



SIGNED BY:

MINISTRY
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

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



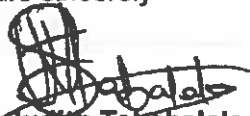
Mr L Claasen
Parliament of the RSA
P O Box 15
CapeTown
8000

Dear Mr Claasen

**REPORT ON THE WITHHOLDING OF REMUNERATION OF MR M J KGOMO,
ADDITIONAL MAGISTRATE, RANDBURG**

The purpose of this letter is to provide Parliament with the report to be tabled in Parliament in terms of section 13(4A)(b) of the Magistrates Act, No 90 of 1993. The report is 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 (n151103)
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

**REPORT ON THE WITHHOLDING OF REMUNERATION OF MR M J KGOMO,
ADDITIONAL MAGISTRATE, RANDBURG**

The purpose of this letter is to provide Parliament with the report to be tabled in Parliament in terms of section 13(4A)(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: 21/11/17



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Ref: 3/26/5/5 (n151103)
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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

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MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

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Ref: 3/26/5/5 (n151103)
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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

**REPORT ON THE WITHHOLDING OF REMUNERATION OF MR M J KGOMO,
ADDITIONAL MAGISTRATE, RANDBURG**

With reference to your letter dated 15 November 2017 (under your reference 6/5/5/2(187/2013), I wish to inform you that I have noted the Commission's determination to withhold Mr Kgomo's remuneration with immediate effect.

A copy of the report, which I have tabled in Parliament in compliance with the provisions of section 13(4A)(b) of the Magistrates Act, 1993 is enclosed herewith for your records. A copy of my letter to Mr Kgomo 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 (n151103)
Enq: X1700
Email: Ministry@justice.gov.za

Mr M J Kgomo
c/o The Chief Magistrate
Private Bag 1
JOHANNESBURG
2000

Dear Mr Kgomo

WITHHOLDING OF REMUNERATION

I have noted the Commission's determination to withhold your remuneration.

A report to this effect has been tabled in compliance with the provisions of section 13(4A)(b) of the Magistrates Act, 90 of 1993.

Yours faithfully

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

DATE: 21/11/17



REPORT IN TERMS OF SECTION 13(4A)(b) OF THE MAGISTRATES ACT, NO. 90 OF 1993: WITHHOLDING OF REMUNERATION: MR MJ KGOMO, ADDITIONAL MAGISTRATE, RANDBURG

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, 1993 (Act 90 of 1993, hereinafter the Act) to withhold the remuneration of Mr MJ Kgomo, an additional Magistrate at Randburg and to provide Parliament with the reasons therefore.

2. BACKGROUND

My predecessor, on the advice of the Commission, provisionally suspended Mr Kgomo from office in terms of section 13(3)(a) of the Act with effect from 18 February 2014 which suspension was confirmed by Parliament on 13 March 2014.

CRIMINAL PROCEEDINGS

- 2.1 Mr Kgomo is an additional Magistrate at Randburg. He is 57 years of age and has been appointed to the lower court bench in July 2000. He was arrested during the afternoon of 5 December 2013 and appeared in the Randburg Regional Court the following day on a charge of corruption. It is alleged that he demanded and received R150 000 (one hundred and fifty thousand rand) in exchange for positively influencing the outcome of an appeal for extradition brought by the complainant in the particular matter. The complainant had to face charges of corruption in another country amounting to R20 million. The money was recovered in Mr Kgomo's briefcase in his office and in his presence. The Court on 9 December 2013 granted Mr Kgomo bail to the amount of R30

000 (thirty thousand rand).

- 2.2** The criminal case was postponed on several occasions for various reasons. The matter was on 26 August 2014 remanded to 3 October 2014 for Mr Kgomo to instruct an attorney. The Senior State Advocate assigned to prosecute Mr Kgomo advised the Commission that Mr Kgomo's attorney did not appear in court on the last occasion. Mr Kgomo's legal representative withdrew as attorney of record on 3 October 2014. The case was provisionally remanded to 30 October 2014 for Mr Kgomo to secure the services of a new legal representative. The Court also set the trial date for 16-20 February 2015. The new legal representative made his appearance in court on 30 October 2014.
- 2.3** The criminal trial commenced on 16 February 2015 and proceeded for the entire week. Three witnesses testified in a trial within a trial. After judgment was passed, the State called the complainant to the stand. The matter was postponed to 09 June 2015 for further trial and set down for three weeks for the evidence to be finalised.
- 2.4** On 09 June 2015 Mr Kgomo once again experienced problems with legal representation. The record of the proceedings reflects that there was an issue between Mr Kgomo and his instructing attorney which issue could not be resolved, with the result that his attorney and counsel had to withdraw. The witnesses for the State were all subpoenaed and most of them were in attendance. The case was remanded to 11 June 2015 for Mr Kgomo to sort out his problem concerning legal representation.
- 2.5** On 11 June 2015 Mr Kgomo placed on record that he had tried to negotiate with his previous legal team but that the trust relationship had irretrievably broken down. He was given until 17 June 2015 to instruct a new legal representative.
- 2.6** On 17 June 2015 his new attorney placed on record that he was instructed to represent Mr Kgomo but that he would engage the services of counsel to assist him at the trial. Although previous counsel indicated that he was prepared to proceed with the matter

when so briefed, he on 17 June 2015 indicated that he was already engaged and not willing to come back to represent Mr Kgomo in the matter. This left the newly appointed attorney with no option other than to ask the court for a postponement to brief another advocate. The Court postponed the case until 23 June 2015 on condition that Mr Kgomo's newly appointed attorney, as well as counsel be present to arrange new dates for the trial to proceed.

- 2.7** On 18 June 2015 Mr Kgomo terminated the services of his new attorney and once again instructed another attorney to represent him. The now newly instructed attorney was on record on 23 June 2015. Mr Kgomo's indicated that they would not be briefing counsel. Arrangements for a new trial date had to be set. The Presiding Officer, however, refused to set a trial date and gave Mr Kgomo until 01 July 2015 to pay his lawyer for the duration of the trial.
- 2.8** The matter was back in court on 23 September 2015 and 26-28 October as well as 02-03 November 2015 for further hearing. The State made considerable progress in the matter. The matter was remanded to 03 and 04 May, 09 to 11 May, 16 to 18 May and 23 May 2016 for continuation of the hearing. The State again made significant progress in the matter during this entire period. The case was postponed until 03, 04, 06, 10, 11 and 17 to 19 October 2016 for further evidence. The Director of Public Prosecutions: Gauteng Local Division on 20 October 2016 reported that the State had closed its case and that the defence brought an application for Mr Kgomo's discharge in terms of section 174 of the Criminal Procedure Act (CPA). The defence also brought an Application in terms of section 186 of the CPA which was found to be premature. The court ordered the defence to proceed with its case and postponed the proceedings for this purpose until 18 -20 January 2017. Mr Kgomo's attorney was not available prior to these dates. The matter was further adjourned to 10 March 2017 to argue on the section 186 Application. The Court on 31 March 2017 dismissed the application. The matter was postponed until 26 July 2017 for the parties to submit written Heads of Arguments and address on the merits.
- 2.9** The cause of this long delay was once again due to the defence attorney not being

available prior to this date and the fact that the parties requested a copy of the transcription of the record of proceedings. A magnitude of evidence has been led in the case which includes oral testimony as well as tons of documentary evidence. The Regional Court convicted Mr Kgomo on two (2) counts of corruption on 23 October 2017 and postponed the matter to 07 and 08 February 2018 for sentencing.

DISCIPLINARY PROCEEDINGS

- 2.10** The Magistrates Commission charged Mr Kgomo with misconduct. A charge sheet dated 11 April 2014 was duly served on him. Mr Kgomo absented himself from office without leave or valid cause for the period 20 January 2014 to 04 March 2014, the latter being the day he was served with the Minister's letter informing him of his provisional suspension from office.
- 2.11** The National Prosecuting Authority (NPA) requested the Commission not to commence with its disciplinary hearing/inquiry against Mr Kgomo since it was of the view that it would prejudice the State's criminal case against him.
- 2.12** The Magistrates Commission at its meeting held on 31 October 2014 considered this request and resolved to keep a decision on the matter in abeyance until its next meeting to be held on 27 February 2015 for the NPA to provide the Commission with a progress report regarding Mr Kgomo's criminal prosecution. The Commission at its meeting held on 27 February 2015 noted that the criminal case is complex and very sensitive. The Commission therefore resolved to keep the disciplinary hearing against Mr Kgomo in abeyance, pending the progress made in the criminal case him.

3. DISCUSSION

- 3.1** Mr Kgomo is on provisional suspension since 18 February 2014. The misconduct inquiry against him has been kept in abeyance pending the progress made in the criminal matter. Mr Kgomo's first court appearance was on 06 December 2013. It is clear from the above that he is the sole cause of the delay in having the criminal case against him concluded. He has now been convicted on two counts of corruption. He has

been provisionally suspended from office for almost four (4) years and is still receiving full remuneration.

- 3.2 The Commission holds the view that Mr Kgomo will equally cause the disciplinary process against him to be delayed. The mere fact that he has been convicted on two counts of corruption, on its own, justifies the withholding of his remuneration, pending the finalisation of the misconduct inquiry against him.
- 3.3 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, Mr Kgomo's provisional suspension from office without remuneration is justified.
- 3.4 On 27 October 2017 Mr Kgomo was, in compliance with the rules of natural justice, therefore invited to show cause why the Commission (or its EXCO), at its next meeting, should not determine to withhold his remuneration forthwith. A letter in this regard was served on him on 03 November 2017, a copy of which is attached.

(27 October 2017)

- 3.5 Mr Kgomo, however, failed to respond within the time limits to this invitation to furnish the Commission with any representations in this regard. His representations dated 09 November 2017, which were filed out of time, were nevertheless considered by the Commission. A copy of his representations is attached.

(09 November 2017)

- 3.6 Having regard to the fact that it is evident that Mr Kgomo is deliberately delaying the continuation of the disciplinary process against him and the serious nature of his

criminal conviction, the Commission determined to withhold Mr Kgomo's remuneration in terms of section 13(4A)(a) of the Act, pending the conclusion of the disciplinary inquiry against him with immediate effect.

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



**MAGISTRATES' COURTS JUDICIARY
REPUBLIC OF SOUTH AFRICA**

Private Bag 1 JOHANNESBURG 2001 – Tel [011] 491 5031 Fax [011] 834 9768
Magistrates' Court House - Cnr. Fox and West Streets – Johannesburg

Ref: 2/1/5 JM
Enq: E. Mashile/bm
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e-mail: EMashile@justice.gov.za
Date 3 November 2017

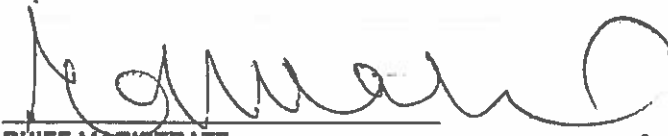
The Secretary
Magistrates Commission
P.O Box 9096
PRETORIA
0001

Attention: Mr. A Louw

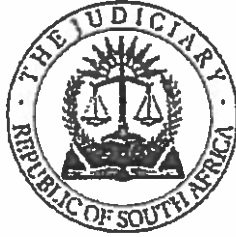
WITHHOLDING OF REMUNERATION: Mr. M J KGOMO: YOUR 6/5/5/2-187/2013 REFERS

1. With reference to your email dated 30 October 2017, I confirm that Mr. Kgomo called at my office this morning and that I served him with your letter dated 27 October 2017 against his signature.
2. The copy he signed is attached hereto as requested.

Regards,



CHIEF MAGISTRATE
JOHANNESBURG CENTRAL



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001

☎ (012) 325 3951

FAX/FAKS (012) 326 0094

┌
Mr M J Kgomo
c/o The Chief Magistrate
Private Bag X3005
RANDBURG
2125
└

┌

Reference : 6/5/5/2 – 187/2013
Verwysing

Enquiries : A Louw
Navrae

Date : 27 October 2017
Datum

└

Dear Mr Kgomo

WITHHOLDING OF REMUNERATION: YOURSELF

It has come to the notice of the Commission that on 23 October 2017 you were convicted by the Regional Court, Randburg on two counts of corruption.

I confirm that you are currently provisionally suspended from office, which suspension was confirmed by Parliament on 13 March 2014.

In the light of the afore-going, the Commission contemplates, in terms of section 13(4A)(a) of the Magistrates Act, 1993 (Act 90 of 1993), to determine to withhold your remuneration whilst you are provisionally suspended from office and pending the outcome of an investigation into your fitness to hold office.

You are hereby invited to show cause, in writing, within 3 days from date of receipt hereof, why the Commission should not determine to withhold your remuneration in terms of section 13(4A)(a) of the Act with immediate effect and request the Minister of Justice and Correctional Services to table a report in this regard to Parliament.

Yours faithfully

SECRETARY: MAGISTRATES COMMISSION



**MAGISTRATES' COURTS JUDICIARY
REPUBLIC OF SOUTH AFRICA**

Private Bag 1 JOHANNESBURG 2001 – Tel [011] 491 5031 Fax [011] 834 9768
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Ref: 2/1/5 JM
Enq: E. Mashile/om
Fax No: 086 507 0588
e-mail: EMashile@justice.gov.za
Date: 09 November 2017

The Secretary
Magistrates Commission
P.O. Box 9096
PRETORIA
0001

Attention: Mr. A Louw

WITHHOLDING OF REMUNERATION: MR. M J KGOMO: YOUR 6/5/5/2-187/2013 REFERS

With reference to my evenly numbered minute dated 3 November 2017, I attach hereto Mr. Kgomo's response which was hand delivered to my office earlier this morning.

Regards,

**ACTING CHIEF MAGISTRATE
JOHANNESBURG CENTRAL**

M J Kgomo
% CHIEF MAGISTRATE
P/Bag 73005
RANDBURG
8/11/2017

MAGISTRATE COMMISSION
Box 9095
PRETORIA
0001

ref 6/5/12 - 187/2013

RE WITHHOLDING OF REMUNERATION. M J KGOMO

I refer to your letter dated 27/10/2017
the content of which has been noted
and therefore respond as follows:

That I request the committee not to
withhold my salary as I am
a breadwinner. I am having
five orphans staying with me
three is attending at tertiary,
while two still at high school

Not all my four children are
still staying with me is my
house and two still also at
ETI the inservice training while
the two not employed.
I also have three grand children
their mother is unemployed

(2)

In total we are 14 in the house five of them, four of them are my children plus three grandchildren, myself and my wife all depend on me for anything, if the committee can decide to withhold my salary all will automatically suffer.


The other reason is that at this stage one cannot finally say that I am convicted as the remedies has not yet exhausted I am not yet even sentenced and it is highly possible that something might happen in between which might cause the court to reverse my conviction before the sentence I can also still have the right to appeal the conviction which I am intending to do and it is possible that the appeal might succeed, and if the appeal succeed while my salary was withheld for the period pending appeal which is normally \pm two years when finalized I would have suffered an irreparable damage as I am now still paying for my house bond (outstanding year 8 yrs) and still paying for my car if the appeal succeed.

Based on the above facts I hereby request the committee not to withhold my salary until all remedies are being exhausted in order for the sake of all the innocent children.

②

and to minimise damage that it
might suffer or incur as a result

I thank


MATHOBELA JOHANNES KGOMO



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JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

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