



JUDICIAL CONDUCT COMMITTEE

In the matter between:

ADVOCATE A BRINK

Complainant

and

JUDGE PRESIDENT MLAMBO

Respondent

DECISION IN TERMS OF S 17 OF THE JSC ACT

Introduction

[1] Advocate Brink lodged with the Secretariat of the Judicial Conduct Committee a total of eight complaints against Judge-President Mlambo of Gauteng Division of the High Court in his capacity as a Chairperson of the Board of Directors of Legal Aid South Africa (Legal Aid SA). The Chairperson of the Judicial Conduct Committee by letter dated 21 February 2020 referred these complaints to me to be dealt with in terms of s 17 of the Judicial Service Commission Act, 9 of 1994 (JSC Act).

[2] The complaints had their origin in the dispute about his non-appointment to Legal Aid SA's senior litigator post at its Pietermaritzburg office during or about 2010. Advocate Brink had applied and was interviewed for this position. He alleges that following the interviews, he was recommended for appointment as a successful

candidate, but due to Mlambo JP's preference of his 'long-time brother in the Judiciary', Mr Mzochithwayo Ngcamu, he was never appointed to the position. Neither was Mr Ngcamu appointed. Legal Aid SA's version is that it decided to freeze the position and cited financial constraints as a reason for not filling the position.

[3] Aggrieved by this, Advocate Brink made six applications to the Legal Aid SA's CEO and information officer, Ms Vedalankar in terms of the Promotion of Access to Information Act, 2000 (PAIA), requesting access to Legal Aid SA's records of the selection panel's recommendation. He was denied access, he claims.

[4] In January 2011 he appealed to Mlambo JP and other Board members of Legal Aid SA to intervene in what he contends was 'Vedalankar's illegal total refusal of his PAIA request' and the irregular abortion of his appointment. He says Mlambo JP rebuked his appeal characterising his conduct as 'unbecoming . . . and borders on harassment'.

[5] The complainant alleges further that on 22 June 2011, in a letter to the Chairperson of the Portfolio Committee, Mlambo JP repeated his 'malicious calumny and false mischaracterisation of his due and proper approaches to him and the Board'. In that letter Mlambo JP explained to the Chairperson of the Portfolio Committee that he informed the complainant that he could find nothing untoward in how he had been treated by the Legal Aid SA and he asked him to desist from communicating with its Board Members and that he had asked them to ignore all communications from the complainant.

[6] Additionally, the complainant launched proceedings in the Labour Court against the Legal Aid SA regarding his non-appointment. In his Labour Court matter, the complainant sought to subpoena Mlambo JP for purposes of cross-examining him on his failure to intervene in Ms Vedalankar's refusal to grant him access to the recommendation of the selection panel and on the report which Mlambo JP submitted to the Minister of Justice and Constitutional Development and to the Chairperson of the Justice Portfolio Committee in the National Assembly.

Nature of the complaints

[7] In his first complaint Advocate Brink 'charges [Mlambo JP] with suborning perjury to defeat the ends of justice, an act of 'gross misconduct' as envisaged in section 177(1)(a) of the Constitution', read with s 14(4)(a) of the Act.

[8] The allegations in support of this complaint are set out in para 5 of the complaint: 'On 31 October 2012, I sued the respondent under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination at the trial of my claim against LASA in the Durban Labour Court. The nature of the claim and my reason for wishing to cross-examine the respondent will be detailed later in this affidavit.'

[9] Advocate Brink alleges that in the opposing affidavit deposed to by Legal Aid SA's head-in-house attorney, Thembile Mtati on the authority of Mlambo JP, a certain untruthful statement concerning him was made. Mr Mtati averred on behalf of Mlambo JP that:

'The most disturbing reprehensible and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented the Applicant's conduct amounts to professional misconduct.'

[10] The complainant strongly denies this averment. He says he has no idea where the 'South Gauteng High Court' is.

[11] He goes on to say:

'15. One of my reasons for not pursuing my application for leave to subpoena the respondent after reading this chilling, depraved perjury was my apprehension that it would be too dangerous to bring him to court, because he was evidently capable of saying absolutely anything, no matter how perversely false, confident that the trial judge — until quite recently the respondent's judicial colleague and superior as head of the Labour Court — would take him at his word without question as a senior judge.'

[12] The complainant says after the dismissal of his Labour Court matter he unsuccessfully applied for leave to appeal. After that he petitioned the Judge President of the Labour Appeal Court for leave to appeal. He alleges that Mlambo JP persisted with his personal attacks on him to 'improperly influence and prejudice [him] against

Judge President Basheer Waglay' and as a result his petition for leave to appeal was dismissed. He maintains that again, this was a further instance of defeating the ends of justice by Mlambo JP.

[13] The second complaint is embodied in an affidavit the complainant attested to on 23 June 2017. He says this complaint 'details how to cover-up recruitment corruption, of which [Mlambo JP] was at the centre, [he] colluded in a fundamental rights violation: Vedalankar's illegal suppression of records to which I was constitutionally entitled.' The complainant goes on to say that his next complaint will detail, how Mlambo JP lied about this to the Minister of Justice and Constitutional Development.

[14] In the second complaint the complainant alleges that Mlambo JP, in breach of fiduciary obligation to Legal Aid SA as Chairperson of its Board, failed to act to remedy the complainant's extraordinary serious complaint that in breach of her obligations imposed by PAIA, Ms Vedalankar had illegally refused him access to Legal Aid SA's business records he duly requested under the PAIA. The complainant accuses Mlambo JP of colluding with Ms Vedalankar by permitting her to forge a letter on her office computer rebutting his petition.

[15] The complainant alleges further that Mlambo JP knew full well that the financial insufficiency excuse given to him by Ms Vedalankar for not proceeding with his appointment was a lie. He contends that in doing so, Mlambo JP violated Article 7.2 of the Legal Aid SA's Code of Ethics which requires him to act honestly and in good faith at all times.

[16] The third complaint is embodied in an affidavit which the complainant attested to on 27 June 2017. This complaint arises from Mlambo JP's alleged failure to deal with the second petition he addressed to him on 24 January 2011. The complainant alleges that on 24 January 2011 he petitioned Mlambo JP for the second time, among others, about Ms Vedalankar's 'illegal denial access to records'. He says in that petition he raised Mlambo JP's failure in the letter Mlambo JP emailed him on 30 December 2010 to have dealt with '[his] opening complaint' made in his petition to him in November 2010.

[17] The complainant alleges that he informed Mlambo JP that in view of his and Board's indifference to Ms Vedalankar's defiance of the PAIA he had 'drawn draft application papers for an application to compel' and he put them on terms.

[18] In response, Mlambo JP wrote to him informing him that his 'behaviour is unbecoming and borders on harassment'. The complainant alleges that instead of duly intervening as Chairperson by directing Ms Vedalankar to desist from violating his fundamental right to information he forwarded his second petition to Ms Vedalankar without issuing any instruction to her. The complaint is that in doing so, Mlambo JP breached Legal Aid SA's Code of Ethics and he failed to uphold the Constitution.

[19] The fourth complaint is contained in the affidavit to which the complainant attested on 27 June 2017. This complaint is based on the letter dated 28 January 2011 Ms Vedalankar addressed to him in response to his PAIA request. The complainant alleges that the only document Ms Vedalankar included in this letter is the redacted and censored recommendation report. He says it would have been immediately apparent to Mlambo JP that the new bunch of substituted reasons given by Ms Vedalankar for continuing to totally refuse his PAIA requests 'were incompetent, unlawful and unconstitutional'. He contends that by his deliberate silence and inaction Mlambo JP tacitly approved Ms Vedalankar's clear violation of his right to information and in doing so, he again breached the relevant provisions of Legal Aid SA's Code of Ethics and Conduct and failed to uphold the Constitution.

[20] After receiving Ms Vedalankar's letter of 28 January 2011 the complainant says on 25 February 2011, he petitioned Mlambo JP and the Board of Legal Aid SA for a third time seeking their intervention to stop Ms Vedalankar from continuing violating his right to information. He copied his third petition to the Minister of Justice and Constitutional Development, his Special Adviser, Deputy Minister and the Chairperson of the Justice Portfolio Committee. He received a response from the Minister and the Chairperson of the Portfolio Committee, but none from Mlambo JP. This formed the basis of his fifth complaint which is fleshed out in the affidavit he attested on 27 June 2017.

[21] The complainant alleges that after receiving a copy of his third petition to Mlambo JP, the Minister and the Chairperson of the Portfolio Committee requested a report from Mlambo JP.

[22] The complainant alleges Mlambo JP reported to the Minister on 9 March 2011 and sent a copy of his report to the Portfolio Committee Chairperson on 22 June 2011. He says this report was ghost-written by Legal Aid SA's National Operation Executive, Mr Nair. He further alleges that he did not receive a copy of this report and he learned of its existence from the Chairperson of the Portfolio Committee in June 2011. The complainant alleges that the report made to the Minister contained factually incorrect and dishonest statements. He argues that the report to the Minister was self-evidently calculated to pervert his enquiry by misleading him and inducing him to believe that his three complaints to Mlambo JP about Ms Vedalankar's 'illegal refusals' of his PAIA requests were baseless. He alleges that by doing so, Mlambo JP breached the relevant provisions of Legal Aid SA's Code of Ethics and Conduct and failed to uphold, defend and respect the Constitution.

[23] These allegations form the basis of the sixth and seventh complaints which are contained in the affidavits attested by the complainant on 2 July 2017.

[24] In the seventh complaint the complainant alleges that Mlambo JP 'succeeded in corruptly misleading the Portfolio Committee and thereby perverting its enquiry into [his] complaint that LASA CEO and information officer . . . had repeatedly and persistently illegally refused to comply with [his] duly made requests for access to Legal Aid SA's records . . . '.

[25] The eighth complaint is contained in a 64 page-long affidavit the complainant attested to on 14 July 2017. The complaint is that Mlambo JP committed gross misconduct as envisaged in s 177(1)(a) of the Constitution 'in conducting a major criminal cover-up of his illegal abuse of power, escalated to Parliament'. He alleges that Mlambo JP repeatedly lied to him, in response to his repeated petitions for his intervention and lied to the Minister and Portfolio Committee about why the complainant was not appointed.

[26] The complainant maintains that he was selected and recommended for the post he had applied for, and his rivals were eliminated from the race. He dismisses as false Legal Aid SA's explanation for not appointing him. He says there never was an attempt by Legal Aid SA to hold a second round of interviews as suggested by its officials. Furthermore, the complainant denies that the Legal Aid SA ever took a decision to not fill the post he had applied for. He asserts that Legal Aid SA's records showed that no such 'decision' was ever made by it.

[27] As a further basis of his complaint, the complainant relies on the updated report provided by Mlambo JP to the Chairperson of the Portfolio Committee in which he wrongly characterised the nature of his claim. The complainant says monetary compensation was never his claim. He says his principal claim had always been appointment to the post for which he had been duly selected.

[28] Mlambo JP denies all the allegations made against him. He specifically denies that he had 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. He was advised by officials of Legal Aid SA, which advice he accepted 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 he had no role to play and the relevant officials of Legal Aid SA executed these appointments. He says 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, he says he did not form part of such a panel. Furthermore, Mlambo JP asserts, Mr Ngcamu was not even recommended for the second round of Senior Litigator interviews during the Provincial selection process.

[29] Mlambo JP denies that he conducted himself for 'subornation of perjury to defeat an application under section 25 of the Supreme Court Act for leave to subpoena him, so as to avoid being cross-examined at the trial of Brink's labour action against Legal Aid SA (D529/11) on his gross misconduct, including crimes in false reporting and lying on multiple scores to the Justice Portfolio Committee'. His denial is based on the ground, first, that Advocate Brink withdrew the application to subpoena him and exonerated him 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 he still maintains.

[30] He denies that he '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 his own gross misconduct exposed by the illegally refused records'. The report to the Minister, he proceeds, also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints. According to information at his disposal, all the records requested by Advocate Brink and as far as legally permissible in terms of the PAIA, were duly provided to him. He says to the extent that Legal Aid SA had refused to provide some records, he was advised that such refusals were subject to determination by the courts in various applications brought by him.

[31] In his reply the complainant admits that at the hearing he 'withdrew' his originally pleaded allegations against Mlambo JP – but he says the withdrawal was for the purpose of the action. He explains why he had originally accused Mlambo JP of wrongdoing and why he changed that perception about him. The complainant accuses Mlambo JP of conspicuously failing to mention that he promptly revived his 'withdrawn' complaints against him in his petition for leave to appeal to the Labour Appeal Court.

[32] I must immediately point out that this accusation is, however, unjustified because in para 8.12 of his answer to the complainant's complaint, Mlambo JP does mention that the complainant in his affidavit in support of his petition for leave to appeal, [the complainant's] 'vitriolic attitude and cumulative conduct not only towards Legal Aid SA, but also towards [him] and Cele J erupted'. In support of these allegations Mlambo

JP referred to relevant excerpts of the application containing such accusation. These were annexed as 'JP003' to his response.

[33] During the consideration of Advocate Brink's complaints and Mlambo JP's response thereto I noted that in his response Mlambo JP did not address the allegations in paras 9 and 10 of Advocate Brink's first complaint which formed the basis of the accusation that Mlambo JP had lied under oath. In paragraph 9 of the first complaint Advocate Brink had alleged that in opposing the application to for leave to subpoena Mlambo JP had stated:

'The most disturbing, reprehensible and brazen act of disrespect came recently when [the complainant] left the KZN province and attended unannounced and without warning at the office of [Mlambo JP] in the South Gauteng High Court. [Mlambo JP] did not take kindly to the [complainant's] conduct. In the face of litigation where the Legal AID SA is represented the [complainant's] conduct amounts to professional misconduct'.

The complainant denied these allegations.

[34] I asked the Secretariat to address a letter to Mlambo JP inviting him to comment on the relevant paragraphs of the first complaint. In November 2020 he responded by filing an affidavit in which he confirmed that in 2012 his former Secretary gave him documents which she said she received from Advocate Brink who had come to his Johannesburg chambers to deliver them. In her affidavit Mlambo JP's secretary stated that 'in 2012, Mr Brink delivered a formal complaint to the office of the Judge President...'

[35] In the response filed in March 2021 Advocate Brink denied these allegations and in particular that in 2012 he delivered a formal complaint to the office of Mlambo JP. He explained that in 2012 he intended to subpoena Mlambo JP for cross-examination at the trial of his labour claim he had instituted against Legal Aid SA regarding the statements he made to the Minister and the Portfolio Committee. He then brought an application for leave to subpoena Mlambo JP in terms of s 25 of the Supreme Court Act which he served on him by telefax. He did not have to travel to Johannesburg to have the processes served on Mlambo JP.

[36] The complaints were referred to me to be considered in terms of s 17 of the JSC Act, which deals with investigation of non-impeachable complaints. This is after they were considered by the two members of the JCC, who recommended to the Chairperson of the JCC that they be dealt with in terms of s 17 of the Act.

Discussion and findings

[37] The complaints against Mlambo JP are founded on Articles 5 and 6 of the Code of Judicial Conduct. Article 5 provides that a judge must always, and not only in the discharge of official duties, act honourably and in a manner benefiting judicial office and that all activities of a judge must be compatible with the status of judicial office. Article 6 provides that a judge must at all times, also in relation to extra-judicial conduct, comply with the law of the land.

[38] The grounds upon which any complaint against a judge may be lodged, are set out in s 4(4) of the JSC Act. These, inter alia, are:

‘(a) Incapacity giving rise to a judges’ inability to perform the function of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct as envisaged in s 177(1)(a) of the Constitution;

(b) Any wilful, or grossly negligent breach of the Code of the Judicial Conduct referred to in s 12, including any failure to comply with any regulation referred to in s 13(5);

. . . .

(e) Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraph (a) to (d), that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.’

[39] The question to be considered is whether having regard to the Constitution, the JSC Act and the applicable Code of Judicial Conduct and the facts, Mlambo JP has committed a conduct, which constitutes judicial misconduct.

[40] As already stated all of the complaints against Mlambo JP arise from the complainant’s non-appointment to Legal Aid SA’s Senior Litigator post at its Pietermaritzburg office during 2010.

[41] The first complaint is that Mlambo JP committed an act of gross misconduct by causing Mr Mtati to state under oath that the complainant had attended unannounced and without warning at his office in the South Gauteng High Court, Johannesburg to which conduct Mlambo JP did not take kindly. The complainant denies this allegation. He says he has no idea where the 'South Gauteng High Court' is and has never set foot in it. The complainant contends that these untruthful averments were made by Mlambo JP in order to defeat the ends of justice 'by corruptly prejudicing the Labour Court against [him] with poisonously inflammatory lying defamation falsely attacking [his] character and professional integrity.'

[42] The impugned statement which is attributed to Mlambo JP is embodied in an answering affidavit deposed to by Legal Aid SA's lead in-house attorney, Mr Mtati on behalf of Mlambo JP in the Labour Court interlocutory application, in which the complainant had cited Mlambo JP as a respondent. The averment complained of was based on what was communicated to Mlambo JP by his former secretary. He *bona fide* believed that what was conveyed to him by his former secretary was correct. She has since filed an affidavit, in which she confirms that in 2012, the complainant 'delivered a formal complaint to the Office of [Mlambo JP]'.

[43] For a conduct to constitute a judicial misconduct, it must be shown that it was wilful or grossly negligent breach of the Code. In this matter, it cannot be said that Mlambo JP's statement was a lie. The statement may be incorrect, but it cannot be said that it is deliberately untruthful. He did not suborn Mr Mtati, who deposed to the affidavit on his behalf. Subornation of perjury consists in unlawfully and intentionally inducing another person to make a false statement on oath, affirmation or admonition, and in the course of a judicial proceeding. The first complaint is accordingly dismissed as it is lacking in substance.

[44] In the second complaint, the complainant accused Mlambo JP of colluding with Ms Vedalankar of Legal Aid SA by permitting her to forge a letter on her office computer, rebutting his petitioner to the Board of Legal Aid SA to interfere and force her to provide him access to Legal Aid SA's business records. The third to fifth complaints are similar to the second complaint and they will be considered together.

[45] In my view, these complaints should be dismissed. Aggrieved by his non-appointment, the complainant instituted a claim in the Labour Court, Durban. The basis of his claim was that the failure to appoint him, was due to political or racial prejudice and not financial constraints as contended by Legal Aid SA. He alleged that the information he sought from Legal Aid SA would have proved that his non-appointment had not been due to the freezing of the post but was due to collusion between Mlambo JP and Ms Vedalankar. He asserted that Legal Aid SA withheld this information in order to frustrate his unfair discrimination claim.

[46] During cross-examination in the Labour Court proceedings, the complainant withdrew the allegations of wrong doing on the part of Mlambo JP and Ms Vedalankar. It is not clear to me why the complainant is raising again the same allegations of misconduct against Mlambo JP, which he previously withdrew.

[47] As far as the sixth, seventh and eighth complaints are concerned, it is my view that they should also be dismissed.

[48] In his fifth complaint, the complainant says after his request for access to the relevant records was declined by Vedalankar, he turned to Mlambo JP and the Board for assistance. He sent a letter to them on 25 February 2011 in which he complained about Ms Vedalankar's alleged repeated refusal to comply with his request for information in terms of PAIA. He asked Mlambo JP and the Board to intervene by prevailing on Ms Vedalankar. He says his request fell on deaf ears. He copied the Minister, the Deputy-Minister, Special Adviser to the Minister and the Chairperson, Parliamentary Portfolio Committee.

[49] The Minister and the Chairperson of the Portfolio Committee thereafter initiated separate enquiries into the allegations the complainant made in his letter. Legal Aid SA was asked for comment.

[50] Mlambo JP on behalf of Legal Aid SA reported to the Minister on 9 March 2011 and to the Chairperson of the Portfolio Committee on 22 June 2011. In the report Mlambo JP rejected the complainant's suggestion that his non appointment was racially and politically motivated. He explained that all executives involved in the matter

confirmed that the complainant was not known to them, nor his political views and that the first time ‘they came across his name was when his letter of complaint about his non-appointment was received’.

[51] Mlambo JP further explained that the reason for freezing of senior litigation posts was that ‘Legal Aid SA was going through a very uncertain period with regards to the provision of funding by the [Department of Justice] to finance [the] OSD phase implementation.

[52] He concluded in his report as follows:

‘Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts on this matter of his alleged non appointment. We are however comfortable that we would be able to show to a court of law that our decisions taken on this matter made good business sense and was in the best interests of our organisation at the time. As a result of Mr Brink’s invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson’s request Mr Brink has continued with his tirade.’

[53] In the letter he addressed to the Chairperson of the Portfolio Committee on 22 June 2011 Mlambo JP stated:

‘In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me:
“Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view. I further take this opportunity to advise you that the Board of Directors of Legal SA is not the appropriate forum to raise your matter. Your approach to the Board is therefore misdirected. Your matter was handled at Executive Management level, being the level at which such matters are handled, and should you have any issues in that regard you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you. For this reason 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.”

I trust that the attached report and this letter clarify the matter concerning Mr Brink.’

[54] After receiving Mlambo JP's report, the Chairperson of the Portfolio Committee on 29 June 2011 addressed a letter to the complainant informing him that neither he, nor the Justice Portfolio Committee 'becomes involved in the day-to-day operational matters of LASA . . .' and that 'in light of the facts set out in Justice Mlambo's response', he regarded the matter as closed.

[55] Aggrieved by these developments the complainant, in July 2017, lodged further complaints (the sixth to the eighth complaints) of judicial misconduct against Mlambo JP again relying on s 14(4)(a) of the JSC Act as read with s 177(1)(a) of the Constitution, the allegations being that he had lied to 'the Portfolio Committee of the National Assembly on Justice and Constitutional Development in a 'confidential' report, under a covering letter of noting a dishonest and disparaging email he had sent [him], to pervert the Committee's enquiry into [his] complaint repeated in his third petition to [Mlambo JP] . . .'

[56] The complainant contended that by 'perverting the Committee's enquiry with his lies, Mlambo JP:

'4.1 Obstructed and successfully defeated the National Assembly policing duty imposed by section 55(2)(b)(ii) of the Constitution "to maintain oversight of . . . organ (s) of State", and thereby prevented it from holding LASA's most senior public officers to account for their repeated and persistent fundamental right violation. . ."

4.2 Criminally contravened section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 . . ." This section makes it an offence for anyone who with intent to deceive a House or Committee, produces to the House or Committee any false, untrue or fabricated or falsified document; or wilfully furnishes a House or Committee with information which is false or misleading.'

[57] The complainant in paras 12, 13 and 14 of his seventh complaint argued:

'By quoting to the Committee his lie told me in his January 2011 email that he still saw nothing remiss in Vedalankar's illegal and unconstitutional refusals of my PAIA request made in August and December 2010, notwithstanding my detailed complaints about this in my repeated petitions to him, the respondent thereby repeated this lie to the Committee, and thus lied to it with the dishonest object of discrediting my entirely proper, duly made complaint to him in my third petition about Vedalankar's ongoing violation of my fundamental right to information.

And by quoting to the Committee his false charges against me of personal and professional misconduct, the respondent defamed me with the dishonest object of misleading the Committee by discrediting me personally.

The respondent's corrupt intention in repeating his said lie and in defaming me to the Committee was to prejudice it against me and my complaint, the better to pervert its enquiry inter alia into Vedalankar's repeated illegal and unconstitutional refusals of my duly made requests for sight of LASA's public records, about which I'd repeatedly protested to the respondent and sought his intervention to remedy it.'

[58] The allegations which the complainant makes in these complaints, relate to the matters which were investigated by the relevant structures of Parliament. After receiving a report from Legal Aid SA they decided to terminate their investigations.

[59] The report that Mlambo JP sent to the Minister and the Chairperson of the Portfolio Committee explained in detail why the complainant was not appointed and the nature of steps taken by Legal Aid SA to deal with his PAIA request. There is no factual basis for the contention that Mlambo JP had lied to the Minister and the Chairperson of the Justice Portfolio Committee with the intention to prevent them from proceeding with their own investigations. It was up to them to decide whether, based on the information presented to them by Mlambo JP on behalf of Legal Aid SA, there existed any basis for them to proceed with their own investigations. In any event some of the records which the complainant had requested from Legal Aid SA in terms of PAIA were furnished to him. If the complainant had felt that the information provided was inadequate to enable him to advance his case against Legal Aid SA, he should have approached the court for necessary relief under PAIA. He was not without remedy.

[60] Moreover some of the allegations which form basis of the complainant's complaints, were also raised by the complainant in his unfair discrimination claim which he had instituted in the Labour Court.¹ His claim was dismissed by that court. The court stated at para 68 of its judgment:

'In his pleaded case and in his initial approach at trial in court, the applicant attributed discriminatory acts against him, on the part of Mr Nair, Ms Clark, Ms Vedalankar and Mlambo

¹ *Brink v Legal Aid South Africa* [2014] ZALCD 49.

JP, the Chairman of the Board. He later exonerated all but Mr Nair, blaming the respondent for not supplying him timeously with the information he had sought from it.'

[61] In my view, the sixth to eighth complaints must be dismissed for lack of substance. The complainant is advised that he may, within one month after receiving this decision, appeal to the Committee in writing, against this decision.

Zondi JA
Member of the Judicial
Conduct Committee