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Per email: [anthonybrink.sa@gmail.com](mailto:anthonybrink.sa@gmail.com)

Our Ref: JSC/533/17

Dear Advocate Brink

**RE: COMPLAINT AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT**

Kindly find the attached response from Mlambo JP.

The Secretariat requests your comments (if any) by the close of business on 20 June 2018.

Yours sincerely,

**L BIOS**

**Secretariat for the Judicial Service Commission**

Date: 09/06/2018





## OFFICE OF THE JUDGE PRESIDENT

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Your Ref: JSC/533/17

THE CHAIRPERSON  
JUDICIAL SERVICE COMMISSION  
186, 14<sup>TH</sup> ROAD  
NOORDWYK  
MIDRAND  
1685

Dear Chief Justice

RE: COMPLAINT BY ADVOCATE BRINK AGAINST MLAMBO JP

1. I refer to your letter dated 25 May 2018 wherein you sought my response to the complaint that has been lodged by Mr Anthony Brink ("Brink").

### INTRODUCTION

2. At the outset, I wish to point out that the complaint by Brink is not the first or isolated complaint. Brink has on innumerable occasions filed or made complaints against myself and senior officials of Legal Aid South Africa and other judicial officials. These complaints were made not only before the JSC but also in various courts, Parliament and before various Chapter 9 institutions.



3. At the heart of Brink's numerous complaints is his non-appointment to Legal Aid South Africa's Senior Litigator post at its Pietermaritzburg office during or about 2010.
4. Of particular concern though, is the language used by Brink in all the complaints that he has filed. Brink has been, to say the least, very derogatory, defamatory, and, at times, racist, against not only myself, but also senior officials of Legal Aid South Africa and other sitting judicial officers.
5. With this introduction I proceed to address Brink's complaint.

### SUMMARY OF THE COMPLAINTS

6. In his complaint, Brink had made eight allegations of gross misconduct against me in my capacity as the Chairperson of the Board of Directors of Legal Aid South Africa ("Legal Aid SA") which I can summarise as follows -
  - 6.1. The first complaint is *"subornation of perjury to defeat an application under section 25 of the Supreme Court Act"* for leave to subpoena me, so as to avoid being cross examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on my *"gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee"*;
  - 6.2. The second complaint is *"collusion in Legal Aid SA CEO and Information Officer Vidhu Vedalankar's illegal and unconstitutional total refusal to comply with Brink's request duly made under the Promotion of Access to Information Act 2 of 2000 ("PAIA") for access to specified records exposing recruitment corruption in which [I] was directly involved"*. The third to the fifth complaints are similar to the second complaint;





6.3. The sixth complaint is *“false reporting and lying to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into Vedalankar’s repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records which were ultimately surrendered many years later at the point of argument in court for an order compelling their delivery”;*

6.4. The seventh complaint is *“false reporting and lying to the Justice Committee to pervert its separate independently instituted enquiry into the same illegal and unconstitutional suppression of public records, with the same corrupt object, in criminal contravention of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act”;*

6.5. The Eighth complaint is *“false reporting and lying to the Minister of Justice and Correctional Services, and to the Justice Portfolio Committee to pervert their separate, independently instituted enquiries into-*

*(a) the unauthorised, off the record, illegal abortion of the appointments of recommended candidates to three Senior Litigator posts under cover of a mendacious budgetary insufficiency excuse given to cover recruitment corruption favouring an unsuccessful candidate, [my] former long-time colleague as an acting Judge in the Labour Court which [I] headed at the time; and*

*(b) the unauthorised, off the record, unlawful, permanent freezing of the fully funded critical posts, substantially disrupting critical specialist legal professional service delivery in KwaZulu- Natal and the Eastern Cape; unlawfully deviating from Legal Aid SA’s approved Strategic Plan and unlawfully contravening the Public Finance Management Act in multiple other respects- in the case of the false report to the Portfolio Committee, in criminal*



*contravention of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act”.*

## BACKGROUND

7. Having read the complaint lodged, I do not intend to deal with each and every allegation made by Brink as doing so will be unjust to both myself and the Judicial Service Committee (Committee) to burden it with unnecessary and irrelevant information. However, my failure to deal with any of the allegations *ad seriatim* should not be construed as an admission but as a denial.
  
8. For convenience of the Committee, it is important that I lay the background to the complaints:
  - 8.1. On 12 November 2009, Brink was interviewed and shortlisted for the second round of interviews as a candidate for the Senior Litigator post at the Pietermaritzburg offices of Legal Aid SA. I revert to the interview date as it becomes relevant to one of the complaints relating to my alleged involvement in the appointment of Mr. Ngcamu;
  
  - 8.2. Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints and Brink was informed of the decision;
  
  - 8.3. On 26 August 2010, Brink filed his first PAIA request with Legal Aid SA seeking 51 records relating to the recruitment process for the Senior Litigator post;
  
  - 8.4. On 18 October 2010, the First Request was refused. The Chief Executive Officer (CEO) of Legal Aid SA addressed a letter to Brink explaining why the recruitment process was discontinued;
  
  - 8.5. Thereafter, Brink addressed a letter to me as the chairperson of the Legal Aid SA Board of Directors. I responded to the letter on 30 November 2010;





8.6. Dissatisfied with both the Legal Aid SA and my response, Brink proceeded with a claim and challenged Legal Aid SA's decision not to appoint him to the Senior Litigator post in the Labour Court, Durban. He based his challenge primarily on the ground that the failure to appoint him was due to political or racial prejudice as a result of his Aids denialism;

8.7. Brink sought to subpoena me to attend Court. Just before the hearing of the matter, Brink voluntarily withdrew his application;

8.8. In the statement of claim before Court, Brink made various defamatory statements against me and the CEO of Legal Aid SA including the complaints forming part of the current enquiry. In his initial statement of claim, Brink alleged:

8.8.1. I was "*motivated by unlawful political (alternatively racial) prejudice [when I] aborted his appointment*".

8.8.2. I "*attempted to camouflage [my] direct discrimination against [him] on prohibited grounds by concocting and advancing a false cover story for it based on fake financial justification*".

8.8.3. I "*lied to the Minister of Justice and Constitutional Development and the Chairperson of the Portfolio Committee of Justice and Constitutional Development.*"

8.9. It was during the hearing and under cross examination that Brink withdrew such statements exempting me from any alleged involvement in collusion with any official of Legal Aid SA, false reporting, connivance and corrupt activities. I hereby attach a



schedule of some of the statements that Brink made in his statement of claim as well as the excerpts of the transcript of the Labour Court record which I mark JP001 and JP002;

8.10. He withdrew and exonerated me and the CEO of Legal Aid SA during cross examination and shifted his focus to the National Operations Executive of Legal Aid SA;

8.11. His claim to the Labour Court was dismissed with costs. The decision is reported as *Brink v Legal Aid South Africa* (2015) 36 ILJ 1020 (LC);

8.12. Brink filed an application for leave to appeal to that Court and the application failed. Brink petitioned the Labour Appeal Court for leave to appeal. In his founding affidavit, Brink's vitriolic attitude and cumulative conduct not only towards Legal Aid SA but also towards me and Cele J erupted. That application, too, failed. I attach relevant excerpts of the application illustrating such attitude and conduct, which I mark JP003;

8.13. After his appeal failed, he lodged an urgent application at Pietermaritzburg High Court under case number 12977/15 seeking to interdict the taxation of the bill of costs. Brink continued with his vitriolic attitude and cumulative conduct not only towards Legal Aid SA but now also towards Waglay JP and I, accusing us of corruption and maliciously obstructing his right to appeal. See JP004. Brink also levied personal attacks against us, stating that:

8.13.1. Waglay JP ordered his registrar "to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected" his petition.

8.13.2. "The lying defamatory Memorandum was certainly not written by Waglay JP, Davis JA or Sutherland JA, all of whose judgments are written in fine, flawless, plain and unpretentious English, in contradistinction to the haughtily magisterial, aggressive tone of the document in second language English with its grammatical imperfections – such as I noticed listening on my car radio to Mlambo JP's disposal of the costs question after President Zuma dropped his





*application to interdict the Public Protector's state of capture report. (I don't mean to be rude; I wish my Zulu were as strong as his English.)*

8.14. Brink is currently indebted to Legal Aid SA for taxed costs in the total amount R1,647,814.65 which he is not able to pay due to his impecuniosity; and

8.15. Brink now seeks to re-litigate his matter on a new basis that he was not appointed due to my involvement in as he couches it "*plain recruitment corruption*". He now seeks to abuse the PAIA Act, Court processes and even the JSC complaint mechanism in his misguided pursuit to this end.

## SUBMISSIONS

9. I deny all the allegations made against me. I specifically deny that I have been involved in recruitment corruption and the appointment of staff or otherwise influenced the appointment of Mr Ngcamu or any other official of Legal Aid SA. I am advised by officials of Legal Aid SA, which advice I accept as true, that at the time when the recruitment process commenced for

the filling of the Senior Litigator positions in Pietermaritzburg and Durban, Mr Ngcamu was not in the employ of Legal Aid SA. He was first appointed as a temporary employee on 1 November 2011 to 28 February 2012 as a Civil Professional Assistant. He was then appointed



again from 19 March 2012 to 16 June 2014 as a Civil Professional Assistant. Both these appointments were at Empangeni Local Office of Legal Aid SA. Mr. Ngcamu was thereafter appointed as a Labour Court Practitioner in Durban Local Office of Legal Aid SA from 17 June 2014 to 31 July 2017. In all these recruitment processes I had no role to play and the relevant officials of Legal Aid SA executed these appointments. As indicated in paragraph 8.1 above, the Senior Litigator recruitment process began long before Mr. Ngcamu joined Legal Aid SA and in particular, the process of recruitment was stalled before he joined the organisation. Whilst Mr. Ngcamu was apparently interviewed during the first round of interviews, it should be mentioned that I did not form part of such a panel. Furthermore, Mr. Ngcamu was not even recommended for the second round of Senior Litigator interviews during the Provincial selection process.

10. I deny that I conducted myself for "*subornation of perjury to defeat an application under section 25 of the Supreme Court Act for leave to subpoena me, so as to avoid being cross examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on my gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee*". Firstly, as mentioned in paragraph 8.7 above, Brink withdrew the subpoena against me and exonerated me and the CEO from any wrongdoing. Secondly, the report to the Justice Portfolio Committee confirmed that the reason for not proceeding with the second round of interviews was budget related which I still maintain.

11. I deny that I "*falsely reported and lied to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into the CEO's repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records*". The report to the Minister also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints. In addition, I submit that there is nothing illegal and unconstitutional in all the refusals to records in accordance with PAIA. According to information at my disposal, all the records requested by Brink and as far as legally permissible in terms of the Act, were duly provided to him. To the extent that Legal Aid SA has refused to provide some records, I'm advised that such refusals are subject to determination by the Courts in various applications brought by Brink.





## CONCLUSION

12. It needs to be noted that Mr Brink is susceptible to make allegations without factual substantiation and does not spare anyone holding a different view to his, as can be demonstrated with his attacks on me, later Cele J and thereafter with Waglay JP as well as various senior officials of Legal Aid SA. I believe I have demonstrated that Mr Brink has been openly disrespectful and downright malicious to me in particular. I hold the firm view that he has used complaint, PAIA and Parliamentary Portfolio processes to harass me and other officials of Legal Aid SA over the years. He has used these processes to insult me in particular as is clear from his comment regarding my handing down of the Public Protector Judgement. He is perpetuating this conduct in his complaint to the Judicial Conduct Committee against me. The allegations he has made against me in his complaint were retracted by him, as is clear in the transcript of his cross examination, in his failed Labour Court matter. Taking all this into account, I urge the Judicial Complaint Committee to dismiss Mr Brink's complaint against me and that he be censured in the strongest of terms. I'm a senior Judicial officer with an unblemished record and do not deserve to be treated in this fashion by anyone including Mr Brink.

**Yours Sincerely**

A handwritten signature in black ink, appearing to read 'D Mlambo', written over a horizontal line.

**D MLAMBO  
JUDGE PRESIDENT  
GAUTENG HIGH COURTS  
07<sup>th</sup> JUNE 2018**



SCHEDULE OF SOME OF THE ALLEGATIONS MADE BY BRINK IN HIS STATEMENT OF CLAIM BRINK MADE AGAINST MLAMBO J AND THE CEO, AMONGST OTHERS.

The following are only some of the many statements he made:

*Par 4. The applicant will show..., the respondent's chairperson Dunstan Mlambo and Chief Executive Officer Vidhu Vedalankar, motivated by unlawful political (alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification-unsupported and contradicted by the respondent's business record; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development; and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.*

*Par 5. The Applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the Applicant, Mlambo lied to the Minister on several scores in a "Confidential... report" to him "Re: Adv Anthony Brink", which lies Mlambo repeated to the Chairperson of the Portfolio Committee; and by so doing Mlambo deliberately misled the respondent's executive authority and Parliament in order to (a) allay their further enquiries into the applicant's complaints against the Respondent, which he had copied to the Minister and Committee Chairperson, of unfair discrimination against him and unlawful refusal to*





*surrender material records duly requested under the Promotion of Access to Information Act, and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the Applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson.*

*Par 17. "Having regard to his subsequent recorded conduct in the matter,... that Mlambo supported and was party to 'the decisions we took'... to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so under cover of a lying alibi"*

*Pars 26 & 27. "Although himself African, Mlambo uncritically subscribes to the American and European industrial complex's HIV-Aids-ARV business model, promoted by the pharmaceutical industry that Africans in South Africa (not whites, coloureds or Indians) are 'new[ly]' riddled with deadly venereal disease... Mlambo actually believes these things and is an active political promoter of these immensely lucrative politico-medical construct on the international stage..."*



*Par 30. "The respondent's entire Board and executive management structure actively promote and perpetuate the Western HIV/AIDS/ARV – paradigm in South Africa..."*

*Par 31. Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation ... , and the recruitment process to appoint the applicant was thus brought to an end.*

*Par 33. The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.*

*Par 34. The reason Mlambo and Vedalankar opted for this initial simple strategy was because:*

*34.1. it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and*

*34.2. they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so."*





*Par 55. Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalisation of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, ..."*

*Par 71. Mlambo's and Vedalankar's purpose in sacrificing the successful Mthatha candidate*

*"In July 2010" off the record ..., was to fabricate a factual foundation for their assertion about to be made to the applicant that the respondent had decided, "due to various reasons", impliedly legitimate, not to fill the respondent's three remaining vacant Senior Litigator posts in order to disguise her and Mlambo's unfair discrimination against the applicant..."*

*Par 85. "... it is probable that Mlambo was the author of the false and misleading statement of the law concerning the applicant's right to information..."*

*Par 108. "It follows that Mlambo's 'Confidential' allegation to the Minister ...was a blatant lie improvised by him to patch the first gaping hole (amongst many others) in his ... lying alibi uttered variously to the applicant, to the Minister and to the chairperson of the Portfolio Committee to mislead and deceive them all,..."*



*Par 278. "The horror of the applicant's experience of Mlambo's and Vedalankar's dishonestly camouflaged direct unfair discrimination against him has been considerably exacerbated by his apprehension that Mlambo heads the very court in which he is constrained to seek justice-particularly given the history of Mlambo's appalling, brazen dishonesty in his dissimulations to the applicant...; in his false representations to the Minister...; and in his and Vedalankar's mala fide dealing with the applicant and how best to defeat him, in cabals, behind the scenes and off the record."*





JP002

EXCERPTS FROM THE TRANSCRIPT OF THE LABOUR COURT MATTER D529/11 WITH

SPECIFIC REFERENCE TO BRINK EXONERATING MLAMBO JP UNDER CROSS

EXAMINATION

<p>Page 133</p>	<p><i>Mr Du Toit</i> "Then just by the way, Judge Mlambo you say is one of the top judges in the country is the person you called a liar about 30 times?"--</p> <p>--</p> <p><i>Mr Brink</i> "This is before I discovered that Nair was abusing his office, abusing his name to convey falsehoods to Parliament and to the Minister."</p>
<p>Page 137</p>	<p><i>Mr Brink</i> "I am saying that Judge Mlambo and I mean it with absolutely no disrespect and I really rule about my misconceptions about Judge Mlambo's role in this matter."</p>
<p>Page 154</p>	<p><i>Mr Du Toit</i> "By the way, Mr Brink, having called Mrs Vedalankar a liar and dishonest in concocting defenses, do you really think that you could possibly be appointed in an organization where she continues to be the chief executive officer?"--</p> <p><i>Mr Brink</i> "It is my conclusion from reading her two letters to me, that they</p>



	<p>were written by Brian Nair, consequently it is my relatively late conclusion, after the case began and consequently I believe that the CEO as Judge Mlambo was, the CEO's higher office and Gormy abused by Nair to convey lies to me. Sir I hold CEO Vedalankar clear in this matter."</p>
Page 158	<p><b>Mr Du Toit</b> "But you have said that it was the chief executive officer who was involved in this plot"---</p> <p><b>Mr Brink</b> "But I thought so; I thought so, because of her letters to me. But later I discovered I faulted and I am sure it will be confirmed, but she did not write those letters, so I was misled."</p>
Page 159	<p><b>Mr Brink</b> "In the early days for the better, before one discover that Judge Mlambo was innocent in this thing and I have since formed the conclusion that Vedalankar too. You see, I had her letters to me, full of lies. Judge Mlambo's report to the Minister, full of lies, what could I conclude, it was a nightmare, it was very shocking, so I had to draw what conclusion but that they are the authors, but now I know they are not the authors."---</p> <p><b>Mr Du Toit</b> "Well let us clarify exactly what you are withdrawing now. You are saying firstly that Ms. Vedalankar not plot or struck your appointment, is that what you are saying?"---</p> <p><b>Mr Brink</b> "This is my current conclusion in the fullness of the evidence."---</p> <p><b>Mr Du Toit</b> "And you are saying that Judge Mlambo did not plot to obstruct your appointment"---</p>





	<p><b>Mr Brink</b> "Correct"</p> <p><b>Mr Du Toit</b> "That is right, okay. So she is out of the picture, she did not discriminate against you that is what you say now?"---</p> <p><b>Mr Brink</b> "That is the look of it to me now, neither may well surprise us all and say, no, no, I neatly discussed it with Vedalankar and she agreed. He may tell us that, I do not know, but the look of it on the evidence before me, that I have assembled, the look of it now, that Vedalankar was not involved, not involved."</p>
Pages 172-173	<p><b>Mr Du Toit</b> "But you now say this falls away?"---</p> <p><b>Mr Brink</b> "It does. I hold her clear, unless Mr Nair implicates her, but we will have to see, but I have no knowledge here."---</p> <p><b>Mr Du Toit</b> "And then in paragraph 17, you again say that the chairperson of the respondent's board, Dunstan Mlambo, supported and was partied to the decisions took, to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so, under the cover of a lying alibi"---</p> <p><b>Mr Brink</b> "That is right, and that conclusion was founded on my receipt from the chairperson, the portfolio of Judge Mlambo's updated report to parliament, a pack of lies, including the manifestly untruthful alibi."---</p> <p><b>Mr Du Toit</b> "And this falls away as well?"---</p>



**Mr Brink** "Oh yes"---

"Then"---

*"Just about everything falls away in my first claim."*

**Mr Du Toit** "Well, let's just get it clear, because I think it is necessary both for your sake and for the sake of Judge Mlambo at least to get this absolutely clear"---

**Mr Brink** "Yes, yes"---

**Mr Du Toit** "And then in paragraph 18, we refer to the grounds, Mlambo and Vedalankar rejected was because you were politically undesirable and well, if there was no plot, then this must fall away as well."---

**Mr Brink** "Right. It falls away to the extent that they were not the actors, but Nair was."---

**Mr Du Toit** "I see, okay. And then in 19 Mlambo's and Vedalankar's decision to reject the applicant's appointment on prohibited ground was taken, communicated to Nair behind the scenes and off the record and accordingly no record exists. Now if there was no decision by them, then it could not have been communicated."--

**Mr Brink** "It is quite obvious."---

**Mr Du Toit** "Okay, so that falls away. I just want to make a note of these allegations that now are... Withdrawn?"---

**Mr Brink** "Withdrawn, yes."

**Mr Du Toit** "Then in paragraph 20 you have here at page 44, Mlambo





	<p><i>neither consulted nor informed the rest of the board of his decision jointly, Ms. Vedalankar's discriminate, does that also fall away?"</i></p> <p><b>Mr Brink "Ja"</b></p>
Page 188	<p><b>Mr Du Toit</b> <i>"Now why would Ms. Vedalankar who you have exonerated already from any participation and any unfair discrimination against you why would she tell you a lie?"---</i></p> <p><b>Mr Brink</b> <i>"Because she did not write the letter; I am pretty sure she did not write the letter. I could be surprised by this, but I do not think she wrote the letter; I think it was Nair who wrote the letter"</i></p>
Pages 205-206	<p><b>Mr Du Toit</b> <i>"Then you go on in paragraph 32 at page 49, not only had you expand on this, you say, Nair having been instructed as it were by Vedalankar, informed by Vedalankar, he then deliberately does not do something, because he is now carrying out his CEO's instruction. He is astute not to note, because appreciating the decision to abort was unlawful, so in other words he is now part of the ploi, construed by Ms. Vedalankar."---</i></p> <p><b>Mr Brink</b> <i>"This is my conclusion, because I am many miles away, I am on the other end of the world and I am peacefully developing about bits and</i></p>



	<p><i>pieces that the American Right is taller than these things, bits and pieces. And the accumulation evidence, someone required quite recently as profoundly shifted my understanding of what actually happened in this matter. Now, sir, you can hammer away that my early statement declare but I tell you it was based on numerous fundamental misconceptions to which I had been led by Nair."</i></p>
Page 213	<p><b>Mr Du Toit</b> <i>"But she could not have joined Vedalankar's scheme, because you already accepted that there was no scheme by Vedalankar."---</i></p> <p><b>Mr Brink</b> <i>"Correct."---</i></p>
Page 214	<p><b>Mr Du Toit</b> <i>"Paragraph 48 stands, paragraph 49 stands, 50 stands, 51 stands, save that is no longer Mlambo and Vedalankar's scheme, but Nair's"</i></p>
Page 215	<p><i>"And then the heading, page 57, the scheme, that is also wrong."---</i></p> <p><b>Mr Brink</b> <i>"Ja, it was wrong to the extent that Mlambo and Vedalankar are named the Nair scheme."</i></p>
Page 219-220	<p><b>Mr Du Toit</b> <i>"Right, and in paragraph 90, or 89 you attribute lies to Ms. Vedalankar."---</i></p> <p><b>Mr Brink</b> <i>"Ja."</i></p> <p><b>Mr Du Toit</b> <i>"That must fall away?---</i></p> <p><b>Mr Brink</b> <i>"No you must reallocate the blame to Nair."</i></p>





Page 221	<p><i>Mr Du Toit</i> "In paragraph 99 on page 68, you describe to Judge Mlambo a desire to obstruct your efforts under the Promotional Access to Information Act. Do you stand by those contentions?"---</p> <p><i>Mr Brink</i> "You know I do not."</p> <p>-----</p> <p><i>Mr Du Toit</i> "You really are challenging, I asked you, are you still attributing falsity against Judge Mlambo?"---</p> <p><i>Mr Brink</i> "I have said it a hundred times, that I am not doing so, I am not attributing."</p>
Page 223	<p><i>Mr Brink</i> "Really, I have no quarrel with Judge Mlambo, I think he was misled, he was given a bad picture and that is the start of this irritable e-mail on the..."</p>
Page 224	<p><i>Mr Du Toit</i> "Now, in paragraph 108, page 73, you have accused Judge Mlambo of a blatant lie."---</p> <p><i>Mr Brink</i> "Ja, it is Nair's blatant lie, it is so easy to show and indeed it is going to be retracted."</p>
Page 227	<p><i>Mr Brink</i> "I do not, do you want me to repeat bluntly, I do not think Judge</p>



	<i>Mlambo is a liar, and that is it, I used to I mean what else was there to conclude from the secret report?"</i>
Page 228	<i>Mr Du Toit "You slandered a senior judge in a most disgraceful way."---</i> <i>Mr Brink "I agree, I agree, M'Lord, I agree and I tell you it was inadvertent and I regret it."</i>
Page 231	<i>Mr Du Toit "You make the allegation that Judge Mlambo made a false allegation concerning the knowledge of the executives; do you attribute falsity against Judge Mlambo?"</i> <i>Mr Brink "I do not. But the rest of the paragraph is absolutely sound, to the actual extent that it is Nair's false allegation via Judge Mlambo."</i>
Page 241	<i>Mr Brink "Well, we got over and over, but you know I hold Judge Mlambo clear..."</i>
Page 242	<i>Mr Brink "No. The financial cover story and the report were fake, but Judge Mlambo is not the author of that lie."</i>
Page 264	<i>Mr Du Toit "Paragraph 265, 122 and I imagine you do not attribute falsity to Judge Mlambo."---</i> <i>Mr Brink "That is right"</i> <hr/> <i>Mr Du Toit "Well, just to save us the agony of going through the rest, can we assume that for the rest you have assume I think, exonerated Judge Mlambo and Mrs Vedalankar from any accusation of dishonesty and</i>





	<p><i>discrimination?"---</i></p> <p><b>Mr Brink</b> "Yes"</p>
Page 269	<p><b>Mr Du Toit</b> "And you have attributed delinquency to persons involved in this matter."---</p> <p><b>Mr Brink</b> "Correct. My scope was broaden, it was broader then than it is now. Because I thought Vedalankar was involved and so on."</p>



EXCERPTS FROM THE PETITION FOR LEAVE TO APPEAL AT LABOUR APPEAL COURT

Par 2	<p><i>"This is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told to me, to the LASA Board, to the SAHRC, and to court( different lies told in the pleadings and interlocutory affidavits, and then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude and perfunctory judgement, riddled with the most basic legal and factual misdirection, omissions and non-sequiturs, and characterized by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair"</i></p>
Par 3	<p><i>"I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try."</i></p>
Par 4	<p><i>"In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects. To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence."</i></p>
Par 5	<p><i>"The judge elliptically conceded his fundamental legal misdirection, identified in my application, that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me</i></p>





	<p><i>instead of on LASA. He then sought to avoid the fatal ramifications of the radical error by two means:"</i></p>
Par 6	<p><i>"The judge's response was to silently look away."</i></p>
Par 7	<p><i>"And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different-notwithstanding that LASA relied on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth' on numerous scores. Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word, mechanically reciting his evidence as gospel, without any endeavor to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practiced, confident, spontaneously inventive, unctuous, bare-faced, abject liar."</i></p>
Par 8	<p><i>"In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose, thus depriving me of some major artillery I'd lined up; and he swept the whole thing-all 59 pages and 323 paragraphs-off the table in a single dismissive paragraph."</i></p>
Par 22	<p><i>"Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial-he was a pathetic liar-</i></p>



	<p><i>contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top professional echelon specialist Senior Litigator posts, I showed at trial and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't. The judge evidently didn't read that far."</i></p>
Par 24	<p><i>"And what they unequivocally show is that she lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded...The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up."</i></p>
Par 25	<p><i>"At trial I mentioned my conclusions from the evidence I'd found of this that Nair had ghost-written Vedalankar's letters, and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my complaints, and for this reason I held them both clear. But in his evidence, Nair denied any hand in Vedalankar's letters to me; and although in evidence he ultimately admitted writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that' (having first insinuated it might have been Vedalankar and then again) i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation. (It's quite clear Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.) That is to say, after I'd told the Judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament."</i></p>
Par 26	<p><i>"True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12<sup>th</sup>-but not me, from who</i></p>





	<p><i>she concealed this hotly material fact in her letter to me six days later, the better to maintain her pretense that LASA was still too skint to hire me."</i></p>
Par 28	<p><i>"In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)</i></p>
Par 29	<p><i>"In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE, and HRE all swore the lie was true."</i></p>
Par 30	<p><i>"Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalizing my appointment in the initial three-and-a-half month period between the dates he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story-later twice retracted by him on affidavit as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit, then contradicted with a different story he told the judge. Who didn't think to note any of this dismal shambles in his judgment"</i></p>
Par 31	<p><i>"In his reports written for Mlambo JP to sign and submit to pervert the ministerial and</i></p>



	<p><i>parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment-a so-called second round interview-was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error...palpably an error' that Mlambo JP had made. Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.</i></p>
Par 32	<p><i>"But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads. The judge didn't note this, and accepted and believed Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)</i></p>
Par 33	<p><i>"So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because no attempt was ever made to do so...So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained in a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection."</i></p>





Par 34	<p><i>"Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only...Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly."</i></p>
Par 35	<p><i>"My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained."</i></p>
Par 36	<p><i>"In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so,</i></p>



	<i>this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear to me that the judge wanted the evidence contained. He did not want me to lead more evidence beyond the smaller fry."</i>
Par 38	<i>"After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed to the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch. Both lies. Waffling feebly, Nair was unable to support his first new story and radically changed his second, before which it was repeatedly exposed as a lie by LASA's records."</i>
Par 40	<i>"It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record, not alleged in any affidavit or pleading, and contradicted by LASA's recruitment/vacancy statistics for June 2010. But Nair's new lie in evidence made no impression on the judge, as said, he didn't mention it."</i>
Par 41	<i>"The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment), namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates-unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework. Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation</i>





	<p><i>in a grossly irregular, prejudicial, and unlawful recruitment practice.”</i></p>
Par 42	<p><i>“His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn’t have to-a lie repeatedly and squarely contradicted by LASA’s pleadings and interlocutory affidavits. The judge didn’t note this; again the LAC is sure to.”</i></p>
Par 43	<p><i>“Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair’s evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA’s pleadings and interlocutory affidavits...”</i></p>
Par 44	<p><i>“The LAC is certain to find Nair’s evidence to have been obviously untruthful just about whenever he opened his mouth...It failed to do so, because its various explanations given were obviously untrue. So what?”</i></p>
Par 47	<p><i>“I did not expect the judge to be nodding off during the afternoon sessions, and finally claiming perversely, but revealing to his negative animus, that I ought rather to have taken LASA’s abortion of my appointment on ‘review’. As if I shouldn’t have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way, viciously defamed all the while, contemptuously</i></p>



*redoubled when I complained of it. In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour law jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages' suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument the judge hadn't troubled himself to read our heads, and was hearing our oral argument without having prepared for it ten months after the evidence, and relying only on his fading and defective memory of it presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken, wrongly forced by him on the record and improperly pressed by him off it. I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down. And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged."*

Par 48 *"Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most important high court in the country, and thereby trigger a gargantuan scandal. But the truth must be out, and justice needs doing fearlessly."*

Par 49 *"An unattended splinter, so easily removed, has led to a widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance."*





Par 50

*"Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it-successfully so far, like Nixon nearly did after Watergate-your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instruction can offer you no more than hearsay about the case, and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial, and since the judge found Nair to have been untruthful under oath on any number of scores, I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal... The prospect of being jailed may chill any inclination she might have to repeat under oath to your lordships the lies she told me."*



EXCERPTS FROM THE URGENT APPLICATION AT PIETERMARITZBURG HIGH COURT CASE12977/15

*"In sum, Waglay JP acted alone in rejecting my petition, prematurely before all the papers were in and the matter was ready for decision, and without designating three appeal judges to consider and decide my petition ..."*

*He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct."*

*It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process ... I landed the written evidence of stunningly dishonest improper influence that caused him to do so. And I have a photocopy of it worth a bar of gold".*

