



Private Bag

MINISTRY
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REPUBLIC OF SOUTH AFRICA

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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 AND WITHHOLDING OF
REMUNERATION: MS F K JASONE-TWALA, ADDITIONAL MAGISTRATE AT
GEORGE**

The purpose of this letter is to provide Parliament with reports to be tabled in Parliament in terms of section 13(3)(b) and 13(4A)(b) of the Magistrates Act, No 90 of 1993. The reports are attached.

Yours sincerely

Ms Judith Tshabalala
Parliamentary Liaison Officer
Date: 21/11/17

Cell: 0718524919
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MINISTER
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Ref: 3/26/5/5 (n151102)
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 AND WITHHOLDING OF
REMUNERATION: MS F K JASONE-TWALA, ADDITIONAL MAGISTRATE AT
GEORGE***

The purpose of this letter is to provide Parliament with reports to be tabled in Parliament in terms of section 13(3)(b) and 13(4A)(b) of the Magistrates Act, No 90 of 1993. The reports are attached.

With kind regards

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

DATE: 21/11/17



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Ref: 3/28/5/5 (n151102)
Enq: X1700
Email: Ministry@justice.gov.za



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 AND WITHHOLDING OF
REMUNERATION: MS F K JASONE-TWALA, ADDITIONAL MAGISTRATE AT
GEORGE**

The purpose of this letter is to provide Parliament with reports to be tabled in Parliament in terms of section 13(3)(b) and 13(4A)(b) of the Magistrates Act, No 90 of 1993. The reports are attached.

Yours sincerely

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

DATE: 21/11/17



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Ref: 3/26/5/5 (n151102)
Enq: X1700
Email: Ministry@justice.gov.za

The Honourable Mr Justice M F Legodi
Chairperson: Magistrates Commission
P O Box 9096
PRETORIA
0001

Fax No: 012 – 325 3957

Dear Judge

**PROVISIONAL SUSPENSION FROM OFFICE AND WITHHOLDING OF
REMUNERATION: MS F K JASONE-TWALA, ADDITIONAL MAGISTRATE AT
GEORGE**

With reference to your letter dated 15 November 2017 (under your reference 6/5/5/2(79/2015), I wish to inform you that I, after having considered the Commission's advice, decided to provisionally suspend Ms F K Jasone-Twala, an Additional Magistrate at George, from office pending the outcome of the inquiry into her fitness to hold office as a Magistrate. I have in addition noted the Commission's determination to withhold her remuneration.

A copy of the reports, which have been tabled in Parliament in compliance with the provisions of section 13(3)(b) and 13(4A)(b) of the Magistrates Act, 1993 are enclosed herewith for your records. A copy of my letter to Ms Jasone-Twala is also enclosed.

With kind regards

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

DATE: 21/11/17



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Ref: 3/26/5/5 (n151102)
Enq: X1700
Email: Ministry@justice.gov.za

Ms F K Jasone-Twala
c/o The Chief Magistrate
Private Bag X3
WYNBERG
7824

Dear Ms Jasone-Twala

PROVISIONAL SUSPENSION FROM OFFICE

I regret to inform you that after having considered the advice of the Magistrates Commission, I have, in terms of section 13(3)(a) of the Magistrates Act, 1993 (Act No 90 of 1993), decided to provisionally suspend you from office pending the inquiry into your fitness to hold office as a Magistrate with immediate effect. I have also noted the Commission's determination to withhold your remuneration

Reports to this effect have been tabled in compliance with the provisions of sections 13(3)(b) and 13(4A)(b) of the Act.

As soon as Parliament has taken a decision in this regard, you will be informed.

Yours faithfully

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

DATE: 21/11/17



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REMUNERATION: MS F K JASONE-TWALA, ADDITIONAL MAGISTRATE AT
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The purpose of this letter is to provide Parliament with reports to be tabled in Parliament in terms of section 13(3)(b) and 13(4A)(b) of the Magistrates Act, No 90 of 1993. The reports are attached.

With kind regards

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

DATE: 31/11/17



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REMUNERATION: MS F K JASONE-TWALA, ADDITIONAL MAGISTRATE AT
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Yours sincerely

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

DATE: 21/11/17



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Yours sincerely

Ms Judith Tshabalala
Parliamentary Liaison Officer
Date: 21/11/17

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

**ANNEXURE A -
REPORT**



PROVISIONAL SUSPENSION FROM OFFICE: MS F K JASONE-TWALA, ACTING ADDITIONAL MAGISTRATE, GEORGE

1. PURPOSE

The purpose of this report is to inform Parliament on the provisional suspension from office of Ms Jasone-Twala, an acting additional Magistrate at George, pending the outcome of an investigation into her fitness to hold office as a magistrate, as required by section 13(3)(b) of the Magistrates Act, 90 of 1993.

2. BACKGROUND

- 2.1** Ms Jasone-Twala is an acting additional Magistrate at the George District Court. She is 44 years of age and has been appointed to the lower court bench in July 2012. Ms Jasone-Twala is still on probation.
- 2.2** Parliament is referred to an extract of the Commission's Ethics Committee's agenda held on 17 August 2017, setting out the history of the matter and for ease of reference. The Commission resolved that Ms Jasone-Twala, an additional magistrate at George be charged with misconduct. A copy of the extract is attached.

(17 August 2017)

3. DISCUSSION

3.1 Having regard to the fact that:

- a) the allegations of misconduct against Ms Jasone-Twala are very serious;
- b) *prima facie* evidence exist that she suffers from alcohol dependency which has a continuous detrimental effect on her daily work performance as a judicial officer;

- c) she is on probation since 2012 and that her probation period has been extended twice by the Commission's Appointments Committee;
- d) despite her having been admitted for rehabilitation on three different occasions during the period of her probation and having been counselled by her colleagues;
- e) her conduct has a detrimental effect on the smooth running of the courts, since she would on numerous occasions, and without advising her Judicial Head of Office timeously, or not at all, not report for duty;
- f) when she reports for duty, the possibility exist that she would be intoxicated and not able to dispense justice in the cases on her court roll;
- g) there is furthermore no substantial proof that she is currently receiving any medical and/or psychiatric treatment which adequately addresses her alcohol dependency, and
- h) there seems to be a progressive deterioration in her conduct,

the Commission holds the view that it would be in the interest of the administration of justice that Ms Jasone-Twala be provisionally suspended from office pending the conclusion of the inquiry into her fitness to hold office.

3.2. On 12 October 2017, Ms Jasone-Twala was, in compliance with the rules of natural justice, invited to furnish the Commission with representations why the Commission should not recommend that she be provisionally suspended from office and why the Commission should not determine to withhold her remuneration. A copy of the correspondence in this regard and her representations dated 24 October 2017 are attached.

(12 October 2017; 24 October 2017)

3.3 The Commission deliberated the matter and holds the following view:

3.3.1 The available evidence against Ms Jasone-Twala is of such a serious nature as to make it inappropriate for her to perform the functions of a magistrate while the allegations are being investigated.

3.3.2 Her conduct tarnishes the good name, dignity and esteem of the Office of Magistrate and the administration of justice.

3.3.3 That, without anticipating the outcome of the investigation into her fitness to hold the Office of Magistrate, the available evidence against Ms Jasone-Twala is of such a serious nature that it would justify her removal from office, should she be found guilty of the misconduct charges which are preferred against her.

3.3.4 There seems furthermore to be no justification why she should still receive remuneration whilst she is provisionally suspended from office pending the conclusion of the misconduct inquiry against her. She is on probation since 2012.

3.4 In order to advise the Minister on her provisional suspension from office pending the outcome of the investigation, Ms Jasone-Twala was afforded the opportunity to comment on the desirability of such provisional suspension. A letter dated 12 October 2017, addressed to Ms Jasone-Twala, is attached.

(12 October 2017)

3.5 Having considered Ms Jasone-Twala's response dated 24 October 2017, the Commission resolved to recommend that Ms Jasone-Twala be provisionally suspended from office in terms of section 13(3)(a) of the Act, pending the investigation into her fitness to hold office.

(24 October 2017)

3.6 The Commission holds the view that, without anticipating the outcome of the investigation into her fitness to hold the office of Magistrate, the existing evidence against Ms Jasone-Twala is of such a serious nature that it would justify her

removal from office, should she 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 light of the above, I decided to provisionally suspend Ms Jasone-Twala, an acting additional Magistrate at George from the office of Magistrate with immediate effect, pending the outcome of an investigation into her fitness to hold such office.
- 5.2** This report is submitted for consideration by Parliament in terms of section 13(3)(c) of the Magistrates Act, 1993.

Given under my hand at ... *CAPE TOWN* on this *21st* ... day of November 2017.



TM MASUTHA, MP (ADV)

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

(17 August 2017)

EXTRACT FROM EC AGENDA: 17 AUGUST 2017

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8.1(g)	Ms F K Jasona-Twala – George, 79/2015	Mr Meijer
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1. Summary

The Committee is referred to the minutes of its meetings held on 23 June and 30 October 2016. The content thereof is briefly discussed.

The Committee at its meeting held on 30 October 2015 resolved "that the misconduct matter against magistrate FK Jasona-Twala (hereinafter Ms Twala) be kept in abeyance pending the availability of updated psychiatric, medical and all other related medical reports". Ms Alman, the Chief Magistrate, Wynberg and the Cluster Head concerned, was advised of the Committee's resolution per email on 02 November 2015 and was requested to forward the reports to the Commission on or before 17 November 2015. This correspondence was forwarded to Ms Mviko, the Judicial Head of the Office, George on the same day. Ms Mviko responded on 10 November 2015 advising Ms Alman that Ms Twala is "still struggling to get a report from her George clinical psychologist as well as the Cape Town psychiatrist and clinical psychologist". She would forward the documents as soon as she received them.

Despite several reminders, the reports are still outstanding. On 19 July 2016 Ms Mviko responded to Ms Alman indicating that she is still awaiting the reports from Ms Twala. She submits that one must "take into consideration that Ms Twala was not referred to a state psychiatrist who would be compelled to make a report about his own findings. There is doctor patient confidentiality that still operates. The practitioners have been paid by this employee who acknowledged that she had a problem. That is a positive step."

On 18 May 2016 the Ethics Division directed an email to Ms Alman requesting her to furnish the Division with any further information on Ms Twala or report on any new developments which she is aware of. On 06 June 2016 the Division further requested Ms Alman to furnish the Commission with an update on Ms Twala's latest conduct with specific reference to her alleged abuse of alcohol, which request was forwarded to Ms Mviko the very same day. Ms Mviko provided Ms Alman with a report dated 30 June 2016 which report Ms Alman forwarded to the Commission on 01 July 2016, a copy of which is attached. Having perused the report and the correspondence contained in the file, the Ethics Division on 12 July 2016 requested Ms Mviko's comments/clarification on certain statements she made in her report. Copies of the Division's email to Ms Alman and subsequent electronic correspondence between Ms Alman, Ms Mviko and the Ethics Division dated 12, 13 and 19 July 2016 in this regard were also attached for the Committee's consideration.

The Ethics Division concluded that although no statements from witnesses were obtained and provided to the Commission, it is clear from the recent reports and the documentation submitted to the Commission that Ms Twala still appears to be abusing alcohol from time to time. Having been admitted for rehabilitation twice during August 2014 and March/April 2015 she has reportedly again been under the influence of liquor and/or sent home as recently as 25 November 2016, 09 March and 06 June 2016. There is furthermore no substantial proof that she is currently receiving any medical and/or psychiatric treatment which is adequately addressing her alcohol dependency. Despite various requests to furnish the Commission with updated reports in this regard, no reports have been submitted. Ms Twala has been appointed an acting magistrate at George on 12 July 2012. She is still on probation. Her probation period has been extended twice by the Commission's Appointments Committee. It appears that although Ms Twala admits that she has a drinking problem, she is not keen to address it.

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The shortcomings identified during the Judicial Quality Assurance Assessment conducted in September 2015 in the criminal court work indicate that dedicated attention is needed to prevent a recurrence thereof. Mentoring and guidance in this regard should be intensified and monitoring should occur on a daily basis in order to prevent irregularities and other shortcomings. In her report dated 11 July 2016 on Ms Twala's work performance Ms Mviko reports that she has vast knowledge of the law and that she can articulate that in the court decisions she is making on a daily basis. She further reports "that there are certain cases where she makes mistakes and such are referred to the High Court." Further that "Miss Twala does have knowledge of procedure although she does make procedural errors at times". Copies of the court cases Ms Twala dealt with were, however, not attached to the report.

It was recommended that:

- 1) the matter of Ms Twala's alleged recent alcohol abuse be further investigated by the Ethics Division and that statements be obtained from those officials and magistrates at George who witnessed Ms Twala being under the influence of alcohol at work on 26 November 2015, 08 March and 08 June 2016 in support thereof;
- 2) it be established whether or not Ms Twala is currently treated by a psychologist and/or psychiatrist and/or any other medical practitioner specifically relating to her alleged alcohol abuse, and if so, that she be directed to obtain progress reports from those practitioners in this regard;
- 3) copies of court cases she has dealt with and judgements she delivered during the past 7 (seven) months be obtained for purpose of assessing her work performance on the bench, and;
- 4) once all the documentation and information has been obtained, the matter be presented to the Ethics Committee at its next meeting for final consideration whether or not to charge her with misconduct and/or to obtain a directive how to deal with the matter further.

The Ethics Committee at its meeting held on 16 September 2016 subsequently resolved that further statements be obtained from officials and magistrates at George who observed Ms Twala being under the influence of alcohol, whilst at work and that the Committee awaits the outcome of her treatment and report from the relevant practitioners.

In Addition, the Ethics Division reported as follows on the history of the matter and any progress made since its meeting held on 20 July 2016:

- a) It will be noted that the Committee at its meeting held on 30 October 2015 resolved "that the misconduct matter against magistrate FK Twala be kept in abeyance pending the availability of updated psychiatric, medical and all other related medical reports".
- b) Ms Alman, the Chief Magistrate, Wynberg and the Cluster Head concerned, was advised of the Committee's resolution per email on 02 November 2015 and was requested to forward the reports to the Commission on or before 17 November 2015. This correspondence was forwarded to Ms Mviko, the Judicial Head of the Office, George on the same day.
- c) Ms Mviko responded on 10 November 2015 advising Ms Alman that Ms Twala is "still struggling to get a report from her George clinical psychologist as well as the Cape Town psychiatrist and clinical psychologist". She would forward the documents as soon as she received them.
- d) Despite several reminders, the reports are still outstanding. On 19 July 2016 Ms Mviko responded to Ms Alman indicating that she is still awaiting the reports from Ms Twala. She submits that one must "take into consideration that Ms Twala was not referred to a state psychiatrist who would be compelled to make a report about his own findings. There is doctor patient confidentiality that still operates. The practitioners have been paid by this employee who acknowledged that she had a problem. That is a positive step."
- e) On 18 May 2016 the Ethics Division directed an email to Ms Alman requesting her to furnish the

Division with any further information on Ms Twala or report on any new developments which she is aware of.

- f) On 08 June 2016 the Division further requested Ms Alman to furnish the Commission with an update on Ms Twala's latest conduct with specific reference to her alleged abuse of alcohol, which request was forwarded to Ms Mviko the very same day.
- g) Ms Mviko provided Ms Alman with a report dated 30 June 2016 which report Ms Alman forwarded to the Commission on 01 July 2016. Ms Mviko believed that if Ms Twala be "given another opportunity, she will completely conquer the alcohol dragon, as she has succeeded to be sober for such a very lengthy period". Having perused the report and the correspondence contained in the file, the Ethics Division on 12 July 2016 requested Ms Mviko's comments/clarification on certain statements she made in her report.
- h) Ms Mviko reported that Ms Twala on 08 July 2016 arrived late at the office and again smelt of liquor. Ms Mviko had to send her home and asked her to take leave for the day.
- i) Ms Mviko on 24 August 2016 reported to the Cluster Head that Ms Twala had another relapse. Ms Twala did not come to work on Friday, 19 August 2016. She did not report for duty and reportedly "could not pick up the phone" when Ms Mviko tried to call her. When Ms Mviko confronted her about her conduct the following Monday, 22 August 2016, she indicated that she did not had a reason for not coming to work. Ms Twala advised Ms Mviko that "her divorce proceedings were finalized on Friday and that she just felt like staying alone". She was requested to take unpaid leave for the day.
- j) On 07 September 2016 the Ethics Division was provided with a medical certificate issued on 06 September 2016 by Dr Q Cossie, a Specialist Psychiatrist certifying that Ms Twala had been admitted to the Rondebosch Summit Clinic, a rehabilitation centre, from 06 to 27 September 2016 for in patient care.
- k) On 25 October 2016 Ms Mviko directed a letter to Ms Twala requesting her to comment on her observations that Ms Twala unmistakably again smelled of liquor when she on 17 October 2016 reported for duty. Ms Mviko had to again request her to go home as she realised that Ms Twala was not fit and proper to preside over cases on that day. Ms Mviko reports that Ms Twala could not pick up the phone when she tried to call her on 18 October 2016. Ms Twala sent an sms stating that she was not feeling well. She did not report for duty the rest of the week and failed to submit a medical certificate indicating that she was ill. She was requested to furnish Ms Mviko with reasons why her absenteeism from office for this period "should not be treated as leave without pay and treated as an act of misconduct".
- l) Ms Mviko's statement dated 28 October 2016 and Ms Twala's comments of even date refer. The Committee was advised that Ms Twala apologised for not reporting for duty on 19, 20 and 21 October 2016, that she attempted to see a doctor, but felt to be alone in a dark place and wanted to be alone. She realised that that this was not an excuse for her behaviour.
- m) Despite numerous requests to furnish the Commission with documentary proof/medical reports of her alleged rehabilitation since March 2016, Ms Twala has to date failed to submit same.

The Ethics Division recommended that the Committee at its meeting held on 02 December 2016 resolves to recommend to the Appointments Committee to advise the Minister not to permanently appoint Ms Twala in terms of section 10 of the Magistrates Act, No 90 of 1983. Ms Twala is regarded not to be fit and proper to hold the Office of Magistrate.

Having had regard to the history of the matter the Committee resolved that the Appointments Committee be informed to not extend Ms Twala's probation any further and to advise the Minister not to permanently appoint Ms Twala in terms of section 10 of the Magistrates Act, 90 of 1983 as she is not a fit and proper person to hold such Office.

The matter served before the Commission's Appointments Committee in December 2016. On 12 December 2016 the Ethics Division was advised that the Appointments Committee resolved to refer the matter to the Magistrates Commission. The Appointments Committee is of the view that Ms Twala has made herself guilty of misconduct and that the normal misconduct processes must be followed.

The matter again served before the Ethics Committee at its meeting held on 24 January 2017. The Committee duly noted the resolution of the Appointments Committee and agreed that the matter be referred to the Magistrates Commission for its direction. The Committee further resolved that the matter be placed on the agenda of the Commission's meeting to be held on 24 February 2017.

The Magistrates Commission at its meeting held on 24 February 2017 resolved to support the view of the Appointments Committee and referred the matter back to its Ethics Committee.

On 28 February 2017, the Ethics Division directed an email to the Head of the Cluster, requiring her to update the Commission on Ms Twala's conduct and work performance, including information whether she was on leave etc. since October 2016 to date.

On 07 March 2017 the Cluster Head advised the Commission that Ms Twala was arrested on 28 September 2016 and warned to appear in the Riviersonderend Periodical Court on 09 February 2017 per SAF 496. On that date she called the Prosecutor and indicated that she is unable to be at court. An arrangement was made for the warrant of arrest to be held over until 13 February 2017 for her appearance. On 12 February 2017 she failed to appear in court and a warrant for her arrest was authorised. She is being charged for driving a motor vehicle on the N2 whilst under the influence of alcohol. She was granted vacation leave for the period 13 to 17 February 2017 but failed to appear in court. The warrant was issued.

The Cluster Head decided in the interest of the image of the magistracy not to wait until Ms Twala was arrested and instructed the Head of Office, George to tell Ms Twala to contact the Investigating Officer and make arrangements for her court appearance. She was also instructed to move Ms Twala from the criminal court. Ms Twala's Head of Office was unaware of the pending criminal case against Ms Twala and this fact came to her as a shock. The Head of the Cluster further reported that she visited the Caledon Court and whilst standing outside court Ms Twala arrived. Ms Twala appeared in court and the matter was postponed until 06 April 2017 for the Riviersonderend Periodical court.

On 13 March 2017, the Cluster Head was requested to obtain Ms Twala's comments on her court appearance at Caledon and to show cause why the Commission should not charge her with misconduct.

The Cluster Head on 18 May 2017 advised the Commission that the matter was on 06 April 2017 remanded to 16 May 2017 for Ms Twala to appoint a legal representative. The matter was on that day again remanded to 15 June 2017 in order for Ms Twala's attorney to obtain further particulars. The attorney on this day arranged for Ms Twala and herself to be excused and a warrant was held over until 20 July 2017 for them to be present at Riviersonderend Periodical Court. The Commission was on 01 August 2017 advised that despite Ms Twala informing the Presiding Officer that she will appoint a private attorney, to date no one has come on record or confirmed their appearance. Ms Twala was informed to ensure that her attorney is present in Caledon and not Riviersonderend on 20 August 2017 for purposes of arranging a trial date.

In a brief report from the acting Head of Office dated 20 March he confirms that Ms Twala during the period 12 December 2016 until 19 January 2017 there was not a single incident regarding Ms Twala's conduct which was reported to him. At times they were the only two magistrates on duty at George. When he had to travel to Uniondale during this period she was the only magistrate at George and was able to cope. "She was always on time and never absent from work. She really did her bit during this time". Ms Twala in her comments dated 20 March 2017 confirmed that she appeared in Court at Caledon and, rightly so, indicated that she has not been found guilty as yet and that the presumption of innocence is equally applicable to her as any other South African citizen is presumed to be innocent.

The Cluster Head was also requested to furnish the Commission with a performance report on Ms Twala's judicial work since November 2017. Ms Mviko, the Head of Office, George on 20 March 2017 at 02:30 PM reported to the Cluster Head that "There has been a great improvement in the conduct of Ms Twala ever since she went for rehabilitation at her own expense" and that from January 2017 to date she does "not recall any incident where Ms Twala was reported to be smelling of alcohol during working hours."

Ms Mviko, however, on 27 March 2017 informed the Head of the Cluster that she on 20 March 2017 at 02:56 PM (thus before she submitted the above report on Ms Twala) at about 12:30 released Ms Twala to go home, noticing that she was not looking well as she was showing signs of rapid respirations. She further perceived a slight smell of alcohol which she did not smell at 09:00 that morning when she was with her. When, she gave Ms Twala a document after 12:00 to sign, she sensed the smell of alcohol and released her. The Head of the Cluster's opinion is that Ms Mviko was being a great deal less than frank in her report. Ms Mviko has, on her request, been transferred to Mthatha with effect from 01 May 2017. The Cluster Head finds it difficult to make a recommendation regarding the way forward. She, in an email dated 30 May 2017, indicated that it is of extreme concern to her that the incident of her appearing in court occurred when Ms Twala was returning from an intervention regarding her alcohol abuse and that it appears that this, and previous interventions, did not have the desired effect.

It appears from Ms Twala's leave record that she for the past 10 months was granted leave for the following days/periods:

17 October 2016	Vacation leave
18 October 2016	Sick leave
19-21 October 2016	Unpaid leave
12 December 2016	Sick leave
13-17 February 2017	Vacation leave
09 March 2017	Vacation leave (for her court appearance)
08 April 2017	Vacation leave
19-21 April 2017	Sick leave
15-16 May 2017	Sick leave
18-19 May 2017	Vacation leave

The acting Head of Office, George on 11 August 2017 reported that he was made aware that Ms Twala was not able to come to work due to ill-health on 24 and 25 July 2017. Upon her return to work on 26 July 2017 she did not report to his office. He went to see her at her office on 27 July 2017, reminding her to fill in and submit leave forms for the days she was absent. On 31 July 2017 Ms Twala again did not report for duty. He was not informed of the reasons thereof. She also did not report for duty the following day (01 August 2017), but was

given a medical certificate indicating that she was sick and that she would report for duty on 04 August 2017. She was on duty on 04 August 2017, but did not report to him that she is present. She was on duty on 07 and 08 August 2017, but still not reported to him and failed to submit any leave form. She was reportedly again not at office on 10 and 11 August 2017 and has failed to notify her acting Head of Office of her absence.

She has up to date failed to provide him with the required duly completed leave forms for these periods of absence.

2. Conclusion

The view is held that there is sufficient evidence to charge Ms Twala with various counts of misconduct. It is clear from the recent reports, statements obtained from witnesses and the documentation submitted to the Commission that Ms Twala has still a problem with abusing alcohol from time to time. Having been admitted for rehabilitation twice during August 2014 and March/April 2015 and again during September 2016, she has reportedly again been under the influence of liquor and/or sent home as recently as 20 March 2017. There is furthermore no substantial proof that she is currently receiving any medical and/or psychiatric treatment which adequately addresses her alcohol dependency. Despite various requests to furnish the Commission with updated reports in this regard, no reports have been submitted. Ms Twala has been appointed as an acting magistrate at George on 12 July 2012. She is still on probation. Her probation period has been extended twice by the Commission's Appointments Committee. It appears that although Ms Twala admits that she has a drinking problem, she is not keen to address it. Her conduct and continuous absenteeism from office negatively affects the administration of justice at George.

3. Recommendations

It is recommended that Magistrate FK Jasone-Twala, an additional magistrate at George and still on probation, be charged with misconduct in terms of regulation 28(4)(b) of the Regulations for Judicial Officers Lower Courts, No. R 381 of 11 March 1994 and that a draft charge sheet be presented to the Committee at its next meeting for consideration.

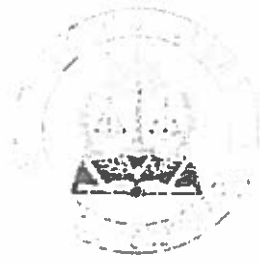
RESOLUTION:

(i) Magistrate F.K. Jasone Twala is charged with misconduct and that a draft charge sheet be presented to the Ethics Committee at its next meeting for due consideration.



ADV. J. MOOSA
CHAIRPERSON: ETHICS COMMITTEE
DATE: 17/08/2017

49(6)



(12 October)
2017

**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001

☎ (012) 325 3951

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┌
Ms K Jasone-Twala
George Magistrates' Court
Private Bag X6537
GEORGE
6530
└

┌

Reference : 6/5/5/2 – 79/2015
Verwysing

Enquiries : D Bosman
Navrae

└

Date : 12 October 2017
Datum

Dear Ms Jasone-Twala

PROVISIONAL SUSPENSION FROM OFFICE: YOURSELF

1. You have been appointed as an acting (aspirant) magistrate on 23 May 2012 with effect from 2 July 2012
2. Your probation period should have lapsed on 02 January 2013, but your probation date has been extended since then due to incapacity, allegations and complaints of misconduct as well as your appearance in a criminal court on pending criminal charges against you.
3. An investigation has already been instituted by the Magistrates Commission (Commission) into your fitness to hold office of which you were informed and given reasonable opportunity to be heard.
4. **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 while the investigation is being finalized and a misconduct charge sheet be prepared and approved.
5. In view hereof, as well as the fact that you are still on probation, 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) of the Magistrates Act, No. 90 of 1993 pending the finalization of the inquiry into your fitness to hold office as Magistrate.

2.

6. Your written submission, if any, should reach this Office on or before 20 October 2017.
7. Should you fail to reply within the stipulated period it will be deemed that you do not wish to submit any representations.

Yours faithfully



D BOSMAN

ETHICS DIVISION: MAGISTRATES COMMISSION

(24 October)
2017

The Magistrate Commission

24 October 2017

Dear Sir/ Madam

Firstly I would like to apologise for the late submission of reasons, I was under the impression that the date was the 25th of October 2017 and not as indicated in the letter 20th of October 2017.

My request is that there are compelling circumstances that have made me to be disturbed. The transfer documentation are before the commission, as I have on numerous occasions requested a transfer back to Cape Town, as I have no support structure in George. I moved to George with my child who suffers from Autism but he also could not cope with the environment of George. Following this I had to send him back to Cape Town to live with his father as there are better schools which can cope with his Autism. During that time the officer initiated divorce proceedings that were only finalised in 2016 which also took a toll on my well-being.

Myself, as an officer of the court, am still committed to the job that I have taken and request not to be provisionally suspended as I am the sole breadwinner at the home of the officer in Cape Town. Both my parents are now deceased and both my siblings are unemployed.

The officer emphasises that there are reasons why the officer should not be suspended from office. I hope the above receives your most favourable attention and as officer humbly request not be suspended.

I humbly apologise for my late response.

Yours faithfully

Faith Jasone-Twala

Faith

49(15)

**ANNEXURE B -
REPORT**



REPORT IN TERMS OF SECTION 13(4A)(b) OF THE MAGISTRATES ACT, 90 OF 1993: WITHHOLDING OF REMUNERATION: MS FK JASONE-TWALA, ACTING ADDITIONAL MAGISTRATE, GEORGE

1. PURPOSE

The purpose of this report is to inform Parliament of a determination by the Magistrates Commission in terms of section 13(4A)(a) of the Magistrates Act, 90 of 1993 (hereinafter the Act), to withhold the remuneration of Ms FK Jasone-Twala, an acting additional Magistrate at George and to provide Parliament with the reasons therefor. Parliament is referred to my report which I tabled in Parliament relating to my decision to provisionally suspend Ms Jasone-Twala from office and the reasons therefore.

2. BACKGROUND

- 2.1** The Commission advised me that it resolved to determine to withhold Ms Jasone-Twala's remuneration in terms of section 13(4A)(a) of the Act, if I approve her provisionally suspension from office, which I did.
- 2.2** Parliament is referred to an extract of the Commission's Ethics Committee's agenda held on 17 August 2017, setting out the history of the matter and for ease of reference. The Commission resolved that Ms Jasone-Twala, an additional Magistrate at George be charged with misconduct. A copy of the extract is attached.

(17 August 2017)

3. DISCUSSION

3.1 Having regard to the fact that:

- a) the allegations of misconduct against Ms Jasone-Twala are very serious;
- b) prima facie evidence exist that she suffers from alcohol dependency which has a continuous detrimental effect on her daily work performance as a judicial officer;
- c) she is on probation since 2012 and that her probation period has been extended twice by the Commission's Appointments Committee;
- d) despite her having been admitted for rehabilitation on three different occasions during the period of her probation and having been counselled by her colleagues;
- e) her conduct has a detrimental effect on the smooth running of the courts, since she would on numerous occasions, and without advising her Judicial Head of Office timeously, or not at all, not report for duty;
- f) when she reports for duty, the possibility exist that she would be intoxicated and not able to dispense justice in the cases on her court roll;
- g) there is furthermore no substantial proof that she is currently receiving any medical and/or psychiatric treatment which adequately addresses her alcohol dependency, and
- h) there seems to be a progressive deterioration in her conduct,

the Commission holds the view that it would be in the interest of the administration of justice that Ms Jasone-Twala remuneration be withheld, whilst she is provisionally suspended from office pending the conclusion of the inquiry into her fitness to hold office.

3.2 The Commission deliberated the matter and holds the following view:

- ##### **3.3.1 The available evidence against Ms Jasone-Twala is of such a serious nature as to make it inappropriate for her to perform the functions of a magistrate while the allegations are being investigated.**

3.3.2 Her conduct tarnishes the good name, dignity and esteem of the Office of Magistrate and the administration of justice.

3.3.3 That, without anticipating the outcome of the investigation into her fitness to hold the Office of Magistrate, the available evidence against Ms Jasone-Twala is of such a serious nature that it would justify her removal from office, should she be found guilty of the misconduct charges which are preferred against her.

3.3.4 There seems to be no justification why she should still receive remuneration whilst she is provisionally suspended from office pending the conclusion of the misconduct inquiry against her. She is on probation since 2012.

3.2 On 12 October 2017 Ms Jasone-Twala was, in compliance with the rules of natural justice, invited to show cause why the Commission, should not determine to withhold her remuneration forthwith. A copy is attached.

(12 October 2017)

3.3 Having considered Ms Jasone-Twala's response dated 24 October 2017, the Commission resolved to determine to withhold the remuneration of Ms Jasone-Twala in terms of section 13(4A)(a) of the Act, pending the investigation into her fitness to hold office and whilst she is provisionally suspended from office.

A copy of her representations in this regard is attached.

(24 October 2017)

3.4 Due to the existing evidence against her, Ms Jasone-Twala is not fit and proper to hold the office of Magistrate any longer. Ms Jasone-Twala is still on probation. She has for the past five (5) years received full remuneration.

3.5 The Commission is of the opinion that, having further regard to the Constitutional Court's judgment in Van Rooyen and Others v The State and Others, CCT case no 21/2001, where the Constitutional Court held that if good reasons exist for the

suspension of a magistrate, even if provisionally, the withholding of salary during such suspension is not necessarily disproportionate, Ms Jasone-Twala's provisional suspension from office without remuneration is justified.

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 therefore must be tabled in Parliament by the Minister within 7 (seven) days of such determination 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(4A)(b) of the Act)

5. **CONCLUSION**

This report is submitted for consideration by Parliament in terms of section 13(4A)(b) of the Magistrates Act, 1993.

Given under my hand at CAPE TOWN on this...21ST...day of November 2017.



TM MASUTHA, MP (ADV)

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT