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FOURTH 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. 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, in conniving, again, at 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, and given effect by the Promotion of Access to Information Act 2 of 2000 ('PAIA').
4. For concision, I'll refer to parts of my previous complaints against the respondent, and I request that they be read as incorporated in this Fourth Complaint.
5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Fourth Complaint.

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6. On 28 January 2011 – four days after the respondent’s appalling late-night email on the 24th (the subject of my Third Complaint), in which he abusively dismissed my second petition to him and the Board earlier that day, and lied to me in claiming that he’d found, and still could find, nothing untoward about Vedalankar’s illegal ‘denial of access to records’ and ‘disrespect for section 32(1)(a) of the Constitution’, about which I’d complained to him in close detail in my first petition to him, and complained again in my second – Vedalankar:

6.1. totally refused my second PAIA request made on 15 December 2010, on the false basis that it merely ‘repeated’<sup>1</sup> my first;

1. In truth and in fact, I’d sought quite different records, testing her budgetary insufficiency story for aborting my recruitment to the Pietermaritzburg Senior Litigator post, which she’d fed me in her October 2010 letter illegally refusing my first PAIA request in August 2010, by means of which I was probing the circumstances in which my appointment had been blocked.

On the 3rd of that month, LASA National Operations Executive Brian Nair responded to my plea to CEO Vedalankar in July 2010 to see to the finalisation of my appointment, now eight silent months since my successful interview, by telling me that LASA had decided ‘due to various reasons’ that ‘we will not be proceeding with the filling of any of these posts’, LASA’s remaining vacant three Senior Litigator posts for which suitable candidates had been selected and recommended. (In April 2011, I forced Nair’s admission on oath under section 23 of PAIA that no record whatsoever of any such decision exists.)

6.2. revisited her refusal of my first PAIA request, and refused it again, for a new set of equally spurious and unlawful reasons;<sup>1</sup>

1. The South African Human Rights Commission (‘SAHRC’) confirmed this a few months later in June 2011; LASA’s head office lawyers admitted it to the SAHRC in October 2011; and Vedalankar’s spurious and unlawful reasons were implicitly abandoned by the delivery over the following years of the initially

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refused records and other similar records, which I determinedly pursued by repeatedly applying to court (6X) to compel their delivery.

The few records Vedalankar annexed to her January letter were 'To demonstrate' her several contentions, and not to respond to my request for access to the records I'd specified. But a couple of her records coincidentally partially satisfied some of my requests, including my request for a copy of the selection panel's report recommending me. Unjustifiably under any provision of PAIA, however, the report was illegally redacted with a black Koki pen to conceal from me the crucial, all-important information recorded in it, to which public body information I was entitled as of constitutional right, that my rival applicant for the post, which had strangely silently been frozen completely off the record after I'd been recommended for it, and he was unexpectedly rejected, had long been the respondent's fellow judge of the Labour Court.

The mutilation of the report before furnishing it to me, to conceal this vital information and to deny me my right to it (ultimately conceded five years later), was a criminal contravention of section 90(1) of PAIA: 'A person who with intent to deny a right of access in terms of this Act – (a) destroys, damages or alters a record; (b) conceals a record ... commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding two years.'

- 6.3. rejected and returned my bank cheque for the compulsory request fee prescribed by section 22 of PAIA, just to underscore her total rejection of, and absolute refusal to comply with, my August and December PAIA requests for access to LASA's records in my investigation of the true circumstances in which my recruitment had been silently aborted.
7. A copy of Vedalankar's letter to me of 28 January 2011 is annexed marked 'A'. The only document she put up with her letter that's relevant to this Fourth Complaint is the redacted and censored recommendation report, which I've annexed, marked 'B'. (Other documents she put up are relevant to and will be annexed to a different, separate, future complaint.) A copy of my unrepresented cheque for the compulsory request fee that

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Vedalankar unlawfully rejected and returned by post, even the envelope I sent it in, is annexed marked 'C'.

8. The cc addressees of her email covering her January letter show that Vedalankar copied it to the respondent. A copy of this email is annexed marked 'D'.
9. As one of our country's top legal authorities, it would have been immediately apparent to the respondent that the new bunch of substitute reasons given me by Vedalankar for continuing to totally refuse my PAIA requests, even spitting back my mandatory request fee, were incompetent, unlawful and unconstitutional.
10. It follows that the respondent was full well aware that Vedalankar was continuing to illegally refuse me access to duly requested records and was thereby violating my fundamental right to information.
11. Vedalankar's said letter concluded:

The Legal Aid SA's Board of Directors; its Executives and all its staff country-wide are committed to complying with the laws and statutes of the country and most importantly the Constitution of the country and its values of accountability and transparency. In that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB. We have exhausted our explanations to you<sup>[1]</sup> and trust that this final letter shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to.

1. Several months later, in November 2011, NOE Nair would give the Board totally different 'explanations', and in July/August 2013 yet another radically different 'explanation' to the Labour Court trying my claim for my instatement to the post.

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12. It would have been as obvious to the respondent as it was to me that by wishing me this final good-bye, after violating my constitutional right to information that she pretended to respect, Vedalankar was trying:
  - 12.1. to force my acceptance of her budgetary insufficiency excuse for not approving<sup>1</sup> my appointment;
  - 12.2. prevent me testing it by requesting supporting records to vouch it, or, where they didn't exist (as I suspected, later confirmed), by requiring her to certify this on oath under section 23 of PAIA; and,
    1. Under LASA's Approval Framework, an internal regulation approved and prescribed by the respondent and his Board, Vedalankar and Nair have co-authority for approving selection panel recommendations for Senior Litigator appointments. And no one else. As a non-executive member of the Board, the respondent's illegal intrusion into LASA management's Senior Litigator selection and approval operations, in violation of the rule of law, will be the subject of a separate, future complaint.
  - 12.3. to discourage me from making any more requests under PAIA to examine LASA's records, in the exercise of my fundamental right to information, by telling me they'd be ignored, in further violation of this constitutional right.
13. On being copied her letter, the respondent deliberately failed to honour his judicial oath and his fiduciary duty to LASA to see to it that Vedalankar quit violating the Constitution, stop breaking the law, and cease violating my basic civil rights; and did nothing to call her to order about this.
14. By his deliberate silence and inaction the respondent tacitly approved Vedalankar's:
  - 14.1. clear violation of my fundamental right to information; and,

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14.2. announcement of her intention to continue violating it should I attempt to exercise it again.

15. In this manner, the respondent again:

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

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

Signed at Mtunzini on 27 June 2017.

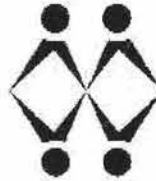
ANTHONY BRINK

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: *Sihle Abongile Zisani*  
Address: *Mtunzini SAPS*  
Capacity: *Constable*





**Legal Aid**  
South Africa

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18 October 2010.

Adv Anthony Brink  
25 Baker Road  
Prestbury  
Pietermaritzburg 3200

29 De Beer Street  
Braamfontein  
Johannesburg 2017  
Private Box X76  
Braamfontein 2017  
Tel: 011 877 2000  
Fax: 011 877 2222  
[www.legal-aid.co.za](http://www.legal-aid.co.za)

by Fax: 0866720776

Dear Advocate Brink,

**Re: Promotion of Access to Information Act: Request for Records: Senior Litigator Position, Pietermaritzburg**

I acknowledge receipt of your letters addressed to the CEO and COO dated 26 August and 1<sup>st</sup> September respectively. Whilst not responding to each and every allegation contained therein, an omission to address any aspect should not be construed as an admission of the correctness on our part, and we reserve our rights to respond to any such allegation should the need arise.

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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.*

2

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.

Section 32 of the constitution grants access to information in the following terms:

"(1) *Everyone has the right of access to:-*

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- (a) Any information held by the State; and
  - (b) Any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state”.

3

The national legislation enacted for this purpose is the Promotion of Access to Information Act which you have sought to use in this matter. In terms of Chapter 4 of the Act, specifically sections 62 to 70, 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 protection of the privacy of a third party who is a natural person.
- b) Mandatory protection of certain confidential information of a third party.
- c) Mandatory protection of records privileged from production in legal proceedings.
- d) Mandatory protection of research information of a third party.

The refusal of information falling into the above categories is however not without qualifications. In this regard section 46 provides as follows:

*“Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34 (1), 36 (1), 37 (1) (a) or (b), 38 (a) or (b), 39 (1) (a) or (b), 40, 41 (1) (a) or (b), 42 (1) or (3), 43 (1) or (2), 44 (1) or (2) or 45, if—*

- (a) *the disclosure of the record would reveal evidence of—*
  - a substantial contravention of, or failure to comply with, the law; or*
  - an imminent and serious public safety or environmental risk; and*
- (b) *the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.”*

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Your request for information was considered against this background and it was in terms whereof that it was decided that (i) your request for information goes beyond your individual



circumstances and extends to information on other third parties, (ii) the information on third parties does not fall within the section 46 category above.

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Noting the above and without waiver of any of our rights, the following explanation is provided in so far as it relates to the senior litigator positions within Legal Aid SA:

- 6.1 A defined number of Senior Litigator positions were created linking to particular High Courts.
- 6.2 Noting the seniority of these positions, it was decided to implement a two stage interview process in the appointment to these posts.
- 6.3 The first stage takes place at Regional Office level where an Interview Panel will make a recommendation for candidates to proceed to the second stage of interviews.
- 6.4 The second stage comprises an interview process by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resource Executive and the Chief Operations Officer. This panel does not have to recommend for appointment any of the recommended candidates from the first phase interviews conducted by the region.
- 6.5 The recommendation of the second stage of interviews are finalised by the responsible executive in terms of section 8.2.2 (b) of the Legal Aid SA Approval Framework. As per this Approval Framework, the relevant Regional Operations Executive (ROE), in the case of the Durban and Pietermaritzburg positions the ROE for KwaZulu-Natal together with the NOE and CEO approve the final appointment. The Approval Framework is approved by the Board of Legal Aid SA from time to time, and was last approved on 27 February 2010. The relevant extract of the approval framework is hereby made available and attached for ease of reference.
- 6.6 The NOE, as the executive responsible for operations may also motivate a change in the organisational structure, including the freezing of positions, for discussion and finalisation with the CEO (refer S.8.1.2 (b) of the Legal Aid SA Approval Framework).
- 6.7 Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.

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Noting the above and without waiver of any of our rights, the following explanation is provided in so far as it relates to your individual application for the senior litigator position and the circumstances that followed.

- 7.1 You were interviewed together with other candidates in the first round of interviews.
- 7.2 You were recommended together with other candidates, for the second round of interviews. As explained above that however was not a guarantee that you would get the position. We have instances in the past when our nationally constituted panel has not recommended for appointment any of the recommended candidates from the first phase interviews conducted by the region.
- 7.3 The NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. Therefore, the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.
- 7.4 You were sent a final letter of regret from our Regional Operations Executive dated 23 August 2010 indicating that Legal Aid SA will not be proceeding with the filling of the Senior Litigator post. A copy of the aforementioned letter is also attached for your reference.
- 7.5 Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.

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The above information is provided to clarify the position and to definitively address your suspicion that your right to a fair administrative process is threatened, breached or may be rendered unenforceable. Accordingly your request for the detailed information requested in your letter, other than the information and explanation provided above, is declined as it is not relevant to you exercising any right you may have in law.

**Yours faithfully,**

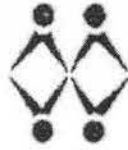
*N. N. Vedalankar*

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**Ms Vidhu Vedalankar**  
**CEO & Information Officer**

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Legal Aid  
South Africa

TO	NOE
FROM	ROE (KZN)
DATE	06 <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 Inifinitum).
- 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.

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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 amico*) 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.

[REDACTED]

[REDACTED]

[Handwritten signatures and initials: J, B, BA, and a large circular signature]

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[REDACTED]

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
TOTAL	36	32	68

Equity Stats as at 06.11.2009.

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

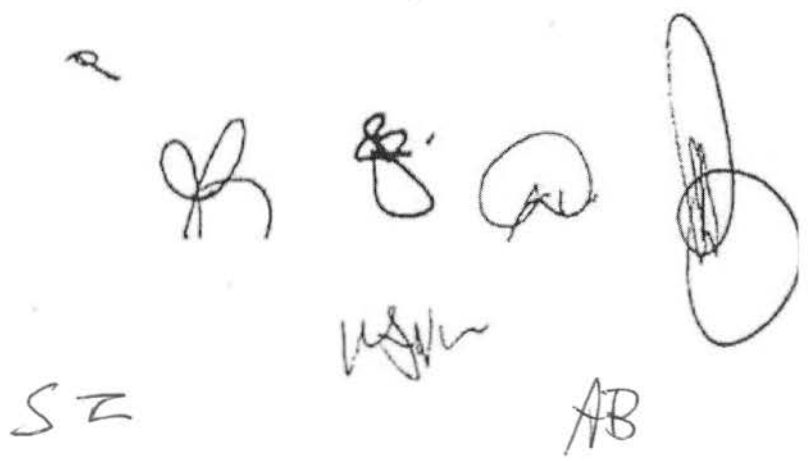
RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
TOTAL	39	27	66

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


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

*[Signature]*  
Baboo Brinjil  
Reg. HR Manager (KZN Region)

*[Signature]*  
Vis Nair  
JCE (Pinetown) 23/11/2009

*[Signature]*  
Kishore Mehta  
JCE (Durban JC) 17/11/09

*[Signature]*  
Kerthi Apper  
JCE (Pmburg JC) 23/11/09

*[Signature]*  
Julian Boshor  
HCU Manager (Pmburg JC)  
23/11/2009

*[Signature]*  
Vela Ndaka  
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
SRJAN NAIR HOE			

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PAIA request fee rejected

Cheque returned unrepresented – together with the registered envelope enclosing it, and the labelled envelope inside it.


 LONG STREET  
 Pay/Betaal: Legal Aid South Africa  
 the sum of/die bedrag van: Thirty Five Rand R35-00  
 Date/Datum: 15 Dec 2010  
 Registered Bank Reg. No: 1029/001225/06  
 A R BRINK (Signature)  
 MICR line: ⑈4791 12017091 50930450510⑈ 03

Ref: Request Fee: Adv Brink  
 PAIA request.

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**From:** Vidhu Vedalankar [<mailto:VidhuV@legal-aid.co.za>]  
**Sent:** 28 January 2011 02:25 PM  
**To:** Anthony Brink  
**Cc:** Justice Dunstan Mlambo; [ckisoon@sahrc.org.za](mailto:ckisoon@sahrc.org.za)  
**Subject:** PAIA: Brink - supplementary request for records

Dear Mr Brink

Please see attached a response to your letter.

Regards

Vidhu Vedalankar

CEO



[www.legal-aid.co.za](http://www.legal-aid.co.za)

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