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

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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. Before I continue: The concluding paragraph of my Second Complaint anticipated that this, my Third Complaint, would detail the respondent's lies and false reporting to the Minister of Justice and Constitutional Development (as he was then called). On reconsideration, this will be the subject of my Sixth Complaint to follow; and the respondent's lies and false reporting to the Justice Portfolio Committee of the National Assembly – a crime – my Seventh. Before this, I've three more complaints to present against the respondent regarding his collusion with Vedalankar and his connivance at her violation of my fundamental right to information, the first of which is made here, the next two to follow.
4. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act (the Act'), in colluding, again, with LASA CEO and information officer Vidhu Vedalankar in her violation of my fundamental

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right to public body information entrenched by section 32(1)(a) of the Constitution, given effect by the Promotion of Access to Information Act ('PAIA'), an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Act.

5. For concision, I'll refer to parts of my First and Second Complaint against the respondent, and I request that they be read as incorporated in this Third Complaint.
6. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Third Complaint.
7. On 24 January 2011, I petitioned the respondent for the second time, inter alia about Vedalankar's illegal 'denial of access to records' and 'defiance of the Promotion of Access to Information Act'. A copy of my second petition is annexed marked 'A'. Its paragraphs 27–31 and 47 are material to this complaint.
8. In my second petition to the respondent, I raised his failure in the letter he emailed me on 30 December 2010 to have dealt with 'my opening complaint' made in my first petition to him in November 2010 'that Vedalankar, as LASA information officer, has unlawfully refused my request for access to LASA's records under the Promotion of Access to Information Act' (delivered in August 2010).
9. The respondent's December letter is the subject of my Second Complaint, and is annexure 'D' to it. About which I asked him: 'Did you actually write the letter? According to its PDF properties file, Vedalankar did.'
10. I mentioned that 'I was hoping that as a senior judge you would appreciate the gravity of her refusal to comply with the Act and her disrespect for section 32(1)(a) of the Constitution behind it, and that you would instruct her to obey the law forthwith.'

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11. And noted: 'Since she's already informed me that in her opinion I'm not entitled to access to any of LASA's records – grossly misquoting a reported case against her, which she claimed to support her position – I'm expecting her to refuse my second records request as well.'
12. I informed the respondent that 'In view of your and the Board's indifference to Vedalankar's defiance of the Promotion of Access to Information Act ... I've drawn draft application papers for an application to compel', and that I'd 'posted' them online 'for your perusal' at the internet address I stated.
13. And I issued him with a very proper ultimatum:

If I haven't heard from you by the end of this week, I'll take it that your position against me remains unchanged, and I'll petition the Minister, the Deputy Minister, and all members of the Portfolio Committee as the next levels of authority and accountability – all four of my successive appeals to the Management Executive Committee and the Board of Directors having been spurned.

14. My second petition was delivered to the respondent by email attachment early in the afternoon. To record this, moments before sending it, I entered above 'Dear Judge Mlambo', 'Per email: 13h45'.
15. The respondent ruminated for several hours about what to say to me and how best to shore up the disintegrating cover-up of the true reason my appointment to the Pietermaritzburg Senior Litigator post had been aborted after I'd been selected and recommended for it.
16. Appreciating with alarm that my complaint to him was unanswerable (except that I was barking up the wrong tree in surmising unfair discrimination: it was his cronyism) and that the most serious trouble lay ahead, the respondent decided to try cowing me into abandoning my endeavour to vindicate my fundamental right to information that

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Vedalankar had violated, in order to put me off discovering the true reason my recruitment had been aborted.

17. Late that night ('11:12 PM'), the respondent responded by writing me an email, in which he contemptuously rebuked my second petition with the false charge that in pleading for his and the Board's intervention in the gross unconstitutional illegality of which I was complaining at LASA, my:

behaviour is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.

18. The record of this email is annexure 'C' to my First Complaint.
19. As appears from its sender information, 'From: Mlambo Dunstan [DMLambo@justice.gov.za]', the respondent emailed me from his judge's email account, and not from his LASA account.
20. The Cc bar shows he copied it to Vedalankar, to let her know he'd told me to get lost.
21. Further shaking his stick at me to make me go away, the respondent made a point of adding his high judicial authority to his communication by signing it off:

I trust you find this in order.

D Mlambo  
Chairperson- Legal Aid SA and  
Judge President  
Labour Courts  
dmlambo@justice  
Tel +27113595735/6

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Fax 0866447932

22. The respondent's rude and threatening dismissal of my second petition wasn't 'in order' at all; quite the contrary, and he well knew it.
23. It's impossible that as a senior judge the respondent could have failed to understand and appreciate the unconstitutional illegality of Vedalankar's total refusal of my August 2010 PAIA request, on the manifestly false and irrelevant grounds advanced in her October 2010 letter, claimed to be supported by what turned out to be a fake quotation from a judgment on PAIA, affirming the public's constitutional right of access to records held by organs of state. All of which I precisely detailed to him in paragraphs 17–43 of my first petition to him in November 2010 (annexure 'A' to my Second Complaint).
24. Instead of duly intervening as chairperson of the Board and also a top judge by directing Vedalankar to desist from violating my fundamental right to information, and to duly hand over the records I'd requested under PAIA, including those listed in my second PAIA request in December 2010 (the list of which, already drawn, I'd appended to my first petition to him in November 2010), the respondent forwarded my second petition to her without issuing any such instruction.<sup>1</sup>

1. I know this because Vedalankar mentioned my second petition to the respondent in her letter to me four days later on the 28th, in which she refused my entire second December 2010 PAIA request, just as I anticipated she'd do in my second petition, and again refused my entire first August 2010 PAIA request. Her letter is the subject of, and is annexed to, my Fourth Complaint, next.

I'm unable to provide the Judicial Service Commission with a copy of the respondent's email to Vedalankar covering my second petition that he forwarded to her, because LASA now absolutely refuses to answer any more of my duly made PAIA requests on the false and untruthful basis that they're all a frivolous and vexatious waste of its time.

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To prevent me enforcing my core constitutional right to information by applying to court for mandatory relief under section 78 of PAIA (most recently in Pietermaritzburg High Court case 1118/16, which I launched in October 2016), LASA responded with an application later that month to have me banned as a vexatious litigant (Pmb HC case 12124/16).

Which corrupt suit to knock me down, in furtherance of the cover-up, I've answered comprehensively in an affidavit of nearly 300 pages and 1000 paragraphs supported by 80 annexures, setting out the rampant, pervasive, systemic top-level corruption at LASA that I've uncovered in my investigation of this to date. It's accessible online in my Dropbox at: <https://goo.gl/ydG4Pi>.

A comprehensive history of LASA's illegal and unconstitutional persistent refusal to comply with its constitutional information transparency obligations from 2010 to date is set out in a 'SPECIAL REPORT ON LEGAL SA: AN AGGRAVATED CASE OF REPEATED WILFUL NON COMPLIANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO ILLEGALLY OBSTRUCT ACCESS TO DULY REQUESTED RECORDS, AND REPEATED FALSE ANNUAL AND 'CONFIDENTIAL' REPORTING TO CONCEAL THIS FROM THE NATIONAL ASSEMBLY'. It's online at: <https://goo.gl/OwcxJe>.

25. The respondent intended that I should recoil fearfully on reading his aggressive charge, which he levelled against me as Judge President of the Labour Courts from his judge's email account in the middle of the night, and that I should abandon my pursuit of access to LASA's records to which I was constitutionally entitled, including the selection panel's recommendation of me for the Pietermaritzburg Senior Litigator post – the report of which recorded, I discovered only last year, that my rival for the post, Ngcamu AJ, as he used to be, had been the respondent's brother in the Labour Court for '±6 years'.
26. Annexed marked 'B' is a copy of the recommendation report<sup>1</sup> revealing this information, which I finally forced out of LASA in April 2016 by suing for it in the Eshowe Magistrate's Court.<sup>2</sup>

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1. It's incorrectly dated; in fact the interviews were held on 12 November 2009. The report's erroneous understatement of my High Court experience is immaterial to set right here; likewise the unauthorised, gerrymandered, scaled up qualifying criteria not applied to other Senior Litigator posts; likewise its repeated mention of a legally incompetent 'next round of interviews' – to be dealt with in a separate complaint about the respondent's wholesale disregard for LASA's internal regulatory instruments; his corruption of Board approved and prescribed recruitment procedure; and his violation of the rule of law.
2. After opposing me all the way, at immense wasted cost in public revenue, probably in the millions, LASA ultimately capitulated in court on 14 February 2016, as I was on the point of moving for an order that the recommendation report and other requested documents be surrendered, and agreed to hand them over.

I duly requested all LASA's counsel's fee-notes for this futile litigation, with the stated intention of passing them on to the Auditor General for the personal recovery of the irregular and fruitless and wasteful expenditure involved, but they were illegally refused; and, as mentioned above, my application duly brought to the High Court at Pietermaritzburg in October 2016 for an order compelling their production was shortly afterwards answered with an application to have me stripped of my ordinary constitutional right to information and my constitutional right to approach the courts for relief when it's violated. Like a listed 'communist' under apartheid.

27. By:

- 27.1. dissembling that 'I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view';
- 27.2. falsely charging me with 'unbecoming ... behaviour' which 'borders on harassment', i.e. just about illegal conduct;
- 27.3. doing nothing to remedy Vedalankar's illegal and unconstitutional refusal in October 2010 of my request for access to LASA's records duly made under PAIA in August 2010; and,
- 27.4. not instructing Vedalankar to respond lawfully to my second PAIA request made in December 2010,

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the respondent connived again at Vedalankar's violation of my fundamental right to information.

28. And in behaving this way, the respondent again:

28.1. breached multiple relevant provisions of LASA's Code of Ethics and Conduct, enumerated in paragraphs 38 and 41 of my Second Complaint; and,

28.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in contempt of his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name: *SHANE ARSANTIAO ZESANI*  
 Address: *Mtunzini SAPS*  
 Capacity: *Constable*



25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
24 January 2011

Chairperson Judge Dunstan Mlambo and the Board of Directors

Legal Aid South Africa

29 De Beer Street

Braamfontein

Johannesburg

Per email: 13h45

Dear Judge Mlambo

BRINK/LASA  
FINAL APPEAL TO THE BOARD  
PIETERMARITZBURG SENIOR LITIGATOR POST

1. On Thursday last week, a concerned friend of mine, Christopher Rawlins, discussed our matter with Board Director Ela Gandhi at her home in Durban. A record of the meeting is annexed.
2. Chris, now 69, is South Africa's first conscientious objector, forced into political exile when he refused a call-up by the apartheid military in 1961 – finally coming home in 1994 immediately after the advent of democracy in our country.
3. And having paid a heavy personal price for his moral and political conscience, with some of his comrades killed for it, he's been especially outraged by LASA's illegal discrimination against me for exercising our newly won, constitutionally guaranteed rights of freedom of thought, opinion, research, expression, and participation in political discourse and public policy formulation.

4. Even if this means contradicting transnational pharmaceutical interests and their political/propaganda assets in the law, academia, media and political action groups.
5. Ms Gandhi is one of the Board members whose email address I'd been unable to find on the internet last year, and so had been unable to email her a copy of my letter to you and the Board of Directors of 30 November 2010.
6. My request to Board Secretary Bee-Mari Schoeman on 8 December 2010 to ensure that all Board Directors were apprised of my complaints of illegal discrimination and denial of access to LASA's records, and to place the matter on the agenda of the next board meeting, went unacknowledged. I therefore assumed, correctly, that Schoeman had disregarded my request and that Ms Gandhi was among the Directors deliberately kept in the dark.
7. Chris mentioned to me that Ms Gandhi lives near his house on the Durban Berea and volunteered to print and bind a hard-copy of my letter and Document Bundle annexed to it and deliver it to her.
8. He thought she would be concerned about LASA's unconstitutional, unlawful, and deceitful behaviour, given her promotion of her grandfather's absolute opposition to intolerance and discrimination and his absolute commitment to truth and justice.
9. With this in mind, I agreed; I also thought so.
10. Chris hand-delivered my letter and annexure to Ms Gandhi on 14 December 2010, and on 19 January 2011 phoned to follow up. He told me Ms Gandhi responded that she didn't see what I was concerned about because she'd been on the Board for four years with people she knew to be highly qualified, and there'd been unqualified audit reports for five years. Nonetheless, at his request, she agreed to meet him for a briefing about my case and invited him to her home for this.
11. At the meeting the following day, Ms Gandhi admitted having read my letter only 'quickly'; yet again she said she believed I had no cause for complaint.

12. During the meeting, Board member Yusuf Vawda telephoned her and spoke to her about my letter for some time.
13. Evidently her mind had been made up for her, and she'd been poisoned against me: Ms Gandhi concluded the meeting by slandering me as a libeller and extortionist. You can read what she said to Chris in his report of the meeting. I find it too perverse and disgusting to repeat.
14. It's obviously been decided to play dirty: instead of taking the trouble, for which they're paid, to apply their minds to evaluating and determining the merits of my complaints, and how to address and resolve them to avert remedial action in court, certain Board members and possibly executive managers have taken to assassinating my character and reputation by smearing me as an unconvicted criminal. Anything to avoid respecting the Constitution and the law of the land, when it comes to people they're politically prejudiced against.
15. This is the low mentality and viciously hostile animus I'm up against.
16. This is the quality and the level of the discussion currently taking place between certain Board members about my matter.
17. This is the shockingly irregular way in which my complaint is being dealt with at Board level: furtively; in cabals; behind the scenes; on the phone; off the record; dishonestly.
18. I'd be grateful if you'd direct the Board members and possibly management executives responsible for telling and spreading their foul lies about me to desist from doing so; and if you'd remind them that the proper place for a discussion of a matter as serious as mine is at a full Board meeting, on the record, with minutes taken recording the things they say. So that they can be reviewed by an independent judge if needs be.
19. Since she seems disinclined to do so, please also instruct Board Secretary Schoeman to place both this letter and my 30 November letter and its annexed Document Bundle on the agenda for discussion at the next Board meeting, and to prepare printed copies of both my letters and Document Bundle for the

Auditor General's staff, flagging for their attention the useless and wasted public expenditure caused by the abortion of my recruitment on illegal political grounds, and, as I discovered incidentally when investigating and exposing the false cover contrived for it, the presentation of false financial information in LASA's current annual report.

20. Like my first letter to her on 8 December 2010, Schoeman has not acknowledged my reminder to her on 10 January 2011 either. It seems plain, therefore, that she's been instructed to conceal the extraordinarily serious issues raised in my first letter and annexure from the Board as a whole, and to keep them off the agenda of the next Board meeting, thus concealing them from the Auditor General as well.
21. Who issued this illegal instruction to her, Schoeman will be compelled to reveal when she's cross-examined.
22. The Auditor General will be concerned to learn that my letter to CFO Rebecca Hlabatau on 1 September 2010, included in the Document Bundle, about the useless and wasteful expenditure issue went unacknowledged.
23. And that my letter to you and the Board of Directors about this and about the false financial information appearing in LASA's current annual report went unacknowledged by Audit and Risk Committee Chairperson Nonhlanhla Mgadza, whom I emailed on 30 November 2010.
24. And that no steps have been taken by the Board under its obligations as LASA's 'accounting authority' imposed by section 51(1)(b) of the Public Finance Management Act to 'take effective and appropriate steps to prevent ... fruitless and wasteful expenditure'. Such as readvertising and re-interviewing for a senior professional post for which an eminently suitable candidate has already been recruited – per Vedalankar's letter to me of 18 October 2010.
25. And that those members of LASA's Board whom I've been able to reach are apparently unbothered about the serious contraventions of the Public Finance Management Act that I've brought to their attention:

26. Besides yourself as Chairperson, of the nine Board Directors whose email addresses I found by searching the internet, only Adv du Rand, Dr Konar, and attorney Maree acknowledged receipt of my first letter to you and the Board – and then did nothing about it. My follow up letter on 10 January 2011 to du Rand, copied to Konar and Maree, was again formally acknowledged by du Rand, but again has otherwise been ignored.
27. Your perfunctory one-line response that you emailed me on 30 December 2010 – although dated 9 November (sic: 9 December?) 2010 – did not address my opening complaint that Vedalankar, as LASA information officer, has unlawfully refused my request for access to LASA's records under the Promotion of Access to Information Act.
28. I was hoping that as a senior judge you would appreciate the gravity of her refusal to comply with the Act and her disrespect for section 32(1)(a) of the Constitution behind it, and that you would instruct her to obey the law forthwith.
29. Did you actually write the letter? According to its PDF properties file, Vedalankar did – on 15 December 2010, while you were still away in the US. It's even signed off with 'Regards', just as she does – a strikingly unconventional and inappropriate style for formal business letters. Moreover, a complaint I never made was dismissed, and those I did make weren't addressed. All this suggests a legally unqualified person wrote your letter, and indeed Vedalankar has left her fingerprints on it.
30. In view of your and the Board's indifference to Vedalankar's defiance of the Promotion of Access to Information Act, just to start with, I've drawn draft papers for an application to compel in the South Gauteng High Court (Johannesburg); and I'm just waiting for her response to my supplementary request for records, which she undertook to give me by 29 January 2011, so as to include it in the papers.

31. Since she's already informed me that in her opinion I'm not entitled to access to any of LASA's records – grossly misquoting a reported case against her, which she claimed to support her position – I'm expecting her to refuse my second records request as well.
32. Given the malicious false interpretation of my repeated appeals for an amicable resolution of my illegal discrimination complaint, it seems futile, even dangerous, to repeat it.
33. Nonetheless I'm still faintly hoping that at least some Board members will have the presence of mind to appreciate their exposure in this looming scandal and will call for an urgent special meeting under section 5(2) of the Legal Aid Act to discuss and resolve my matter properly, on the record, before it spills into open court.
34. As you well know, the financial reasons given in Vedalankar's letter to me of 18 October 2010 for aborting my recruitment are lies.
35. (Who actually wrote her letter – she's mentioned in the third person as 'the CEO' – and who instructed the real author of the letter to tell these lies, will emerge in cross-examination.)
36. These lies are comprehensively interrogated and refuted in paragraphs 44ff of my first letter to you and the Board. And the records I've requested, or, more pertinently, Vedalankar's sworn confirmation they don't exist, will further reveal them for the lies they are.
37. As you also know, the Senior Litigator post for which I was selected and recommended has been budgeted for and funded as part of LASA's critical professional senior staff establishment since as far back as 2007/2008.
38. The issue of delayed OSD funding has never had anything to do with it – but in any event, this had already been resolved by the time Vedalankar wrote to me falsely claiming budgetary constraints as the reason for aborting my appointment.

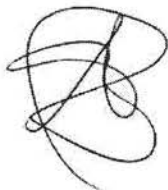
39. In her oral report to the Portfolio Committee on 12 October 2010, Vedalankar mentioned that ‘the Minister’ told you he didn’t want any posts frozen. Yet in brazen defiance of his express wishes Vedalankar claims to have frozen my post.
40. Leaving the majority poor in KwaZulu-Natal, unlike all other provinces, without the services of a Senior Litigator for nearly four years now.
41. And again, this is in defiance of the express wishes of the Portfolio Committee’s predecessor, the Parliamentary Safety and Security Select Committee, conveyed to you and Vedalankar at your meeting on 30 May 2007, namely that LASA should appoint Senior Litigators.
42. Topping which, in ‘freezing’ my post Vedalankar didn’t even deign to comply with LASA’s Approval Framework – such is the lawless breakdown of proper corporate governance at LASA.
43. As indicated in the conclusion of my appeal to COO Jerry Makokoane on 1 September 2010, failing the Board’s prompt intervention and resolution of my illegal discrimination and unlawfully denied records complaints, I’ll shortly be reporting them and the disgraceful manner in which they’ve been dealt with at Board level to the Portfolio Committee, to the Minister of Justice and Constitutional Development, and to the Deputy Minister. (Before granting interdictory relief, the courts require one to show that all available non-litigious remedies have been exhausted.)
44. To repeat once again, the solution to the catastrophe LASA is facing is quite simple: the illegal political prejudice against me must be put aside, the patently false cover invented for it must be abandoned, and my appointment to the senior professional post for which I was duly selected and recommended by a delegated expert panel of my professional peers must be finalised in the ordinary course.
45. Even if this is unpalatable to those in LASA who’ve unlawfully opposed themselves to me for political reasons – solely on account of my thoroughly researched, published criticisms of the safety and utility of certain patented

- chemicals plied by enormously wealthy and powerful Western corporations on the African poor.
46. Unfortunately for those persons who've moved to oppose me politically, however, we have a progressive, enforceable Constitution these days; and as our own Navi Pillay, now United Nations High Commissioner for Human Rights has pointed out: 'More than pure aspirations, human rights are real rights that can be tested in courts of law.'
47. The draft papers in my preliminary PAIA application, testing my real right of access to LASA's records, are posted for your perusal at [www.tig.org.za/LASA](http://www.tig.org.za/LASA) ; username: lasa ; password: LASA2010. The application is substantially ready for launching in February.
48. My main case to vindicate and enforce my other even more basic constitutionally guaranteed human rights, disrespected and trampled on by LASA, will follow once I have my records or Vedalankar's confirmation on oath that they don't exist.
49. Please let me have the Board's assurance that the Pietermaritzburg Senior post for which I was selected and recommended will not be readvertised until my pending claim for appointment to it has been resolved, either by settlement or by order of court. Without such assurance I'll be bound to act to protect my rights with an interim interdict application.
50. Would you ask Board Secretary Schoeman to forward this letter to all Board members so that they are all fully informed of the dangerously advanced state of play and the rapidly fading prospects of a sensible internal resolution? As mentioned above, she's ignored both of my requests to inform all members of the Board. I only have some Board members' email addresses, and the rest would presumably want to know about the rocks towards which LASA is currently headed, threatening to wreck its exemplary reputation as an impeccably well managed public body (Deputy Minister Andries Nel remarked in *Business*

*Day* on 12 January: ‘The world would be a better place if it were run by Legal Aid.’).

51. If I haven’t heard from you by the end of this week, I’ll take it that your position against me remains unchanged, and I’ll petition the Minister, the Deputy Minister, and all members of the Portfolio Committee as the next levels of authority and accountability – all four of my successive appeals to the Management Executive Committee and the Board of Directors having been spurned.
52. Please appreciate that whatever Vedalankar decides concerning my second records request, and even if she reverses her decision to refuse the first one, I will still be petitioning the Minister, the Deputy Minister, and the Portfolio Committee to intervene and remedy my main illegal discrimination complaint, unless the Board moves to resolve it immediately. I’ve been waiting over fourteen months now.
53. And if I get no joy from Parliament, I’ll claim my constitutional rights in court, with its patient and efficient machinery for separating truth from lies.
54. This case is shaping up to be a historical, landmark development in South African constitutional jurisprudence. It’s just dismal to think that LASA is set to be forever memorialized in the law reports for its shameful contempt of the basic civil liberties enshrined in our democratic Constitution.

Yours sincerely



ANTHONY BRINK

Advocate of the High Court of South Africa

033 344 2420

083 779 4174

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Cc:

To: Board Directors du Rand, Gandhi, Jarana, Konar, Kruger, Maree, Memka,  
Mgadza, Mhlungu, Monaledi, Mosidi, Naidoo, and Vawda;

And to: Board Secretary Schoeman;

And to: Attorneys Kisoona and Bokaba:

PAIA Unit, South African Human Rights Commission

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## Record of Meeting

Ela Gandhi and Christopher Rawlins

20 January 2011

2 P.M.

Ms Gandhi's home

During my meeting with Ela Gandhi on Thursday she received a telephone call from fellow board director, Prof. Yusuf Vawda, immediately informing him that she was busy discussing your letter with me. After the call, I explained that I had telephoned Prof. Vawda the previous Friday 14th January when he told me that he knew nothing at all about your letter and expressed no interest in learning of its contents. I reminded Ela Gandhi that she too would have known nothing about your letter had I not taken the trouble to print, bind and hand deliver it and now follow up with a meeting to update her on the correspondence since your letter to the board of 30 November 2010.

I outlined the way in which I believed you had been illegally discriminated against by the CEO and board Chair who held very opposed views to yours on the AIDS issue. Ela Gandhi said she firmly believed in the beneficial qualities of the drugs known as ARVs although she had never read any of your books or studies of AZT and nevirapine.

When I referred to the fact that KZN had been deprived of senior litigators in contrast to all other high court areas, Ela Gandhi assured me that KZN did in fact have senior litigators in post. She knew this from her attendance at the last meeting in Oct/Nov 2010 of the Legal Services Committee at which the good performance of the senior litigators had been commented on, in particular the one at Durban. I responded that you had been informed in the CEO's letter of 18 October that the KZN posts had been frozen because of lack of funding.

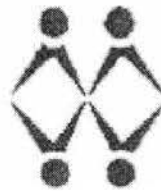
Ela Gandhi said there was no proof that you had been a victim of unlawful discrimination. She said many people are out of work and make unsuccessful job applications. She likened your application to that of Ashok Kaloo who had previously been rejected for the Pietermaritzburg senior litigator post after failing the second confirmatory interview in Johannesburg. I responded that the crucial distinction was that you had never been given the second confirmatory interview nor were you ever rejected on the basis of your skills, experience and personal qualities. You were informed after 9 months of waiting that the post had been frozen due to lack of sufficient funding.

I detailed the persistent steps you had taken to resolve the problem by written appeals to ever higher levels of authority within LASA, culminating in an appeal to the board Chair and the board in which you said that you would very much like to deflate the rapidly ballooning problem by way of a conciliatory meeting. Ela Gandhi said that this attempt to solve the problem by a conciliatory meeting amounted to attempted blackmail because you had made serious allegations of financial mismanagement in your letter of 30 November. Her belief was that you would offer to refrain from any

further exposure of the contraventions of various Acts as outlined in the heading page of your letter, in return for confirmation of your appointment which you claimed to have been unlawfully blocked. I responded that you had not offered nor would you ever contemplate such an agreement. The purpose of a conciliatory meeting would be to obtain justice as defined in our constitution without the necessity of the dispute becoming public through protracted legal action in the full glare of the media. The onus was on the board to meet to discuss how to respond to the contraventions of Acts and failure of corporate governance which had accompanied the cover up of your unlawful discrimination. Exercising its oversight function, the board is responsible and accountable to parliament and the public of South Africa and clearly would be neglecting its role if it did not address and rectify the breakdown in internal control and executive management that had allowed the problem to develop to such a serious stage. This would be necessary regardless of whether the dispute was resolved by a face to face meeting or by correspondence.

Ela Gandhi also said that the contraventions of Acts specified in your letter of 30 November were grounds for LASA to sue you for defamation. I responded that the truth of the statements made in your letter could be confirmed by reference to the records you had requested, but LASA had failed to comply with its legal obligations under PAIA. Referring specifically to the false totals contained in the table of executive management remuneration in the 2009/10 annual report, I left Ela Gandhi a copy of the annual report table, which she had not seen before although the false totals were detailed in your letter. She explained that the annual financial statements were thoroughly audited and examined by the specialist board members and asked me why you had not reported the false totals to the external auditors. I explained yet again the persistent efforts you had made to get your letter distributed to all board members but the board secretary had failed to even acknowledge your two letters requesting her to notify all board directors and canvass them on their support for a special meeting. The external auditors attend all meetings of the audit and risk committee together with the Chief Financial Officer and the internal audit executive and have unrestricted access to the Chair of the Committee and the Chair of the board. The external auditors would automatically be informed of any financial irregularities if the board secretary and board Chair had performed their job responsibilities as defined in the annual report.

Christopher Rawlins



TO	NOE
FROM	ROE (KZN)
DATE	05 <sup>th</sup> NOVEMBER 2009

**SENIOR LITIGATOR INTERVIEWS  
RECOMMENDATION FOR NEXT ROUND INTERVIEWS**

**1. PURPOSE**

To recommend the following candidates for the next round of interviews:-

- Mr Anthony Brink
- Mr Bongani Mngadi

**2. BACKGROUND**

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply.

Candidates must possess the following:

- Admitted Attorney / Advocate.
- B Proc or LLB degree, with right of Appearance in the High Court.
- A LLM will be an advantage.
- At least 12 years post qualification legal experience of which 10 years must be high court experience. Must be performing at least 80% active court litigation.
- Valid code 08 drivers licence.
- Excellent leadership & people development skills with a track record in training.
- Experience in budget preparation & management thereof.
- Advanced computer skills (MS Word, Excel, Outlook, PowerPoint & Ad Infinitum).
- Strong communication, problem solving & interpersonal skills.
- Innovative, creative & analytical thinking skills. Strong research skills.
- Ability to interpret & apply policies.

Envisaged for this position is a senior Attorney or Advocate, with a good standing in the legal fraternity, proven track record in criminal and civil litigation, a motivated, self-driven & mature individual who is a team player.

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

The selection panel consisted of the following members:

Mr Vela Mdaka	-	ROE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (PmBurg JC)
Mr Julian Butler	-	HCU Manager (PmBurg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

### 3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	Vela Mdaka	Baboo Brijlal	Kishore Mehta	Bertus Appel	Julian Butler	Vis Nair	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	25	29	33	25	35	31	29.66 / <u>59.33%</u>
Mr Anthony Brink	25	32	38	33	37	26	31.83 / <u>63.66%</u>
Mr Johannes van Wyk	18	26	31	27	35	31	28.00 / <u>56.00%</u>
Mr Bongani Mngadi	42	35	38	27	36	32	35.00 / <u>70.00%</u>

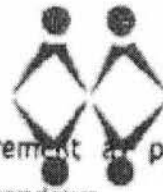
#### Notes:-

All scoring out of a maximum score of 50 (5 questions X 10 points each).

### 4. SUMMARY OF CANDIDATES

#### Mr Mzochithwayo Ngcamu

Mr Ngcamu has a B. Proc degree and is an admitted Attorney (Feb 1983). He is currently practicing for his own account. Candidate has acted in the Labour Court on numerous occasions ( $\pm 6$  years). Candidate also worked as an Assessor and a Justice College mentor to magistrates. Despite having a good knowledge of the law, candidate does not have any High Court experience (does not have right of appearance in the HC). Therefore candidate



does not meet the minimum High Court requirement as per the advert. Therefore candidate is not recommended for next round of interviews.

Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro omnia*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

Mr Johannes van Wyk

Mr Van Wyk has a LLB degree and was admitted as an Attorney in July 1986. Candidate is currently practicing for his own account (Jan 1997 to date). Prior to that candidate worked as Partner (Sept 1991 to Dec 1996), State Attorney (July 1986 to Feb 1991) & (Jan 1984 to July 1986) and as a Lecturer (Jan 1981 to Dec 1981). Candidate also served pupillage at the Pretoria Bar (Mar 1991 to July 1991). Candidate has limited HC experience having briefed Counsel in most matters. Candidate also does not have any experience in the SCA (briefed Counsel) or CONCOURT. Candidate has a fair grasp of the law. Candidate did not demonstrate his ability to undertake high level research and training. Candidate does not meet minimum HC experience in terms of the advert. Therefore candidate is not recommended for next round of interviews.

Mr Bongani Mngadi

Mr Mngadi has a B.Proc, LLB and MBA degrees. He was admitted as an Attorney in January 1990 and has been in private practice for 13 years (since Feb 1991 to Sept 2005). Prior to joining the Legal Aid South Africa, candidate also worked as a Magistrate (Nov 1981 to August 1985), Lecturer (UNIZUL) & Legal Assistant in Government. Candidate is currently employed as High Court Unit Manager (June 2009 to date). Candidate previously served Legal Aid South Africa as JCE at the Port Shepstone JC (Sept 2005 to May 2009). Candidate

has trained and supervised more than Candidate Attorneys directly articled to him - has a good understanding of training CAs. Candidate also has financial management, budgeting and management experience. Candidate demonstrated his understanding of strategic management reasonably well. He further displayed good problem solving and decision making skills. He possesses good communication skills and is an assertive individual. The Candidate has a good knowledge of criminal & civil work. Candidate also acted as a Small Claims Commissioner for a period of time. Overall presentation to Interview panel was very good. Candidate has 9 years experience in the High Court. Candidate does not have any SCA and CONCOURT experience. After having considered the candidate's overall presentation to the panel, the candidate is recommended for the next round of interviews.

#### 5. EMPLOYMENT EQUITY STATUS

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
<b>TOTAL</b>	<b>36</b>	<b>32</b>	<b>68</b>

Equity Stats as at 06.11.2009.

The PmBurg JC staff complement, including this appointment, will be as follows: -

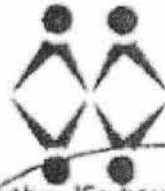
RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
<b>TOTAL</b>	<b>39</b>	<b>27</b>	<b>66</b>

Equity Stats as at 06.11.2009.

#### 6. RECOMMENDATION

The panel recommends the following candidates for the next round of interviews:-

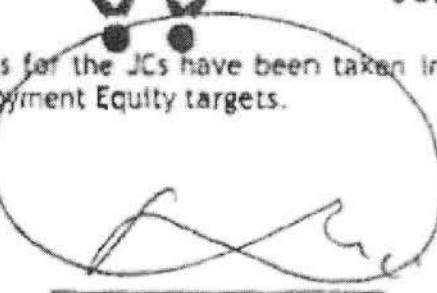
- Mr Anthony Brink                      ·        External Candidate
- Mr Bongani Mngadi                    ·        Internal Candidate



Legal Aid<sup>B</sup>  
South Africa

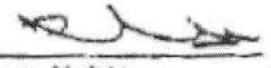
We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

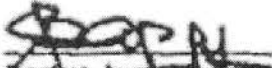
  
Baboo Brijlal  
Reg. HR Manager (KZN Region)




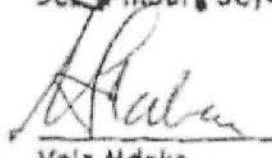
Vis Nair  
JCE (Pinetown)

23/11/2009

  
Kishore Mehta  
JCE (Durban JC) 17/11/09

  
Vertus Appel  
JCE (PmBurg JC) 23/11/09.

  
Julian Bonner  
HCU Manager (PmBurg JC)  
23/11/2009

  
Veia Mdaka  
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR NOE			