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6th April 2026

Judicial Apartheid: A House Divided Cannot Stand: The Grave Discrimination Against Lower Court Magistrates and the Urgent Imperative for a Single, Unified Judiciary

In a constitutional democracy founded on the rule of law and the separation of powers, the judiciary must stand as one indivisible pillar—independent, impartial, and equally resourced. Yet in South Africa today, that pillar is fractured. Magistrates, the backbone of our justice system who adjudicate the overwhelming majority of cases affecting ordinary citizens, are subjected to systemic, unjustifiable discrimination in benefits. This is not mere administrative oversight; it is a profound assault on judicial independence and equality before the law. As President of the Judicial Officers Alliance, I write not in anger, but in resolute defence of the constitutional values that bind us all.

The facts are stark and indefensible. The cost-of-living adjustment (COLA) for magistrates, duly determined and due with effect from 1 April 2025 under section 12 of the Magistrates Act, 1993, was only effected nearly a full year later—without justification, without interest, and without regard for the financial prejudice suffered by judicial officers who must maintain professional standards on salaries already lagging far behind those of their High Court counterparts. A new annual adjustment is now supposed to take effect, yet there has been no movement whatsoever. The Independent Commission for the Remuneration of Public Office Bearers (established under the Remuneration for Public Office Bearers framework and the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997) appears wholly unconcerned with ensuring the timeous, fair, and non-discriminatory treatment of lower court judicial officers.

Magistrates and, notably, the presiding officer of the Equality Court itself have now approached the Equality Court under the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (the Equality Act). They allege unfair discrimination on the basis of occupational status and the arbitrary differentiation between superior court judges and lower court magistrates. This is not hyperbole. While High Court judges receive timely, structured packages—including substantial cash components, medical aid, and motor allowances—magistrates labour under packages where 70% is basic salary and the balance is a “flexible portion” effectively clawed back by the employer, with no equivalent benefits. The remuneration gap exceeds R1 million per annum in some instances, a disparity repeatedly acknowledged as “too wide and unjustifiable” even in the Commission’s own historical reviews.

This discrimination strikes at the heart of judicial independence. Section 165 of the Constitution declares that the courts are independent and subject only to the Constitution and the law. Adequate remuneration is not a privilege; it is a constitutional imperative. As the Constitutional Court has long

recognised, financial security is one of the core pillars protecting judicial officers from external pressure. In *Van Rooyen and Others v The State and Others 2002 (5) SA 246 (CC)*, the Court emphasised that magistrates form part of the judiciary and must enjoy institutional independence, warning against any arrangement that could reasonably be perceived as compromising impartiality. Yet how can magistrates be expected to discharge their duties fearlessly when their remuneration is treated as an afterthought, subject to inexplicable delays that superior court judges do not endure? The 2013 Constitutional Court decision in *Association of Regional Magistrates of Southern Africa v President of the Republic of South Africa and Others [2013] ZACC 13* is particularly instructive. There, the Court set aside the President's decision to grant a discriminatory 5% increase to regional magistrates while higher courts received more favourable treatment, affirming that remuneration decisions must be rational, non-arbitrary, and respectful of the judiciary's unified constitutional status. More recently, in *Association of Regional Magistrates of Southern Africa v Independent Commission for Remuneration of Public Office and Others (28644/2024) [2024] ZAGPJHC 1219*, the High Court again underscored the centrality of adequate remuneration to judicial independence, noting that inadequate or delayed pay strains the ability of judicial officers to act without fear or favour.

The Judicial Officers Alliance has consistently advocated for a single judiciary—one seamless institution where district and regional magistrates are fully integrated with superior courts, sharing the same constitutional protections, career pathways, and remuneration framework. The current bifurcation—magistrates under the Magistrates Act and Commission processes distinct from the Judges' Remuneration and Conditions of Employment Act—is an outdated relic that perpetuates hierarchy rather than hierarchy of function. A single judiciary would eliminate these artificial distinctions, ensure uniform application of remuneration principles under section 219 of the Constitution, and restore public confidence that justice is dispensed equally at every level of the court system.

The Commission's apparent indifference cannot continue. Its mandate is to recommend remuneration that enables all public office bearers to perform their duties effectively, not to preside over a de facto two-tier system that devalues the very officers who handle the bulk of criminal, civil, and family matters in this country. Delays without interest or explanation amount to an unlawful withholding of lawfully due emoluments, eroding the dignity of the office and the rule of law itself.

We call upon the Executive, Parliament, and the Commission to act with the urgency this crisis demands: immediate implementation of all outstanding adjustments with interest; a comprehensive, rational review to close the unjustifiable pay gap; and concrete steps toward legislative recognition of a single, independent judiciary. The Equality Court proceedings now before us offer an opportunity to vindicate these rights. But true resolution lies not only in litigation but in political and institutional will to honour the constitutional promise of an undivided, equally respected judiciary.

The bench is not a ladder of privilege; it is a single foundation upon which our democracy rests. Until magistrates are treated as equal partners in that foundation—remunerated fairly, promptly, and without discrimination—our justice system remains compromised. The Judicial Officers Alliance will not rest until that equality is achieved. The time for a unified judiciary is now.

Neelan Karikan

President and Founder

Judicial Officers Alliance of South Africa