



REPORT

SUSPENSION OF A MAGISTRATE: MR T V D MATYOLO, ADDITIONAL MAGISTRATE AT PORT ELIZABETH

1. Purpose

The purpose of the memorandum is to inform Parliament of the suspension of Mr T V D Matyolo, an additional Magistrate at Port Elizabeth, 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) of the Magistrates Act, 1993 (Act No 90 of 1993).

2. Background

- 2.1 Mr Matyolo was appointed as a Magistrate on 1 January 1996. He currently holds the position of additional Magistrate in Port Elizabeth. On 5 February 2007 the Magistrates Commission appointed a Senior Magistrate to conduct an investigation into Mr Matyolo's capacity to carry out his duties of office efficiently. It was alleged that he has refused to execute lawful orders, that he frequently absents himself from duty without a valid reason and that he was negligent or indolent in the carrying out of his duties.
- 2.2 The investigation could however not commence due to the fact that Mr Matyolo was absent from office since 28 February 2007. The Senior Magistrate in control of the civil courts in Port Elizabeth reported that Mr Matyolo did not report for duty between 28 February 2007 and 5 June 2007. Various attempts to contact him either telephonically or otherwise during that period were unsuccessful. He did not even respond to correspondence. Even personal visits to his place of residence did not bring any success. According to the Commission Mr Matyolo is single and has no children.
- 2.3 The Commission, during its meeting in May 2007, recommended that Mr Matyolo be removed from office on the basis of misconduct. The Commission also recommended that I suspend Mr Matyolo from office pending consideration by Parliament of the recommendation for his removal from office. However, before I could suspend Mr Matyolo and submit a report in that regard to Parliament, Mr Matyolo, on 5 June 2007, "reported" at the Magistrate's Court in Port Elizabeth, and provided an administrative staff member, Mrs Herselman, with 21 medical certificates issued by 9 different medical practitioners covering the area between 28 February 2007 and 1 June 2007. Since he handed in medical certificates, there was no basis for me, at that stage, to recommend that Parliament remove him from office and to suspend him in the meantime without further investigation. Accordingly, the matter was kept in abeyance pending investigation by the Commission.

2.4 After Mr Matyolo left the office on 5 June 2007, he has not again reported for duty. No leave forms have been submitted by him and no contact, either telephonically or in writing, has been made with his Judicial Head or with any of the senior judicial officers at the office. This state of affairs was again reported to the Commission and confirmed on 23 August 2007 by the Judicial Head of the Administrative Region concerned, the Chief Magistrate of Port Elizabeth.

3. Legal Requirements and Authority

3.1 If a Magistrate is absent without leave or a valid reason from his/her office or duty for a period of 30 days or longer (as in the case of Mr Matyolo) -

- (c) the Commission must, in terms of regulation 34(1) of the Regulations for Judicial Officers in the Lower Courts, 1994, be informed without delay; and
- (d) it shall be deemed that the Magistrate has absconded and made himself/herself guilty of misconduct.

3.2 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.

3.3 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.

3.4 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.

3.5 After the resolution has been passed by Parliament as contemplated in paragraph 3.4, 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 For all practical purposes, Mr Matyolo has been absent from work since February 2007. Although he has submitted medical certificates covering the period 28 February 2007 to 1 June 2007, he has again been absent from work ever since – a period of almost four months. In terms of regulation 34(1) of the Regulations for Judicial Officers in the Lower Courts, 1994, he is therefore deemed to have absconded and, as such, he made himself guilty of misconduct. It is therefore unnecessary to conduct an inquiry into his fitness to hold office since he is already deemed to have misconducted himself and as such he is guilty of misconduct.

4.2 Having considered the matter, the Commission at its meeting held on 23 August 2007, resolved to recommend that Mr Matyolo be removed from office on the basis of misconduct in terms of section 13(4)(a)(i) of the Magistrates Act, 1993.

4.3 The recommendation of the Commission for Mr Matyolo's removal from office is based on the following:

The Commission is of the view that it is not justified for a Magistrate whose whereabouts are unknown for a period of more than 30 days to hold the office of Magistrate any longer. Mr Matyolo's absence from office, 3 months without leave or valid cause, is detrimental to the efficient running of the courts at Port Elizabeth.

and to the Administration of Justice. He has many part-heard civil matters outstanding. It is Mr Matyolo's responsibility to report for duty or at least to inform his Judicial Head of his whereabouts. He failed to do this and in so doing, brings the good name, dignity and esteem of the office of Magistrate and the Administration of Justice into disrepute. Furthermore, his conduct is in terms of regulation 34 an abscondment, thereby constituting gross misconduct.

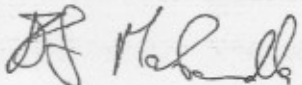
4.4 As indicated above, if the Magistrates Commission has recommended that a Magistrate be removed from office on the basis of misconduct, the Minister must suspend that Magistrate from office. Furthermore, the Minister must table a report in Parliament making known the suspension and the reasons therefor.

4.5 On this basis I have suspended Mr Matyolo from office.

5. Conclusion

The 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 27th day
of September Two Thousand and Seven.



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

Confirmation of fax.

→ 106/07.



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attends

MAGISTRATES COURTS JUDICIARY
2007 -05- 04
JUDICIAL QUALITY ASSURANCE MAGISTRATES COMMISSION

**Magistrates' Court Judiciary
Republic of South Africa**

Private Bag X3904, North End, PORT ELIZABETH, 6056
Tel: 041-5025201, Fax: 041-4841230
New Law Courts Building, 584 Govan Mbeki Avenue, North End, Port Elizabeth

Handwritten signature and date:
19/4/07

JUDICIAL QUALITY ASSURANCE OFFICE
2007 -05- 04
PRETORIA MAGISTRATES COURTS JUDICIARY

Ref:	2/1/5
Enq:	PR Rothman
E-mail:	prothman@justice.gov.za
Date:	19 April 2007

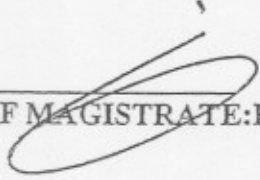
The Secretary
Magistrate Commission
P.O. Box 9096
PRETORIA
0001

Attention: MR A P LOUW

ABSENCE FROM DUTY WITHOUT PERMISSION: MAGISTRATE T V D MATYOLO

1. I refer you to my recommendations contained in my letter 2/1/5 (Matyolo T V D) dated 14 December 2006. Your reference number with regard to this letter is 6/5/5/2 (103/04) dated 28 November 2006. The Commission appointed a Senior Magistrate stationed at Bloemfontein to investigate the matter. The investigation has not been finalized as yet.
2. Mr Matyolo has been absent without leave or valid reason from his office or duty since 28 February 2007 to date (19 April 2007).
3. I attach hereto a copy of a letter 2/1/5 dated 12 April 2007 together with the mentioned letter dated 3 April 2007 which was addressed to this office by Senior Magistrate Mr Mbude who is Mr Matyolo's direct senior and supervisor.
4. An investigation revealed that no one is aware of his whereabouts with the result that he cannot be contacted.
5. Regulation 34(1) of the regulations in terms of the Magistrates' Act 90 of 1993 reads and I quote:
"If a Magistrate is absent without leave or valid reason from his office or duty for a period of 30 days or longer the Commission shall be informed accordingly without delay by the Director-General, and it shall be deemed that the magistrate has absconded and made himself guilty of misconduct".

6. It is recommended that the Commission be informed accordingly and act in accordance with Regulation 34(2) of the Regulations in terms of the Magistrates' Act 90 of 1993, namely to make a recommendation to the Minister regarding the suspension of Mr Matyolo in accordance with section 13(3) of the Act.


CHIEF MAGISTRATE:PORT ELIZABETH



**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
PORT ELIZABETH MAGISTRATE**

PRIVATE BAG X 3904, PORT ELIZABETH 6056, TEL 041-5025265 FAX 041-4845638
584 GOVAN MBEKI AVENUE, NORTH END, PORT ELIZABETH, 6025

File 2/1/5

3rd April 2007

The Magistrate
PORT ELIZABETH

Dear Mr Matyolo

YOUR ABSENCE FROM DUTY WITHOUT PERMISSION

You have not been on duty from 28\02\07 up to and including to date. You are therefore given 2 days to report for duty, otherwise you will be regarded to have absconded.

Yours faithfully

MAGISTRATE
CIVIL COURT
PORT ELIZABETH

LANDDROS
PRIVAATSAK/PRIVATE BAG X3904
2007 -04- 0 4
PORT ELIZABETH 6056
MAGISTRATE



**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
PORT ELIZABETH MAGISTRATE**

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584 GOVAN MBEKI AVENUE, NORTH END, PORT ELIZABETH, 6025

File 2/1/5

12th April 2007

The Chief Magistrate
PORT ELIZABETH

**ABSENCE FROM DUTY WITHOUT PERMISSION : MAGISTRATE TVD
MATYOLO**

During March 2007 to date, I attempted to contact Mr Matyolo telephonically but to no avail. His cellular phone made it clear that no messages will be conveyed. On the 4th April 2007, I again visited his house and delivered a copy of the attached letter dated 3rd April 2007 at Mr Matyolo's post box, at his residence, at 40 Mark Avenue, Charlo, Port Elizabeth. To date, he has not responded to the letter dated 3rd April 2007.

I also visited his house and it was clear that no one was living there. His house was locked; the gates were locked and the grass in front of the house was not cut for a very long time. His neighbors' reaction to my questions was that he did not know his whereabouts.

SENIOR MAGISTRATE: CIVIL SECTION
JZ MBUDE
PORT ELIZABETH



Magistrates' Court Judiciary
Republic of South Africa

Private Bag X3904, North End, PORT ELIZABETH, 6056
Tel: 041-5025201, Fax: 041-4841230
New Law Courts Building, 584 Govan Mbeki Avenue, North End, Port Elizabeth

Reference: 2/1/5

Fax Number of Receiver : 012-3260094
To (Institution) : Secretary: Magistrates Commission
For Attention : Mr A.P. Louw
From : Chief Magistrate Port Elizabeth
Subject : absence from duty
without permission: Mr T.V.D. Matyolo

Message: I refer you to my letter 2/1/5 dated
19 April 2007 and our telephonic
conversation. I attach hereto the
required affidavit. Your reference
is 6/5/5/2 dated 28 November 2006

Number of pages (Including this one): 2

Authorized By: _____

Date: 30/4/07 Rank: Chief Magistrate

Please phone if all the pages are not received or if there are illegible parts

LANODROS
PORT ELIZABETH 6056
MAGISTRATE
02 MAY 2007

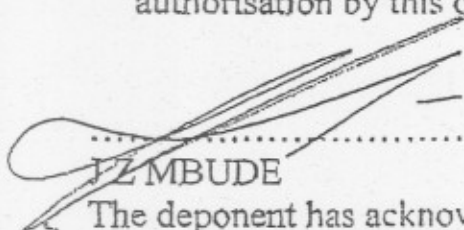
AFFIDAVIT

I, the undersigned,

JERRY ZALISEKILE MBUDE

do hereby declare under oath that:

1. I am a Senior Magistrate stationed at civil section of the Magistrates Office, Port Elizabeth.
2. I am Mr Matyolo's senior and supervisor. He was placed in the civil section under my control.
3. During March 2007 to date, I attempted to contact Mr Matyolo telephonically but to no avail. His cellular phone made it clear that no messages will be conveyed. On the 4th April 2007, I again visited his house and delivered a copy of the letter dated 3rd April 2007 at his residence, at 40 Mark Avenuc, Charlo, Port Elizabeth, wherein I gave him 2 days to respond, otherwise he would be regarded to have absconded. To date, he has not responded to the letter dated 3rd April 2007.
4. I also visited his house and it was clear that no one was living there. His house was locked; the gates were locked and the grass in front of the house was not cut for a very long time. His neighbour's reaction to my questions was that he did not know his whereabouts.
5. There has been no response from him and now he has been absent from 28th February 2007 up to date i e 30th April 2007, without any report or authorisation by this office.


 JZ MBUDE

02/05/07
 Date

The deponent has acknowledged that he knows and understands the contents of this affidavit which was sworn to before me at PORT ELIZABETH this 30th day of April 2007.


 COMMISSIONER OF OATHS

KLERK VAN DIE SIVILE HOE
 02 MAY 2007
 PORT ELIZABETH
 CLERK OF THE CIVIL COURT

NOMAJAMSAWA N. MPEHALO
 KLERK VAN DIE SIVILE HOE
 CLERK OF THE CIVIL COURT
 PORT ELIZABETH

J 418 (81/819197)



MAGISTRATES COURTS
JUDICIARY

2007 -05- 23

JUDICIAL QUALITY ASSURANCE
MAGISTRATES COMMISSION

106/07
78/07

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DEPARTEMENT VAN JUSTISIE EN KONSTITUSIONELE ONTWIKKELING
REPUBLIC OF SOUTH AFRICA • REPUBLIEK VAN SUID-AFRIKA

MAGISTRATE : PORT ELIZABETH

Reference: 2/1/5 T V D MATYOLO

LANDDROS

Verwysing:

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Privaatsaak:

Telephone No.: 041-5025201
Telefoon No.:

Area: Port Elizabeth

Fax/Faks: 041-4841230

Postal Code: 6056
Poskode:

E-mail/E-pos: nsengane@justice.gov.za

Enquiries: N Sengane
Navrae:

FAX COVER

Fax Number of receiver : 012- 3260094

To (Institution) : Secretary Magistrates Commission

For Attention : Mr Meijer

From : Chief Magistrate Port Elizabeth

Subject : Absence from duty without permission magistrate Matyolo
Your 6/5/5/2 (103/94) has reference.

Affidavit signed by Mr Mbude is attached hereto.
I certify the contents thereof as correct.

Message :

2

Number of pages (Including this one) :

Authorized By: MR L V MAKABA

Rank: SENIOR MAGISTRATE

LANDDROS

PRIVAATSAK/PRIVATE BAG X3904

23 MAY 2007

PORT ELIZABETH 6056
MAGISTRATE

Please phone if all the pages are not received or if there are illegible parts

AFFIDAVIT

I, the undersigned

JERRY ZALISEKILE MBUDE

Do hereby declare under oath that:

1. I am a senior Magistrate stationed at civil section of the Magistrate office, Port Elizabeth.
2. I am Mr Matyolo's senior and supervisor. He was placed in the civil section under my control.
3. He has not reported for duty since 28 February 2007 up to today i.e. 23 May 2007. There was no response from him and his absence was without a report or authorisation from this office.



J.Z MBUDE

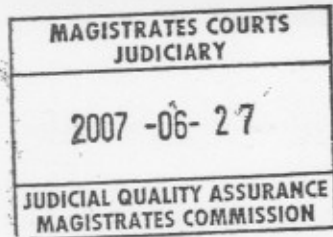
The deponent has acknowledged that he knows and understands the contents of this affidavit which was sworn to before me at Port Elizabeth this 23 May 2007-05-23

MAGISTRATE, 584 GOVAN MBEKI AVENUE
NORTH END, PORT ELIZABETH

Nonela Noueleni

 COMMISSIONER OF OATHS
 NONELA NOULENI
 REGISTRY CLERK

MAGISTRATE
PRIVATE BAG/PRIVAATSAK X3904
2007 -05- 23
PORT ELIZABETH 6056
LANDDROS



Confirmation of fax

**Magistrates' Court Judiciary
Republic of South Africa**

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New Law Courts Building, 584 Govan Mbeki Avenue, North End, Port Elizabeth

Ref:	2/1/5
Enq:	P R ROTHMAN
E-mail	prothman@justice.gov.za
Date:	20 June 2007

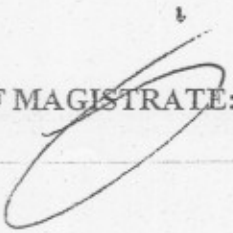
The Secretary
Magistrates Commission
P.O. Box X 3904
PRETORIA
0001

Attention: Mr Meijer

**ABSENCE FROM DUTY WITHOUT PERMISSION: MAGISTRATE T V D MATYOLO:
(PERSAL 16799739) YOUR 6/5/5/2(103/04)**

1. I refer you to my letter 2/1/5 dated 19 April 2007 which was submitted to your office in respect of the above matter. A copy of this letter is attached for your convenience and has not been marked as an annexure to this letter.
2. Mr Matyolo entered the magistrates court building on 5 June 2007 with the sole purpose of submitting twenty one (21) medical certificates, which were issued by nine (9) different medical practitioners for the period 28 February 2007 to 1 June 2007, to Ms Herselman at the administrative support structure of the judiciary. I purposely refer to this component to convey the message that he did not approach his seniors or myself to explain and/or to motivate the reasons for his absence from duty. The list of medical certificates which were submitted is contained in a list which is attached as per annexure "A". The signature on this list is that of Mr Matyolo, who indirectly certified the correctness of the number of the medical certificates and periods covered by these medical certificates. Copies of the medical certificates are attached as per annexures A1 to A21
3. The days which are not covered by the medical certificates are reflected in a list which is attached as per annexure "B". These days are regarded as normal vacation leave because the medical certificates do not cover these days, which are Saturdays, Sundays and Public Holidays. As indicated in the second paragraph he did not report for duty since 28 February 2007 to date, neither did he approach his seniors with regard to his absenteeism or submit any written motivation therefore.

4. Ms Herselman completed the application for leave of absence for both the vacation and sick leave. Mr Matyolo signed the application form in her office. A copy of the application is attached as per annexure "C". The weekend of 2-3 June 2007 was included as vacation leave by Ms Herselman because Mr Matyolo did not report for duty on Monday the 4th June 2007.
5. After Mr Matyolo submitted the medical certificates to the administrative component of the judiciary and on his way out of the building, he walked into the office of Senior Magistrate Makaba who is also the Sub-Cluster Head at Port Elizabeth. I attach hereto as annexure "D" a letter dated 14 June 2007 addressed to me by Mr Makaba in respect of the events that took place in his office. A copy of the newspaper report, dated 1 June 2007 published in The Herald, which he refers to in his letter is attached as per annexure "E"
6. I attach as annexure "F" a letter dated 20 June 2007 received from Mr Matyolo's direct senior and supervisor, Mr Mbude. The contents thereof speak for itself.
7. I attach as annexure "G" a copy of a letter 1/4/2 dated 26 April 2007 which was addressed to Wikus Van Rensburg Attorneys in response to his letter CLJJ dated 16 April 2007, which is also attached as annexure "H". There are many attorneys who are also affected, to such an extent that there is a crisis in the civil section. This is the section where Mr Matyolo performs or is supposed to perform his duties as a magistrate/presiding officer.
8. The fact that Mr Matyolo was absent for the past nearly four (4) months resulted in a shortage of a magistrate. This post could not be filled with a temporary magistrate because the post is for all practical purposes filled by Mr Matyolo and he is being paid a salary. This has led to a heavy burden on the other magistrates in this section.
9. I still stand by my recommendation contained in the letter 2/1/5 dated 19 April 2007 which was addressed to your office and also referred to in paragraph 1 *supra* of this letter. The fact that Mr Matyolo only came to this office with the sole intention of submitting his medical certificates to the administrative component of the judiciary and to confront Mr Makaba as set out in annexure "D" has aggravated the situation. To date, namely 20 June 2007, Mr Matyolo never reported for duty since 28 February 2007, except for one brief visit on 5 June 2007 to attend to only the two aspects mentioned in paragraph 5 *supra*.


CHIEF MAGISTRATE: POR ELIZABETH