

19 September 2018

Mr Sam Sole

AmaBhungane Centre for Investigative Journalism

0824188944

per email: solesam@gmail.com

Good day Mr Sole

**IN RE: NZIMANDE INVESTIGATION AND OTHER MATTERS**

The following refers:

1. Your mail dated 17 September 2018 at 09h22 and received by the author on the aforesaid date at 22h00, the contents of which have been duly perused and noted.
2. Our telecons of yesterday at 09h35 and 18h00.

I wish to advise as follows:

3. It would appear that a portion of your mail deals with allegations of criminal conduct on the part of a member/s of the judiciary and organised profession who are "seemingly linked to Mr Nzimande through their appointment who have been accused (or alleged) of taking bribes in poaching cases in Northern Kwazulu Natal".
4. In this regard kindly be advised that the aforementioned allegations were duly reported by the Magistrates Commission, to the South African Police Services for further investigation and action in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (Precca). Accordingly, I am of the view that the Commission has acted with due diligence in this regard.
5. Kindly be advised further that the matter is currently with the SAPS and the Director of Public Prosecutions. I am therefore, unable to comment

regarding their processes and as to how far the criminal investigation has proceeded thus far.

6. It would further appear that you also deal with allegations of misconduct that have been made against Mr Nzimande. I pause to mention that as many of the allegations related to corruption and corrupt activities same was reported upon in terms of PRECCA by the Magistrates Commission.
7. In addition, Regulation 26 (1) investigation was authorised and conducted in order to determine as to whether there were any grounds to charge the Magistrate with misconduct. Accordingly, such investigation resulted in Mr Nzimande being duly charged with misconduct and I would like to advise that the charge sheet was duly served him on 04 September 2018 by a member of the Ethics Division of the Magistrates Commission, at his seat of office in Durban.
8. Kindly be advised further that in terms of due process, Mr Nzimande has been afforded a period of 14 (fourteen) business days in which to respond to the allegations in writing and to further provide reasons to the Magistrates Commission as to why he should not be suspended from office pending the outcome of the misconduct enquiry. I pause to mention that the 14 days period will expire on 25 September 2018, and as such the Commission is awaiting such responses from the Magistrate.
9. Therefore, at this stage and due to the fact that Mr Nzimande has not responded to the allegations in the charge sheet it would not be in accordance with due process and the principles of natural justice that the contents of the charge sheet be disclosed.
10. Kindly be advised further that in terms of the "poaching ring cases" the Commission is not in possession of any allegation of misconduct against Mr Nzimande. Hence, in the circumstances, I wish to reiterate

that the matter is with the relevant authorities for investigation and action, and does not currently form part of any misconduct proceedings against Mr Nzimande at this stage. These allegations will be revisited once the Commission is privy to the outcome of the criminal investigation.

11. I now turn to deal with the “concerns expressed about the slow pace at which the Magistrate Commission has acted in the case of KZN Regional Court President Eric Nzimande” which is contained in your introduction.
12. I deem it important that I set out the necessary procedures that need to be followed when allegations of misconduct are made against Magistrates.

12.1 In the event that a matter is referred to the Ethics Division of the Magistrates Commission, a file is opened, registered and allocated to one of the Magistrates within the division.

12.2 Documents and relevant information would then be obtained in support of the allegations and in terms of due process.

12.3 The matter is duly presented and reported upon to the members of the Ethics Committee at its next sitting, for due consideration and deliberation.

12.4 In the event that the EC is of the view that there is sufficient merit in the allegations it would resolve to authorise a Regulation 26(1) investigation in order to determine if there are grounds for a charge of misconduct. In this regard, an investigator/s is duly identified and an appointment is accordingly completed.

12.5 The investigator then proceeds with the investigation and the Ethics Committee will receive feedback regarding the progress of the

investigations. I wish to point out that the Commission does not interfere in the investigation process nor with the investigator.

12.6 Once the investigation is duly completed, the preliminary investigation report is then placed before the Ethics Committee for due consideration. In the event that sufficient grounds exist for a charge of misconduct then a resolution is passed by the Ethics Committee for the respective member of the Ethics Division to prepare a draft charge sheet for subsequent approval by the Ethics Committee.

12.7 The draft charge sheet is duly deliberated upon by the Ethics Committee at its meeting and if approved is then presented at the next meeting of the Magistrates Commission for approval.

12.8 Once approved by the Commission it is then served upon the Magistrate who is then afforded the opportunity, in terms of due process, to respond to the allegations. In the event that the Commission is of the view that the charges of misconduct of such a serious nature it would then invite the Magistrate to furnish reasons as to why they should not be suspended from office pending the outcome of the misconduct hearing.

12.9 Accordingly and in pursuance of the hearing, the officer leading evidence and the presiding officer are duly appointed.

12.10 The misconduct hearing then proceeds as per due process.

12.11 In the event that the Magistrate is found guilty, then the presiding officer would recommend an appropriate sanction to be imposed upon the Magistrate, which recommendation will be considered by the Commission.

12.12 In the event that the Commission recommends for the removal from office of the Magistrate then the Commission would make a

recommendation to the Minister in terms of Section 13(4)(a) of the Magistrates Act 90 of 1993 for such removal. The Minister must then suspend the Magistrate from office and table a report in Parliament, in terms of Section 13(4)(b) of the Act. Parliament is then required to pass a resolution whether or not to restore the Magistrate to his or her office, in terms of Section 13(4)(c) of the Act. This process would require both houses of Parliament to pass such resolution, and which resolution the Minister would have to give effect to, in terms of Section 13(4)(d) of the Act.

13. I hereby place on record that the Magistrates Commission denies any allegation of dilatory conduct on its part in relation to the allegations of misconduct on the part of Mr Eric Nzimande. In this regard, I place on record that the Commission has followed due process regarding the allegations of misconduct, as it is required to do.
14. In amplification, I wish to state that as follows:
  - 14.1 A complaint was received on 30 June 2015 from Ms Gumede, via email, by the Secretary of the Magistrates Commission.
  - 14.2 The matter was referred to the Ethics Division who in turn placed the matter on the agenda of the Ethics Committee's meeting of 23 July 2015. It was duly resolved that a preliminary investigation be conducted in terms of regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994.
  - 14.3 On 30 July 2015, both Mr Mashile and Ms Swart were duly appointed to conduct the preliminary investigation. I pause to mention that due to the complex nature of the investigation, it was deemed fit in the circumstances to appoint two investigators.
  - 14.4 It is noteworthy to mention that during the course of such investigation many other allegations of misconduct came to the fore which necessitated proper investigation. Needless to state that this

exceeded the expected timeframes in which the initial investigation was to have been completed in.

14.5 In addition, the investigators had to enlist the assistance of the SAPS in order to obtain information and evidence relevant to the investigation. In this regard, I wish to advise that due process had to be followed to obtain such information. To this end, I wish to point out that the investigators had to obtain subpoenas in terms of Section 205 of the Criminal Procedure Act 51 of 1977, in order to obtain documentary evidence from financial institutions, in support of the allegations.

I reiterate that this matter continued increasing in complexity and sensitivity as the investigation unveiled itself. Hence, these factors directly contributed to the delay in finalising the investigation.

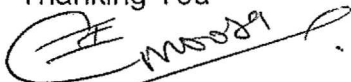
14.6 I wish to state that despite the Commission being informed of the allegations against Mr Nzimande, it had to await the receipt of documentary evidence in support of the allegations as per the charge sheet. In this regard, I once again wish to state that the Commission has not laid supine and had to await the documentation.

14.7 Kindly be advised that in terms of Section 13(3)(a) of the Act, the Commission may approach the Minister to provisionally suspend a Magistrate from office if an investigation has been instituted into such Magistrates fitness to hold office. In this instance, since the charge sheet has now been served, and the investigation has commenced, the Commission is entitled to now approach the Minister with a view to provisional suspension, subject to the Magistrate submitting reasons as to the desirability of such provisional suspension.

15. Kindly be advised further that the Magistrates Commission immediately proceeded with the drafting and approval of the charge sheet once it had received the necessary documentation in support of the allegations and the charges in the charge sheet.

16. I wish to conclude by stating that, at this stage, I do not deem it appropriate to deal with and comment on each and every aspect of your mail regarding the comment which you require, having due regard to the nature, complexity, sensitivity, the principles of natural justice and the *audi alteram partem* rule.
17. Kindly be advised further that such failure on my part, at this stage, should not be construed as an admission of the correctness of the allegations contained in your mail nor an admission, omission or commission on the part of the Magistrates Commission.
18. All rights in this regard remain strictly reserved.
19. I trust that you will find all in order.

Thanking You



Adv. Cassim I. Moosa

Spokesperson

Magistrates Commission