

***EXTRAORDINARILY IMPORTANT
FOR PERSONAL ATTENTION***

36 Pearson Street
Eshowe, KwaZulu-Natal
29 November 2019

The Honourable Chief Justice Mogoeng Mogoeng,
Chairperson and Information Officer:
Judicial Service Commission
188 14th Road, Noordwyk
Midrand 1685

Dear Justice Mogoeng

- 1. The Judicial Conduct Committee's failure to finalise gross misconduct complaints against Mlambo JP and Waglay JP.¹**
- 2. Your deputy information officer's unlawful failure to respond to a request for access to certain JSC records, duly made under section 18 of the Promotion of Access to Information Act ('PAIA'), and a plea for belated compliance with it.²**
- 3. A further PAIA request.³**
- 4. Outline of further intended gross misconduct complaints being held up by non-compliance with PAIA.⁴**
- 5. Retaliation.⁵**
- 6. The possibility of a conciliatory resolution.⁶**

INTRODUCTION

1. I write to you in your capacity as chairperson and information officer of the Judicial Service Commission ('JSC') in a matter of unprecedented gravity, surely

¹ Paragraphs 3–30.

² Paragraphs 31–8.

³ Paragraph 39.

⁴ Paragraphs 40–48.

⁵ Paragraphs 49–60.

⁶ Paragraphs 61–3.

eclipsing the Constitutional Court’s complaint against the head of the Western Cape Division of the High Court, Hlophe JP.

2. Coming right after your several recent public statements⁷ in defence of the judiciary against the fake bribery and judicial capture allegations put about in social and other media, this will surely be the most appalling letter you’ve ever read; and well you might first wonder whether I’m not part of the malicious ‘campaign to delegitimise the judiciary’,⁸ bent on ‘harming the reputation of our judges’⁹ with yet more malicious corruption¹⁰ claims about them.

THE JUDICIAL CONDUCT COMMITTEE’S FAILURE TO FINALISE GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP AND WAGLAY JP

3. In mid-2017 I lodged eight gross misconduct complaints under section 14(1) of the Judicial Service Commission Act 9 of 1994 (‘the JSC Act’) with the JSC’s Judicial Conduct Committee (‘JCC’) against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, arising from his unlawful, unconstitutional, dishonest, and in two instances criminal, misconduct, wilfully committed not on the bench but in his capacity as then chairperson of Legal Aid South Africa¹¹ (‘LASA’), manifestly ‘incompatible with or unbecoming the holding of judicial office’, as section 14(4)(e) of the JSC Act puts it, and with ‘the core values of integrity, impartiality and transparency, set out in the Judicial Norms and Standards’ to which ‘the Judiciary commits itself’.¹²

4. My complaints charged Mlambo JP with suborning perjury; repeatedly conniving at and colluding in the illegal and unconstitutional suppression of public records duly requested under the Promotion of Access to Information Act 2

⁷ In the period August to November 2019, quoted herein, referencing publications and their dates, but omitting article titles. I recognise that your speech reported by the media may not be perfectly verbatim.

⁸ *Citizen*, 3 October 2019.

⁹ *Citizen*, 8 October 2019

¹⁰ The ‘corruption’ called to your attention in this letter doesn’t concern lucre, but rather the general sort, no less serious, defined by the Oxford English Dictionary as ‘6.II.6 Perversion or destruction of integrity in the discharge of public duties by ... favour; the use or existence of corrupt practices, esp. in a state, public corporation, etc.’ And by ‘corrupt’ I mean precisely ‘3.B.3 Debased in character; infected with evil; depraved; perverted; evil, wicked’ and ‘4.B.4 Perverted from uprightness and fidelity in the discharge of duty’.

¹¹ As a putative guarantee of constitutional, legal and ethical probity in the conduct of LASA’s operations, section 4(1)(a) of the Legal Aid Act 22 of 1969, in operation at the material time, required that LASA’s Board include a judge, impliedly and in practice to chair it. Section 8(1) of the succeeding and current Legal Aid South Africa Act 39 of 2014 now explicitly prescribes: ‘The judge appointed in terms of section 6(1)(a) is the chairperson of the Board.’

¹² Media Briefing Announcement, Office of the Chief Justice, September 2019.

of 2000 ('PAIA') to obstruct an investigation of jobs-for-pals recruitment corruption at LASA in which he was centrally involved; and lying and false 'confidential' reporting on multiple scores to the Minister of Justice and Constitutional Development (as the Department was then called), and then to the Portfolio Committee of the National Assembly for the same Department, to put down and pervert enquiries they'd separately and independently instituted into this corruption and its cover-up, involving inter alia the said persistent illegal and unconstitutional withholding of duly requested records¹³ to hinder its exposure.

5. Unlike the Constitutional Court's complaint against Hlophe JP, arising from what he's alleged to have said behind closed doors, my complaints against Mlambo JP are all founded on supporting documents, which is to say are 'evidence-based',¹⁴ supported by 'credible evidence',¹⁵ 'concrete proof',¹⁶ 'verifiable documentary ... proof'.¹⁷ All are substantiated by real 'evidence to support [my] confidence-damaging allegations that any judge is corrupt'.¹⁸

6. In the same period, I filed a gross misconduct complaint against Basheer Waglay JP, head of the Labour- and Labour Appeal Courts, for failing to observe the 'fierce independence'¹⁹ he swore to maintain as a judge in trying his cases, and breaking his judicial oath to 'administer justice to all persons alike without fear, favour or prejudice'.

7. Like my complaints against Mlambo JP, my complaint that Waglay JP acted under improper influence was similarly objectively supported by 'concrete proof',²⁰ 'verifiable documentary ... proof'²¹ in the form of an anonymously written,

¹³ Most of the documents were ultimately clawed out of LASA via multiple pre-trial discovery processes, comprising an application to compel after LASA's total refusal to discover any one of the documents requested at the original pre-trial conference, followed by two additional pre-trial conferences held at court under judicial supervision; and then, after trial, via numerous applications to court under section 78 of PAIA – nine to date, the first five, set down together, conceded by LASA at the point of argument in the Magistrate's Court, and the sixth, to compel LASA's full and proper compliance with its settlement agreement, partially conceded by disgorging further records in successive batches under pressure of set-downs of the application. (My claim to the balance of the promised records is pending). Three PAIA applications are pending in the High Court, the first of which was argued on 30 August 2019, with judgment reserved.

¹⁴ *Citizen*, 8 October 2019.

¹⁵ *SAnews.gov.za*, 14 September 2019.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

unsigned, undated, and unstamped ‘memorandum’ crudely disparaging me to devastate my credibility, and dishonestly misrepresenting the issues in my case at trial and my case on appeal – calculated to poison him against me, prejudice his consideration of my petition for leave to appeal, and pervert its decision, as indeed it did.

8. Fortunately for me, this criminal instrument used to defeat the ends of justice was inadvertently left in the court file, and turned up some months later during my investigation of the peculiar circumstances in which Waglay JP had strangely prematurely and irregularly dismissed my petition in the middle of a condonation application LASA had brought after opposing me out of time, before all the affidavits were in and the matter was ripe for consideration.

9. As requested, the registrar’s office made and provided a copy of this hard ‘evidence of taking instructions on how to prepare a judgment, evidence of being influenced one way or the other by people other than considering what has been presented before them’,²² and certified an inventory listing the court file’s contents, including the ‘memorandum’.²³

10. My purpose in making my complaint against Waglay JP certainly wasn’t to ‘delegitimise the outcome’²⁴ of my petition and to discredit his ‘judgment against’²⁵ it given on 18 February 2015,²⁶ because by the time I made my complaint on 15 June 2017, I’d already learnt that my action in the Labour Court had been *correctly dismissed* a year-and-a-half earlier on 18 September 2014, in that my cause of action had been completely wrong.²⁷

²² News24, 14 August 2019, quoting Judiciary spokesman Nathi Mncube.

²³ The ‘memorandum’ was still in the file when last checked, only it had been moved to the top of its contents, which means after I mentioned in an affidavit having found it someone went back to look, drew it, and then put it back, out of its original order.

²⁴ *Citizen*, 3 October 2019.

²⁵ *Ibid.*

²⁶ Without reasons, in the brief standard-form template used to dismiss all such petitions.

²⁷ Deliberately kept ignorant of the true facts by the determined illegal suppression of a pivotal document I’d duly requested, I’d wrongly surmised and pleaded *covert unfair discrimination* as the reason my appointment to LASA’s top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, had been blocked following my unanimous recommendation for the post by a duly constituted selected panel of LASA’s top lawyers in KwaZulu-Natal. The actual reason for the silent, off-the-record, unauthorised, illegal backroom abortion of my recruitment, only discovered long after the trial – with great difficulty and via persistent litigation – turned out to be everyday jobs-for-pals recruitment corruption. Years after Waglay JP’s dismissal of my petition for leave to appeal the dismissal of my unfair discrimination action, I discovered from the selection panel’s complete recommendation report – repeatedly requested and repeatedly refused on shifting grounds, but finally disgorged by suing for it – that unfair discrimination had nothing to do with it; the reason I wasn’t appointed was everyday cronyism, in that LASA Board chairperson Mlambo JP, then head of the Labour- and Labour Appeal Courts, wanted the appointment of my rival applicant, his long-time judicial colleague Ngcamu AJ (as he used to be), whom he’d repeatedly got appointed as an acting judge of the Labour Court over a period of six-and-a-half years prior to his application for the top post (so the

11. Given that section 15(2)(d) the JSC Act prescribes that meritless complaints found to be ‘frivolous or lacking in substance’ ‘must be dismissed’,²⁸ the JCC clearly didn’t think my complaints against Mlambo JP and Waglay JP were ‘gratuitous allegations of corruption’,²⁹ ‘scurrilous claims of corruption within the Judiciary’.³⁰ Quite the contrary, satisfied that I’d made out prima facie, answerable cases against the two accused Judge Presidents on all counts, it required both to respond to them.

12. To recap, consistent with your admonition to ‘watch us closely’³¹ and not to allow ‘complacency to set in’³² by reposing our trust in the courts with our eyes closed, ‘otherwise our constitutional democracy is gone’,³³ and consistently with your call on the public to ‘come forward’³⁴ ‘with evidence of judges implicated in corruption’³⁵ and ‘share it with us’³⁶ – since ‘the South African public deserve a corruption-free Judiciary’,³⁷ ‘a credible, independent and truly transparent Judiciary’³⁸ – I did indeed ‘come forward’ to the JCC ‘with evidence of judges implicated in corruption’ annexed to affirmed complaints I made, signed after ‘raise[ing my] hand to tell the truth, the whole truth and nothing but the truth’.³⁹ Nothing in my affirmed complaints and affirmed comments on the judges’ responses to them ‘is untrue’⁴⁰ and I was and remain ‘prepared to give evidence

recommendation report crucially revealed) – regardless of the fact that the selection panel had disqualified and rejected him for not meeting the job criteria, in that he lacked right of appearance in the High Court and any litigation experience on his feet there. (My dogged persistence in pursuing the post foiled the plan to appoint him instead of me.) Eight months after my successful interview, and as I was pressing for my appointment, I was told the post had been ‘frozen’ for lack of budget to fill it. There’s no record of any such decision, and LASA’s financial records show that in truth the post was and has remained budgeted by LASA and funded by the Treasury via the Justice Department. Completely different, radically contradictory, mutually exclusive and destructive stories cooked up by National Operations Executive Brian Nair, also contradicted by LASA’s own records, were told to the Board for not filling the post, along with two other such posts, which, despite being budgeted and funded, have remained ‘frozen’ to date – *illegally*, as the Constitutional Court confirmed in paragraphs 8 and 9 of *Zungu v Premier of the Province of KwaZulu-Natal and Others* (CCT136/17) [2018] ZACC 1 (22 January 2018): ‘[L]eaving ... vacant’ a budgeted and funded ‘position’ in an organ of state is a ‘breach of the provisions of the Public Finance Management Act (PFMA)’, namely section 53(4). On receipt of the withheld records I’ve sued LASA for, I’ll be returning to the Labour Court with a common law rescission application founded on newly discovered documents showing that LASA’s defence of insufficient budget to fill the post was a fraud on the trial judge, and I’ll be persisting with my claim to my appointment on fresh pleadings.

²⁸ Like Hoffman SC’s obviously spurious complaint against you, dismissed under this section in September 2013.

²⁹ SAnews.gov.za, 14 September 2019.

³⁰ Media Briefing Announcement, Office of the Chief Justice, September 2019.

³¹ News24, 23 November 2019.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Citizen*, 3 October 2019.

³⁵ *Ibid.*

³⁶ SAnews.gov.za, 14 September 2019.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Mail & Guardian*, 11 October 2019.

⁴⁰ *Ibid.*

even in a court of law or commission of enquiry'⁴¹ and 'to testify as to its veracity'.⁴² I was equally prepared to 'make my identit[y] known to the Judiciary'⁴³ and didn't hide behind any 'mask'⁴⁴ by making my complaints anonymously.⁴⁵

13. You appealed to the public to 'tell us which judge has been ... corrupted and by whom'. In the latter regard, I did so in my invited comments on Waglay JP's response to my complaint against him. On a conspectus of the cogent circumstantial evidence available weighed with the probabilities,⁴⁶ I identified the obviously well placed, well connected, highly motivated author of the anonymous, unstamped⁴⁷ 'memorandum' slipped past the registrar directly to Waglay JP to torpedo my petition as having likely been then LASA Board chairperson Mlambo JP,⁴⁸ under whom Waglay JP had served as Deputy Judge President, and whom he had succeeded as Judge President of the Labour- and Labour Appeal Courts.

14. But I didn't 'give information'⁴⁹ about the judicial corruption indicted in my complaints 'to the police or the media'⁵⁰ as you urged, because I preferred that the JCC deal with my 'credible evidence of ... corruption against the Judiciary'⁵¹ under its statutory mandate, rather than the criminal courts and court of public opinion, and that the judiciary itself act to 'root out these injurious practices'⁵² by two of its senior fellows. (The 'police or the media'⁵³ will necessarily be my last

⁴¹ SAnews.gov.za, 14 September 2019.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Like the anonymous complainant who blew the whistle on a Sassa executive manager for fixing jobs for 'his girlfriends'; for not 'following due process'; and for appointing 'people in positions even though the applicants did not meet the job criteria'. (News24, 'Public Protector probes Sassa manager for alleged abused of state funds and power', 25 November 2019). Similar unethical abuse of power by Mlambo JP is mentioned in paragraph 46 and footnote 27.

⁴⁶ I'm a civil law specialist advocate of three-and-a-half decades standing, with extensive experience also as a district and regional court magistrate, including several years as a full-time civil trial magistrate, and a sterling appeal record.

⁴⁷ Not having been stamped by the registrar, the 'memorandum' obviously didn't pass over his reception counter in the ordinary course and was given to Waglay JP surreptitiously.

⁴⁸ How the JCC handles the complaint will determine whether I file a formal charge against Mlambo JP for this.

⁴⁹ *Citizen*, 3 October 2019.

⁵⁰ *Ibid.* Subsequent to making my complaints to the JCC, I copied them to South Africa's leading investigative journalist Martin Welz, editor and publisher of *Noseweek*, and he telephoned me for over an hour to discuss them.

⁵¹ SAnews.gov.za, 14 September 2019.

⁵² *Ibid.*

⁵³ *Ibid.*

resort in the event that the JCC fails to prosecute my complaints properly and in due time.)

15. As you frankly conceded, ‘Any South African who cares about our constitutional democracy, any South African who cares about the future of our children, we say to you, we’re not a perfect institution.’⁵⁴ Indeed so: no less than three Judge Presidents in our country currently stand accused of the most serious imaginable corruption. And although you affirmed during your 17th Nelson Mandela Lecture, ‘I am not saying there is something wrong with our judges. I am confident in us’,⁵⁵ you seemed to have had at least one particular instance in mind when adding, ‘You must be worried when you read a judgment and you are struggling to make sense of it.’⁵⁶

16. That the JSC itself is not invulnerable to corruption you acknowledged too:

You have got to observe carefully. You have got to watch how people are being interviewed because there are times when you can tell certain people have been shielded from being asked critical questions. How can you have an independent judge ... when questions are asked to them, people build a scrum around them. When these things happen, you must know that people are attempting to capture the judiciary.⁵⁷

17. For your information only, since the JCC is currently seized with them, I enclose (printed in a compressed format) copies of my complaints; the accused judges’ mendaciously evasive responses; and my comments on them, in which I point up their aggravating dishonesty. Perusing them you’ll readily appreciate the enormity of the matter, the egregiousness of the judicial misconduct in question, and the immense damage to public confidence in the judiciary that they portend – threatening to ‘delegitimise the Judiciary and endanger

⁵⁴ News24, 3 October 2019.

⁵⁵ News24, 23 November 2019.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

constitutional democracy'⁵⁸ by collapsing public confidence in the judicial process and its officers.

18. When remarking at your media briefing on 13 September 2019 that only a judge 'completely bereft of legal professional and judicial ethics'⁵⁹ would act corruptly, with Mlambo JP seated alongside you⁶⁰ as the very face of judicial 'integrity, impartiality and transparency'⁶¹ and of the 'credible, independent and truly transparent Judiciary'⁶² that 'South Africans need and deserve',⁶³ you couldn't have been aware of his unlawful, unconstitutional and criminal misconduct described and documented in my complaints against him, showing that he's 'completely bereft of legal professional and judicial ethics'⁶⁴ and that in practice he scorns the 'core values of integrity, impartiality and transparency'⁶⁵ to which you absolutely sincerely said the judiciary is committed. Nor could you have been aware of the 'concrete proof'⁶⁶ put up with my complaint against Waglay JP that in rejecting my petition for leave to appeal the dismissal of my labour claim, he was 'taking instructions on how to prepare a judgment [and] being influenced one way or the other by people other than considering what has been presented before [him]'.⁶⁷

19. On 11 February 2019, during a phone call to request another copy of my complaint against Waglay JP (the acknowledged original I'd delivered had been lost), JSC secretary Lynnette Bios responded to my query about progress in the prosecution of my complaints against Mlambo JP, also made way back in mid-2017, that they were being dealt with under section 17 of the JSC Act.

20. You'll understand my disgust at this. Section 17 governs the disposal of 'serious, non-impeachable' misconduct, for which the maximum possible 'remedial steps [that] may be imposed' under subsection (8) are an apology,

⁵⁸ SAnews.gov.za, 14 September 2019.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Media Briefing Announcement, Office of the Chief Justice, September 2019.

⁶² SAnews.gov.za, 14 September 2019.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Media Briefing Announcement, Office of the Chief Justice, September 2019. See paragraph 4 above.

⁶⁶ SAnews.gov.za, 14 September 2019.

⁶⁷ Judiciary spokesman Nathi Mncube quoted by News24, 14 August 2019

reprimand, warning, compensation order, counselling, training, or other appropriate corrective measure, excluding impeachment, to which ‘appropriate remedial action will be limited’ under subsection (1)(a).

21. Clearly on any proper, honest appraisal, Mlambo JP’s exceptionally serious, dishonest, unlawful, unconstitutional and criminal misconduct, closely detailed and substantiated in my complaints, is eminently impeachable and falls to be dealt with under section 16, governing the disposal of ‘impeachable complaints’⁶⁸ of ‘gross misconduct’.⁶⁹

22. Despite Ms Bios’s assurance in her letter of 29 August 2017, acknowledging receipt of my complaint against Waglay JP, that ‘The Secretariat will notify you of the outcome of your complaint in due course’, it’s yet to do so two-and-a-half years since I made it in June 2017. So much for section 195(1)(g) of the Constitution: ‘Transparency must be fostered by providing the public with timely, accessible and accurate information’.

23. The JCC’s mishandling of and dragging anchor with my gross misconduct complaints against Mlambo JP and Waglay JP flies in the face of everything you stated absolutely sincerely in your leadership talk at Ekurhuleni in July 2019:

We have got to make it our business not to beatify others at the expense of others, not to make others untouchable, and not to allow anybody, including me, to be awarded an underserved saintly status. ... We are determined not to be told who is clean and who is dirty. We are going to research it ourselves and where there is smoke we will follow it up to its logical conclusion.⁷⁰

And in later on claiming that ‘all allegations of corruption against judges are closely examined’⁷¹ (per the reporter’s paraphrase); that the judiciary had ‘never avoided holding their own accountable’;⁷² that it ‘had never shied away from

⁶⁸ ‘16 Committee may recommend appointment of Tribunal in respect of impeachable complaints’.

⁶⁹ Per section 16(1).

⁷⁰ *The Mercury*, 18 July 2019.

⁷¹ *Dailymaverick.com*, 4 October 2019.

⁷² *Citizen*, 3 October 2019.

openly pursuing any judge who is rightly or wrongly accused of misconduct’;⁷³ and that ‘Most cases of alleged misconduct against judges have been speedily finalised’,⁷⁴ the exceptions being the Hlophe JP, Motata J, Preller J, Mavundla J, and Phoswa J complaints, delayed for ‘good reasons’,⁷⁵ namely ‘a series of legal challenges that led to inordinate delays which nobody could have done anything about.’⁷⁶

24. In contradistinction to those judges’ cases, no ‘legal challenges’⁷⁷ have impeded the prosecution of my complaints against Mlambo JP and Waglay JP. To any reasonable observer, the JCC’s ‘inordinate delays’⁷⁸ in dealing with my complaints ‘legitimately’⁷⁹ ‘raise concerns about the speed’⁸⁰ at which the JCC has done its work – or rather, not done it – more especially since no ‘good reasons’⁸¹ exist to explain it, like the various ‘legal challenges’⁸² raised by Hlophe JP, Motata J and Phoswa J.

25. The JCC indeed ‘could have, but failed to, expedite this process’⁸³ of prosecuting my complaints against Mlambo JP and Waglay JP; and my dissatisfaction over its slow-walking of my complaints against them can’t credibly be written off to ‘ignorance or frustration’⁸⁴ on my part.

26. In the circumstances, it appears that contrary to your absolutely sincere belief and assurance about this, the judges on the JCC are indeed reluctant to ‘hold... their own accountable’⁸⁵ in the Mlambo JP and Waglay JP particular cases – if not actually disposed to ‘build a scrum around them’⁸⁶ and ‘cover up’⁸⁷ their capital misconduct.

⁷³ News24, 3 October 2019.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ IOL, 3 October 2019.

⁸⁰ *Ibid.*

⁸¹ News24, 3 October 2019.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Citizen*, 3 October 2019.

⁸⁶ News24, 23 November 2019.

⁸⁷ IOL, 3 October 2019.

27. The JCC's decision to deal my complaints about Mlambo JP's manifestly impeachable misconduct, including his crimes, under section 17, thereby exposing him to no more than a slap on the wrist under subsection 17(8), speaks precisely to the JCC 'want[ing] to cover up'⁸⁸ what he's done; and it traduces your absolutely sincere assurance that 'We are dead against corruption'⁸⁹ in the judiciary.

28. Whereas a man accused of shoplifting a piece of cheese invariably gets prosecuted to verdict/sentence within weeks at the most, two Judge Presidents accused of the most extreme 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution',⁹⁰ with the gravest implications for 'the reputation of our judges',⁹¹ and for 'our constitutional democracy',⁹² sit pretty, confident of their impunity, untouched, undisciplined, above the law, years afterwards.

29. And whereas the foundation of constitutional orders like ours is 'the denial of every pre-eminence' as Jefferson put it to Washington in 1784, the JCC's conduct practically illustrates that on the ground the law isn't flat and isn't being applied equally to the higher and lower orders in our country – diametrically contradicting your opening observation in your judgment in *Public Protector v South African Reserve Bank* [2019] ZACC 29 (22 July 2019):

[1] Accountability, equality before the law and transparency are some of the values on which our constitutional democracy was founded. It ought therefore never to matter who a person, natural or juristic, is whenever the need arises to breathe life into these values.

30. Only, at the JCC apparently it does matter. When it comes to 'holding all, including the high and mighty, accountable for their alleged or perceived wrongdoing',⁹³ the seemingly 'hypocritical'⁹⁴ judges of the JCC evidently lack the

⁸⁸ *Ibid.*

⁸⁹ SAnews.gov.za, 14 September 2019.

⁹⁰ Per section 14(4)(a) of the JSC Act.

⁹¹ *Citizen*, 8 October 2019.

⁹² News24, 3 October 2019.

⁹³ *Public Protector*, paragraph 2.

⁹⁴ News24, 23 November 2019: 'Mogoeng also said judges were the ones who administered oaths to presidents and members of Parliament, expecting them to be loyal to their oath of office. He said it would be "hypocritical" to expect them to commit to doing what the Constitution demanded, if judges didn't do the same.'

energy and appetite to prosecute Mlambo JP and Waglay JP for their ‘high crimes and misdemeanours’ (in the fitting old English of the US Constitution governing presidential impeachment) – again flatly contradicting what you said at the start of your judgment in *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11 (31 March 2016):⁹⁵

[1] One of the crucial elements of our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the apartheid era. To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy. For this reason, public office-bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck.

YOUR DEPUTY INFORMATION OFFICER’S FAILURE TO RESPOND TO A REQUEST FOR ACCESS TO CERTAIN JSC RECORDS, DULY MADE UNDER SECTION 18 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, AND A PLEA FOR BELATED COMPLIANCE WITH IT

31. On 6 March 2019, I filed a PAIA request for access to certain JSC records. The contextual notes appended to my request plain that my main purpose⁹⁶ in seeking access to the documents specified in the first part of my request was to ascertain how the JCC had practically swept my eight gross misconduct complaints against Mlambo JP under the carpet. The second part of my request concerned the nomination of a certain female former LASA management executive for appointment to a tribunal constituted under section 16 of the JSC Act to try the Constitutional Court’s complaint against Hlophe JP; her

⁹⁵ Hereafter referred to as *EFF I*.

⁹⁶ Under section 11(3) of PAIA my reasons for requesting access to the records were irrelevant to the decision of my request. I indicated them nonetheless.

appointment to the tribunal; followed by her resignation from it before it sat, and the reason for this odd development.⁹⁷

32. Copies of my request and its covering email are annexed marked ‘A’ and ‘B’. Following a reminder, your deputy information officer Nelson Phakola assured me that my request would be responded to. His email is annexed marked ‘C’.

33. In breach of his promise, and contradicting your absolutely sincere assurance that ‘The judiciary commits itself to ... transparency’,⁹⁸ since ‘South Africans need and deserve a credible, independent and truly transparent Judiciary’,⁹⁹ I received no response to my request.

34. That is, instead of being ‘truly transparent’ and conducting itself in conformity with one of the ‘core values’¹⁰⁰ of our open democracy, the JSC has showed itself to be truly opaque, ‘ducking and diving as if we want to cover up’,¹⁰¹ in the manner of apartheid officials after a death in detention.

35. In mitigation, however, the JSC’s failure to comply with its constitutional information transparency obligations is nothing out of the ordinary in democratic South Africa. On the contrary, it’s balefully typical of the ‘shocking dereliction of duties by public ... bodies to realise South Africans’ constitutional right of access to information’, as the Access to Information Network (‘ATI’) noted in 2016, reporting that that ‘46% of requests submitted to government were refused – i.e. no information was provided’ and that ‘58% of these refusals were deemed refusals – i.e. the requests were ignored.’ ‘Only 34% of requests submitted to government were granted in full.’ Pointing up these findings, a press release by the information transparency advocacy organisation Right2Know is annexed marked ‘D’.

36. Hoping to achieve the JSC’s compliance with my request by extra-curial means, I made a formal human rights violation complaint to the South African Human Rights Commission (‘SAHRC’) on 10 July 2019, protesting that by

⁹⁷ See paragraph 46 below.

⁹⁸ Media Briefing Announcement, Office of the Chief Justice, September 2019.

⁹⁹ SAnews.gov.za, 14 September 2019.

¹⁰⁰ Media Briefing Announcement, Office of the Chief Justice, September 2019.

¹⁰¹ IOL, 3 October 2019.

ignoring my request the JSC had infringed my fundamental civil right to public body information guaranteed by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution. Unfortunately, notwithstanding its special statutory powers under section 83(3) of PAIA to monitor public body compliance with PAIA; to assist the public access records; and to mentor public body information officers in how to respond lawfully to record requests and thereby respect and give effect to requesters' constitutional right to information, my formal complaint to this Chapter 9 institution responsible for overseeing public body compliance with PAIA¹⁰² was ultimately turned away on the basis that 'it may be best for you to proceed to court in this matter. The JCS's failure to respond to your request and/or provide you with information relating to the fees you need to pay to have your request processed is reviewable in court as you have noted.'¹⁰³

37. I demurred suing under section 78 of PAIA to compel delivery of the requested JSC records because the respondent in such an application would have to have been you in your capacity as JSC information officer *ex officio* under section 1 of the Act.¹⁰⁴ And suing you, the Chief Justice, who I respect and admire immensely, was a dreadful prospect. No simple matter either, because section 25 of the Supreme Court Act 59 of 1959 would have required that I first obtain the consent of your Constitutional Court to call you to court.

38. It's unimaginable to me that you knew about, much less acquiesced in, the illegal and unconstitutional tacit refusal of my PAIA request. Hence this appeal to you in your capacity as JSC information officer to see to your deputy information officer's belated compliance with it.¹⁰⁵

A FURTHER RECORDS REQUEST

39. I enclose a further PAIA request for access to records concerning the JCC's handling of my complaint against Waglay JP.

¹⁰² Section 84 of PAIA requires the SAHRC to report annually on this to the National Assembly.

¹⁰³ My complaint to the SAHRC and the correspondence between us that followed are privately accessible in a Dropbox folder online at <https://goo.gl/Ut9eH5>.

¹⁰⁴ Your deputy information officer hadn't actually decided my request; he'd merely assured me it would be responded to.

¹⁰⁵ Subsection 17(2) of PAIA provides: 'The information officer of a public body has direction and control over every deputy information officer of that body.'

OUTLINE OF FURTHER INTENDED COMPLAINTS BEING HELD UP BY NON-COMPLIANCE WITH PAIA REQUESTS

40. I've several further gross misconduct complaints to make against Mlambo JP, in which I'll demonstrate that he disregards the rule of law at whim; that 'the core values of integrity, impartiality and transparency, set out in the Judicial Norms and Standards'¹⁰⁶ have zero meaning for him; and that he is 'completely bereft of legal professional and judicial ethics'¹⁰⁷ – of personal ethics too – but I'm being obstructed and delayed in this by the JSC's tacit,¹⁰⁸ and LASA's express,¹⁰⁹ illegal and unconstitutional refusals to comply with my record requests.

41. Some of my further intended complaints against Mlambo JP will concern his procedural and ethical corruption of recruitment at LASA; his brazen illegal intrusion of himself as a *non-executive* director of LASA's Board by interfering in recruitment operations and decisions,¹¹⁰ and his disregard for the rule of law in flouting LASA's internal regulations – its Recruitment code¹¹¹ and Approval Framework – precisely governing recruitment procedure at LASA to ensure fairness; transparency; the elimination of improper considerations in employment decisions by executive management, such as a Board member's personal preference for a particular candidate; and the approval, by management executives delegated by the Approval Framework,¹¹² of the best available candidates for appointment to advertised vacant posts following their recommendation by selection panels constituted under the Recruitment code to shortlist, interview, select and recommend applicants for them.

¹⁰⁶ Media Briefing Announcement, Office of the Chief Justice, September 2019.

¹⁰⁷ SAnews.gov.za, 14 September 2019.

¹⁰⁸ Section 27 deems a failure to respond to a records request within 30 days to be a refusal.

¹⁰⁹ I have several applications pending against LASA to compel its delivery of records contemptuously refused on Chief Legal Executive Hundermark's instructions under section 45 of PAIA as an alleged waste of LASA's time; and a further such application is in preparation to compel the delivery of records he refused earlier this year. As said, my first five applications brought in the Magistrate's Court were conceded on Hundermark's instructions on the morning they were to be argued, and his waste-of-time story was abandoned. An application to compel LASA's full and proper compliance with its settlement agreement by turning over all requested records sued for was partially conceded by turning over further records in two batches; and an application is pending to compel delivery of the remainder, along with a compliant section 23 affidavit regarding non-existent records. The first of three High Court PAIA applications I brought in 2016, 2017 and 2018 was argued on 30 August 2019; judgment was reserved and is due imminently.

¹¹⁰ In his State of the Nation Address on 16 February 2018, President Cyril Ramaphosa mentioned this general problem at public entities: 'We have found ... that board members get involved in operational measures. ... We will remove board members from any role in [them].'

¹¹¹ Fully named 'Policies and Procedures on Recruitment, Induction, Probation and Relocation'.

¹¹² Section 8.2.2 (b) of LASA's Approval Framework governing 'Appointments', read with 'Key to Levels', stipulates that the management executives 'delegated for approval' of 'appointment recommendations' concerning grade LP10 'Senior Professional staff' posts like Senior Litigator posts are the 'NOE' who gives 'Final approval', subject to the assent of the 'CEO': she 'Must agree'.

42. Aided by internal documents and inside information leaked to me by sympathetic current and former high-ranking LASA officers, my investigation of the pervasive, systemic corruption of Senior Litigator recruitment at LASA,¹¹³ by drilling into it with multiple PAIA requests¹¹⁴ followed by multiple applications to court to compel compliance with them when illegally and unconstitutionally refused,¹¹⁵ has revealed that Mlambo JP has totally corrupted these recruitment processes, both openly on the record and covertly behind the scenes. That is, I've found this corruption to extend far beyond the original single instance I began probing with PAIA in August 2010.¹¹⁶

43. My relentless investigation of this corruption, undaunted by every obstacle thrown up to hamper it, has laid bare the radically contradictory, mutually exclusive and destructive lies told to me and to the highest authorities to cover it up,¹¹⁷ as well as LASA's ongoing illegal contraventions of section 53(4) of the Public Finance Management Act 1 of 1999¹¹⁸ in deliberately not filling its budgeted and funded Senior Litigator posts at the seats of the High Court at Pietermaritzburg and Durban¹¹⁹ with the appropriately qualified and experienced candidates duly recommended for them by a duly constituted selection panel in November 2009, exactly one decade ago.

44. All thanks to Mlambo JP, this corruption has totally deprived the indigent in KwaZulu-Natal of expert litigation services since the Board's creation of LASA's

¹¹³ A former LASA national management executive, who chaired the selection panel that interviewed applicants for the Mahikeng Senior Litigator post, informs me that the candidate he and his panel recommended was passed over and a rejected candidate was appointed instead. LASA (Hundermark) has illegally and unconstitutionally refused my request for access to material records in this regard, and I've sued for them; the case was argued in the High Court on 30 August 2019 and reserved judgment is pending. I've sourced a record showing that Mlambo JP, unlawfully sitting in committee with several management executives equally unqualified and unauthorised by the Recruitment code and Approval Framework, illegally re-interviewed and then illegally vetoed the appointments of three Senior Litigator candidates who'd been duly recommended by selection panels. How their posts were filled with other persons, after Mlambo JP's illegal abortions of their recruitments, is unclear to me because again LASA (Hundermark) is illegally and unconstitutionally withholding requested records in this regard; they're the subject of pending litigation to compel their production. Following the illegal abortions of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, the fully budgeted and funded posts have been corruptly 'frozen', unfilled for a decade, under a welter of changing, radically contradictory explanations, some of which are quoted with supporting records in my complaints to the JCC.

¹¹⁴ Virtually all illegally and unconstitutionally refused on shifting, spurious grounds, ultimately abandoned at court, some of which were then vexatiously revived. LASA's persistent aggravated PAIA delinquency since 2010 is chronicled in a 'Special Report' to the SAHRC, online at <https://goo.gl/Ut9eH5>.

¹¹⁵ My PAIA applications are accessible via the above hyperlink. I also used multiple pre-trial discovery processes; see footnote 13.

¹¹⁶ See footnote 113.

¹¹⁷ Mlambo JP's lies to the Justice Minister and to the chairperson of the Justice Portfolio Committee are treated in my fifth to eighth complaints. After I categorically refuted one of his blatant lies to them, it was feebly retracted in an affidavit made on his behalf and on his instructions after consultations, as 'an error', 'palpably an error'.

¹¹⁸ See the Constitutional Court's decision in *Zungu* quoted in footnote 27.

¹¹⁹ The Auditor General has never picked up and reported this major ongoing illegality involving underexpenditure of millions of rands annually.

Senior Litigator posts in November 2006 (two posts in especially populous KwaZulu-Natal, because of the special need and demand), along with seven other such posts in other provinces, after the National Assembly raised its concerns about reports received of deficient legal professional expertise available at LASA – repeatedly acknowledged by Mlambo JP and then Legal Development Executive, now Chief Legal Executive Patrick Hundermark¹²⁰ – and pertinently asked whether LASA employed Senior Litigators to remedy the problem.

45. On 30 August 2019, I argued an application¹²¹ in the High Court at Pietermaritzburg¹²² for an order compelling LASA’s surrender of duly requested records, all illegally and unconstitutionally refused on the disingenuous basis that my requests were an obvious waste of LASA’s time.¹²³ Judgment was reserved,¹²⁴ and I expect it will flush out numerous further documents needed to support more complaints against Mlambo JP concerning his wholesale corruption of recruitment operations at LASA and its cover-up – other grossly unethical and inappropriate job-fixing too:

46. In your Nelson Mandela Lecture you pointed out very correctly that ‘Power corrupts’, and asked the public to enquire, ‘Who are we uncomfortably or indecently friendly to?’¹²⁵ What I found out about this will inform a future complaint against Mlambo JP for his grossly unethical abuse of power as LASA chairperson in trading *favours* with LASA staff¹²⁶ – a matter notorious in the organisation according to a former national management executive who detailed it to me; but, as said, I’ve been held up in drawing and lodging this intended complaint by LASA’s¹²⁷ and the JSC’s¹²⁸ illegal and unconstitutional failures to turn over records needed for it.

¹²⁰ Since elevated to membership of LASA’s Board as an executive director.

¹²¹ See footnote 13.

¹²² It was launched in October 2016. By several means immaterial to detail here, Hundermark succeeded in delaying the hearing for years.

¹²³ Section 45 of PAIA permits the refusal of requests that are ‘manifestly frivolous or vexatious’ or unreasonably time-consuming to respond to. Since 2013, LASA (Hundermark) has reflexively refused all my requests on this spurious ground. At court in February 2016, a few months before I launched my first PAIA application in the High Court in October, LASA (Hundermark) abandoned this waste-of-time story and agreed to surrender all the records I’d sued for – then revived it to refuse my next and all following requests.

¹²⁴ It’s due imminently under section 5.2.6 of the Judicial Norms and Standards, allowing judges three months to write and deliver their reserved judgments.

¹²⁵ News24, 23 November 2019.

¹²⁶ That is, ‘corruption or sectional beneficial use or abuse of institutional power’, as you put it in paragraph 4 of *Public Protector*.

¹²⁷ One of the records for which I sued LASA in the application currently pending judgment in the High Court at Pietermaritzburg is the notice issued to a LASA officer calling on her to give reasons why she shouldn’t be suspended pending the determination of a charge of

47. I also intend making a second complaint against Waglay JP for tossing my petition for leave to appeal without the concurrence of the two other appeal judges named in the order dismissing it. An examination of the court file has established that there's no record whatsoever that they ever considered and decided my petition against me; and it's inconceivable to me that a judge can make a judicial decision without recording it – such as by signing below the words 'I agree'.

48. But there'll be little point in filing any further gross misconduct complaints with the JCC if, as it appears, it's unwilling to deal properly and expeditiously with complaints against 'certain people',¹²⁹ whom it's thus far 'shielded from being asked critical questions',¹³⁰ and from being held to account. It would be as futile as laying a complaint at a police station about a rogue policeman whose colleagues are more interested in protecting him than upholding the law.

RETALIATION

49. Interviewing for judicial appointments last month you said, 'I like people who speak truth to power'¹³¹ – having remarked in your judgments that taking on the powerful invariably comes at a heavy personal cost. In *EFF 1* you observed that 'allegations and investigation of improper or corrupt conduct against all, especially powerful public office-bearers, are generally bound to attract a very unfriendly response'.¹³² In *Public Protector*, referring to the apartheid and colonial eras 'preceding our constitutional democracy',¹³³ you recalled more specifically:

[4] Harsh consequences including smear or other writings bereft of intellectual integrity could flow from displaying the nerve to speak out or act against injustice, corruption or sectional beneficial use or abuse of

gross dishonesty brought against her. I'm informed that she responded by resigning, after which – despite this rotten background – she was fixed an appointment on the tribunal established to try Hlophe JP, from which she also strangely resigned. Part Two of my PAIA request for JSC records in March 2019 probes the reason for this.

¹²⁸ See Part Two of my PAIA request for JSC records, annexure 'X' hereto.

¹²⁹ News24, 23 November 2019.

¹³⁰ *Ibid.*

¹³¹ *Mail & Guardian*, 11 October 2019.

¹³² Paragraph 55.

¹³³ *Public Protector*, paragraph 3.

institutional power or public resources. It was potentially career-limiting¹³⁴ and even life-threatening for those who were supposed to know their place to seek to have the right thing done by challenging the “entitled” perpetrators of injustice or their allies.

50. A few days before making these observations in that judgment, you said much the same in a public talk: ‘Justice Mogoeng called for vigilance on how those who tried to investigate figures who were deemed untouchable were bombarded with insults and negativity even when there were indications that there was something worth probing.’¹³⁵ This sure speaks to me. My ‘allegations and investigation of improper or corrupt conduct against’¹³⁶ your judicial brethren Mlambo JP and Waglay JP, about whom I’d complained in court papers before approaching the JCC with the solid ‘indications that there was something worth probing’¹³⁷ did indeed ‘attract a very unfriendly response’.¹³⁸ For ‘challenging the “entitled” perpetrators of injustice’¹³⁹ and for having had ‘the nerve to speak or act out against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources’¹⁴⁰ by these ‘powerful public office-bearers’,¹⁴¹ exceedingly ‘harsh consequences ... flow[ed]’¹⁴² for me alright, and I attracted the most violent retaliation possible short of a bullet in the head.

51. To neutralise me as a whistleblower, in the manner of the Mob rubbing out witnesses, Mlambo JP and his consigliere Hundermark (fixed an acting judicial appointment for his loyalty) went all out to annihilate me by wrecking my reputation, destroying my legal career, depriving me of my livelihood, strangling

¹³⁴ Precisely for ‘displaying the nerve to speak or act out against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources’ in the apartheid era ‘preceding our constitutional democracy’, I lost my post as a full-time civil magistrate in the early 1990s. Threatening the Justice Department with a review application, I’d successfully challenged my irregular transfer out of town at the behest of then Deputy Minister of Justice Danie Schutte, mobilised against me by my opponent in a noise nuisance dispute (his noise), using his political connections with the local branch of the National Party in the Tammany Hall manner. (This back-story was reliably leaked to me by a senior court officer afterwards.) On the day the Director General backed down and cancelled the transfer, I was demoted to traffic court. (I then quit and joined the Bar.) As described in this ‘RETALIATION’ chapter, I paid yet again, now in the constitutional democratic era, the ‘career-limiting’ price of ‘challenging the “entitled” perpetrators of injustice or their allies’ in the judiciary.

¹³⁵ *The Mercury*, 18 July 2019. (The talk mentioned in paragraph 23 above.)

¹³⁶ Paragraph 55.

¹³⁷ *The Mercury*, 18 July 2019.

¹³⁸ *Ibid.*

¹³⁹ *Public Protector*, paragraph 4.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

me financially, and having me stripped of my fundamental civil rights in our democracy, like a ‘communist’ listed by the Minister of Justice during apartheid.

52. To discredit my complaints by discrediting me, Mlambo JP and his ‘all[y]’¹⁴³ Hundermark have conducted an ongoing smear campaign, defaming me to the Minister,¹⁴⁴ to the chairperson of the Justice Portfolio Committee,¹⁴⁵ to the courts,¹⁴⁶ and, most recently to you¹⁴⁷ – as witness Mlambo JP’s vicious *ad hominem* attack on me in his response to my complaints against him, wantonly smearing me as a ‘racist’¹⁴⁸ (who doesn’t ‘love this country and all its people’)¹⁴⁹ to dishonestly imply that my eight complaints against him were motivated by racial animus.

53. Mlambo JP’s ‘writings’¹⁵⁰ to me, to the Minister, to the Portfolio Committee, to the courts, and to you have been entirely ‘bereft of intellectual integrity’¹⁵¹ to say the least of it, and they reveal him to be a complete stranger to the truth.¹⁵²

54. For pleading Mlambo JP’s corruption in the Labour-¹⁵³ and Labour Appeal Courts,¹⁵⁴ and Waglay JP’s in the Magistrate’s Court¹⁵⁵ and High Court,¹⁵⁶

¹⁴³ *Ibid.*

¹⁴⁴ See my fifth to eighth complaints to JCC.

¹⁴⁵ *Ibid.*

¹⁴⁶ See my first complaint to the JCC. Other lying calumnies in aggravation of damages were catalogued in page after page of my heads of argument in my labour case.

¹⁴⁷ Mlambo JP improperly addressed his response to my complaints directly to you, not to the JCC. You appear not to have read it, however, and to have duly passed it on to the JCC, because during your presentation of the judiciary’s annual report in October 2019 you mentioned only the long pending complaints against Hlophe JP and Motata, Preller, Mavundla, and Phoswa JJ, and not my long pending complaints against Mlambo JP and Waglay JP, showing you weren’t aware of them.

¹⁴⁸ I categorically refute Mlambo JP’s despicable lie about me in light of some private information provided in my comments on his response.

¹⁴⁹ SAnews.gov.za, 14 September 2019.

¹⁵⁰ *Public Protector*, paragraph 4.

¹⁵¹ *Ibid.*

¹⁵² Mlambo JP’s dishonest ‘writings’ are the subject of my complaints to the JCC. My invited comments on his response to them show it to be equally dishonest.

¹⁵³ In my original statement of claim. On a silk’s advice as to trial strategy, I didn’t plead Mlambo JP’s misconduct in my amended statement of claim on which my case was tried, nor did I impeach it at trial; contrariwise, to confine the issues I stated that I held him clear.

¹⁵⁴ In my petition for leave to appeal. Neither the trial judge Cele J nor the appeal judge(s) Waglay JP (et al.) found any fault with my case against Mlambo JP made in my court papers. During argument I specifically asked Cele J whether he was minded to criticise any aspect of the manner in which I’d litigated against LASA, so that I might address it (LASA was seeking punitive costs for my criticism of Mlambo JP in my original statement of claim). He amiably waved me away, and later complimented both sides for our conduct in the case, after delivering judgment. Neither of his judgments dismissing my claim and my application for leave to appeal stated or implied anything adverse about my forthright criticism of Mlambo JP in my original statement of claim. Had Waglay JP been troubled by the equally mordant case I made against Mlambo JP in my petition for leave to appeal, and by my forthright identification of Cele J’s many radical reversible errors*, he could have said so and penalised me in costs. He didn’t, and in dismissing my petition made no costs order. (*As basic as misallocating the onus of proof (as he and LASA conceded); refusing to allow me to cross-examine key LASA witnesses specially subpoenaed for the purpose; failing to consider the contradictory, mutually exclusive and destructive excuses, unsupported and contradicted by the records, advanced for not appointing me; also his misconduct in dozing during the afternoon sessions and failing to prepare for the oral argument by reading my extensive heads of argument – as he jocosely volunteered in his chambers.)

¹⁵⁵ To illustrate the extent of the background corruption I was up against, I put the ‘memorandum’ up with one of my PAIA applications.

Mlambo JP and Hundermark contrived to have me struck off the roll of advocates with a complaint to the Bar in November 2015 that I'd scandalised the court.¹⁵⁷ Without hearing me, or even informing me of the complaint against me, the Bar resolved to apply that I be ignominiously expelled from its ranks. You explained its unreconstructed *denkstil* in *Public Protector*:

[3] For centuries preceding our constitutional democracy, untouchability was so entrenched or virtually institutionalised that it was unthinkable for some to challenge the apparent or actual criminality, naked injustice or corruption that reigned in our country. So normalised was impunity and injustice that some citizens were not only expected to accept their unjustly prescribed inferiority, but to also succumb to the “preferred” impermissibility for them to be critical of the untouchables.

55. When some months later I chanced to learn of the Bar's intention to have me professionally decapitated for not ‘succumb[ing] to the “preferred” impermissibility ... to be critical of the untouchables’¹⁵⁸ and for my allegedly unprofessional ‘challenge [to] the apparent or actual criminality, naked injustice or corruption that reigned in our country’ among ‘the untouchables’¹⁵⁹ in the judiciary, and I requested a hearing, the learned leaders of the Bar agreed to reverse their *ex parte* decision and deigned at last to observe that elementary principle of natural justice, the *audi alteram partem* rule, with which hitherto they appear to have been unfamiliar.

56. I answered the charge that I'd professionally disgracefully impugned Mlambo JP's and Waglay JP's integrity by furnishing the Bar with copies of my complaints to the JCC, and that was the end of it. Still, with news of the Bar's original decision having spread through the professional grapevine, the

¹⁵⁶ After discovering the ‘memorandum’, I launched a semi-urgent interdict application to the High Court at Pietermaritzburg. Although timeously delivered to the sheriff's office for service, the papers weren't served before the hearing as a result of a communication failure, and my case was struck from the roll.

¹⁵⁷ Nominally signed by Hundermark's then immediate subordinate and subaltern Legal Executive Thembile Mtati, but almost certainly drawn by Hundermark, the ‘complaint deals with the manner in which Advocate Brink conducts his litigation, [his] unwarranted, abusive and defamatory statements made against members of the bench ... Judge President Mlambo of the North and South Gauteng Divisions of the High Court [and] Judge President Waglay of the Labour Court ... [T]he conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate. The language used is unprofessional, the manner he relates to colleagues and Judges requires sanction.’

¹⁵⁸ *Public Protector*, paragraph 3.

¹⁵⁹ *Ibid.*

attempted hit on me severely damaged my reputation; I've picked this up in my interactions with my colleagues repeatedly.

57. Mlambo JP and Hundermark copied their complaint¹⁶⁰ to the Magistrates Commission, which passed it on to the Justice Department without thinking to investigate it. For the reason you identified in *Public Protector*, quoted just above, my contract as an acting magistrate in Eshowe, KwaZulu-Natal, was thereupon summarily terminated¹⁶¹ a few days later, without notice to me of the complaint, let alone a hearing, and I was thrown off the bench.¹⁶²

58. I only learned of LASA's hand in my sacking eighteen months later when at the end of May 2017 the Chief Magistrate at Pietermaritzburg telephoned to ask me to apply for another acting appointment at another court in the region, where I was needed to relieve the resident magistrate away on Regional Court test. To our mutual surprise, the Deputy Minister refused to appoint me, on account of the complaint against me.¹⁶³ That is, for 'displaying the nerve to speak out or act against injustice, corruption or sectional beneficial use or abuse of institutional power or public resources'¹⁶⁴ and for having had the temerity to 'challenge the apparent or actual criminality, naked injustice or corruption ... of the untouchables',¹⁶⁵ Mlambo JP and Hundermark had succeeded in getting me both fired and blacklisted¹⁶⁶ as a professional reprobate unfit to preside as a magistrate¹⁶⁷ – turning things seriously 'upside down'.¹⁶⁸

¹⁶⁰ Again, nominally signed by Mtati.

¹⁶¹ Like all acting magistrates on contract, I was employed on routinely renewed rolling three-month contracts, suddenly ended.

¹⁶² The reason my contract wasn't renewed, which my permanent colleague understood and conveyed to me, and which I accepted at the time, was that I'd served a maximum two years on contract. In fact, as I later learned, there's no such policy limit, and other acting magistrates have served very much longer.

¹⁶³ The Chief Magistrate's secretary emailed me on 1 June 2017: 'The Deputy Minister's office has sent us communication regarding a pending complaint from Legal Aid against you and so at this stage it does not as though your appointment will be authorised.'

¹⁶⁴ *Public Protector*, paragraph 4.

¹⁶⁵ *Public Protector*, paragraph 3.

¹⁶⁶ The Magistrate's Commission explained to the Chief Magistrate on 13 June 2017 that 'the complaint was lodged to prevent Mr Brink from being appointed as an Acting Magistrate due to his prior behaviour.' A 'Deputy Minister Memo' to the Justice Department's deputy information officer on 7 July 2017 confirmed: 'LASA informed the Magistrates Commission during November 2015 of their concerns for Adv Brink to be appointed as an Acting Magistrate. The Office of the Deputy Minister will in the normal course consult with the Magistrates Commission whether they have information on the their system regarding retired or ex magistrates or acting magistrates that the Deputy Minister should be aware of when considering applications from Heads of Court. It is during this process of consultation that the Magistrates Commission provided us with the concerns raised by LASA.'

¹⁶⁷ See footnote 157: '[T]he conduct of Advocate Brink is not befitting of an officer of the Court more so to act as a Magistrate.' My blacklisting likely also cost me a permanent appointment to a civil magistrate post for which I was interviewed in August 2017 ('Mr Brink, you have a very impressive CV'), after which, silence.

¹⁶⁸ *Public Protector*, paragraph 104.

59. Like former President Jacob Zuma resorting to every possible legal trick to derail his corruption prosecution, Mlambo JP's fixer Hundermark's next gambit to obstruct my investigation of his boss's corruption and finish me off good and proper was to apply¹⁶⁹ to the High Court at Pietermaritzburg in October 2016 for orders interdicting me¹⁷⁰ from accessing any more of LASA's records¹⁷¹ and banning me from seeking relief from the courts¹⁷² as an alleged 'vexatious litigant' – for repeatedly suing for records needed for my corruption investigation, whenever illegally and unconstitutionally denied me, including records Hundermark had formally pledged to hand over in a settlement agreement made¹⁷³ with me at the Magistrate's Court in February 2016 after totally capitulating to my first five PAIA applications brought to compel their delivery to me, as well as records he'd implicitly undertaken to provide in response to what we agreed would be my final PAIA request to be made in the matter of LASA's Senior Litigator posts.¹⁷⁴

60. A year later on 27 October 2017 the High Court at Pietermaritzburg found Hundermark's malicious, vexatious application to be so obviously devoid of merit that I wasn't even called on to argue, and it was dismissed immediately after LASA's counsel sat down.

THE POSSIBILITY OF A CONCILIATORY RESOLUTION

61. I conclude by recording that I'm not on any 'vindictive crusade'¹⁷⁵ (even less 'against the innocent').¹⁷⁶ Now that it's in the JCC's hands I appreciate I no longer control the ball, but for my own part I'd infinitely prefer a global, conciliatory resolution of my complaints to the JCC and my claims against

¹⁶⁹ With Mlambo JP's approval: as with all litigation by and against LASA, the case was reported to the Board in a quarterly litigation report by Hundermark's corporate legal department.

¹⁷⁰ With the same corrupt intent, Gavin Watson interdicted the Special Investigating Unit from investigating his and other Bosasa executives' tender corruption in 2009 – see 'How Bosasa's Watson evaded SIU attention', *Citizen*, 2 April 2019.

¹⁷¹ That is, deprived of my fundamental right to information in the democratic era, guaranteed by section 32 of the Bill of Rights.

¹⁷² That is, deprived of my fundamental right to seek relief from the courts in the democratic era, guaranteed by section 34 of the Bill of Rights.

¹⁷³ Via Legal Executive Mtati, present at court and taking and acting on Hundermark's telephonic instructions. The pledge was dishonoured: some records were turned over, but many key records were retained, and LASA's section 23 affidavits certifying non-existent records were uselessly non-compliant – as both the magistrate pointed out and as LASA's counsel conceded in court on the record. These failures to honour the settlement agreement are the subject of a pending application to compel full and proper compliance with it.

¹⁷⁴ My investigation was substantially complete.

¹⁷⁵ *Public Protector*, paragraph 104.

¹⁷⁶ *Ibid.*

LASA,¹⁷⁷ closing this sordid saga so that I might move on with my life after ten wasted, joyless years, completely consumed by my ongoing struggle for justice, at immense, irrecoverable personal cost. Which has only steeled my resolve.

62. Otherwise, *aluta continua* against ‘the “entitled” perpetrators of injustice’,¹⁷⁸ the ‘untouchables’¹⁷⁹ ‘completely bereft of legal professional and judicial ethics’,¹⁸⁰ with all my power and ‘deploying all the resources at [my] command.’¹⁸¹

63. As my indefatigable pursuit of justice in my case over the past decade¹⁸² must show beyond any doubt, clearly I don’t ‘know [my] place’¹⁸³ and don’t cringe before corrupt power, and I’m unshakeably determined to ‘have the right thing done’¹⁸⁴ in this matter by all and by any lawful means, whatever it takes.

Yours sincerely

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¹⁷⁷ On its end, all ‘the biggest law firm on the African continent’ (as LASA bills itself) has to do is return to the rule of law by (a) removing the illegal, off-the-record, unauthorised block on its recruitment process for its still vacant, still budgeted, still funded, critical, top legal professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, which was illegally ‘frozen’ off the record ten years ago this month when I was unexpectedly and disagreeably recommended for it instead of Mlambo JP’s judicial friend Ngcamu; (b) quit contravening section 53(4) of the PFMA by at last applying the salary funding it has budgeted for and received, and still budgets for and receives, for the post ever since it was created in November 2006; (c) resume due process by concluding and finalising my appointment with effect from 1 January 2010, the earliest date I said I could begin when asked about this by the selection panel – in which event I’ll withdraw my pending court applications; abandon my further intended applications currently in preparation; withdraw my complaints to the JCC; and abandon my further intended complaints, currently on hold pending the delivery of duly requested records needed to support them.

¹⁷⁸ *Public Protector*, paragraph 4.

¹⁷⁹ *Public Protector*, paragraph 3.

¹⁸⁰ SAnews.gov.za, 14 September 2019.

¹⁸¹ *EFF 1*, paragraph 86.

¹⁸² Numerous litigations, many shelves full of papers.

¹⁸³ *Public Protector*, paragraph 4.

¹⁸⁴ News24, 23 November 2019.