



REPORT

SUSPENSION OF A MAGISTRATE: MR S P ZWELIBANZI, ADDITIONAL MAGISTRATE AT NGQAMAKWE

1. Purpose

The purpose of the memorandum is to inform Parliament of the suspension of Mr S P Zwelibanzi, an additional Magistrate at Ngqamakwe, pending consideration by Parliament of a recommendation by the Magistrates Commission for his removal from office as a Magistrate in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act No 90 of 1993).

2. Background

2.1 Mr Zwelibanzi is a 50 year old additional Magistrate at the Ngqamakwe district Court. He was appointed as a Magistrate on 1 August 1996. He had 11 years of service in the Department of Justice prior to his appointment to the Bench.

2.2 Mr Zwelibanzi was convicted of misconduct on 2 previous occasions:

(a) On 4 February 1998 he was convicted on charges of -

- (i) being absent from office or duty at Butterworth and Ngqamakwe without leave or valid cause;
- (ii) failing to comply with office hours by only reporting for duty after 08h00;
- (iii) failing to enter the results in a number of criminal cases into the criminal record book;
- (iv) being convicted in a criminal court for the driving of a motor vehicle whilst under the influence of intoxicating liquor; and
- (v) failing to repay subsistence and travel advances to the Department of Justice

On the charge of "drunken driving" he was suspended from office for a period of six months without remuneration. As far as the other charges are concerned, he was merely cautioned.

(b) On 2 December 2003 he was again convicted on charges of -

- (i) failing, on several occasions, to timeously respond to reviewing Judges' queries;
- (ii) failing to timeously refer a case for automatic review;
- (iii) failing, on several occasions, to timeously furnish reasons for judgment in appeal cases; and
- (iv) being absent, on a number of occasions, from office or duty without leave or valid cause.

On these charges, Mr Zwelibanzi was severely reprimanded and cautioned that any further convictions of misconduct could lead to a sanction of removal from office.

2.3 On 20 March 2006 the Commission again charged Mr Zwelibanzi with four counts of misconduct. The charges related to contraventions of different regulations of the Regulations for Judicial Officers in the Lower Courts, 1994 and can be summarized as follows:

- (a) During the period 16 August 2004 to 5 January 2006, a total of 57 days, he absented himself from office or duty without leave or valid cause;
- (b) During the period 27 May 2005 to 16 January 2006 he failed to adhere to office hours in the sense that he reported for duty only at approximately 09h00 during the day;
- (c) During the period January 2005 to December 2005 he neglected and/or failed to compile / submit his judicial returns to his Judicial Head of Office; and
- (d) During the period 3 January 2005 to 17 January 2006 he failed/neglected to sign the attendance register refusing to execute a lawful order given to him in writing by the Judicial Head of the sub-cluster Butterworth.

2.4 The misconduct inquiry against Mr Zwelibanzi commenced on 26 July 2006. After several postponements at Mr Zwelibanzi's request the inquiry was finally postponed to 14 and 15 February 2007. He was represented by 3 different attorneys during the course of this period. On 14 February 2007, Mr Zwelibanzi admitted guilt in writing to all 4 counts of misconduct referred to above. Having questioned Mr Zwelibanzi in terms of regulation 26(9) of the Regulations of the Judicial Officers in the Lower Courts, 1994 the Presiding Officer was satisfied that he was indeed guilty as charged. The inquiry was subsequently postponed to 9 and 10 May 2007 for the imposition of an appropriate sanction. On 3 May 2007 Mr Zwelibanzi's Counsel informed the Commission that, due to other commitments in the High Court, he would be unable to attend the misconduct inquiry on 9 and 10 May 2007 and requested the matter to be postponed until 27 and 28 June 2007. Mr Zwelibanzi was duly notified in writing of this arrangement. He acknowledged receipt of a written notice served on him in this regard on 21 May 2007.

2.5 Neither Mr Zwelibanzi nor his Counsel appeared at the hearing on 27 June 2007. At the hearing the Judicial Head of Office testified that he had last seen Mr Zwelibanzi on 22 June 2007 at the office and that Mr Zwelibanzi did not contact him at all. Having satisfied himself that proper notice of the hearing was given to Mr Zwelibanzi, the Presiding Officer, ordered that the misconduct inquiry for purposes of the imposition of a sanction be proceeded with in Mr Zwelibanzi's absence. The Presiding Officer recommended that Mr Zwelibanzi be removed from office in terms of section 13(4)(a)(i) of the Magistrates Act, 1993.

3. Authority

3.1 In terms of section 13(4)(a) of the Magistrates Act, 1993 (Act No 90 of 1993), the Minister, if the Magistrates Commission would recommend that a Magistrate be removed from office on *inter alia* the basis of misconduct, must suspend that Magistrate from office or if the Magistrate is at that stage provisionally suspended in terms of the Act, confirm the suspension.

3.2 The report in which such suspension and the reasons therefor are made known, must be tabled in Parliament by the Minister within 14 days of that suspension, if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of the next ensuing session.

3.3 Parliament must then, as soon as it is reasonably possible, pass a resolution as to whether or not the restoration to his/her office of the Magistrate so suspended is recommended.

3.4 After the resolution has been passed by Parliament as contemplated in paragraph 3.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.

4. Discussion

4.1 As indicated, the Officer presiding in the misconduct proceedings against Mr Zwelibanzi recommended that he be removed from office in terms of section 13(4)(a)(i) of the Magistrates Act 1993. The Presiding Officer was of the view that Mr Zwelibanzi did not take his last caution and warning seriously, as less than a year later, in August 2004, he again started absenting himself from office or duty without leave or valid cause and again failed to attend to official office hours. The Presiding Officer was satisfied that there has been a gross dereliction of duty and a complete abdication of judicial responsibility on the part of Mr Zwelibanzi and, accordingly, he recommended that Mr Zwelibanzi be removed from office. Mr Zwelibanzi was informed in writing of his right to lodge representations with the Commission as to why he should not be removed from office. Having considered the Presiding Officer's finding and recommendations and the representations submitted on behalf of Mr Zwelibanzi (a copy of which is enclosed herewith), the Commission, at its meeting held on 22 November 2007, resolved to accept the recommendations of the Presiding Officer that Mr Zwelibanzi be removed from office. The Commission is of the view that Mr Zwelibanzi's conduct as set out in the recent charges of which he was found guilty, exacerbated by his two previous convictions of misconduct, is so serious that it justifies his removal from office. His conduct, according to the Commission, renders him unfit to hold the office of a Magistrate any longer.

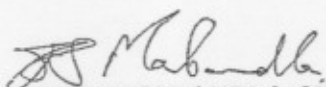
4.2 As indicated above, if the Magistrates Commission has recommended that a Magistrate be removed from office on the basis of misconduct, the Minister must suspend that Magistrate from office. Furthermore, the Minister must table a report in Parliament making known the suspension and the reasons therefor.

4.3 On this basis I have suspended Mr Zwelibanzi from office.

5. Conclusion

A report as required by section 13(4)(b) of the Magistrates Act, 1993 is submitted herewith for Parliament's consideration.

Given under my Hand at Pretoria on this 19th day
of December Two Thousand and Seven.



MS B S MABANDLA, MP
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT