



**MINISTRY
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA**

Private Bag X 276, Pretoria, 0001, Tel: (012) 406 4669; Fax: (012) 406 4680
Private Bag X 256, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

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 MS R M MALAHLELA,
ADDITIONAL MAGISTRATE, DELMAS**

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: 29/11/2017

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



MINISTRY
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA
Private Bag X 276, Pretoria, 0001, Tel: (012) 406 4669; Fax: (012) 406 4680
Private Bag X 266, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

Ref: 3/26/5/5 (n271103)
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 MS R M MALAHLELA,
ADDITIONAL MAGISTRATE, DELMAS**

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: 29/11/2017



**MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA**

Private Bag X 276, Pretoria, 0001, Tel: (012) 406 4689; Fax: (012) 406 4680
Private Bag X 256, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

Ref: 3/28/5/5 (n271103)
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

**REPORT ON THE WITHHOLDING OF REMUNERATION OF MS R M MALAHLELA,
ADDITIONAL MAGISTRATE, DELMAS**

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

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

DATE: 29/11/2017



MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

Private Bag X 276, Pretoria, 0001, Tel: (012) 406 4669; Fax: (012) 406 4680
Private Bag X 256, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

Ref: 3/26/5/5 (n271103)
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

**REPORT ON THE WITHHOLDING OF REMUNERATION OF MS R M MALAHLELA,
ADDITIONAL MAGISTRATE, DELMAS**

With reference to your letter dated 24 November 2017 (under your reference 6/5/5/2(193/2007), I wish to inform you that I have noted the Commission's determination to withhold Ms Malahlela'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 Ms Malahlela is also enclosed.

With kind regards

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

DATE: 29/11/2017



MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

Private Bag X 278, Pretoria, 0001, Tel: (012) 406 4668; Fax: (012) 406 4680
Private Bag X 256, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

Ref: 3/26/5/5 (n271103)
Enq: X1700
Email: Ministry@justice.gov.za

Ms R M Malahlela
c/o The Chief Magistrate
Private Bag 1
JOHANNESBURG
2000

Dear Ms Malahlela

WITHHOLDING OF REMUNERATION

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

A report to this effect has been tabled in Parliament 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: 29/11/2017



REPORT IN TERMS OF SECTION 13(4A)(b) OF THE MAGISTRATES ACT, 90 OF 1993: WITHHOLDING OF REMUNERATION: MS MALAHLELA, ADDITIONAL MAGISTRATE, DELMAS

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 RM Malahlela, an additional Magistrate at Delmas and to provide Parliament with the reasons therefor.

2. BACKGROUND

DISCIPLINARY PROCEEDINGS

- 2.1 Mrs Malahlela is an aspirant additional magistrate at the Delmas District Court. She is 54 years of age and has been appointed to the lower court bench on 01 November 2004. She is still on probation. The Minister, on the advice of the Commission, provisionally suspended Ms Malahlela from office with effect from 17 July 2014 which provisional suspension was confirmed by both Houses of Parliament on 6 and 18 November 2014 respectively.
- 2.2 To date her permanent appointment could not be finalized due to poor performance, irregularities in her work, absenteeism from office, refusal to execute lawful orders, major delays in handing down 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.

- 2.3 Mrs Malahlela was for considerable periods absent from work and in default to explain her absence, she could not satisfy the Commission that she is a fit and proper person to be appointed as a magistrate. Medical reports indicated that she suffered from Major Depressive Disorder and Panic Disorder. The condition does however not render her unfit to work, but she has to continue with monthly psychotherapy and medication.
- 2.4 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 and that she should furnish reasons in terms of Regulation 29(6) of the Regulations.
- 2.5 The Commission's Ethics Committee subsequently resolved that a Judicial Quality Assurance Report on the judicial work performed by Ms Malahlela be submitted to the Commission for consideration. The report was compiled by two Senior Magistrates and covered the period 2010 to August 2012. The following concerns were raised in the report: 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; similarly, the mistakes made in the Family Court is not reflecting her years of experience; she has a long outstanding debt for private phone calls made from the land line of the office; various complaints resulted in her allocation to the reception court; partly heard matters prior to 2010 took years to finalize; there is a history of strained relationships between Mrs Malahlela and the local attorneys, the prosecutors and administrative staff; her absenteeism from office has reduced since she works in the reception court – she has a tendency to be absent on Mondays which extends to Wednesdays.
- 2.6 The Ethics Committee on 6 September 2012 resolved that she be exposed to an additional six months of probation under the guidance of an on board mentor, namely the then acting Judicial Head of Office. A report in this regard was submitted to Mrs Malahlela on 18 April 2013 for her comments. Although the gist of the report was positive in nature, the then acting Judicial Head of Office at the

time was not prepared to make a recommendation.

- 2.7 The acting Judicial Head of Office reported as follows: "It was difficult to write a comprehensive report due to the fact that the magistrate was during the period of extended probation absent for 39 days – 31 days for vacation leave and 8 days for sick leave; the magistrate was evaluated on her work done in the reception court; the statistics she provided raises many questions as to her productivity; she often arrives late at work; does not attend in time to circulars/official correspondence which she must sign; her dedication to her work is questionable; the traffic court roll is not finalized on the allocated court day."
- 2.8 New complaints were lodged against Mrs Malahlela on 24 April 2013: The Control Prosecutor averred that she in case A793/2012 held an enquiry into the accused's failure to attend court and found him not guilty despite the fact that his bail was finally forfeited to the state on a previous occasion; the warrant of arrest was not cancelled by the magistrate; she refuses to sign circulars and official communication; failure to finalize her inquests despite reminders; left the office without finalizing her court roll; the acting Judicial Head of Office does not see her way open to discuss anything with her; the relationship has become strained and she often does not know what the whereabouts of Mrs Malahlela are at the office. Further complaints on 7 May 2013 indicated the following: the inquests mentioned above were not submitted. She did not return on 2 May 2013 from leave and eventually handed in a sick note for the 2nd and 3rd of May 2013; she did not submit her monthly statistics on 26 April 2013; she only did so on 6 May 2013 after various reminders; she did not respond to a reminder from the Magistrates Commission.
- 2.9 A letter from the then acting Judicial Head of Office and the sub-cluster Head dated 20 May 2013 requested the Commission to take into consideration all previous reports and recommendations; to consider whether Mrs Malahlela is indeed a fit and proper person to be appointed as a magistrate; the past conduct of her, namely falling asleep in court; she did not honour her bond payments which

resulted in the re-possession of her house and the selling thereof on public auction; despite a court order for eviction, she refused to vacate the property for a year and left the house in a neglected and damaged state; she often arrives late at work; she takes extensive vacation and sick leave; she does not attend case flow meetings; a backlog court was created to accommodate her as she cannot cope with a normal court roll; statistics are not submitted in time; she often takes time off from work during official work hours. Seven (7) civil judgments taken against Mrs Malahlela were handed down at the District Court in which jurisdiction she is a judicial officer.

- 2.10 The Commission's Ethics Committee accordingly resolved to conduct a preliminary investigation in terms of Regulation 26(1) of the Regulations to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against Mrs Malahlela and to investigate the feasibility of re-opening the previous four charges of misconduct against her.
- 2.11 The Investigation report recommended that Mrs Malahlela is charged with misconduct. A charge sheet comprising of 29 counts of alleged misconduct was served on her on 05 March 2014.

HIGH COURT APPLICATION

- 2.12 On 18 June 2014 Mrs Malahlela filed a Notice of Motion at the North Gauteng High Court citing the Magistrates Commission and the Minister of Justice as respectively the First and Fourth Respondents. She applied for a Court order, *inter alia* to declare the Commission's decision to charge her with misconduct to be wrongful and unlawful. The application is opposed.
- 2.13 At its meeting held on 31 October 2014 the Commission considered the content of an email message from Mrs Malahlela's attorney, requesting not to proceed with the disciplinary hearing, pending the outcome of the High Court review application since the relief sought, *inter alia*, is to set aside the decision by the Magistrates Commission to charge Mrs Malahlela with misconduct. The Commission resolved

to stand by its earlier decision that the misconduct hearing must proceed, notwithstanding the pending litigating in the High Court.

- 2.14 Mrs Malahlela's attorney was advised accordingly and requested for further particulars which were furnished to him on 13 November 2014. In consultation with her attorney, the date for the misconduct hearing to commence was set for 11 May 2015. On 11 May 2015, the defence requested a postponement of the disciplinary inquiry which application was argued before the Presiding Officer. The Presiding Officer however ruled to keep the disciplinary inquiry in abeyance pending the outcome of Ms Malahlela's High Court application.
- 2.15 Having delayed her High Court application for more than three (3) years, the State Attorney on 04 May 2017, advised the Commission that the matter was set down for hearing on 02 and 03 May 2017 by the Gauteng Local Division of the High Court. Ms Malahlela persisted with an application to have the matter heard by 2 Judges or more. This request was turned down. She then brought an application for the Presiding Judge to recuse herself on the basis of incidents which occurred in court. Her attorney was given the opportunity to bring an application from the bar which he refused.
- 2.16 He insisted that he wanted to bring it by way of a Notice of Motion, supported by an affidavit. The Court refused this request given the fact that the matter would then have to be postponed to allow the Applicant time to consult and bring such an application. The attorney then decided to withdraw as attorney of record. The Court allowed the Applicant/Ms Malahlela a postponement to afford her an opportunity to get another legal representative. She was ordered to pay the wasted costs.
- 2.17 The Office of the State Attorney, Pretoria holds the view that the order of the Gauteng Division of the High Court of 03 May 2017 is not appealable and that the matter should be set down for hearing. The State Attorney has advised the Department's Litigation Directorate accordingly to brief Senior Counsel in the process of setting down the matter for hearing.

3. DISCUSSION

- 3.1 Ms Malahlela was charged with misconduct, which charge sheet was served on her on 05 May 2014. The disciplinary inquiry against her commenced on 11 May 2015 and was postponed pending the outcome of her High Court application. The disciplinary proceedings were, on her request, postponed pending the outcome of her High Court application. On 03 May 2017 the High Court postponed her application to afford her an opportunity to instruct another legal representative.
- 3.2 The Commission has been advised that Ms Malahlela has requested the Court to furnish reasons for its decision but that she has to date not taken any steps to further her application, causing the conclusion of the misconduct inquiry to be deliberately delayed. She has been provisionally suspended from office by the Minister on 17 July 2014. Ms Malahlela is to date still receiving remuneration and is still on probation. The Deputy Minister is approached on a three-monthly basis to appoint an acting magistrate in her place, resulting in the Department to have to pay the extra costs. The Commission considered the matter and is of the view that a determination to withhold Ms Malahlela's remuneration is at this stage justified.
- 3.3 On 09 November 2017, Ms Malahlela was, in compliance with the rules of natural justice, invited to furnish the Commission with representations why the Commission should not determine to withhold her remuneration in terms of section 13(4A)(a) of the Act. The letter was forwarded to her erstwhile attorney who confirmed that Ms Malahlela "*has returned to us for assistance*" and that they are preparing the court file to be set down shortly. A copy of the correspondence in this regard is attached.

(09 November 2017)

- 3.4 The Commission received no response from either Ms Malahlela or her attorney.

- 3.5 The Commission holds the view that Ms Malahlela is deliberately delaying the disciplinary process against her and that a determination by the Commission to withhold her remuneration is justified. In terms of section 13(3)(f) of the Act, a misconduct inquiry against a magistrate must be concluded as soon as possible. It could never have been the intention of the Legislature to allow disciplinary inquiries against magistrates to be held in abeyance indefinitely.
- 3.6 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 Malahlela's provisional suspension from office **without remuneration is justified.**
- 3.7 Having regard to the fact that it is evident that Ms Malahlela is deliberately delaying the continuation of the disciplinary process against her and the serious nature of the misconduct charges preferred against her, the Commission, at its meeting held on 24 November 2017, determined to withhold Ms Malahlela'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 *29* day of November 2017.



TM MASUTHA, MP (ADV)

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

(09 November 2017)

Meijer Johannes

From: Meijer Johannes
Sent: 09 November 2017 09:55 AM
To: 'Yasmin Omar'
Cc: Bosman DeVilliers
Subject: RE: MISCONDUCT INQUIRY: MS RM MALAHLELA, ACTING MAGISTRATE ON PROBATION AT DELMAS: OUR REF 6/5/5/2-193/2007
Attachments: LETTER TO MS MALAHLELA: WITHHOLDING OF REMUNERATION (09 NOV 2017)

Tracking:

Recipient	Delivery
'Yasmin Omar'	
Bosman DeVilliers	Delivered: 2017/11/09 10:04 AM

Dear Ms Omar

Thank you so much for your prompt response, the content of which has been noted.

Letter, addressed to Ms Malahlela, is by direction of the Commission's Ethics Committee attached for her attention. The content is self-explanatory.

We trust to receive a reply from you shortly in this regard. Kindly note the due date.

Kind regards

J Meijer
Magistrate: Judicial Quality Assurance
Ethics Division/Magistrates Commission
PO Box 9096
PRETORIA
0001
Tel: 012 325 3951
Fax: 012 326 0094
Fax2email: 086 688 1304

Note: 20/11/2017.
No response received
20/11/2017

From: Yasmin Omar [<mailto:yasminomar@vodamail.co.za>]
Sent: 09 November 2017 09:07 AM
To: Meijer Johannes
Subject: RE: MISCONDUCT INQUIRY: MS RM MALAHLELA, ACTING MAGISTRATE ON PROBATION AT DELMAS: OUR REF 6/5/5/2-193/2007

Hello Mr Meijer

We confirm that Magistrate Malahlela has returned to us for assistance.

We await a new date of set down. On the last occasion the matter was postponed.

We are preparing the court file and will set the matter down shortly.

Regards

Yasmin Omar
Zehir Omar Attorneys
95 Seventh Street
Springs 1560
Tel : 011-8151720
Fax : 011-3625588

From: Meijer Johannes [<mailto:JMeijer@justice.gov.za>]
Sent: Wednesday, 08 November 2017 12:00 PM
To: admin@zehiromarlaw.co.za
Cc: yasminomar@vodamail.co.za; Bosman DeVilliers <DBosman@justice.gov.za>
Subject: FW: MISCONDUCT INQUIRY: MS RM MALAHLELA, ACTING MAGISTRATE ON PROBATION AT DELMAS: OUR REF 6/5/5/2-193/2007

Dear Mr Omar

It has been a while since we corresponded on the issue of Ms Malahlela's misconduct inquiry. We have been advised that you withdrew as attorney of record during her High Court Application on 03 May 2017.

It would be appreciated if you could indicate whether you are still representing Ms Malahlela at the misconduct proceedings to enable me to advise the Commission accordingly.

I trust to receive a response from shortly in this regard.

Kind regards

J Meijer
Magistrate: Judicial Quality Assurance
Ethics Division/Magistrates Commission
PO Box 9096
PRETORIA
0001
Tel: 012 325 3951
Fax: 012 326 0094
Fax2email: 086 688 1304

Privileged/Confidential information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person) you may not copy or deliver this message to anyone. In such case, you should destroy this message and kindly notify the sender by reply E-Mail. Please advise immediately if you or your employer do not consent to e-mail messages of this kind. Opinions, conclusions and other information in this message that do not relate to the official business of the Department of Justice and Constitutional Development shall be understood as neither given nor endorsed by it. All views expressed herein are the views of the author and do not reflect the views of the Department of Justice unless specifically stated otherwise.

Privileged/Confidential information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person) you may not copy or deliver this message to anyone. In such case, you should destroy this message and kindly notify the sender by reply E-Mail. Please advise immediately if you or your employer do not consent to e-mail messages of this kind. Opinions, conclusions and other information in this message that do not relate to the official business of the Department of Justice and Constitutional Development shall be understood as neither given nor endorsed by it. All views expressed herein are the views of the author and do not reflect the views of the Department of Justice unless specifically stated otherwise.



Virus-free. www.avast.com