
FIFTH 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 '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 Fifth Complaint.
5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Fifth Complaint.
6. Unintimidated and undeterred by the respondent's:

SZ

AB

- 6.1.1. shockingly improper and dishonest rebuff of my second petition to him (the subject of my Third Complaint), corruptly contrived to chill my endeavour to vindicate my fundamental right to information that Vedalankar had violated – clearly and incontestably demonstrated in my first petition to him in November 2010 (annexure ‘A’ to my Second Complaint);
- 6.1.2. extraordinarily ‘untoward’ (his word) studied indifference to this serious unconstitutional illegality by an organ of state in the democratic era that I was repeatedly protesting to him; and,
- 6.1.3. conscious and deliberate inaction on seeing that Vedalankar had illegally totally refused my first August 2010 PAIA request again on 28 January 2011 on manifestly spurious new grounds, and had illegally totally refused my second December 2010 PAIA request on the obviously false basis that it merely ‘repeated’ my first,

I petitioned the respondent and the LASA Board a third time on 25 February 2011, again seeking his intervention and remediation of Vedalankar’s illegal obstruction of my access to LASA’s public records – now copying in:

- LASA’s Executive Authority, the Minister of Justice and Constitutional Development (as he was then called);
- the Minister’s Special Advisor;
- the Deputy Minister; and,
- the chairperson of the Portfolio Committee for Justice and Constitutional Development of the National Assembly (‘Portfolio Committee’), with oversight responsibility over state organs like LASA, imposed by section 55(2) of the Constitution.

7. My approach to these several high authorities fulfilled my ultimatum that I duly gave the respondent in my second petition (annexure ‘A’ to my Third

sz

AB

Complaint), namely I would escalate my complaint about Vedalankar's illegal and unconstitutional refusal to comply with my PAIA requests to them should he fail to belatedly perform his fiduciary obligation to LASA to see to it that Vedalankar comply with the Constitution and the law by allowing me access to LASA's public records as I'd requested.

8. A copy of my third petition to the respondent and other Board members, which I copied to these high authorities, is annexed marked 'A'.

9. My third petition:

9.1. mentioned my first petition to the respondent in November 2010 (which the respondent had batted away in collusion with Vedalankar in the manner described and vouched in my Second Complaint);

9.2. reminded the respondent that:

My [second] petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament;¹

1. Just as I predicted, it was; and the Portfolio Committee taxed Vedalankar about it on 9 October 2012. She evaded its repeated concerned questions by telling lies and falsely repudiating the SAHRC's report: 'Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this.' (Per the Parliamentary Monitoring Group's minute.) The SAHRC's annual report on public body compliance with PAIA under section 84 wasn't 'untrue'. I wasn't 'in court' when I made my PAIA requests in August and December 2010 and March 2011, and only sued in July 2011. And there was no pending case 'about

SZ

NB

this' in which 'there was going to be an official judgment'. My entitlement to the records wasn't in issue in any court.

- 9.3. informed the respondent that to falsely justify continuing to totally refuse my first PAIA request in August 2010, Vedalankar had replaced her unlawful reasons given me in October 2010 with another set of equally obviously unlawful ones in her January 2011 letter (which he already knew, because Vedalankar had copied her January 2011 letter to him); and,
- 9.4. repeated my intention, stated in my second petition, to apply to court for an order compelling Vedalankar's production of the records she was withholding from me, for which I'd prepared draft papers.¹

1. In his 24 January 2011 email, the respondent had sarcastically responded, in tinny legal argot calculated to impress and put me off, dishonestly insinuating, contrary to his full appreciation otherwise, that my complaint about Vedalankar's repeated and persistent illegal and unconstitutional refusal to allow me access to LASA's records had no merit and would fail in court: 'you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you.'

In the event, I opted to pursue the records under the Labour Court's discovery rules instead. Faced with LASA's determined obstruction and resistance, my struggle to access its records continued: I was constrained to apply to compel discovery, after my entire list of requested documents listed in my agenda for the first pre-trial conference was totally refused. On the very correct advice of LASA's senior counsel, now Constitutional Court judge, Mbuyiseli Madlanga, openly expressed at the conference, this absolute refusal was then reversed, and all the listed records I sought were promised me. Contemptuously disregarding its minuted undertaking given on its senior counsel's advice, and being all the time determined to withhold the requested records from me and conceal them from the trial court, LASA then failed to make full and proper discovery as agreed, requiring me to apply to compel, as said. And then, in my endless difficulty getting documents from LASA that I needed for trial, I had to request

SZ

AB

not one but two further pre-trial conferences under judicial supervision at court to extract most but still not all of the requested records.

As then LASA Board member Ela Ghandi appositely remarked in a different context in The Mercury on 23 November 2011: 'It's only when people have something they are not proud of that they try to hide things.'

10. Predicted by the respondent's emailed announcement to me on 24 January 2011 that he'd be ignoring any further entreaties by me about, inter alia, his CEO and information officer's persistent, repeated violation of my fundamental right to public body information, and my pleas that he act to remedy it – 'I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf – the respondent indeed ignored my third petition about this, as he said he would; did not respond to it; and thereby again:

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

10.2. '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: *SIPHISO ABENRASO ZESANI*
Address: *MTUNZINI SAPS*
Capacity: *CONSTATOR*

SOUTH AFRICAN POLICE
COMMUNITY SERVICE CENTRE
2017 -06- 27
MTUNZINI
KWAZULU-NATAL



A

25 Baker Road
Prestbury
Pietermaritzburg
25 February 2011

Dear Board Directors

LASA BOARD MEETING, SATURDAY 26 FEBRUARY 2011

Your meeting on Saturday presents an opportunity to address, resolve, and defuse what threatens to be the most damaging crisis in LASA's history. And so easily.

In November last year, I addressed a 59-page petition to Judge Mlambo and the Board of Directors, appealing for the Board's intervention in CEO Vidhu Vedalankar's illegal abortion of my recruitment as Senior Litigator, Pietermaritzburg, for political reasons, following my selection and recommendation for appointment by a professional selection panel in November 2009.

My petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament.

I also raised LASA's contravention of the Public Finance Management Act – (a) in incurring fruitless and wasteful expenditure in Vedalankar's illegal abortion of my appointment and the wasted cost of readvertising the post, despite having already found a suitable candidate; and (b) in publishing false financial information in LASA's current annual report (Management Executive Committee members' personal incomes are massively understated in total).

My requests to Board Secretary Schoeman to forward my letter to all Board members and to put it on the agenda of the next Board meeting was not carried out; and indeed

310

SZ



appear to have been countermanded, thus concealing from the Auditor General, represented at all Board Audit Sub-Committee meetings, these serious financial irregularities threatening to blot the unqualified audits that LASA has enjoyed for many years.

In her letter to me of 28 January 2011, in which Vedalankar implicitly abandoned her earlier wholly spurious reasons for not complying with PAIA and affording me access to the records I requested, replacing her clueless reasons with other equally fatuous ones, Vedalankar repeated her allegation that for financial reasons she'd 'frozen' the post for which I was selected and recommended; and she put up some records claimed to support this.

In truth, as all (besides recent) Board members are well aware, the single cost-cutting measure agreed by the Management Executive Committee on 16 July 2010 in its Report to the Board, and approved by the Board on the 31st, was the reduction of some junior criminal defence practitioner posts serving the district and regional courts.

The couple of remaining vacant critical Senior Litigator posts were never identified, never proposed, never agreed, and never approved for abolition as a cost-saving measure. On the contrary, the Report to the Board specifically distinguished vacant critical posts from the rest and prioritized them for recruitment.

This is incontrovertibly shown by (a) the Board meeting minutes; (b) the Management Executive Committee's Report to the Board; (c) NOE Nair's recommendations for cost-saving; and (d) Vedalankar's letter to the Director General on 16 April contemplating the abolition of some junior criminal defence practitioner posts, which was ultimately proposed, agreed and approved. All on the record, obviously.

Vedalankar's claims to me to have 'frozen' my post in July, and to have 'frozen' it for budgetary reasons, are lies. And being lies, they are naturally not supported by any records. Contrariwise, her lies are directly contradicted by the very records that she provided me for her own purposes (and not to comply with my PAIA requests) last month in January.

In my petition to the Board in November, I reported how in covering up her gravely illegal abortion of my appointment in late 2009/early 2010 and in contriving a bogus financial justification for it, Vedalankar also unlawfully aborted the appointments of two African lawyers duly selected and recommended for appointment to the Durban and Mthatha Senior Litigator posts, in April/May and July respectively – contemptuous of their rights, their legitimate expectations of being appointed, as well.

And all this in a grossly unlawful, furtive abuse of power; all completely off the record; with no regard for the peremptory requirements of the Approval Framework governing such operational decisions; contravening the Board's strategic policy to equip all seats of the High Court with Senior Litigators; disrespecting the express wishes of Parliament expressed in May 2007 in this regard; disrespecting the Minister's express wishes communicated to Judge Mlambo sometime in the first half of 2010; without informing the Board in the 16 July Report; and without informing the Portfolio Committee on 12 October.

The rapidly developing crisis LASA currently faces on account of Vedalankar's grossly illegal conduct, and the blind eye Judge Mlambo has turned to it in his brief, dismissive responses to my detailed petitions, is as follows:

Unless the extraordinary serious matters raised in my correspondence to the Board in November and again in January are addressed and resolved at Saturday's meeting of the Board, LASA's public reputation for exemplary probity in corporate governance and

financial management stands to be wrecked in a gargantuan public scandal when my complaints reach open court.

Here I refer to my preliminary application to the South Gauteng High Court (Johannesburg) for which I've drawn draft papers for an order compelling Vedalankar to comply with PAIA by producing the records I've lawfully requested, or where they don't exist by confirming this on oath. Moreover I refer to my claim for appointment to the post for which I was selected and recommended, but which Vedalankar illegally aborted for political reasons, behind the scenes and completely off the record, and which she later tried covering up with a patently untruthful budgetary justification, contradicted by the very records she produced in January. Callously sacrificing two African lawyers on the way.

In his email to me on 24 January, Judge Mlambo told me he'd requested all Board members 'to ignore all communications from' me, notwithstanding the Board's statutory responsibilities to oversee and ensure the proper management of LASA by the Management Executive Committee and its compliance with the laws of the country that I'd highlighted.

Having regard to the extraordinarily serious nature of the matters I've raised – *so easily fixed* – I would suggest that you rather 'ignore' judge Mlambo's grossly improper request to 'ignore' my petitions pointing up the breakdown of proper corporate governance and Vedalankar's evident contempt for the Constitution and the law of our country and the fundamental constitutional rights of its people.

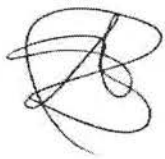
In the situation, I respectfully call on you as a Director to exercise your responsibility to LASA, to Parliament, and to the people of South Africa, and to move for the discussion by the Board of the grave matters I've brought to your attention so that they can be openly ventilated, debated, and resolved. Before this shambles spills into the open to the

considerable embarrassment of the Minister and Deputy Minister of Justice and Constitutional Development.

All relevant documents in this matter are accessible online at a private secure archive: www.tig.org.za/LASA; username: lasa; password: LASA2010.

Thank you for your attention.

Yours sincerely



ADV ANTHONY BRINK

CC:

The Minister of Justice and Constitutional Development, the Honourable Mr Jeffrey Radebe MP

The Deputy Minister of Justice and Constitutional Development, the Honourable Mr Andries Nel MP

Special Advisor to the Minister of Justice and Constitutional Development, Dr Jabulani Mzaliya

The Chairperson, Parliamentary Portfolio Committee on Justice and Constitutional Development, the Honourable Mr Lewellyn Landers MP