
SECOND COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.
3. I charge the respondent with collusion in LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.
4. Although the respondent's gross misconduct, detailed and vouched below, was committed by him in his capacity as chairperson of LASA's Board, and not as a judge, the Judicial Service Commission has jurisdiction to decide this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges 'always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office', 'in a manner that enhances public trust in, or respect for, the judiciary and the judicial system', to 'avoid impropriety or the appearance of impropriety in

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all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

5. Crucially to this complaint, the respondent's judicial office is not just coincidental to his leadership of LASA, it's precisely a legal requirement. Section 4(1)(a) of the Legal Aid Act 22 of 1969, in operation at the material time, required that LASA's Board include a judge, impliedly and in practice to chair it; and section 8(1) of the succeeding and current Legal Aid South Africa Act 39 of 2014 now explicitly prescribes: 'The judge appointed in terms of section 6(1)(a) is the chairperson of the Board.'
6. This is to say, LASA's top officer must be a person who has taken the judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it'.
7. The Legislature evidently intended by this unique qualifying requirement for the head of a public entity in our country – that it be headed by no less than a judge – that LASA's most senior public officer can confidently be relied upon to 'uphold and protect' the country's hard-won constitutional rights in the democratic era after the apartheid one – by which former baleful epoch I'm referring, in the language of the Preamble to the Promotion of Access to Information Act 2 of 2000 ('PAIA'), to 'the system of government in South Africa before 27 April 1994, [which] amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.
8. The Legislature's further intention in having a judge head LASA is undoubtedly to ensure that under his watch its officers will observe the rule of law, act ethically, and respect the basic civil liberties guaranteed by the Constitution, as far as he can reasonably possibly achieve this, and that he'll act to remedy problems in this regard when brought to his attention.

9. All the more since LASA is a state-funded law firm, billing itself on its website as 'the largest legal institution in Africa', which former Deputy Justice Minister Andries Nel praised in Business Day on 12 January 2011, less than a fortnight after the atrocity described in this complaint (after which the cover-up escalated, ultimately into crime, to be described in separate complaints): 'The world would be a better place if it were run by Legal Aid.'
10. Most importantly, it's expected of the judge heading LASA that he will himself observe the rule of law, act ethically, and 'uphold and protect the Constitution and the human rights entrenched in it' as sworn to do, and not tolerate, much less connive at, the 'secretive and unresponsive culture' practised at LASA with the object of covering up 'an abuse of power' by him.
11. Also that he will be especially cognisant of section 195 in Chapter 10 of the Constitution, headed 'Public Administration' (my ellipses for relevance):
- 195 Basic values and principles governing public administration
- (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
- (a) A high standard of professional ethics must be promoted and maintained.
- ...
- (f) Public administration must be accountable.
- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- (2) The above principles apply to –
- ...
- (b) organs of state[.]

12. Indeed, at his interview by the Judicial Service Commission in May 2012 for his current post, the respondent alleged LASA's stellar compliance with the Constitution under his leadership as an additional commendation for his appointment: 'I want to believe that Legal Aid SA is a shining example of how things should have been done constitutionally'.
13. The very contrary, abysmal reality, thanks to the respondent's deliberate failure to 'uphold and protect the Constitution and the human rights entrenched in it', will be shown in this complaint and in further complaints to follow.
14. For concision, I'll refer immediately below to part of my First Complaint against the respondent lodged on 4 June 2017 (JSC/533/17), and I request that it be read as incorporated in this Second Complaint.
15. In paragraphs 20–24 of my First Complaint, I described Vedalankar's clearly illegal and unconstitutional total refusal of my request for access to LASA's public records, which I'd made under PAIA in August 2010, inter alia for the 'minute of ... the selection board's interview with Brink on 12 November 2009' and the 'notification of [National Operations Executive Brian] Nair ... of the senior legal professionals selected by the ... selection board for the Pietermaritzburg and Durban Senior Litigator posts after interviewing the shortlisted candidates', in other words the selection panel's recommendation report.
16. Claimed to support her refusal, Vedalankar, or the low person writing for her:
 - 16.1. outrageously dishonestly fabricated, and purported to quote, fake dicta from a court judgment on PAIA (I'll revert to this);
 - 16.2. invoked sections of PAIA against me having no bearing on the decision of requests for public body records, namely 'sections 62 to 70', which

are found in Chapter 4, 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS', in Part 3 of PAIA, 'ACCESS TO RECORDS OF PRIVATE BODIES';

16.3. and asserted:

the information officer of a public body must refuse access to information falling into the following categories, save in circumstances provided for in the Act:

- a) Mandatory privacy of a third party who is a natural person.
- b) Mandatory protection of certain confidential information of a third party. [...]

17. In most strangely and surprisingly citing these provisions regarding the 'privacy of a third party' and 'confidential information of a third party' to justify her refusal of my entire PAIA request, including for access to the recommendation report, the 'information' about a 'third party' that Vedalankar was anxiously suppressing as 'priva[te]' and 'confidential' (under PAIA it was neither), turned out to be the key information noted in the recommendation report that my rival for the post for which I'd been selected, and for which he'd been rejected (not having right of appearance in the High Court as an attorney, and therefore never having litigated there on his feet) was the respondent's long-time brother in the Labour Court, Ngcamu AJ, as he used to be for '±6 years'.

18. This was finally revealed to me in April 2016, when after a long and bitter struggle I eventually succeeded in disgorging from LASA the selection panel's full uncensored recommendation report, many years after I'd first requested it in August 2010, and it had been illegally refused; then several months later, under renewed pressure of the South African Human Rights Commission's PAIA Unit, supplied heavily redacted with a Koki pen to unlawfully conceal this potently relevant fact; and then finally – after

another illegal refusal and then protracted meritless opposition to my application to court to compel its production – supplied complete and uncensored at last, as I was on the point of moving for and being granted an order that it be surrendered.

19. In view of the respondent's and the Board's fiduciary duty to ensure compliance by LASA's management executives with PAIA and other statutes governing their operations, I petitioned the respondent on 30 November 2010 to entreat his intervention in and remediation of, inter alia, Vedalankar's illegal and unconstitutional refusal of my PAIA request for access to the selection panel's recommendation, among other many other specified records.
20. A material excerpt from my petition is annexed marked 'A'. In paragraphs 8–13, I underscored the respondent's and his Board's oversight obligations over LASA as a public entity, preliminary to showing in paragraphs 17–43 that Vedalankar's refusal to allow me access to LASA's public records that I'd duly requested was clearly and incontestably illegal and unconstitutional. And dishonest: in paragraph 23 of my petition, I quoted her fake citation from a court judgment on PAIA claimed falsely to justify her refusal; whereas the judge's actual dicta, which I accurately quoted, squarely supported my claim to access to the public body records I'd requested.
21. The Board Secretary emailed me a week later on 6 December 2010, to 'confirm that the Chairperson of the Board of Legal Aid SA, Judge Dunstan Mlambo, is in receipt of your letter dated 30 November 2010. Judge Mlambo is however presently out of the country and has asked me to advise you that he will respond to your letter as soon as he is able to do so.'
22. In breach of his said fiduciary obligation to LASA as chairperson of its Board, the respondent did not act to remedy my extraordinarily serious complaint that in breach of her obligations imposed by PAIA, Vedalankar had illegally refused me access to LASA's business records duly requested under the Act,

and had thus violated my constitutional right to information guaranteed by the Bill of Rights, a basic civil right entrenched in the democratic era to combat the apartheid-like 'secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

23. Instead, after his 'interaction with' Vedalankar about my petition to him, which commenced with my detailed complaint about her illegal, unconstitutional and dishonest total refusal to comply with my PAIA request, the respondent colluded with Vedalankar, the very subject of my complaint to him, by permitting her to forge a letter on her office computer rebuffing my petition and, 'with his knowledge and consent', to paste a scanned image of his signature below it to dissemble to me that he'd written it.
24. The words just quoted are LASA's. Under 'Facts that are common cause' in my agenda for the first pre-trial conference in my subsequent action against LASA in the Durban Labour Court (LC 529/11) for my instatement to the top post, I truly averred for LASA's admission to shorten the trial:

79. Mlambo did not consult the Board to discuss the applicant's extraordinarily serious complaints raised in his petition, but instead instructed Vedalankar to prepare a letter cursorily dismissing it. He was overseas at the time.

80. On 15 December 2010 Vedalankar obliged, pasting a scanned image of Mlambo's signature into the letter she'd drawn for him, and emailed him the PDF of the letter she'd created. On 30 December Mlambo emailed it in turn to the applicant.

25. A material excerpt of my pre-trial conference pleading this is annexed marked 'B'.

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26. LASA responded by admitting my paragraph 79, and denying then admitting my paragraph 80:

Ad 79. Agreed. Mlambo JP found, upon a perusal of the Applicant's letter and the explanation received from the CEO, nothing untoward that was done by the CEO and was correct in dismissing the Applicant's complaint.

Ad 80. Disagreed. The said letter was created as a direct result of Mlambo JP's interaction with the CEO and there is nothing untoward thereabout. The electronic signature by Mlambo JP could not have been used without his knowledge and consent.

27. A material excerpt of this pleading by LASA for the true information of the trial judge is annexed marked 'C'.

28. A copy of the letter in PDF which Mlambo JP emailed me is annexed marked 'D'.

29. The basis of my above-quoted averments, pleaded in my agenda for LASA's admission, was my staggering discovery in the PDF 'Author' properties of the respondent's letter that 'VidhuV' (Vidhu Vedalankar), the very subject of my complaint to the respondent, had written it on her own office computer. A screenshot reflecting this is annexed marked 'E'.

30. Such author information is automatically entered by the user's computer programme.

31. The letter is mistakenly dated 9 November, which is three weeks before the date and delivery of my petition. Its 'File', 'Title' and 'Created' information in its PDF properties, however, all show that it was created on 15 December 2010, which was Vedalankar's last day at work before LASA closed for its annual national one-month holiday.

32. In two sentences the letter dismissed my 57-page, 254-paragraph petition to the respondent, which had commenced with a closely detailed, unanswerable complaint about Vedalankar's illegal and unconstitutional refusal of my PAIA request, but which went completely ignored:

I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator post in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as alleged or at all.

33. The respondent knew full well that the financial insufficiency excuse given me by Vedalankar the month before for not proceeding with my appointment was a lie. In my petition, I presented the then already available clear evidence of this, and much more would later emerge. The respondent's dishonest pretence to me that all was above board in the back-room abortion of my appointment (for which NOE Nair later gave the Board two totally different false explanations, and then in court told another completely different story still) will be the subject of a separate complaint, as will the respondent's own false assertion of the bogus financial excuse, along with another lying excuse later feebly retracted on oath on his behalf as 'an error', 'palpably an error' after I'd exposed it as another flat-out lie, advanced to the Minister of Justice and Constitutional Development (as the Department was then called) and then to the Portfolio Committee of the National Assembly for the same Department.

34. In sum, in the words of Chief Justice Mogoeng Mogoeng delivering the Constitutional Court's unanimous judgment in *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11 ('the Nkandla case'), the respondent as Judge President of the country's biggest High Court and heading its biggest law firm 'failed to uphold, defend and respect the Constitution' when I pertinently called his attention to Vedalankar's

violation of my constitutional right to information by illegally and dishonestly refusing my duly made PAIA request for access to LASA's records, and implored his intervention in the exercise of his oversight authority to remedy it.

35. Obviously as one of South Africa's most senior judges, no defence that 'He might have been following wrong legal advice and therefore acting in good faith' (per the Nkandla judgment) is available to the respondent to raise against the charge that he disgracefully and culpably 'failed to uphold, defend and respect the Constitution'.
36. In other words, it is not open to the respondent to answer that he was too grossly ignorant a layman to appreciate the egregious wrong he was doing when conniving in Vedalankar's illegal, unconstitutional and dishonest obstruction of my access to LASA's records, so as to conceal from me the key fact that my rival for the top professional post for which I'd been recommended had been his long-time fellow judge in the Labour Court – entirely explaining why my recruitment had been strangely silently aborted, totally off the record. And that contrary to Vedalankar's lie to me that I'd been 'recommended together with other candidates', namely this judicial fellow, he'd actually been eliminated from the running for the post.
37. Any such 'wrong legal advice and therefore ... good faith' defence by the respondent, based on being too grossly ignorant to understand the gravity of his connivance in Vedalankar's illegal, unconstitutional and dishonest obstruction of my access to LASA's records, is further precluded by the provisions of LASA's Code of Ethics and Conduct ('Ethics Code').
38. Section 1.2 prescribes that 'Compliance with the code by all employees is mandatory', and that it 'applies equally to all ... Board Members'. Section 7.5 requires the respondent as a Board Member to 'maintain knowledge of and comply with all applicable laws' – such as PAIA, concerning which, section 13

requires: 'A prompt, courteous and accurate response should be made to all reasonable requests for information'. Section 7.3 requires Board Members to act in such a manner as to 'ensure that their conduct cannot be interpreted as being in any way in contravention of applicable laws'. And section 15.1.5 requires that they 'act honestly and in good faith at all times and report any harmful activity they observe in the workplace'.

39. Compounding the respondent's contraventions of these provisions, and his demonstrated contempt for the rights and principles stated in sections 32 and 195 of the Constitution, the respondent did not fail 'to uphold, defend and respect the Constitution' through passive dereliction and indolent neglect of his sworn obligation to do so. By conspiring with Vedalankar, about whose violation of my rights and multiple lies I'd complained in fine detail, to forge a letter dismissing my petition, and by then sending it to me from his own email address, after mulling on its untruthful contents for a further two weeks, he actively 'failed to uphold, defend and respect the Constitution' in contempt of his oath of office, in the manner of a corrupt judge conniving out of court behind the scenes with an obviously guilty criminal accused facing an extraordinarily serious charge; batting aside the complaint's clearly substantiated and unanswerable case; and allowing the accused with whom he has long been a friendly colleague, and whom he well knows to be guilty, to write a brief judgment for him dismissing the charge, and then delivering it as if he'd written it, acquitting his colleague while falsely pretending to have given the matter his judicious consideration.
40. Concerning Vedalankar's illegal refusal of my PAIA request on utterly spurious grounds, ostensibly supported by a fraudulent misquotation from a court judgment, all pertinently brought to the respondent's attention in paragraphs 17-43 of my petition, the respondent couldn't possibly have found in good faith that all was well; that Vedalankar had acted lawfully in

refusing me access to LASA's records as requested; and that my complaint about her violation of my fundamental right to information was unfounded. That is, in turning a deliberate blind eye to this, the respondent dismissed my petition in bad faith, which is to say dishonestly.

41. In flagrant breach of section 7.2 of the Ethics Code declaiming that LASA 'will not condone any violation of the law or unethical business dealing', the respondent further contravened the requirement that he 'act honestly and in good faith at all times', by dissembling to me that he saw nothing wrong in Vedalankar's:

41.1. manifestly illegal and unconstitutional refusal to comply with a PAIA request for access to records, in order to conceal from a recommended applicant for a top professional post in LASA, whose appointment has strangely silently stalled many months after his successful interview, that an unsuccessful applicant for the same post had been the respondent's long-time judicial colleague; and her,

41.2. dishonestly false attribution of manufactured dicta to a judge, by putting words in her mouth that she never spoke, when ostensibly quoting her judgment in a PAIA case, so as to fabricate a fake legal cover for this, at the same time citing perfectly irrelevant provisions of the Act claimed to justify her refusal.

And so 'condone[d]' Vedalankar's 'violation of the law' and 'unethical business dealing' with me.

42. The reason the respondent corruptly connived in Vedalankar's violation of my constitutional right to information, contravened LASA's Code of Ethics and Conduct, dishonoured his judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it', and didn't act to end the apartheid-like 'secretive and unresponsive culture' (per Preamble to

PAIA) at LASA that I'd unexpectedly run into – quite the contrary, he was astute to maintain this 'secretive and unresponsive culture' – came to light only last year when in April 2016 I finally succeeded in clawing out of LASA the selection panel's full, uncensored recommendation report, and discovered that the true reason my recruitment to LASA's Senior Litigator post at Pietermaritzburg had been silently aborted off the record was that in 'an abuse of power' (per Preamble to PAIA) the respondent had illegally hijacked the recruitment to get his former brother on the Labour Court bench, my rival for the post, appointed to it instead of me – irrespective of the fact that he'd been eliminated by the selection panel for not meeting the qualifying criteria. (He was quickly appointed to other LASA posts, whereas after I was selected for another post a year later, I was told the now familiar lie that LASA had decided not to fill the post. In truth, I wasn't wanted: I fortuitously sourced the Regional Operations Executive's emailed instruction to the Justice Centre Executive to 'redo the interviews' so as to find someone else.)

43. The respondent's 'abuse of power', which he sought to conceal from me by maintaining LASA's 'secretive and unresponsive culture' like that of apartheid institutions, would have succeeded but for the fact that I didn't walk away as hoped, and pressed insistently for the outcome of the Senior Litigator interviews, and then for my appointment; and then, even after my wrongly-founded unfair discrimination claim had been dismissed (my real problem was cronyism), I pursued through court the full uncensored recommendation report, among other documents (proving other recruitment corruption), and thereby finally uncovered the truth.
44. The respondent's direct involvement ethical and procedural recruitment corruption at LASA, including fixing the illegal appointment of another

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25 Baker Road
Prestbury
Pietermaritzburg 3201
30 November 2010

The Honourable Mr Justice Dunstan Mlambo
Judge President: Labour Court
Chairperson: Legal Aid South Africa

Labour Court
6th and 7th Floors, Arbour Square Building
Cnr. Juta & Melle Streets
Braamfontein
Johannesburg

And to:

The Board of Directors: Legal Aid South Africa

Mr M Makume, Mr J Maree, Ms N Mgadza, Prof P Kruger, Mr V Jarana,
Prof Y Vawda, Adv P du Rand, Ms E Gandhi, Mr M Moabi, Ms M Naidoo,
Judge E Molahlehi, Ms S Monaledi, Ms A Mosidi, Ms N Memka, Ms A Rhoda,
Dr D Konar, Ms T Mhlungu, Ms J Luthuli, Mr E Moolla, and Mr I Ramdas

Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

And to:

Ms Chantal Kisoon
Head: PAIA Unit
South African Human Rights Commission
29 Princess of Wales Terrace
Houghton
Johannesburg

Dear Judge Mlambo

Pietermaritzburg Senior Litigator post:

• **Illegal political / racial discrimination – covered with false reasons advanced to justify it, and two African candidates selected and recommended for similar posts sacrificed to effect it; • failure by members of the Management Executive Committee to execute a key component of Legal Aid South Africa’s Strategic Plan, concealed from the Board of Directors and from the Parliamentary Portfolio Committee for Justice and Constitutional Development; • multiple contraventions of the Public Finance Management Act, including the presentation of false financial information in Legal Aid South Africa’s 2009/10 Annual Report; • and refusal to comply with a request for records in terms of the Promotion of Access to Information Act on bogus legal and factual grounds**

1. When a year ago I told my partner, my sons, my brothers, and a couple of my closest friends that my interview for the Pietermaritzburg Senior Litigator post had gone extremely well and that I was certain I’d been selected for it (confirmed to me last month), I was met with unwelcome scepticism: ‘They’ll never appoint you, you’re too politically controversial.’ ‘They’re going through the motions formally, but behind the scenes they’ll just do whatever they want.’ One even suggested that ultimately I’d be disqualified for being white.
2. These disagreeably pessimistic predictions sprung from the fact that to many people whose opinions are informed by the newspapers I’m indeed a ‘politically sensitive person’, to cite the lingo of PW Botha’s State Security Council and its operatives, with the extreme prejudice such an appellation attracted. And indeed I’m indubitably a white person too.
3. I remember rebuking their cynicism vehemently: ‘No, you don’t understand. The process is transparent, it’s clean. Things have changed. We’re not living

under apartheid anymore, we have a constitutional democracy now.' Words and sentiments along those lines.

4. By 'clean' I meant the recruitment process was being managed by honourable and honest executives of impeccable and unquestionable integrity who would never do anything illegal and who would never think of telling lies.
5. I really believed it and I insisted, even as the months passed by, but I could not convince them.
6. As things turned out, I was to be sorely disappointed in my absolute confidence and conviction that the recruitment process was being managed by honourable and honest executives of impeccable and unquestionable integrity who would never do anything illegal and who would never think of telling lies.
7. I found that in fact the recruitment process was not transparent and clean; that the executives managing it were not honourable and honest; and that they didn't stint at acting illegally and telling lies to cover up the illegal things they'd done.
8. The 'Introduction' to 'Corporate Governance Arrangements' in Section 4 of LASA's Annual Report 2009/10 states that 'processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner and to adhere to good corporate governance practices'.
9. It assures us: 'Processes are underpinned by the principles of openness, integrity and accountability.'
10. And it explains: 'Corporate governance is concerned with structures and processes for decision making, accountability, control and behaviour. It starts at the Board of the organisation and this sets the tone for behaviour down to operational level at Justice Centres.'
11. Finally the 'Business Conduct' subsection records that 'Legal Aid South Africa has an ethics programme which promotes ethical behaviour in the workplace. This is supported by a written business conduct policy dealing with ethics,

which is applicable throughout Legal Aid South Africa. The continued focus on the business conduct policy has raised awareness of the need for ethical behaviour across the organisation. Employees are required to maintain high ethical standards and to ensure that Legal Aid South Africa's business practices are conducted in a manner that is above reproach.'

12. And it's relevant to mention that section 50(1) (b) of the Public Finance Management Act 1 of 1999 ('PFMA') stipulates that 'The accounting authority for a public entity must act with fidelity, honesty and integrity and in the best interests of the public entity in managing the financial affairs of the public entity.'
13. Having regard to the Board of Directors' oversight responsibility to ensure that 'good corporate governance practices' based on 'principles of openness, integrity and accountability' are observed by the Management Executive Committee in 'decision making, accountability, control and behaviour', and the Board's concern about 'ethical behaviour in the workplace', that 'high ethical standards' be observed, and that 'business practices' should be 'above reproach' – which is why their 'processes and practices are reviewed on an ongoing basis' – I write to report gross, in fact illegal, breaches in this regard by certain individuals on the Management Executive Committee.
14. The basic history is set out in my letters to CEO Vidhu Vedalankar and to COO Jerry Makokoane at pages 1–17 and 21–39 of the Document Bundle appended hereto, read with NOE Brian Nair's and CEO Vedalankar's responses at pages 19 and 101–108. (I will henceforth refer to all LASA officers simply by their surnames.)
15. One might even conclude from the 'behaviour' described in these letters, compounded by the dishonest cover-up that followed it (to be detailed and exposed below) that far from respecting 'the rights enshrined in our constitution' (per LASA's 'Vision') and 'principles of openness, integrity and accountability' in 'decision making' (per LASA Annual Report 2010), the

executives in question have no respect for these rights and principles and that they actually despise them.

16. In my letters to Vedalankar and Makokoane mentioned above, I'd assumed political prejudice against me – something I'm accustomed to. (Bundle, page 11, paragraphs 5.1–14 and pages 93–99 (a letter to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa, including information intended for the unwritten 'Postscript' mentioned in paragraph 58 of my letter to Makokoane)). I've recently appreciated, however, though I doubt it, that the prejudice may simply be racial, albeit no less illegal, inasmuch as my selection and recommendation for the appointment in question might have been inconvenient for the targets set out in LASA's 'Employment Equity Plan for 2010-2015'.
17. Arising from the 'behaviour' in question, I filed an extensive request for records under the Promotion of Access to Information Act ('PAIA') with Vedalankar as LASA's information officer ex officio on 30 August. (Bundle, pages 49–69)
18. On 29 September, the day before the end of the month provided by the Act for compliance with my request, and not having received any response to it, not even an acknowledgement of receipt, I approached the South African Human Rights Commission ('SAHRC') with a plea for assistance.
19. Kindly taking the matter up for me, the director of the SAHRC's PAIA Unit Chantal Kisoon ably negotiated an undertaking from LDE Patrick Hundermark to deal with my records request. Although Vedalankar was out of time for compliance (there was a mix-up over the computation of the period prescribed), I didn't mind, I was just glad that my request would be given attention at last.
20. On 18 October I received a letter from Vedalankar rejecting my request. (Bundle, pages 101–108)

21. Although the letter bears Vedalankar's electronic signature (a scanned image of it is pasted above her name at the end, identical to the image at the end of her CEO report in the 2009/10 Annual Report) it's unimaginable to me that she actually wrote it, and indeed it seems doubtful that she even read it with any attention. I say this having regard to the letter's contents, which are irreconcilable with my understanding of her personal integrity, noted in my letter to her of 12 July. (Bundle, page 10, paragraph 1.1) The letter is replete with false statements, deceptive red herrings, deceptive non-disclosures, and a breathtakingly brazen false statement of the law in regard to the application of PAIA, advanced as a justification for not complying with her obligations under the Act and for refusing my request for records.
22. Vedalankar seems to have authorized the letter drawn in her name trusting that it was in order. I therefore hold her clear of culpability for its disgraceful contents and hope you will too. Although I accept that Vedalankar never actually wrote the letter, for reference sake I must continue referring to it and its contents as if she did. I apologise to her in advance for the hard criticism to follow: it's directed at the real author of the letter, and not at her as the nominal author only.
23. The letter begins with a fraud. Numbered paragraph 1 claims:

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18*, is as follows:

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

wholly unrelated grounds, namely '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above'. (Bundle, page 102, paragraph 5)

30. Of course, this reason given has nothing to do with the fake 'test' or 'principle' that I'd only be entitled to the records requested if 'the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure'. And as hard as one looks, nowhere in PAIA does one find entitlement to records of a public body excluded by reason of being 'beyond [the requestor's] personal circumstances'. It's just made up out of thin air, once again.
31. The so-called 'principle' by which 'we were guided' bobs up at the very end of the letter in paragraph 8. My request for records is 'declined' for the further reason given that 'it is not relevant to you exercising any right you may have in law' – only it's a 'test', a 'principle' that has no bearing on a request for records from a public body, as PAIA makes clear, and the court in the National Teachers Union case plainly stated.
32. And as the Supreme Court of Appeal underscored in *Mittalsteel SA Ltd v Hlatshwayo* [2006] SCA 94 (RSA): 'The issue before us is ... whether the appellant at the relevant time and in creating the requested documents was a "public body" as that term is to be understood in PAIA. If it was then the respondent is entitled to the documents requested by it in terms of s 11 of PAIA. The section is headed "Right of access to records of public bodies". Subsection 11(1) provides that a "requester *must* be given access to a record of a public body if" (emphasis added) [in the judgment] (a) the requester complies with all the procedural requirements of the Act and (b) access to the record is not refused in terms of any ground set out in the provisions of PAIA dealing with the records of public bodies. None of these provisions is applicable to the

respondent's request, and compliance with procedural requirements is not in issue.' (j.mp/bKUmcW)

33. Despite the obstacles I encountered due to (a) LASA's failure to publish a PAIA manual on its website (a stale version of the manual was stuck under a bright new cover and posted on the website some weeks after I'd raised this problem with the SAHRC), and (b) CE Mpho Mphasha's failure to respond to my emailed enquiry about the identities of LASA's information officer/deputy information officer, I duly complied 'with all the procedural requirements of the Act' (per Mittalsteel) and I was and remain accordingly entitled to the records I requested.
34. As to the first excuse manufactured for not complying with the Act – '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above' – a glance at the list of records that I seek will show I wasn't asking for 'information on third parties'. (Bundle, pages 59– 68). This is because I have no interest in any 'information on third parties' whatsoever.
35. What I require – and it's a relatively small part of my request – are records of communications with certain third parties or sworn confirmation, as PAIA requires, that such records don't exist, showing that contrary to what has been suggested to me such communications never took place.
36. To protect their privacy – if privacy really was the issue rather than a false pretext for refusing my request – records of communications to and from third parties have only to 'be edited by blanking out the name of any third party whose privacy would otherwise be infringed by disclosure', as Brand JA put it in *Unitas Hospital v Van Wyk* [2006] SCA 32 (RSA). (j.mp/cHDY5D)
37. The particular records of communications with third parties or lack of them will be probative in establishing that my constitutional rights have been violated. By a public legal body professing to serve the Constitution.

24. (There is no paragraph 'b)' and the phrase 'is as follows' is italicized in the original as above.)
25. The use of indented block paragraphs is a universal writing convention to distinguish quoted text from the writer's own prose. One understands, therefore, that the indented block quote is an excerpt from the judgment. This impression is further emphasized by the use of distinguishing italics in the indented paragraph. Indeed, the indented, italicized block paragraph is preceded by the explicit claim that the 'test to be applied ... as laid down by the court ... is as follows:'.
 26. To read the National Teachers Union case is to discover that in truth no such 'test to be applied' was 'laid down by the court'. The judge said nothing of the sort. He said precisely the opposite. The alleged 'test to be applied' is pure invention, with the lie compounded by dressing it in fake legal authority, even putting words in the judge's mouth that he never spoke. From the CEO of Legal Aid South Africa. Magnificent!
 27. In paragraph 32 of his judgment Pillay J pertinently noted to the contrary: 'Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.' (The judgment is online at <http://j.mp/dxh3sZ>. (All shortened internet URLs in this letter will henceforth be given simply as 'j.mp [.....]'))
 28. Having sucked this so-called 'test to be applied' out of her thumb, pretending that a 'court ... laid [it] down', Vedalankar proceeds to apply her false test to my records request. Paragraph 2 commences: 'In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.'
 29. Decorating her decision in bits of the Constitution and PAIA quoted at me at some length, in a manner possibly quite impressive-looking to legally unschooled persons, Vedalankar concludes by refusing my records request on

38. And since the ramifications of this are awesome to contemplate, it seems this is why Vedalankar should have strained to seize upon this most peculiar, manifestly untenable pretext for refusing my entire request for records, the great majority of which have nothing to do with third parties by any stretch of the imagination.
39. Since Vedalankar's provision of the records I requested could not conceivably 'involve the unreasonable disclosure of personal information about a third party', as Section 34 (1) of PAIA puts it, the provisos in Section 46 cited and discussed in paragraph 3 of Vedalankar's letter are perfectly irrelevant.
40. But even if it were relevant, Section 46 would anyway require my access to the records for the reasons that '(a) the disclosure of the record would reveal evidence of ... a substantial contravention, or failure to comply with, the law ... and (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question'.
41. The fundamental premise of my records request, supported by the evidence I present, is that the disclosure of the records would indeed reveal further documentary 'evidence of ... a substantial contravention of, or failure to comply with, the law'.
42. Here I'm referring to the Constitution and to the Acts I've cited prohibiting discrimination on unlawful grounds in the democratic era, including by reason of 'conscience and belief' and because, motivated by these, I 'campaign for ... a cause'. (Bundle, pages 2-4, paragraphs 6-15 and pages 34-36, paragraphs 56-65) And by reason of race, unless justified by the provisions of the Employment Equity Act 55 of 1998 and the reported cases elucidating its practical application. I'm referring also to Acts and regulations, mentioned below, governing the operation of public bodies.
43. As for 'the public interest' – proviso (b) of Section 46 – the public have a clear interest in the disclosure of the records in this case, because they have a fundamental interest in having the certain assurance that they will not be

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

APPLICANT’S PRE-TRIAL CONFERENCE AGENDA

The items for discussion at the pre-trial conference, enumerated in rule 6(4) of the Labour Court Rules, are raised by the applicant under their titles in the rule, quoted in boldface. The rule provides:

In a pre-trial conference, the parties must attempt to reach consensus on the following:

1.

(i) Any means by which the dispute may be settled;

1. Given that:

- even on the respondent’s own version (unsupported by any record), the Pietermaritzburg Senior Litigator post was frozen with two others to mitigate the respondent’s ‘financial uncertainty’ arising from the Department of Justice and Constitutional Development’s delay in transferring its OSD funding allocation in 2010;
- the ‘OSD funding’ problem has now been ‘resolved’ (Response, paragraph 48.10);

78. On 30 November the applicant petitioned Board chairperson Mlambo and the rest of the Board to exercise their legal responsibility to intervene in (a) Vedalankar's unlawful refusal to comply with PAIA and her violation of the applicant's fundamental right to information under section 32 of the Constitution, 1996; and (b) her unlawful block on his appointment, having regard to the still limited indications then known to him that her budgetary justification for her admitted decision to abort his recruitment was untrue.

79. Mlambo did not consult the Board to discuss the applicant's extraordinarily serious complaints raised in his petition, but instead instructed Vedalankar to prepare a letter cursorily dismissing it. He was overseas at the time.

80. On 15 December 2010 Vedalankar obliged, pasting a scanned image of Mlambo's signature into the letter she'd drawn for him, and emailed him the PDF of the letter she'd created. On 30 December Mlambo emailed it in turn to the applicant.

81. The letter read: 'I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege or at all.'

82. Besides a couple of formal acknowledgements, no other Board member responded to the applicant's petition.

83. On 20 January 2011 Christopher Rawlins met Board member Ela Gandhi in Durban to discuss the applicant's complaints in his petition that Vedalankar had violated his fundamental rights to equality and equal employment opportunity and to information. During their meeting, Board member Yusuf Vawda telephoned her, following which Gandhi accused the applicant of blackmailing and defaming the respondent/the respondent's officers. (Bundle, pages 207-8)

84. Mlambo rejected the applicant's protest about this, repeated his claim to have found nothing untoward in Vedalankar's conduct as CEO and information officer, and accused the applicant of improper conduct in pursuing his complaints: 'I have on a previous occasion informed you that I could find nothing untoward in your treatment by Legal Aid SA. ... Your conduct is unbecoming to say the least and borders on harassment.'

85. Mlambo said he'd instructed the Board to ignore the applicant's further correspondence.

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Respondent

RESPONDENT'S ANSWER TO APPLICANT'S PRE-TRIAL AGENDA

Introduction

1. The Respondent wishes to answer the Applicant's Pre-trial Agenda (the Agenda") in the manner provided hereinbelow.

AB N.K.5

65.2. There is nothing contradictory in the CEO's position and that which was presented to the board of the Respondent's directors.

66. Ad Paragraphs 76 – 77.

66.1 Agreed.

66.2 The funding was released to the Respondent after it had taken its decision to terminate the recruitment of Senior Litigator posts. This decision has never been revisited.

67. Ad Paragraph 78.

67.1. This is irrelevant to the present proceedings and is denied.

68. Ad Paragraph 79.

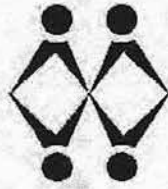
68.1. Agreed.

68.2. Mlambo JP found, upon a perusal of the Applicant's letter and the explanation received from the CEO, nothing untoward that was done by the CEO and was correct in dismissing the Applicant's complaint.

69. Ad Paragraph 80.

69.1. Disagreed.

69.2. The said letter was created as a direct result of Mlambo JP's interaction with the CEO and there is nothing untoward thereabout. The electronic signature by Mlambo JP could not have been used without his knowledge and consent.



BY E-MAIL

Tuesday, November 09, 2010

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Dear Mr Brink

PIETERMARITZBURG SENIOR LITIGATOR POST

Your letter dated 30 November 2010 refers.

I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege or at all.

Regards

Judge Dunstan Mlambo
Chairperson

E

Tuesday, November 09, 2010

Mr A Brink
25 Baker Road
Prestbury
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E-mail: arbrink@iafrica

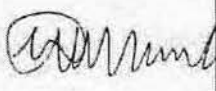
Dear Mr Brink

PIETERMARITZBURG

Your letter dated 30 Nov

I have reviewed the action
for the Senior Litigator per
arbitrariness towards you

Regards



Judge Dunstan Mlambo
Chairperson

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AR N.K.S