOUTH AFRICA**

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Ref: 3/28/5/5 (n271101)
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The Honourable Ms T R Modise
Chairperson of the National Council of Provinces
Parliament of the RSA
CAPE TOWN
8000



Dear Ms Modise

***PROVISIONAL SUSPENSION FROM OFFICE: MR M D HINXA, CHIEF MAGISTRATE,
BLOEMFONTEIN***

The purpose of this letter is to provide Parliament with a report to be tabled in Parliament in terms of section 13(3)(b) of the Magistrates Act, No 90 of 1993. The report is attached.

Yours sincerely

**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE:..29/11/2017



PROVISIONAL SUSPENSION FROM OFFICE: MR MD HINXA, CHIEF MAGISTRATE, BLOEMFONTEIN

1. PURPOSE

The purpose of this report is to inform Parliament on the provisional suspension from office of Mr Hinxa, the Chief Magistrate, Bloemfontein, pending the outcome of an investigation/misconduct hearing into his fitness to hold the office of magistrate, as is required by section 13(3)(b) of the Magistrates Act, 90 of 1993.

2. BACKGROUND

- 2.1 The complainant in the matter is a 42 year old woman from Botshabelo. On 29 July 2016 she lodged a complaint with the Minister alleging that she was raped by Mr Hinxa in his flat in Bloemfontein after he made false pretences to her. Her complaint was submitted to the Department and on 02 November 2016 referred to the Commission for attention.
- 2.2 The complainant had reported the matter on several occasions to different police stations. They all refused to open a case. Hence her letter to the Minister as a last resort.
- 2.3 On 14 January 2017, before the matter could serve before the Commission's Ethics Committee, Mr Hinxa apparently approached Mr Ramoroka, the then Secretary of the Commission, indicating to him that he became aware that a complaint was filed with the Commission against him by a member of the public for alleged rape. He showed the Secretary a report from the Director of Public Prosecutions, Free State (DPP) following a consultation the latter had with the complainant, indicating that he will not be prosecuted. Mr Hinxa furnished the Secretary with a sworn statement, allegedly made by the complainant, indicating

that she was paid R100 000-00 by Maroka Attorneys to implicate him. The Secretary submitted the scanned documentation to the Commission's Ethics Division suggesting that the complainant be advised that her "*complaint will not be followed on and to close the file against Mr Hinxa*". The complainant however persisted that she was raped by Mr Hinxa and denied having ever made such a statement. The names and signatures on her letter of complaint and the statement provided by Mr Hinxa differ substantially. Many other unclarified issues arise from the documents provided by Mr Hinxa to Mr Ramoroka, the former Secretary.

- 2.4 The Commission therefore resolved to conduct a preliminary investigation into the allegations of rape against Mr Hinxa.
- 2.5 Having approached Regional Court Presidents for assistance, Mr I Cox and Ms N Dembula-Smile, Regional Magistrates at respectively Benoni and Paarl were appointed on 17 February 2017 to conduct a preliminary investigation in terms of the regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994. Mr Hinxa was advised accordingly in writing.
- 2.6 Mr Hinxa, in an email dated 22 February 2017 directed representations to the Secretary of the Commission, requesting the Commission to "promptly review and set aside the decision of the Ethics Committee to investigate" him. He based his request mainly on the statement dated 21 June 2015, purportedly made by the complainant, in which she withdrew the complaint against him. As indicated above, Mr Hinxa provided Mr Ramoroka with a copy of this statement on 14 January 2017. On 01 March 2017 Mr Ramoroka's successor, Mr Misser, advised Mr Hinxa that, due to short notice, his representations could not be placed on the agenda of the Commission's meeting held on 24 February 2017 and that the matter will be referred to the Ethics Committee for their input/comments. The Secretary held the view that it would be prudent to first refer the matter to the Ethics Committee to afford the Committee an opportunity to respond to his representations before placing the matter on the agenda of the Commission or its Executive Committee's (EXCO) next meeting for consideration. This caused the conclusion of the investigation to be delayed.

2.7 The Ethics Committee at its meeting held on 03 April 2017 considered Mr Hinxa's representations and resolved "*...to stand by its decision to conduct a preliminary investigation in terms of Regulation 26(1) of the Regulations, due to the serious nature of the allegations and far reaching consequences thereof on both sides. The Committee further resolved that the matter be accordingly placed before the EXCO of the Magistrates Commission for its endorsement.*" EXCO at its meeting held on 10 April 2017 resolved that the preliminary investigation against Mr Hinxa must be proceeded with.

3. DISCUSSION

3.1 Having concluded their investigation, the Investigating Officers filed their combined report with the Commission on 12 October 2017. The Investigating Officers, based on the evidence they obtained, are of the view that the evidence justifies that Mr Hinxa be charged with misconduct. It is common cause that Mr Hinxa had approached the office of the DPP, Free State concerning the criminal case filed against him by the complainant. It appears that the DPP's decision to decline to prosecute Mr Hinxa on a charge of rape is inter alia based on an incomplete investigation, including the withdrawal statement purportedly made by the complainant. On 18 October 2017, the National Director of Prosecutions (NDPP) has, in the interest of justice, been provided with a copy of the docket, the preliminary investigation report and the supporting statements which were obtained during the preliminary investigation with a recommendation to reconsider the matter and take the steps he may deems fit.

3.2 In a letter dated 27 October 2017 Mr Hinxa was invited to show cause why the Commission should not recommend that he be provisionally suspended from office in terms of section 13(3)(a) of the Act, pending the outcome of an investigation into his fitness to hold the office of magistrate.

(27 October 2017)

3.3 Mr Hinxa, through his attorney, responded and furnished the Commission with his representations dated 09 November 2017.

(09 November 2017)

3.4. Having due regard to the serious nature of the allegations, the totality of the information at hand and Mr Hinxa's representations, the Commission at its meeting held on 24 November 2017 resolved to charge Mr Hinxa with misconduct and to recommend that he be provisionally suspended from office in terms section 13(3)(a) of the Magistrates Act, 90 of 1993.

3.5 The Commission holds the view that:

3.5.1 his representations mainly rely on the Director of Public Prosecution's (DPP) decision not to criminally prosecute him. The evidence obtained during the preliminary investigation however indicates that there is sufficient evidence to charge Mr Hinxa with misconduct.

3.5.2 the existing evidence against Mr Hinxa is of such a serious nature as to make it inappropriate for him to perform the functions of a Magistrate while the allegations are being investigated.

3.5.3 Mr Hinxa's conduct tarnishes the good name, dignity and esteem of the Office of Magistrate and the administration of justice.

3.5.4 without anticipating the outcome of the investigation into his fitness to hold the Office of Magistrate, the available evidence against Mr Hinxa is of such a serious nature that it would justify his removal from office, should he be found guilty of the misconduct charges which are preferred against him.

4. AUTHORITY TO PROVISIONALLY SUSPEND

4.1 In terms of section 13(3)(a) of the Magistrates Act, 90 of 1993, the Minister, on the advice of the Magistrates Commission, may provisionally suspend a magistrate from office if-

“(i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that

magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and

(ii) an investigation has been instituted by the Commission into such magistrate's fitness to hold office."

4.2 A report in which the provisional suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 7 (seven) days of such suspension, if Parliament is then in session, or if Parliament is not then in session, within 7 (seven) days after the commencement of its next ensuing session (section 13(3)(b) of the Act).

5. CONCLUSION

5.1 In the light of the above, I decided to provisionally suspend Mr MD Hinxha, Chief Magistrate, Bloemfontein, from the office of Magistrate with immediate effect, pending the outcome of an investigation/misconduct hearing into his fitness to hold such office.

5.2 This report is submitted for consideration by Parliament in terms of section 13(3)(b) of the Magistrates Act, 1993.

Given under my hand at...*Cape Town*.....on this...*29*...day of November 2017.



T M MASUTHA, MP (ADV)

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

(27 October 2017)



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

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┌
Mr MD Hinxa
Bloemfontein Magistrates' Court
Private Bag X20583
BLOEMFONTEIN
9300
└

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Reference : 6/5/5/2 – 20/2016
Verwysing

Enquiries : J Meijer
Navrae

Date : 27 October 2017
Datum

└

Dear Mr Hinxa

PROVISIONAL SUSPENSION FROM OFFICE: YOURSELF

1. An investigation has already been instituted by the Magistrates Commission (Commission) into your fitness to hold office of which you were informed on 13 February 2017 and given reasonable opportunity to be heard. Your representations were received on 22 February 2017 and follow-up representations were received from your attorneys on 19 June 2017.
2. Having considered the content of a preliminary investigation report into the allegations levelled against you by Ms Lerato Constance France the view is held that reliable *prima facie* evidence exists indicating that the allegations against you are of such a serious nature as to make it inappropriate for you to perform the functions of a magistrate pending an inquiry into your fitness to hold the office of Magistrate. A charge sheet, containing the charges of misconduct against you, will be served on you once the Commission has approved same.
3. In view hereof you are requested to show cause why it should not be recommended to the Commission that you be provisionally suspended from office without remuneration in terms of section 13(3)(a) read with section 13(4A) of the

2.

Magistrates Act, No. 90 of 1993 pending the finalization of the inquiry into your fitness to hold office as Magistrate.

4. Your written representations, if any, should reach this Office on or before 10 November 2017.
5. Should you fail to reply within the stipulated period it will be deemed that you do not wish to submit any representations.

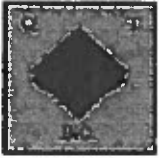
Yours faithfully


SECRETARY: MAGISTRATES COMMISSION

(09 November 2017)

Meijer Johannes

From: dqwelane@mweb.co.za
Sent: 09 November 2017 04:09 PM
To: Bosman DeVilliers; Meijer Johannes
Cc: Hinx Mziwonke
Subject: PROVISIONAL SUSPENSION FROM OFFICE: MR MD HINXA
Attachments: Scan_20171109_145106.pdf



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Dear Sir/Madam

Kindly find herein attached hereto is our client response to your letter dated the 27 October 2017 and referred

to our offices for reply.

We trust you will find the above in order and await your response thereto.

Kind Regards

Dumisani S Qwelane

Director / Direkteur

Tel: (051) 447 4533/ 082 4730 132

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3. As far as the clients knows, the matter was laid to rest by SAPS and the DPP and it is our instructions that the matter is not a subject of any consideration by the DPP or our criminal justice systems and that such as step by the commission is nothing short of a *malicious proceedings* against our client.
4. It is also our humble opinion that there is at this stage no reliable evidence that exist in as required by Section 13 (3) (a) (ii) of the Act 90 of 1993 to justify any action against our client and also that no report in terms of Section 13 (4A) of the Act has been provided to client to enable him to make his submissions therein.

Based on the above factors amongst numerous others, there is no reason why the Magistrates Commission should suspend Mr M.D Hinxa as there is no pending criminal charge against him. We further more want to respectfully submit that, the Commission lacks the necessary jurisdiction and competency on this matter and that its action appears to be tainted with *malicious* intents and in this regard our clients' rights are fully reserved.

We again appeal to the Commissioners to really apply their minds on this matter and act as the true custodians of the just and fair justice system and to also keep in mind that this decision is nothing short of our clients character assassination and that it will have serious ramifications on Mr MD Hinxa person and that it is unjustified.

We trust you will find the above in order and hope for your positive response as if we receive a suspension letter, we shall be left with no other option but to approach court for an appropriate relief against the suspension but we still hope and believe that such a step will not be necessary.

Yours faithfully.



QWELANE THERON & VAN NIEKERK Inc.

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