

IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 5042/22P

In the matter between:

**ANTHONY BRINK**

and

**THE INFORMATION OFFICER,  
JUDICIAL SERVICE COMMISSION**



**APPLICANT**

**RESPONDENT**

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**FILING NOTICE**

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TO: REGISTRAR  
HIGH COURT  
PIETERMARITZBURG

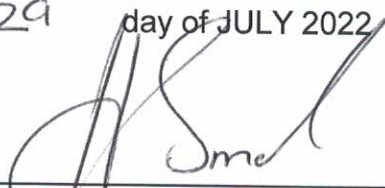
AND  
TO: ANTHONY BRINK  
**APPLICANT**  
LOCAL ADDRESS:  
55 ASHBY ROAD  
PRESTBURY  
PIETERMARITZBURG  
E-MAIL: anthonybrink.sa@gmail.com

S I R S

**KINDLY TAKE NOTICE** that the Respondent hereby files the Answering Affidavit of **KUTLWANO MORETLWE** and Explanatory Affidavit of **KUTLWANO MORETLWE** evenly herewith.

.../2

DATED at PIETERMARITZBURG this <sup>h</sup> 29 day of JULY 2022



---

H SMAL (Senior Assistant State Attorney)  
**RESPONDENT'S ATTORNEY**  
STATE ATTORNEY (KWAZULU-NATAL)  
6<sup>TH</sup> FLOOR, METLIFE BUILDING  
391 ANTON LEMBEDE (formerly Smith) STREET  
DURBAN  
TEL: (033) 3555210  
FAX: (031) 3062448  
E-MAIL: HSmal@justice.gov.za

REF: 116/0014328/22/N/P44  
/hvl

C/O STATE ATTORNEY (KWAZULU-NATAL)  
(SATELLITE OFFICE)  
2<sup>ND</sup> FLOOR, MAGISTRATE'S COURT BUILDING  
302 CHURCH STREET  
PIETERMARITZBURG

**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU- NATAL DIVISION, PIETERMARITZBURG**

**CASE NO: 5042/22P**

In the matter between:

**ANTHONY BRINK**



**APPLICANT**

and

**THE INFORMATION OFFICER-  
JUDICIAL SERVICE COMMISSION**

**RESPONDENT**

---

**RESPONDENT'S ANSWERING AFFIDAVIT**

---

1.

I, the undersigned,

Kutlwano Moretlwe

1

*M.F*  
*K.F*

Do hereby make oath and state as follows:

2.

I am an adult female employed by the Respondent as State Law Advisor, stationed at number 188, 14<sup>th</sup> Road, Noordwyk, Midrand, Gauteng.

3.

I am authorised to depose of this affidavit on behalf of the Respondent.

4.

The facts contained herein, unless otherwise stated or indicated, are within my personal knowledge and are to the best of my knowledge and belief, both true and correct.

5.

Where I rely on the factual information obtained from the others, their confirmatory affidavits will accompany mine.

6.

I have read the Applicant's founding affidavit deposed to by the Applicant, Anthony Brink with the annexures thereto.

7.

I reply thereto as set out hereunder. Where I make legal submission I do so on the advice of my legal representatives.

2

M.P.  
K.F.

8.

Where I do not respond to specific allegations contained in the Applicant's founding affidavit, which I have read, it should be taken as denied save as it appears from the context.

**BACKGROUND:**

9.

The Applicant lodged two complaints with the Judicial Service Commission against Judge Presidents Mlambo and Waglay.

10.

The complaint against Judge President Mlambo was initially allocated to Justice Ponnan and Deputy Judge President Goliath, who recommended that the complaint be dealt with in terms of section 17 of the Judicial Service Act<sup>1</sup>.

11.

The then Deputy Chief Justice, Justice Zondo designated Justice Zondi to deal with the Applicant's complaint.

12.

Justice Zondi subsequently dismissed the Applicant's complaint. The Applicant then lodged an appeal which was considered in December 2021 and the Secretariat is awaiting the written outcome thereof.

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<sup>1</sup> Act No 9 of 1994

MJ  
K-F

13.

The Applicant's complaint against Judge President Waglay was allocated to Deputy Judge President Goliath. Unfortunately, the Secretariat does not have any further information and records about this complaint.

**RESPONSE TO MR. ANTHONY BRINK'S FOUNDING AFFIDAVIT AND  
SERIATIM RESPONSE TO THE ATTACHMENTS THEREOF:**

**RESPONSE TO THE FOUNDING AFFIDAVIT**

14.

**AD PARAGRAPH 1 - 14**

The contents therein are noted.

**SERIATIM RESPONSE TO THE RECORDS REQUESTED:**

**PART ONE**

15.

**AD PARAGRAPH 1**

The records show the current membership of the JSC have been updated and such fact has been acknowledged by the Applicant at paragraph 13 (thirteen) of his founding affidavit. Therefore, the Applicant is in possession of this information.

M.F.  
K.F.

16.

**AD PRARAGRAPH 2**

The requested information is attached herein as **Annexure "A"**.

17.

**AD PARAGRAPH 3**

I have been advised by Mr. Chiloane that the meetings referred to by the Applicant never took place hence the unavailability of the minutes pertaining thereto.

However, Mr. Chiloane has indicated his unwillingness to submit a confirmatory affidavit supporting this assertion.

18.

**AD PARAGRAPH 4.**

The decision that the Applicant is referring to does not exist. However, the Respondent is in possession of a letter designating Justice Zondi to deal with the Applicant's complaints in terms of section 17 of the Judicial Service Commission, Act 9 of 1994 ("**The JSC ACT**"). The letter is attached as **Annexure "B"**.

- Section 17 relates to an inquiry into serious, non-impeachable complaints by the Chairperson or member of the Committee.
- Furthermore, Judge President Mlambo was never charged with any of the things that the Applicant refers to in this paragraph.

M.P.  
K.F.

- The Applicant's complaints were duly attended to by Justice Zondi and were subsequently dismissed.
- The Applicant appealed the dismissal of his complaints.
- Such appeal was considered in December 2021, the written outcome thereof is awaited and will be conveyed to the Applicant once it becomes available.

19.

**AD PARAGRAPH 5**

There is no decision that has been taken in respect of the allegations contained in paragraph 5 (five) of the Applicant's Founding Affidavit.

20.

**AD PARAGRAPH 6.**

Previously there was no letter that was issued to members when they were allocated cases dealing with complaints. The allocation was done randomly. The letter appointing Justice Molemela is attached as **Annexure "C"**.

21.

**AD PARAGRAPH 7.**

The complaint by the Applicant was allocated randomly to Justice Goliath. There is no letter to that effect.

M.P.  
K.F.

22.

**AD PARAGRAPH 8.**

I perused Ms. Bios's e-mails and I could not locate such an instruction. Additionally, Ms. Bios's email account contains some information from 2018 and 2019 only. There are no e-mails prior to that period.

23.

**AD PARAGRAPH 9.**

I wish to state that there are no records of a note or letter under which the late JSC Secretary, Ms. Bios, allegedly resubmitted the Applicant's complaints to the Judges who might have requested them in an indexed and paginated format.

24.

**AD PARAGRAPH 10**

According to the e-mails that are available in Ms. Bios's computer system there is no advice from the JSC to the chairperson of the KwaZulu-Natal Society of Advocates in February or March 2018 that the Society should apply to the High Court for an order to struck off the Applicant from the roll of advocates.

However, there is an e-mail dated the 25<sup>th</sup> October 2018 in which the KZN Bar Council allegedly informed Ms. Bios that they are not going to bring any application to strike off the Applicant from the roll of Advocates, pending the finalisation of the investigation of the two complaints by the JSC (*Annexure "D"*)

MAD  
K.F

25.

**AD PARAGRAPH 11**

I wish to state that there are no records of a note, email or other correspondence with the JSC by Mlambo JP or LASA Chief Executive Patrick Hundermark or other LASA officer motivating the JSC's advice to the Society in February or March 2018 that it should apply for the Applicant to be struck off the roll of advocates.

I have also gone through Ms. Bios's e-mails and such correspondence cannot be traced.

26

**AD PARAGRAPHS 12 and 13**

The requested information is attached (*Annexure "E" and "F"*)

27.

**AD PARAGRAPH 14**

According to the records Ms. Bios did enquire about the issue of the Applicant being struck off (*Annexure "G"*), however, there is no written instruction from the JCC members.

28.

**AD PARAGRAPH 15**

I checked for this instruction but could not find it.

2

8

M.P.  
h.f.

**AD PARAGRAPH 16**

I could not find such correspondence between the then JSC Secretary, Ms. Bois and any judge/s on the JCC concerning the loss of the Applicant's original complaint against Waglay JP. I only have the attached e-mail (**Annexure "H"**) where Ms. Bois indicated that she cannot locate the complaint against JP Waglay and asked the Applicant to resend it.

30.

**AD PARAGRAPH 17**

There is no record of the original decision made by the chairperson of the JCC or delegated members to dispose of the Applicant's capital complaint against Mlambo JP under section 17 of the JSC Act.

31.

**AD PARAGRAPH 18**

There is no record of a written instruction given either by the Chairperson or JCC member/s in February 2020 to ask the Applicant for copies of his complaints against Mlambo JP and Waglay JP.

32.

**AD PARAGRAPH 19**

The appointments of Justices Ponnann and Goliath were approved by the Minister but the appointment letters cannot be traced.

M P  
K.F

33.

**AD PARAGRAPH 20**

The recommendation cannot be traced.

34.

**AD PARAGRAPH 21**

The Respondent is in possession of the letter designating Justice Zondi to deal with the Applicant's complaints in terms of section 17 of the Judicial Service Commission, Act 9 of 1994 ("**The JSC ACT**"). The letter is attached as **Annexure "B"**.

35.

**AD PARAGRAPH 22**

The requested correspondence is attached as **Annexure "I"**.

36.

**AD PARAGRAPH 23**

I wish to state that such correspondence cannot be found.

37.

**AD PARAGRAPH 24**

The appeal roll for December 2021 indicating JCC members who dealt with the Applicant's appeal is attached as **Annexure "J"**.

M.J.  
K.F.

38.

**AD PARAGRAPH 25**

The request is too general and the Applicant should indicate specific documents he is requesting.

39.

**AD PARAGRAPH 26**

I wish to state that such records do not exist.

40.

**AD PARAGRAPH 27**

The reports that the Applicant is requesting are part of the annual report mentioned in paragraph 28 below.

41.

**AD PARAGRAPH 28**

The JSC does produce annual reports, however such reports only deal with statistics of how many complaints were received in a year, how many are resolved and pending at the time the report is published. The reports are available to the public under the JSC annual reports.

42.

**AD PARAGRAPH 29**

M.J.  
K.F.

The requested correspondence is attached as **Annexure "K"**.

43.

**AD PARAGRAPH 30**

I wish to state that the Respondent does not have a manual published under section 14 (1) of PAIA. However, the Applicant should approach the Office of the Chief Justice as they have such a manual.

44.

**AD PARAGRAPH 31**

The request by the Applicant is handled by the deputy information officer through the office of the Secretariat. The relevant document is attached as **"Annexure L"**.

**PART TWO**

45.

I have been advised that the information that is requested in part two of the Applicant's founding affidavit is privileged and therefore cannot be disclosed.

46.

M-F  
K-F

Furthermore, I have been advised that such request by the Applicant can, in terms of section 45 of the PAIA Act, be viewed as a vexatious request and cannot be acceded to.

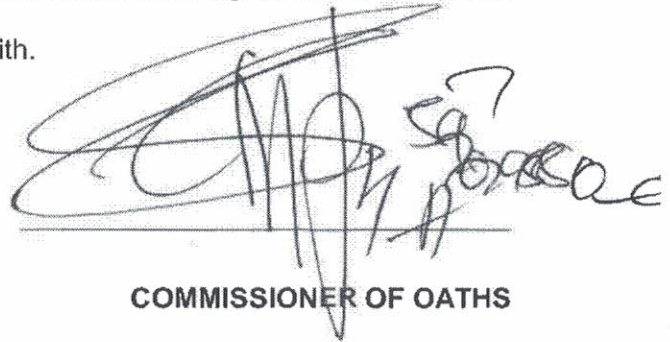
47.

I attach hereto "**Annexure M**", an explanatory affidavit in terms of section 23 of Act 2 of 2000.



**DEPONENT**

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to at MIDRAND before me on this 25 day of JULY 2022 the regulations contained in government notice no. R1258 of 21 July 1972 having been complied with.



**COMMISSIONER OF OATHS**

13



M.F.  
K.F.

FULL NAME:

DELO MATH

BUSINESS ADDRESS:

GRACE EMERGENCY

CAPACITY:

SCAFFOLD

AREA:

MIDRAND





188, 14th Road, Noordwyk, Midrand, 1685  
Private Bag X10, Marshalltown, 2107  
Tel: +27 10 493 2500 (Switchboard)  
E-mail: info@judiciary.org.za  
www.judiciary.org.za

ANNEXURE 'A'

## JUDICIAL CONDUCT COMMITTEE

### List of the current JCC Members

1. Justice B E Nkabinde
2. Justice D Zondi
3. Justice T M Makgoka
4. Judge M Victor

M.P.  
K.F.





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**JUDICIAL CONDUCT COMMITTEE**

Enq: K Moretlwe  
Tel: (010) 493 2652  
Email: [KMoretlwe@judiciary.org.za](mailto:KMoretlwe@judiciary.org.za)

21 February 2020

**The Honourable Judge D H Zondi**  
**Judge of Appeal of the Supreme Court of Appeal**  
**P. O. Box 258**  
**Bloemfontein**  
**9300**

Dear Justice Zondi

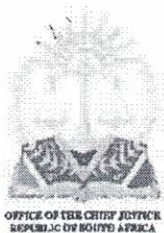
**RE: COMPLAINT BY ADVOCATE A BRINK AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT REF NO: JSC/533/17**

1. The Secretariat of the Judicial Conduct Committee (the JCC) received a complaint from Advocate A Brink against Judge President Mlambo of the Gauteng Division of the High Court.
2. The complaint was referred to two members of the JCC, namely, Ponnar JA and Goliath DJP, to consider and deal with in terms of the Judicial Service Commission Act, No. 9 of 1994, (JSC Act). They have recommended that the complaint be dealt with in terms of section 17 of the JSC Act which entails that I designate a member of the JCC to inquire into the complaint in order to determine its merits.
3. I write to advise you that in terms of section 17(1)(b) of the JSC Act, I hereby designate you, in your capacity as a member of the Committee, to deal with the complaint in terms of section 17 of the JSC Act.

Kind regards,

**R M M ZONDO**  
**Deputy Chief Justice of the Republic of South Africa**  
**Chairperson of the Judicial Conduct Committee**





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Private Bag X10, Mersharikown, 2107  
Tel: +27 10 493 2500 (Switchboard)  
E-mail: info@judiciary.org.za  
www.judiciary.org.za

**JUDICIAL CONDUCT COMMITTEE**

Enq: Lynette Bios  
Tel: (010) 493 2577  
Email: [lbios@judiciary.org.za](mailto:lbios@judiciary.org.za)

29 March 2019

**The Honourable Judge M B Molamela**  
**Judge of Appeal of the Supreme Court of Appeal**  
**P. O. Box 258**  
**Bloemfontein**  
**9300**

Dear Judge

**RE: COMPLAINT BY ADVOCATE A BRINK AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG DIVISION OF THE HIGH COURT REF NO: JSC/533/17**

1. The Secretariat of the Judicial Conduct Committee (the JCC) received a complaint from Advocate A Brink against Judge President Mlambo of the Gauteng Division of the High Court.
2. The complaint was referred to two members of the JCC, namely, Ponnar JA and Goliath DJP, to consider and deal with in terms of the Judicial Service Commission Act, No. 9 of 1994, (JSC Act). They have recommended that the complaint be dealt with in terms of section 17 of the JSC Act which entails that I designate a member of the JCC to inquire into the complaint in order to determine its merits.
3. I write to advise you that in terms of section 17(1)(b) of the JSC Act, I hereby designate you, in your capacity as a member of the Committee, to conduct the inquiry as contemplated in section 17 of the JSC Act in respect of this complaint.

Kind regards,

**R MM ZONDO**

**Deputy Chief Justice of the Republic of South Africa**  
**Chairperson of the Judicial Conduct Committee**

**Kutlwano Moretlwe**

---

**Subject:** FW: Outstanding complaints

---

**From:** Lynette Bios  
**Sent:** Thursday, 25 October 2018 10:42  
**To:** Judge-V Ponnan <VPonnan@sca.judiciary.org.za>  
**Cc:** Veruschka DeKlerk <VDeKlerk@sca.judiciary.org.za>  
**Subject:** Outstanding complaints

Dear Judge Ponnan

The following complaints are still outstanding:

1. **Advocate A Brink / JP Mlambo and JP Waglay**

The complainant was given both the JP's response to which he has replied. Judge Ponnan had asked that I inquire from the KZN Bar how far are they with bringing the application to strike Advocate Brink off the roll. They informed me that they are waiting for the JSC to complete its investigation into the two complaints.

I await your advices on the way forward.

Kind regards

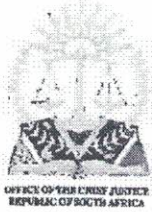
Lynette

Lynette Bios  
Senior State Law Adviser  
Judicial Service Commission  
Office of the Chief Justice  
Tel: (010) 4932577  
Fax: 086 6409601



Office of the Chief Justice  
Republic of South Africa

M.P.  
K.F.



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**JUDICIAL CONDUCT COMMITTEE**

Enq: Lynette Bios

Tel: (010) 493 2500 (switchboard)

Fax: 086 640 9601

The Honourable Judge President Mlambo

Judge President for the Gauteng Division of the High Court

Private Bag X87

Pretoria

00001

Our Ref: JSC/533/17

Dear Judge President Mlambo

**RE: COMPLAINT BY ADVOCATE BRINK AGAINST YOUR GOOD SELF**

The Secretariat of the Judicial Service Commission has received a complaint from Advocate Brink against your good self.

For ease of reference the complaint is annexed hereto. You are kindly requested to furnish the Chairperson with a response to this complaint by no later than 08 June 2018.

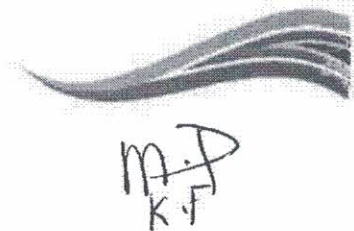
Yours sincerely,



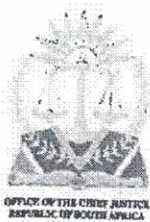
**L BIOS**

**Secretariat for the Judicial Service Commission**

Date: 25/05/2018



ANNEXURE 'F'



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Tel: +27 10 493 2500 (Switchboard)  
E-mail: info@judiciary.org.za  
www.judiciary.org.za

---

**JUDICIAL CONDUCT COMMITTEE**

Enq: Lynette Bios

Tel: (010) 493 2500 (switchboard)

Fax: 086 640 9601

The Honourable Judge President B Waglay

Judge President of the Labour and Labour Appeal Court

Private Bag X 52

Braamfontein

2017

Dear Judge President Waglay

**RE: COMPLAINTS BY ADVOCATE A BRINK AGAINST YOUR GOOD SELF**

The Secretariat of the Judicial Service Commission has received complaints from Advocate Brink against your good self.

For ease of reference the complaint is annexed hereto. You are kindly requested to furnish the Chairperson with a response to this complaint by no later than 29 June 2018.

Yours sincerely,



**L BIOS**

**Secretariat for the Judicial Service Commission**

Date: 19/06/2018



## Kutlwano Moretlwe

---

**From:** Lynette Bios  
**Sent:** Monday, 13 August 2018 08:40  
**To:** Judge-V Ponnar; Judge-P Goliath  
**Cc:** Veruschka DeKlerk; Elmarie Sievers  
**Subject:** FW: Subject: RE: Advocate Anthony Brink

Dear Committee Members

Kindly note the response from the KZN Bar Council.

Kind regards

Lynette

---

**From:** Gardner van Niekerk [mailto:gardner@law.co.za]  
**Sent:** Wednesday, August 08, 2018 3:30 PM  
**To:** Lynette Bios  
**Cc:** kznbar@law.co.za  
**Subject:** Subject: RE: Advocate Anthony Brink

Dear Ms Bios

Thank you for the enquiry of today's date.

The bar council decided that it will for the time being not institute strike-off proceedings against Brink and that it will await the outcome of the complaint to the Judicial Service Commission. We are aware that there is nothing preventing the Society from moving an application but we are reluctant to do so because of the cost implications of such an application. We will know where we stand once the complaint to you has been dealt with and a decision will then be made as to the question of an application.

Kind regards

ADVOCATE G O VAN NIEKERK SC  
Chairman, Society of Advocates, KZN  
6 Durban Club Place  
Durban, 4001  
[gardner@law.co.za](mailto:gardner@law.co.za)  
[michellemack@law.co.za](mailto:michellemack@law.co.za)  
Telephone: (031) 301 8693  
Fax: 0866 824 802  
Home: (031) 209 7660  
Cell Phone: 082 555 1183

M.P.  
K.F.

**Kutlwano Moretlwe**

---

**From:** Lynette Bios  
**Sent:** Thursday, 14 June 2018 11:37  
**To:** Anthony Brink  
**Subject:** RE: Complaints to the JSC against Waglay JP and Mlambo JP

Dear Advocate Brink

Your email refers.

For some strange reason I cannot locate the complaint against Waglay JP. Is it possible for you to email same to me and I will follow it up?

Kind regards

Lynette

**From:** Anthony Brink [mailto:anthonybrink.sa@gmail.com]  
**Sent:** Monday, June 11, 2018 1:22 PM  
**To:** Lynette Bios  
**Subject:** Complaints to the JSC against Waglay JP and Mlambo JP

Dear Ms Bios

Thanks for furnishing me with Mlambo JP's response to my eight complaints against him, received on Friday the 8th instant.

On 29 August 2017 you kindly acknowledged receipt of my complaint against Waglay JP (and of my second and further complaints against Mlambo JP).

I attach a copy of your letter of acknowledgment, marked up to highlight its particular reference to my complaint against Waglay JP.

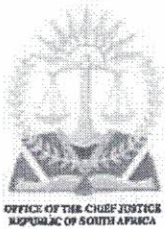
For easy reference, a copy of my complaint against Waglay JP may be accessed here: <https://goo.gl/Q4Yo8h>.

I write to enquire when I might receive Waglay JP's response to my complaint against him.

Please note my change of residential address; it's now: 36 Pearson Street, Eshowe 3815.

Yours sincerely

Anthony Brink



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Private Bag X10, Marshalltown, 2107  
Tel: +27 10 493 2500 (Switchboard)  
E-mail: [info@judiciary.org.za](mailto:info@judiciary.org.za)  
[www.judiciary.org.za](http://www.judiciary.org.za)

## JUDICIAL CONDUCT COMMITTEE

Enq: Ms Kutlwano Moretlwe  
Tel: (010) 493 2652  
Email: [KMoretlwe@judiciary.org.za](mailto:KMoretlwe@judiciary.org.za)

01 July 2020

**The Honourable Judge D Mlambo**  
**Judge President of the Gauteng Division of the High Court**  
**Private Bag X 442**  
**Pretoria**  
**0001**

Dear Judge President Mlambo

**RE: COMPLAINTS LODGED AGAINST YOU BY ADV BRINK**

[1] We refer to the complaints lodged by Adv Brink which have been referred by the Deputy Chief Justice to Zondi JA for consideration.

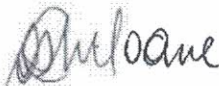
[2] We have been directed by Zondi JA to write to you as follows:

[3] In the affidavit deposed by Mr Thembile Mtati, which is an annexure to Adv Brink's first complaint, it was alleged that the complainant arrived unannounced in your chambers, a conduct to which you allegedly took strong exception. The complainant vehemently denied this allegation in his complaint and reply. This allegation is not addressed in the answering affidavit.

[4] You are kindly requested to depose to an affidavit indicating whether the complainant did arrive in your chambers unannounced as alleged by Mr Mtati.

[5] May we please have your affidavit by no later than 14 July 2020?

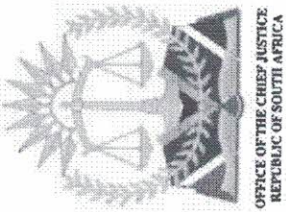
Yours sincerely,



Sello Chiloane  
Secretary, Judicial Conduct Committee



# ANNEXURE 'J'



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[www.judiciary.org.za](http://www.judiciary.org.za)

## Judicial Conduct Committee Meeting

10-11 December 2021

### Appeal List

Name of the Complainant	Name of Respondent	Member who considered the complaint at first instance	Appeal Panel
1. Adv Brink	Judge President Mlambo	Justice Zondi	Justice Nkabinde, Justice Makgoka and Judge Victor

M.F.  
K.F.

Annexure "K"

Constitutional Court  
Private Bag X1  
Constitution Hill  
Braamfontein  
Johannesburg  
2017



Tel: (011) 838 2010  
Fax: 086 649 0944

REPUBLIC OF SOUTH AFRICA  
JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios  
Tel: (011) 838 2021  
Fax: 086 649 9601

26 July 2013

The Hon Justice D Moseneke  
Deputy Chief Justice of the Republic of South Africa  
Private Bag X1  
Braamfontein  
2017

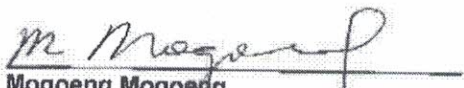
Dear Deputy Chief Justice Moseneke

**CHAIRPERSONSHIP OF THE JUDICIAL CONDUCT COMMITTEE**

By virtue of the powers vested in me in terms of section 8(3) of the Judicial Service Commission Act, No.9 of 1994, I hereby delegate all my powers and functions as Chairperson of the Judicial Conduct Committee to you.

May I take this opportunity to thank you for the sterling work you have done in leading the Committee.

With kind regards

  
Mogoeng Mogoeng  
Chief Justice of the Republic of South Africa  
Chairperson of the Judicial Conduct Committee

  
K.F

ANNEXURE L



INFORMATION  
REGULATOR  
(SOUTH AFRICA)

*Ensuring protection of your personal information  
and effective access to information*

## REGISTRATION CERTIFICATE

Registration Number: 82895/2021-2022/IRRTT

This is to certify that **Memme Sejosengwe** and **Adv Marelize Potgieter, Adv Darol Holby, Nelson Phakola** have been registered with the Information Regulator by **Office of the Chief Justice** as the Information Officer and Deputy Information Officers respectively, in terms of section 55(2) of the Protection of Personal Information Act 4 of 2013 with effect on the 10<sup>th</sup> of January 2022.

Chief Executive Officer  
INFORMATION REGULATOR

**NB:** Please note that it is your responsibility to ensure that the particulars of an Information Officer and/or Deputy Information Officer(s) are correct and updated on an annual basis or as and when it becomes necessary.

M.P.

IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU- NATAL DIVISION-PIETERMARITZBURG

CASE NO: 5042/22P

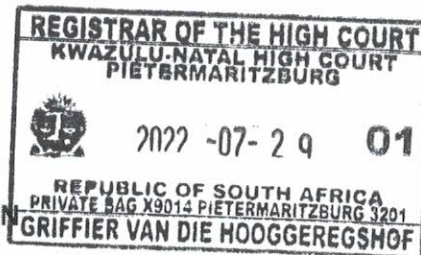
In the matter between:

ANTHONY BRINK

APPLICANT

and

THE INFORMATION OFFICER-  
JUDICIAL SERVICE COMMISSION



RESPONDENT

---

RESPONDENT'S EXPLANATORY AFFIDAVIT

---

1.

I, the undersigned,

Kutlwano Moretlwe

Do hereby make oath and state as follows:

2.

1

M.F.  
K.F.

I am an adult female employed by the Respondent (JSC) as State Law Advisor, stationed at number 188, 14<sup>th</sup> Road, Noordwyk, Midrand, Gauteng.

3.

I am authorised to depose of this affidavit on behalf of the Respondent.

4.

The facts contained herein, unless otherwise stated or indicated, are within my personal knowledge and are to the best of my knowledge and belief, both true and correct.

5.

Where I rely on the factual information obtained from the others, their confirmatory affidavits will accompany mine.

6.

I have read the Applicant's founding affidavit deposed to by the Applicant, Anthony Brink with the annexures thereto.

7.

I reply thereto as set out hereunder. Where I make legal submission I do so on the advice of my legal representatives.

8.

I depose to this Affidavit to provide clarity to the above Court in terms *section 23 of the Promotion of Access to Information Act, 2 of 2000 ("The Act")* and set out the steps that have been taken to find the records that were requested by the Applicant.

2

Handwritten signature and initials, possibly 'M.F.' or 'K.F.', in the bottom right corner of the page.

9.

The Act enjoins a public body, through its information officer, to notify the requester, by way of an affidavit or affirmation, that it is not possible to give access to a requested record that:

“(1) (b) (i) is in the public body’s possession but cannot be found or  
(ii) does not exist.”

10.

I wish to state that I started working for the JSC in October 2019 as a Law Researcher.

11.

I was appointed as a State Law Advisor with effect from 01<sup>st</sup> October 2020.

12.

My portfolio falls within the Secretariat Division of the Respondent (JSC) and responding to requests for information is within my core functions.

13.

The Applicant’s complaint was previously handled by Ms. Lynnette Bios who was employed as a State Law Advisor. Unfortunately, Ms. Bios passed on in September 2019.

14.

Mr. Chiloane briefly took over the duties that were performed by Ms. Bios until my appointment in October 2020.

M.P.  
K.F.

15.

After Ms. Bios's demise, her account was closed and her computer was allocated to another colleague.

16.

I approached the Acting Director in the Office of the Chief Justice, Mr. Ramatlapeng to assist in checking information from Ms. Bios's disabled account.

17.

Mr. Ramatlapeng confirmed that the account has been disabled in compliance with the Department's procedure of disabling an account when the user has passed on or left the Department.

18.

Mr. Ramatlapeng indicated that since the Office of the Chief Justice's server was hacked or crashed, emails from 2019 backwards might not be found.

19.

He further advised that there is a possibility that Ms. Bios's e-mails might not have been backed up by IT as the Department only started using Mimecast (backup system) after Ms. Bios had passed on.

20.

Mr. Ramatlapeng then sent a technician to enable Ms. Bios's account and retrieve any relevant information contained therein.

M.P.  
KIF

21.

The technician managed to enable the account and managed to retrieve some documents in Ms. Bios's desktop.

22.

I went through the documents but some of the information that is requested by the Applicant could not be located.

23.

Furthermore, my supervisor, Mr. Potgieter had requested, and was granted permission for me to have access to Ms. Bios's e-mails.

24.

I searched through Ms. Bios's e-mails looking for the information that the Applicant referred to in his PAIA request but I managed to find some but not all the requested correspondence.

25.

Section 23 (4) of the Act stipulates that:

*"if after notice is given in terms of subsection (1), the record in question is found, the requestor concerned must be given access to the record unless access is refused on a ground for refusal contemplated in Chapter 4 of this part."*

MJP  
KIT

The Respondent will comply with this requirement should any of the requested information be found.

*Baeth*

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn before me at Midrand on this 25 day of July 2022, after the provisions in terms of the Regulation contained in Government Notice No. R1258 published in the Government Gazette No 36919 of 21 July 1972 and Government Notice No. 1648 dated 19 August 1977, has been duly complied with.

*[Signature]*  
COMMISSIONER OF OATHS

*SGT*  
*[Signature]*

FULL NAMES:

BUSINESS ADDRESS:

CAPACITY: AFRICAN POLICE SERVICE

AREA:

CLIENT SERVICE CENTRE
2022 -07- 25
MIDRAND
SUID AFRIKAANSE POLISIEDIENS

*DET. MPA N*  
*CRP ORANGE BLENCH*

*SERGEANT*

*MIDRAND*

*IMP*  
*KIF*