PUBLIC PROTECTOR
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NATIONAL OFFICE
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PUBLIC PROTECTOR COMPLAINTS FORM

FOR OFFICE USE
File number: .....
Date received: .....
Received by: .....

YOUR DETAILS

1. Your name	Adv Anthony Brink
2. Your address and telephone and telephone number(s)	36 Pearson Street, Eshowe 3815, KwaZulu-Natal 083 779 4174

TELL US ABOUT THE COMPLAINT

3. Is the complaint still happening?	Yes

10.	**Where did it happen?**	At the Judicial Service Commission ('JSC') office
11.	**Which government agency is involved?**	The JSC
12.	**Tell us the names of the officials that you contacted to try and solve the problem.**	JSC Chairperson Mandisa Maya CJ (see annexure)

13. Where can they be reached?	188 14th Road, Noordwyk, Midrand 1685 Private Bag X10, Marshalltown 2017 JSC Secretary Mbali Songca msongca@judiciary.org.za
14. Have you reported this case to anyone else?	No
15. Please tell us how you heard about the Public Protector (radio, newspaper, poster, friend?).	As a lawyer I'm *au fait* with our Chapter 9 institutions.
16. Use the space provided below and if you need more space, please use a separate piece of paper, that will be provided to you. Please attach copies of relevant correspondence or documents.	

Complaint

The JSC's Judicial Conduct Committee ('JCC') has failed to act on a judicial misconduct complaint I lodged two-and-a-half years ago, in the matter of Brink v Poyo Dlwati ADJP (as she then was).

My complaint was duly acknowledged and allocated reference no: JSC 1054/22.

On 24 April 2025, two months ago, I wrote to JSC Chairperson Mandisa Maya CJ, pleading for the decision of my complaint at last.

I've had no response.

I've no doubt Maya CJ duly passed my letter on to delegated JCC Chairperson Mbuyiseli Madlanga ADCJ.

Since his term as Justice of the Constitutional Court expires next month in July, I'm sure Justice Madlanga's hands have been full completing his judicial work before he retires, and that my complaint and my plea that it be decided after all this time have been inadvertently overlooked.

But I can't wait indefinitely. The JCC's undue delay in deciding my complaint is causing me

serious prejudice for the reason stated in my letter; and it's manifestly unreasonable, unconstitutional, and unlawful.

Annexed hereto, my letter details the history of the matter with supporting records appended to it.

I hope and trust the Public Protector's intervention will spare me the cost and trouble of having to sue the JSC out of the Gauteng High Court for a *mandamus*, as anticipated in the last sentence of my letter.

Signed at Eshowe on 26 June 2025

ADV ANTHONY BRINK

Cc:

JSC Secretary Mbali Songca: MSongca@judiciary.org.za

and

Sanelesiwe Mthombeni: SMthombeni@judiciary.org.za

Tebogo Phaahlamohlaka: TPhaahlamohlaka@judiciary.org.za

Leago Matenchi: LMatenchi@judiciary.org.za

Veronica Ndhlovu: VNdhlovu@judiciary.org.za

Nokuthula Shabangu: NoShabangu@judiciary.org.za

Dimakatso Ramaisa: DiRamaisa@judiciary.org.za

Sifiso Mthethwa: SiMthethwa@judiciary.org.za

Makoma Salome Boke: MaBoke@judiciary.org.za

Gmail **Anthony Brink <anthonybrink.sa@gmail.com>**

Long unresolved judicial misconduct complaint against Poyo Dlwati JP

1 message

Anthony Brink <anthonybrink.sa@gmail.com> 24 April 2025 at 12:21
To: Mbali Songca <msongca@judiciary.org.za>

Dear Secretary Sonca

I attach a letter to Chief Justice Mandisa Maya, Chairperson of the JSC, in the matter of my judicial misconduct against Portia Poyo-Dlwati JP -- your ref JSC 1054/22 -- still unresolved nearly two-and-a-half silent years since I lodged it.

The complaint and the JSC's acknowledgment are annexed to the letter, just in case the file's gone astray.

Please forward my letter to the Chief Justice for a response within the next month, failing which I'll be proceeding as indicated in my final paragraph.

Sincerely

Anthony Brink

To_Maya_CJ_re_Poyo-Dlwati_JP_Complaint.pdf
9192K

36 Pearson Street
Eshowe, KZN
24 April 2025

Your ref: JSC 1054/22

The Honourable Chief Justice Mandisa Maya,
Chairperson of the Judicial Service Commission

By email to JSC Secretary Mbali Sonca:
msongca@judiciary.org.za

Dear Chief Justice Maya

BRINK v POYO DLWATI JP
JUDICIAL MISCONDUCT COMPLAINT
STILL UNRESOLVED NEARLY TWO-AND-A-HALF YEARS LATER
AND
A PROPOSAL FOR AN ALTERNATIVE RESOLUTION

1. In November 2022, I filed a judicial misconduct complaint against Portia Poyo Dlwati, then-Acting Deputy Judge President of the KwaZulu-Natal Division of the High Court and now its Judge President (hereafter 'the Judge President') on a charge of violating Article 16(1) of the Code of Judicial Conduct ('the Code'), read with section 10 of its Preamble. A copy of my complaint ('Complaint') is annexed marked 'A1'.

2. Every statutory section cited below is in the Judicial Service Commission Act ('the Act').

3. My Complaint complied with section 14 in all respects, and fell precisely within the category of judicial misconduct contemplated by section 14(4)(b), namely 'Any wilful or grossly negligent breach of the Code of Judicial Conduct'.

4. The JSC Secretary duly acknowledged my Complaint in the same month, and allocated the above-mentioned reference number; see annexure 'A2'.

5. Nearly two-and-a-half years later, I've heard nothing more.

6. On 1 July 2024, I requested under the Promotion of Access to Information Act ('PAIA'), '*The record identifying the judge to whom Brink's complaint against Poyo Dlwati JP was allocated for decision*'.

7. The JSC responded, not by furnishing me with this record or by confirming on oath that it doesn't exist, as PAIA requires, but by informing me simply that '*the complaint is being handled by the Acting Chairperson of the JCC*'.

8. Both my PAIA request and the JSC's response to it are accessible online at bit.ly/41imPW5. Paragraph 15 of my PAIA Form A Annexure specifies the record in question.

9. Although the JSC's response to my request didn't comply with PAIA, I accept the truth of its bald claim that as at 30 August 2024, the date of its response, my '*complaint is being handled by the Acting Chairperson of the JCC*'.

10. As we know, the '*"chairperson" means the Chief Justice*' under section 1. That is, the JSC Chairperson is the Chief Justice *ex officio*.

11. Under section 8(1), the JSC Chairperson is also the Chairperson of the JCC.

12. Under section 8(3), the Chairperson of the JSC may delegate the Deputy Chief Justice to chair the JCC.

13. As far as I'm aware, our various Chief Justices over the years have always exercised this power to delegate the Deputy Chief Justice to chair the JCC.

14. So I believe that when then-Chief Justice Raymond Zondo was appointed to that highest bench on 1 September 2022 and at the same time became Chairperson of the JSC, and you were appointed Deputy Chief Justice on the same day, he delegated you to chair the JCC on that date or soon afterwards, under the Act and in the usual convention.

15. Which means you were '*the Acting Chairperson of the JCC* when the JSC responded to my said PAIA request on 30 August 2024.

16. It follows that my Complaint against the Judge President filed in November 2022, a couple of months after you became Deputy Chief Justice in September that year, was passed to you to examine under section 14(2) for assessment as to whether it was spurious or otherwise defective and fit for summary dismissal under section 15; or *prima facie* impeachable under section 16; or *prima facie* serious but non-impeachable and justiciable by a single judge under section 17.

17. On 1 September 2024, just two days after the JSC responded to my PAIA request, telling me in as many words that you were handling my Complaint, you were appointed Chief Justice and became Chairperson of the JSC.

18. Justice Mbuyiseli Madlanga was appointed Acting Deputy Chief Justice on the same day.

19. I assume you delegated him to chair the JCC under the Act and in keeping with past convention.

20. And I assume that you passed my long-unresolved complaint to him as new JCC Chairperson just delegated by you, and that it's not mouldering forgotten in some bottom drawer.

21. The JSC's use of the present tense in its information to me on 30 August 2024 that '*the complaint is being handled …*' implied that it hadn't been dismissed under section 15(1) without informing me – which would have contravened section 15(4) and deprived me of my right to appeal under section 15(5) – and that it was still pending.

22. And in the several months since the JSC told me this, I haven't heard that my Complaint has been dismissed, so I assume it remains undecided.

23. Nor have my comments on the Judge President's response been invited in this recent period (or prior to it), from which I conclude that my Complaint

hasn't been forwarded to her to answer under section 17(3)(a). It seems most unlikely that she's been asked to respond and has failed to do so, or that she did respond but that the JCC then neglected to invite my comment under section 17(3)(c).

24. To put a point on it, the JCC has been sitting on my Complaint for approaching two-and-a-half years now, without deciding it, without even calling on the Judge President to respond to it. So it appears to me from over here.

25. This long delay is manifestly unreasonable, unlawful and unconstitutional, and it's frustrating the very object of Chapter 2 of the Act, which is to provide for 'OVERSIGHT OVER JUDICIAL CONDUCT AND ACCOUNTABILITY OF JUDICIAL OFFICERS'.

26. Moreover, the JCC's inaction is directly prejudicing me personally as well.

27. I need to know the outcome of my Complaint, because I've an application pending for the Judge President's recusal in some litigation before her in the High Court at Pietermaritzburg, and the JCC's decision of my Complaint will be highly material to my case for that relief.

28. The background is that with the corrupt objective of defeating my legal enforcement of my fundamental right to information guaranteed by section 32(1)(a) of the Constitution, and to succeed in continuing to illegally suppress certain duly requested records implicating high-level recruitment corruption at Legal Aid SA ('LASA'), its national office is maliciously demanding exorbitant and unaffordable security to practically prevent me from prosecuting my appeal against the Judge President's botched dismissal of a straightforward PAIA application that I brought against it – leave for which she granted after reading my necessarily phone-book-thick appeal notice in which I detailed all her pitifully confused mistakes in her utterly shambolic judgment.

29. I'm not speaking gratuitously rudely or hyperbolically here: to see what I mean one has only to read her abysmal judgment and my successful application for leave to appeal against it, in which I picked to pieces the complete mess she made of my case. These documents, together with all others in the case, are accessible online at bit.ly/3OJGNkU.

30. Highly relevant to the decision of my Complaint is that Nkabinde J and Makgoka JA, of the Constitutional Court and Supreme Court of Appeal respectively, grasped perfectly the same core issues that featured in an unrelated judicial misconduct complaint against a different head of court.

31. Marked up for relevance, material excerpts of their thorough discussion and careful analysis of these issues and their admirably perspicacious ruling on them, delivered on 19 February 2024, are annexed marked 'A3'. Their full 42-page appeal decision and all other papers in the case are accessible online at bit.ly/3Vt5gie.

32. My Complaint against the Judge President is that in flagrant contravention of her obligation to do so imposed on her by the Code, she delinquently failed to report to the National Director of Public Prosecutions or to the Legal Practice Council then-LASA Chief Legal Executive Patrick Hundermark's perjured repetition in his answering affidavit before her of LASA's:

> (a) false and untruthful financial insufficiency justification (among other completely different, contradictory, mutually destructive cover-stories advanced elsewhere, including '*no suitable candidates*' found) for its unauthorised, unreported, illegal backroom abortion of my appointment to LASA's critical, long-vacant, thrice advertised, twice interviewed for, fully budgeted and funded Senior Litigator post at Pietermaritzburg, following my selection and recommendation for it in glowing terms, being an experienced litigator across all echelons of our judicial system (unlike my rival applicant, who'd never set foot in the High Court before, and who was accordingly rejected by the selection panel for not meeting the most basic qualifying criteria for the post, yet

had nonetheless been corruptly earmarked for appointment by LASA's national office); and,

(b) false and untruthful allegation, unsupported and flatly contradicted by its own records, that it had accordingly resolved to freeze the post

– both of which egregious perjuries by Hundermark I proved categorically with supporting records annexed to my replying affidavit in the case.

33. I interpose crucially here that the Judge President did not treat the dispute in her judgment, so my Complaint does not concern its merits, which I addressed in my successful application for leave to appeal.

34. In their said decision in that other matter, Justices Nkabinde and Makgoka laid bare these lies told by that other head of court to Parliament, which Hundermark repeated under oath to the Judge President, in keeping with the sickening culture of casual criminal mendacity that I'd repeatedly encountered at LASA, variously in the Board chairperson and national management executives' communications with me, both transparently dishonest and breathtakingly brazen, and subsequently falsely confirmed on oath; in the Board chairperson's false reports to the Justice Minister and Justice Portfolio Committee to pervert their separately and independently instituted special enquiries into the recruitment corruption at LASA and its illegal suppression of duly requested documents to obstruct an investigation of this, which I'd reported to both of them; in PAIA affidavits made by LASA's national management executives; and in their legal pleadings and affidavits. Lies told again and again, with that arrogant confidence born of an insouciant sense of perfect impunity – in a country that's become so prodigiously corrupt that I've been threatened with professional strike-off for duly reporting that other head of court's documented corruption, even where my complaints about this have been found by two of our most senior judges to have been well made on the evidence I'd presented against him; see 'Retaliation' at bit.ly/3Yb02sV.

35. As the Cape High Court emphasized a century ago in *R v Samuels* 1930 CPD 67 at 71, perjury is '*a very serious crime*'.

36. It's my understanding that this is still the legal position, even in the New South Africa, in which criminal dishonesty and corruption have become notoriously commonplace in our public life and political system at all levels – and even in our judiciary, a matter detailed in the draft of a letter I'm preparing for delivery to the next US Ambassador to South Africa, Brent Bozell, when he arrives here to take up his new appointment.

37. My letter to him will propose that the corrupt judges and those that covered for them, identified at corrupt-judges.co.za, be added to the list of corrupt South African politicians and officials that the US Administration is currently preparing to sanction under the US-South Africa Bilateral Relations Review Act of 2025.

38. Unfortunately, it appears the Judge President of the KwaZulu-Natal Division of the High Court holds a different view from that expressed by the Cape High Court all those years ago, before everything changed and a whole new value system replaced the old in the New South Africa; and she doesn't consider being lied to under oath objectionable, not even by an officer of the court like Attorney Hundermark, contemptuously defrauding, deceiving, and misdirecting her as to the true, documented facts of my case before her, for which '*very serious crime*' he stands liable to be struck off the roll of attorneys and jailed.

39. In the Judge President's defence, however, I must allow the possibility that before making a total hash of my PAIA claim and dismissing it so completely cluelessly – thereby judicially endorsing LASA's illegal denial of my access to the incriminating records I'd duly requested, and its violation of my fundamental right to information in the post-apartheid era, and practically aiding and abetting LASA's corruption and sleazy manoeuvring to escape being held to account for it – she didn't bother reading my replying affidavit, in which (a) I positively proved Hundermark's perjury concerning matters

irrelevant to my narrow case brought under PAIA for access to the documents I'd sued for, which perjury he committed to prejudicially distract from the clear merits of the perfectly simple matter, and (b) I pointedly reminded her of her duty imposed by the Code in the situation, namely to report him and his crimes to the said prosecuting and disciplinary authorities for investigation and professional and criminal sanctions.

40. In other words, the Judge President may answer my Complaint by pleading that she didn't subjectively appreciate that Hundermark had lied to her on oath in my litigation before her, for the reason that she'd very incorrectly dismissed my PAIA case against LASA without troubling to read my replying affidavit, and therefore without having considered the crushing documentary and other evidence presented in it, either due to her prejudice against me for some dank psychological reason (as a bewildered articled clerk she was once sent by her principal attorney to deliver his brief to me as a senior-junior advocate); or because she naturally and reflexively sided with a corrupt judicial colleague leading a corrupt public entity at the material time; or because she was just too bone idle to do her job properly. (Sorry to say, I've repeatedly encountered in other litigations of mine this dismal problem of judges in the New South Africa not reading all the papers before delivering their rulings – incontestable proof of which I can furnish on request.)

41. But I imagine that the Judge President would rather 'take the Fifth' than admit to such revolting dereliction of her judicial responsibilities to my immense prejudice, and thereby expose herself to sanction by the JSC for this quite different disgraceful and reprehensible abdication of her extraordinarily responsible office as a highly-paid public servant.

42. I've already had to sue the JSC once before, namely for an order compelling it to comply with my first PAIA request made in September 2021, which it had illegally and unconstitutionally ignored, in response to which it substantially conceded my claim in its answering papers. The case documents are online at bit.ly/4g4ATH1.

43. Now that a welcome new era has begun under your leadership of both our judiciary and of the JSC, I'm hoping not to have to return to court to sue the JSC again, this time to compel it to deliver the JCC's long-overdue decision of my Complaint.

44. Please direct JCC Chairperson Madlanga DJP to indicate when I might expect my Complaint to be dealt with at last.

45. Alternatively, I'll be quite satisfied if the Judge President belatedly complies with her obligation under Article 16(1) of the Code to report Hundermark's perjuries to the National Director of Public Prosecutions *and* – I now require – to the Legal Practice Council ('LPC') as well for investigation and sanction, perhaps after heeding JCC Appeal Committee members Nkabinde J and Makgoka JA's very correct factual findings in their above-mentioned excellent decision, in which they thoroughly discussed, easily recognised, and sharply identified the self-same criminal lies told by that other head of court in his false '*confidential*' report to Parliament, which criminal lies Hundermark perjuriously repeated to the Judge President in his affidavit opposing my PAIA application (maybe calculating: *If a judge president can tell such blatant lies to Parliament to successfully pervert its enquiry and get away with it, I bet I can tell the same lies in court to pervert its decision of a case and get away with it too.*)

46. In which event, on receiving written confirmation that the Judge President has now reported Hundermark's perjuries to both of the said two criminal and professional disciplinary authorities, I will file a notice withdrawing my Complaint, thus saving the Judge President the embarrassment of responding to it and the JCC the trouble of deciding it, in an exercise that will amount essentially to reconsidering precisely the same core factual issues that Justices Nkabinde and Makgoka have already examined in their commendably attentive decision in my favour upholding my appeal in that other judicial misconduct case, at the conclusion of which they found that my criminal and other capital complaints against that other head of court (concerning essentially the same criminal lies that Hundermark repeated to

the Judge President) were facially well made and answerable by him, and recommended that a Judicial Conduct Tribunal be appointed to try them.

47. Even as then-Chief Justice Zondo stunningly told the newspapers, and via them the public, a few weeks earlier at the Judges Conference in December 2023 – while my appeal was still pending – that he rejected my charges against that other head of court, seemingly without having actually read them, '*with the contempt they deserve*'.

48. Although on her own showing the Judge President wasn't worried by this, you'll surely agree that we can't have criminally mendacious lawyers like Hundermark brazenly lying under oath to pervert the fair and proper adjudication of litigation in the High Court on the true, documented facts; and crooked lawyers like him going unpunished for their wicked, clearly proven crimes, just because they were audaciously committed before a judge in today's Zulu Kingdom and not yesteryear's Cape Province.

49. If my proposal of an alternative conciliatory resolution isn't acceptable to the JCC or to the Judge President, I demand that the JCC proceed to resolve my Complaint under section 17 within a reasonable timeframe, to be indicated to me within a month of this letter, failing which I'll apply to court without further notice for an order compelling it to do so, now in the third silent year since I lodged it.

Yours sincerely

ADV ANTHONY BRINK
anthonybrink.sa@gmail.com
083 779 4174

JSC ref: /22

COMPLAINT AGAINST POYO-DLWATI J
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT
ON A CHARGE OF CONTRAVENING ARTICLE 16(1) OF THE
CODE OF JUDICIAL CONDUCT, READ WITH SECTION 10
OF ITS PREAMBLE

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, admitted to practice on 12 April 1983. I reside at 36 Pearson Street, Eshowe, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.

2. Besides my many years of practice as a trial lawyer during which I specialised in civil law, including civil litigation in the Supreme Court of Appeal and the Constitutional Court (where my papers were commended by the Chief Justice from the bench), I served for many years in the District and Regional Courts variously as a criminal and civil court magistrate, and I enjoy a sterling record on appeal. For about a decade, I was engaged full-time in single-issue advocacy in the public interest, during which I addressed and convened innumerable major conferences all over Europe, including in Russia, in an important, highly technical subject in which I'd become an internationally recognised autodidact expert. I've written and published several deeply researched books in the field, comprehensively surveying the relevant scientific literature, and these have been reviewed in acclamatory terms by senior scientists, academics, and other credentialed and respected commentators around the world; and my books have been cited and quoted in their own works, notably in the US and Russia; see openbooks.tig.co.za. I have been interviewed countless times by local and foreign print and television journalists, and my work has been translated into all major

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European languages; see tig.org.za. In short, I have a lifetime's experience in researching, examining, and accurately evaluating disputed facts, and I'm widely recognised for my acumen in this. I am not mentally deficient.

3. Retired from general practice, I'm engaged virtually full-time on litigating and otherwise prosecuting a colossal corruption case involving documented corruption in the judiciary, in which two heads of court are directly implicated. All documents in the latter regard are archived online for easy access at corrupt-judges.co.za under the title, 'The Corruption of the South African Judiciary'. For the information of the South African and international public, this complaint, and all further documents filed herein will be archived there as well. Material documents in what's since become the now thoroughly eclipsed, relatively minor matter of top-level criminal and financial corruption at the public entity where it all began, Legal Aid South Africa ('LASA'), are posted under an explanatory introduction at illegal-aid.co.za.

4. The respondent is Mrs Portia Poyo Dlwati, a judge of the KwaZulu-Natal Division of the High Court, currently acting as its Deputy Judge President. Her secretary's email is nfynn@judiciary.org.za.

5. In view of the likelihood that President Cyril Ramaphosa will be appointing the respondent as next Judge President of the said Division at the recommendation of the Judicial Service Commission ('JSC') (per *News24* report, 8 October 2022; bit.ly/3fRE62L), I'll be furnishing a copy of this complaint to him for his information, and to other interested parties.

6. The respondent is guilty of contravening Article 16(1) of the Code of Judicial Conduct ('the Code'). It provides:

> A judge with clear and reliable evidence of serious professional misconduct ... on the part of a legal practitioner ... must inform the relevant professional body or a Director of Public Prosecutions of such misconduct.

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Section 10 of the Preamble to the Code provides:

> [S]ection 12(5), read with section 14(4)(b) of the [Judicial Service Commission] Act, specifically provides that the Code of Judicial Conduct shall serve as the prevailing standard [of] judicial conduct, which judges must adhere to and any wilful or grossly negligent breach of the Code may amount to misconduct which will lead to disciplinary action in terms of section 14 of the Act[.]

7. All material documents referred to in this complaint can be downloaded in printable PDF from illegal-aid.co.za/PAIA/PAIA_1 (or bit.ly/3SjKNc1). If required, I'll furnish hard copies upon request.

8. Before particularising the respondent's violation of the Code, the aggravating circumstances in which she contravened it can summarised in one sentence. For whatever reason, the respondent is determinedly obstructing an investigation and the reporting to the relevant authorities on all available documentary evidence a case of exceptionally serious public sector corruption, involving the commission of multiple crimes and contraventions of the Public Finance Management Act ('PFMA') by certain top officers at LASA[1] (some since retired or quit), pertinently called to her attention in my affidavits in an application she tried, brought against a LASA deputy information officer[2] under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') for an order, *inter alia*, compelling him to grant me access to certain of LASA's public records, which I'd duly requested under the Act, but which he'd[3] illegally and unconstitutionally refused to maintain a continuing cover-up of the said corruption; which corruption I treated further in a subsequent interlocutory application made to the respondent, mentioned just below.

9. My complaint is that the respondent is judicially unethically protecting and covering for the architect and chief executor of the ongoing cover-up of this

[1] See generally the summary on the homepage of illegal-aid.co.za.
[2] After he resigned from LASA, I joined the information officer as second respondent.
[3] In form only; in reality another officer mentioned below.

S.N.

corruption, attorney Patrick Hundermark, employed by LASA as its Chief Legal Executive, to wit by not reporting to the Legal Practice Council or to the Director of Public Prosecutions, as the said Article peremptorily required of her, the many clear, objectively demonstrable perjuries he committed in the litigation. In my replying affidavit filed in the interlocutory application, in which I sought an order exempting me from paying into court an impossible sum that Hundermark had demanded for security for LASA's costs of opposing my appeal against the respondent's dismissal of my said PAIA claim, leave to appeal which she'd granted, I identified and positively disproved the profusion of lies Hundermark told her under oath to deceive, mislead, and defraud her with the intention and object of perverting her decision.

10. Quoting the said Article of the Code at the end of my replying affidavit, and citing an old Cape High Court judgment underscoring that 'perjury is a very serious crime', which opinion I erroneously assumed the respondent as a 'new generation judge'[4] shared with her judicial forbears, I pointedly reminded her of her obligation to report Hundermark to one or other of those authorities for the many lies he told her, so she certainly knew of her duty imposed by the Code to act against professional liars in court, with a view to seeing them punished and purged from their professions for the protection of the public and defence and preservation of the integrity of the South African judicial system.[5]

11. For the JSC's Judicial Conduct Committee ('JCC') to fully appreciate the extraordinary gravity of the matter, I'll briefly sketch the essential background. Importantly, since the core material facts of the matter were stated in my several affidavits in the case, the respondent was full well aware of them as she proceeded to violate the Code by not reporting Hundermark's blatant lies about these documented facts and the other manifold lies he told about other matters – all on affidavit, signed after

[4] Mlambo JP's self-billing at his interview by the JSC for his current job as head of the Gauteng Division.
[5] I know of two cases in which judges, duly complying with their obligations to do so, reported lying lawyers to their professional bodies, one of whom was struck off and thereafter made his living drawing bills of costs.

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raising his right hand in the air and making a show of solemnly swearing to God that he was telling the truth on pain of the penalty for perjury, namely imprisonment or a heavy fine, and further in his particular case, removal from the roll of attorneys permitted to practise in our country and dismissal from his post in the public service.

12. The whole sordid saga extending over many years is rather long, but it's not particularly complicated, and it's readily comprehensible to anyone with sufficient cognitive power paying attention; with an adequately developed moral sensibility susceptible of arousal by clear evidence of grave wrongdoing with many harmful consequences, and of being especially hotly excited by clear evidence that a despicable culture of mendacity and lawlessness has taken root in the managing and governing echelons of an organ of state, and that its officers are given to abusing language, greased with *faux* legal jargon, to baffle and defraud the unintelligent, and further to using words strictly as weapons to win power-plays with a wholesale disregard for the truth, and who persistently and repeatedly commit brazen crimes, easily proved in light of the public body's own documentary record; with a spirit of impartial enquiry and an open mind;[6] with an approach free of Dunning-Kruger bias; with the necessary diligence to read through all the papers, and not just some of them, perhaps after undergoing a great rush to the head of negative emotional feelings, and, swayed by these swirling feelings about things, deciding very judicially disgracefully and revoltingly indolently that it's not necessary to bother reading and considering the other side's last word stated in his final replying papers in accordance with the rules of court formulated and promulgated to ensure the proper airing of all sides of a case for its proper decision; with the requisite mental stamina to absorb, marshal and intellectually process a considerable body of documented fact set out in legal papers with all their supporting documents – unavoidably voluminous, since it takes an order of magnitude more ink to refute a lie than to tell it,

[6] Unlike, by way of another instance, the prejudiced and uninterested approach famously displayed by Seriti JA (ret.) and Musi J at their Arms Deal Commission, noted by the Gauteng Division in reviewing and rebuking their conduct, for which they're currently facing impeachment.

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especially when the lie is smooth and slimy, and confidently told by a practised, habitual liar with a law degree, and the more prolific his lies are the more exponentially the replying papers dismantling them must necessarily swell; with a successfully inculcated and internalised culture, imported from overseas, of fundamental rights guaranteed by a national legal constitution; with the requisite work ethic rather than a traditional culture of parasitic raw power; with an instinct for justice, as distinct from the principle that might is right and grave wrongdoing committed by the powerful with impunity and no accounting for it is and has always been perfectly normal and fine; with the absolute determination to follow the evidence to its ugly and alarming conclusions; with the personal fortitude to respond to these dreadful conclusions, however icy the winds might be in doing so, potentially imperilling one's career ambitions, since pusillanimity, mediocrity, conformity, group loyalty, and craven fealty to power are the royal road and sure rails to advancement; with the integrity to resist the natural human tendency to close ranks around friends and colleagues and kith and kin; and ultimately, with the professional inclination to take high-level corruption seriously, especially after swearing an oath to protect and defend the Constitution, even if documented information about it comes as extremely unpleasant and unwelcome news, because it directly involves and implicates one's judicial peers in such crimes as telling a sea of provable lies to a Portfolio Committee of the National Assembly to pervert a parliamentary enquiry that it's instituted into a complaint of high-level, aggravated recruitment corruption at a public entity, covered by a welter of childishly contradictory, mutually exclusive and destructive lies, and into its top officers' illegal and unconstitutional suppression of duly requested documents with the corrupt intention of hampering the investigation and reporting of this corruption, and slipping a 'memorandum' to a fellow judge, importuning him to throw a case. (Which favour, the court record shows, the judicial chum corruptly obliged on the double, even before all the prescribed papers had been filed and the case was ripe for decision.)[7]

[7] See the Waglay JP case at corrupt-judges.co.za or illegal-aid.co.za/JSC.

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13. Here's the score, and if your eyes and ears are open it's really pretty straightforward, like I said: On 12 November 2009, I was duly recommended in glowing terms by the unanimous vote of a selection panel comprised of LASA's most senior lawyers in KwaZulu-Natal ('KZN') for its top specialist legal professional post in the province for which I'd applied, its Senior Litigator position at Pietermaritzburg.[8]

14. What I didn't know at the time was that my rival applicant for the job, Mzochitwayo Ngcamu,[9] was a long-time judicial colleague of then-LASA Board chairperson Dunstan Mlambo (now Judge President of the Gauteng Division of the High Court), and that over period of about six years he'd repeatedly been appointed as an acting fellow judge of the Labour Court in which Mlambo JP had served.[10]

15. I only got to learn of this very many years later from sight of the selection panel's complete, unredacted, uncensored recommendation report, which Hundermark had strained to conceal from me, in the face of my repeated requests for it under PAIA, and which I'd finally had to crowbar out of him with litigation under that Act – with my claim for it strenuously resisted all

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[8] Because my recruitment was aborted as soon as word reached head office that the wrong candidate had been selected and not the secretly earmarked one, the issue is academic really, but Hundermark has repeatedly claimed I was recommended for and subject to second interview for the post. Actually Senior Litigator Recruitment practice at LASA is entirely corrupt, both procedurally and ethically, but this is another matter not relevant to this complaint. I treat this procedural and ethical corruption in fine detail in my draft complaint to the Public Protector; see illegal-aid.co.za/PP.
My shortlisting, interview, selection and recommendation were all above reproach; it was at the approval level in national office that it all went ethically and legally south.
There's a twin such post at Durban, for which interviews were also held by the same panel on the same day.

[9] Recording his past service on the Labour Court bench, the complete recommendation report also revealed that Ngcamu was positively disqualified and rejected by the selection panel following his interview, after conceding that he didn't have Right of Appearance in the High Court and had never litigated a case on his feet there, let alone in the Supreme Court of Appeal and Constitutional Court. (By contrast, I've litigated civil cases in all these courts. The papers I drew in a case before the Constitutional Court – argued by a silk at the Johannesburg Bar because I was an acting Regional Court magistrate at the time – were commended by the then-Chief Justice from the bench. So the silk reported to me afterwards.
Undisclosed to the LASA selection panel, I independently learned from a news report online that Ngcamu had repeatedly been convicted by the Law Society of KwaZulu-Natal for disciplinary infractions, and that he'd not disclosed them to the judge president who'd repeatedly appointed him to act in the Labour Court before this; and when it emerged at his interview by the Judicial Service Commission for a permanent appointment to that court, his lack of candour in this regard was denounced as unethical and his application for the position was rejected.

[10] And later headed.

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the way to the courtroom, right up to the point that I was about to argue for it, before he finally gave up and yielded to my claim for it.

16. Five strangely silent months after my interview for the top gig, which I sensed had gone very well, I began enquiring about its outcome. The initial response I got from LASA's national Human Resources Executive[11] ('HRE') was impressively professional, reassuringly friendly and clearly intended to be helpful, but it left me no wiser. Her next response to my follow-up enquiry a fortnight later, after she'd discussed the matter with National Operations Executive Brian Nair, who'd been out of office when I first called her, was quite the opposite. First she persistently avoided my calls with the standard 'in a meeting' lying excuse conveyed by her embarrassed secretary every single time I called, many times, day after day; and naturally didn't ever phone back as requested. Finally she tried fobbing me off with a shockingly aggressive email that was transparently dishonest, deliberately opaque, falsely accusatory, and unmistakeably calculated to cow me, get me to quit asking about the upshot of my interview, and shove off. But in her snarling, she unintentionally and backhandedly confirmed that I was the lucky boy selected and recommended for the big post.

17. I then appealed to LASA's Chief Executive Officer ('CEO') to see to the finalisation of my recruitment as the duly recommended candidate, now eight long months since my successful interview.

18. Nair responded on her behalf by alleging baldly that LASA had decided not to complete its Senior Litigator recruitment processes.

19. Seeing as the vacant KZN Senior Litigator posts had been repeatedly advertised, and even previously interviewed for, I tested the veracity of this odd claim by asking under PAIA for the record of this major operational decision.

20. My request for this and other records was ignored – a deemed refusal under the Act – so I called in the PAIA Unit of the South African Human Rights

[11] Since resigned.

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Commission ('SAHRC') to assist me. Prodded to comply with my request, Hundermark promised it that it would be responded to in three weeks.

21. Hundermark's promise to the SAHRC was dishonestly false. Ghost-writing for LASA's CEO and information officer, Hundermark now expressly refused my request *in toto* on a variety of grounds, all spurious, unlawful, and ultimately abandoned; and in doing so crudely fabricated a fake dictum from a reported judgment to further falsely justify his refusal – as if as an experienced trial lawyer, and not some ignorant hick in the street, I wouldn't look up the law report he pretended to quote from; find it held precisely the opposite of what he fantastically dishonestly claimed it did; and discover and expose his attempted fraud on me.

22. Once again I had to call in the SAHRC for support. Again it didn't help. Discussed below, Hundermark then totally refused my request for a second time, now for a whole bunch of completely different bogus reasons he made up, all incompetent and illegal under the Act, and, as before, all abandoned later on. The few records he did give me were claimed to support some points he was making, and were not intended to be responsive to my PAIA request and to a supplementary one I'd filed.

23. Bottom line is, eventually I established that no record of this alleged decision not to finalise the Senior Litigator recruitments exists – positively confirming my suspicion that no such decision had ever been taken by any competent authority at LASA, and that Nair had lied to me about why my recruitment to the critical, long vacant, budgeted and funded post had been aborted: off the record; without authority; in defiance of Parliament's express concerns (a) that LASA hire Senior Litigators to conduct high-powered litigation for the indigent in the upper courts, and (b) that critical posts in the Justice cluster be filled; in breach of LASA's internal regulations; and in contravention of the PFMA, as the Constitutional Court confirmed in the *Zungu* case.[12]

[12] I canvass this in fine detail in my complaint to the Auditor-General; see illegal-aid.co.za/AG.

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24. Among the other documents specified in that first PAIA request of mine was the selection panel's recommendation report. Like everything else, Hundermark repeatedly refused my request for it, so as to hide from me some critically relevant information it contained; but in his second refusal to let me see it for new, different reasons stated a few months later, he gave me a heavily redacted copy from which he'd carefully blacked out with a Koki pen all material detail about the other candidates, including and especially about Mlambo JP's long-time judicial colleague Ngcamu. As mentioned, Hundermark's reason for giving me the censored record was for his own purposes, namely 'to demonstrate' some feeble point he was making, and not to comply with my request for the complete document.

25. Hundermark's redaction was unlawful under the Act – indeed it was criminal under section 90 – but even so, I didn't complain about this because I didn't suspect anything sinister, and so didn't press for the complete document at the time. The important thing as I saw it was that report now categorically confirmed that I'd been selected and recommended for the post in question. I had no idea, and no reason to think, that some of the hidden information was critically relevant, and that Hundermark had criminally concealed it from me with intention of violating my constitutional right to it, to prevent me discovering the overwhelmingly likely true reason I'd been done out of the top job I'd been picked for.

26. To defraud me into believing that my investigation of the abortion of my recruitment was futile, and to finally persuade me to quit pursuing my appointment, Hundermark told me the further lie – pumping up the lie Nair had told me, to make it sound more substantial and more credible – that due to the global recession in 2008 LASA unfortunately hadn't received sufficient salary budget from the Department of Justice to fill its three remaining vacant Senior Litigator posts, and that for this reason they'd been 'frozen'.

27. Since it's elementary under both the Public Service Regulations and LASA's own internal recruitment code on which it's based that a vacant post must be budgeted and funded before it can be advertised, and that the responsible

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human resources officer must first check and confirm that this salary budget is indeed available, I tested Hundermark's insufficient-funds allegation by way of a further PAIA request. As said, he totally refused my request again, now on completely different grounds from those originally asserted to refuse my first PAIA request, which were likewise spurious, unlawful, and later abandoned; but for his own purposes he appended some documents to his refusal notice, reckoning they'd convince me that he and Nair had told me the truth as to why my recruitment had been aborted, and to please just go quietly away now.

28. Some of the records Hundermark put up, for which I hadn't asked, pertained to a duly motivated and duly passed resolution by LASA's Board in July 2010 to temporarily freeze recruitment to some vacant non-critical, junior professional posts (in the result for two months only) – at the same time expressly prioritising recruitment to critical posts, such as Senior Litigator posts at the top of LASA's professional staff establishment – until such time as LASA had received from the Justice Department certain promised funding to pay salary increases to its lawyers, which LASA had already commenced paying. The Treasury allocated this money soon afterwards in the national mid-term budget announced by the Minister of Finance in October, and it was paid over to LASA by the Justice Department right after that in December.[13] Problem solved; the hiccup wasn't even mentioned in LASA's annual report.

29. Taking me for a stupid fool and a sucker, the crooked lawyer Hundermark dissembled to me that these perfectly irrelevant records showed that LASA lacked the salary budget to appoint me to the Senior Litigator post for which I'd been recommended, and that consequently LASA had duly decided to indefinitely and practically permanently freeze recruitment to its three remaining vacant, critical, budgeted and funded Senior Litigator posts. Like a bent used-car salesman hawking a dud, grinning with gold glinting in his rotten teeth, the sleazy attorney imagined that I was so thick and so gullible

[13] All this is vouched by relevant financial records I got out of LASA.

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that he could defraud me with his lies and with his irrelevant documents put in my face and induce me to walk away from the plum post for which I'd been duly chosen.

30. In truth and in fact, as proved by financial records I obtained some years later (via a PAIA request addressed to the Justice Department, because Hundermark was routinely illegally and unconstitutionally refusing all my PAIA requests addressed to LASA), LASA's three remaining vacant Senior Litigator posts were indeed budgeted by LASA and funded by the National Treasury via the Department of Justice's Third Party Funds Division.

31. In other words, contrary to Hundermark's blatant lie to me about this, LASA did indeed have the salary budget to fill the top posts, always did, and still does – proving absolutely that it wasn't for any lack of cash that my recruitment was aborted, as this lowlife had fraudulently alleged to me.

32. Now sixteen years since their creation in November 2006, and having been annually budgeted and funded to the tune of millions of rands every year since then, three out of nine of LASA's Senior Litigator posts remain deliberately kept vacant and unlawfully unfilled in illegal contravention of the PFMA, as the Constitutional Court has pointed out in *Zungu*, with the National Assembly deceived about this, and with the indigent in KZN deprived of expert litigation services all this time. But being so confidently corrupt and cynical, and knowing Mlambo JP has their backs, LASA's top officers couldn't care less about this illegal under-expenditure and denial of essential, critical legal services to the poor.

33. Further disproving Hundermark's dishonestly fabricated financial justification for the abortion of my appointment, a record leaked to me by a sympathetic senior LASA insider revealed that Nair thereafter told LASA's Board totally different lies to justify not filling LASA's remaining vacant Senior Litigator posts, quite unconnected with the false financial excuse that Hundermark had cooked up and fed me. Only, as LASA's own records contradicting these fresh new lies showed, Nair's completely different stories,

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told to cover the illegal abortion of my recruitment and to cover his unlawful failure as chairperson of the responsible executive committee to see to the filling of LASA's remaining vacant budgeted and funded Senior Litigator posts, were fakes as well. That is, Nair defrauded the Board, of which he was later appointed an executive director (still is), to deceive it as to why LASA had illegally stopped completing its recruitment of Senior Litigators – a project integral to its approved Strategic Plan drawn in accordance with the express wishes of Parliament.

34. My finely detailed 60-page petition to LASA Board chairperson Mlambo JP, in which I pleaded for his intervention in the manifestly illegal abortion of my recruitment under cover of lies, and in the illegal and unconstitutional suppression of records I'd duly requested, was brushed off by him in two sentences, in which he pretended to have looked into the matter and to have been satisfied that there was nothing remiss and everything was just fine – contrary to my closely particularised complaint, supported by all the documents and evidence I referenced in it.

35. My second appeal to Mlambo JP got flushed down the same can – understandably, as I discovered sick to my stomach many years later, because in my sad ignorance of his erstwhile judicial collegial relationship with my rival applicant Ngcamu I was naively appealing to the rogue at the very centre of the recruitment corruption in question and of its cover-up, soon to descend into crime.

36. With my successive appeals to LASA's managing and governing officers disappointed, I escalated the matter to LASA's executive authority, the Minister of Justice and to its oversight authority, the Justice Portfolio Committee of the National Assembly. Concerned by the grave illegalities I was reporting to them, both instituted separate and independent enquiries, and demanded that Mlambo JP please explain.

37. Mlambo JP successfully perverted both of their enquiries with 'confidential' reports to them 'Re: Adv Anthony Brink' that were packed full of lies.

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38. I sourced and obtained copies of both of these reports at different times, and on both occasions quite by chance or I'd never have known about them and the many unctuous lies Mlambo JP told in them.

39. Since it was inconceivable to the Minister and to the chairperson of the Portfolio Committee that a judge president might be criminally dishonest[14] and tell them one easily verifiable lie after another, both of them took Mlambo JP at his word and closed their enquiries on the spot.

40. My complaints to the JCC in mid-2017 about Mlambo JP's criminally false report to the Portfolio Committee for which he stands exposed to being jailed; about his impeachable conduct in lying to the Minister; and about his other gross misconduct in conniving at and colluding in LASA's repeated violation of my fundamental right to information on four separate, documented occasions, have yet to be finally determined.[15]

41. Having established that the reason Hundermark had given me for the abortion of my recruitment was dishonestly false, likewise the totally different, contradictory and mutually destructive fake reasons that Nair gave to deceive the Board, I sued out of the Durban Labour Court for an order instating me to the post – and lost the case, correctly[16] it later turned out, because I'd sued on the wrong cause of action: I'd inferred that as an intensely politically unpopular person at the time for my detonation of what quickly became a highly politicised, morally charged, extremely polarised, and frankly hysterical public health policy controversy[17] (and on page after page of his judgment the labour judge reviewed the evidence of my political odium, and duly accepted it as a proven fact), LASA had blocked my

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[14] It's a statutory crime to lie and falsely report to the National Assembly or one of its committees; see my complaints to the JCC against Mlambo JP about this at illegal-aid.co.za/JSC

[15] On 11 September 2022, the secretary of the Judicial Service Commission ('JSC') answered my enquiry about this by informing me that they are still being considered on appeal by Constitutional Court Justices Nkabinde and Mkgoba and Guateng Division Judge Victor (in Mlambo JP's own court). All relevant documents are posted at illegal-aid.co.za/JSC.

[16] The punchline of the judgment was right, but certainly not the labour judge's preceding factual findings, based on perjured evidence, nor his reasoning, including his radical, fatal error in misallocating to me the final burden of proof, which obviously completely vitiated his judgment.

[17] See tig.org.za. It's blown over now and all but forgotten, with the heat in public discourse over it at the time completely burnt out.

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appointment on account of unfair political discrimination; and I'd based my claim on this. Many years after the final disposal of my labour case,[18] however, I eventually succeeded in extracting from Hundermark via litigation the selection panel's complete recommendation report, unredacted and uncensored, delivered in terms of his settlement agreement with me signed at court.[19] That's when I learned of my rival applicant Ngcamu's long-time judicial relationship with LASA's then-chairperson Mlambo JP, recorded in the selection panel's summary of his professional background. And in a lightening flash, everything became clear at last, including Mlambo JP's hitherto inexplicable unconstitutional and criminal conduct in the matter.

42. Their relationship explained why – in striking contradistinction to me and the other candidates interviewed for the two Senior Litigator posts in KZN – Ngcamu wasn't told by letter that the recruitment process had been (illegally) cancelled (without authority and off the record). Contrariwise, Ngcamu was quickly appointed to a number of other holding posts at LASA and kept waiting comfortably in the wings to be slipped into the post, for which I'd been chosen over him, once I'd given up pursuing it.[20] It explained why the qualifying criteria for the re-advertised post had been illegally gerrymandered to rig them in Ngcamu's favour by being jacked up to double the High Court experience that all other past Senior Litigator advertisements had stipulated, including in KZN, without the authority of

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[18] Corruptly; see documented complaint against Waglay JP at illegal-aid.co.za/JSC.

[19] Over the telephone, Hundermark was instructing his subaltern present at court, LASA's Legal Executive, as to the terms of LASA's total surrender treaty, after capitulating to my claims moments before argument.

[20] That this was indeed the corrupt scheme emerged from a clumsy question put to me in cross-examination in the Labour Court: Why hadn't I concluded from the long silence after my interview that I'd been unsuccessful and not just walked away?
As noted above, I've established that Senior Litigator recruitment at LASA is grossly corrupt, both ethically and procedurally:
1. A former national management executive who chaired the selection panel that interviewed for the Mahikeng Senior Litigator post informed me that the candidate his panel selected was passed over, and a rejected candidate was appointed instead.
2. As in all public sector recruitment, the recommendation and approval procedure in staff recruitment at LASA is precisely codified and governed by its internal regulations. In the case of Senior Litigator recruitment, however, several LASA records show that these regulations are entirely disregarded. A comprehensive complaint to the Public Protector about this illegality is substantially complete and will be filed when it's ready; see the draft at illegal-aid.co.za/PP.

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any recorded resolution to do so, on the mistaken assumption in head office apparently that the local selection panel would consider Ngcamu's many years of shuffling files as an attorney and sitting on the bench listening to labour quarrels to count for actual litigation experience in fighting on his feet in the High Court and beyond, and that this qualified him for the high-end specialist litigation work in question.

43. This stunning information about Ngcamu's connection with Mlambo JP also explained why Hundermark had persistently and furtively obstructed my access to the full recommendation report that I'd repeatedly requested under PAIA and finally had to sue for; why he'd strenuously opposed me all the way to the courtroom, throwing in my way lever-arch files full of legal garbage in mountains of answering papers (all dumped in the end); and why this critical, key, all-explanatory record was only surrendered at the last minute as I was about to argue before the magistrate for an order granting me access to it.

44. The relationship, and Mlambo JP's preference for his former judicial pal in the top vacant post instead of me, explained the lies he told me, the Minister and Parliament as he was trying to cover up the whole putrid mess – only, in doing so, criminally aggravating the quotidian root illegality, namely everyday jobs-for-pals recruitment corruption, in which he was centrally involved.

45. In sum, it wasn't that Mlambo JP, Hundermark, Nair, and the HRE didn't want me appointed because they considered me a politically undesirable person, and that LASA had unfairly discriminated against me for this reason as I'd wrongly surmised on all the facts known to me at the time; it was nothing more than cronyism: Mlambo JP simply wanted his colleague in the job instead of me.

46. During the trial of my labour case, Nair gushed lies on the witness stand like a burst sewer: some old; some new, improvised to escape the pinch of my

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cross-examination; and some risibly contradictory.[21] So right after the two-week trial, as soon as I'd drawn and filed my written heads of argument, and long before oral argument and then judgment many months later, I used PAIA yet again to test and objectively expose Nair's profusion of perjuries in court, intending to have him prosecuted for his crimes committed in his casual, fearless violation of his oath administered by the labour judge to tell him the truth in the matter[22] – perhaps fortified in lying so freely and confidently by the happy knowledge that none other than Mlambo JP, his boss and the central miscreant in the case,[23] for whom he was covering in his evidence, headed the very court I was suing in.

47. In keeping with his past dishonest and illegal refusals to comply with my earlier PAIA requests, Hundermark refused all my requests made after the trial of my labour claim, so I sued out of my local Magistrates Court[24] for orders compelling compliance with them. As noted above, he finally capitulated on the morning of argument; agreed in a written settlement to turn over the records I'd requested; and undertook to respond to a final PAIA request regarding LASA's Senior Litigator posts that I foresaw needing to make after examining all the records received under the settlement agreement.[25]

48. Hundermark and his immediate subordinate the Legal Executive promptly reneged on their agreement with me; retained many of the key records formally pledged to me in the settlement; and failed to duly certify under

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[21] Vahed J on the KZN bench well appreciated this, because after spending a week (he informed us) studying *inter alia* my seven volumes of answering papers in LASA's (Hundermark's) corrupt attempt to interdict me from accessing any more of its records and from seeking relief in the courts in the future, in which papers I detailed the profusion of lies that Nair had told the labour judge under oath (see illegal-aid.co.za/VPA), he remarked very correctly from the bench that all trial lawyers know that cases are won by perjury sometimes. Indeed so, just about all trial lawyers have observed this in their own experience.

[22] A few months after the trial, Nair was admitted as an advocate, entitled to practise in the High Court, whose judges will assume he's an honest person and not a habitual liar and serial perjurer.

[23] I didn't know this at the time, and only discovered it much later. For reasons irrelevant to detail here, I told the trial judge in my labour case from the bar at the start of the trial that I held Mlambo JP clear. As said, I only learned of his central role in the matter years afterwards.

[24] A PAIA-trained magistrate from a distant court was appointed *ad hoc* to deal with my applications.

[25] This had happened before; new lines of enquiry had sometimes been generated by surprising records turned up by PAIA requests and during discovery in my labour litigation.

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section 23 of PAIA those records that didn't exist or couldn't be found,[26] as expressly undertaken to me in the settlement handed into court.

49. And in contemptuous breach of his recorded agreement to respond to a final PAIA request in the said matter, when I filed it as agreed Hundermark totally refused it as a waste of his time.

50. So under the default clause that I'd presciently written in – knowing I was dealing with unscrupulous, dishonourable, untrustworthy, agreement-incapable, and corruptly obstructive public servants who'd repeatedly lied to me, to the Justice Minister, to Parliament, and to the courts, in other words with a gang of criminal psychopaths in shiny shoes – I returned to court with an application to compel full and proper compliance with the settlement agreement.

51. It's currently on ice, because after failing to get the High Court to interdict me from proceeding with that application (see below) Hundermark then applied to the same court to transfer the case up from the Magistrate's Court – at first blush an appealing idea when mooted to me, except that it's procedurally incompetent having regard to the rules of court and relevant case law precisely on point, and I've failed in my endeavour to get this through and into Hundermark's head by patiently explaining it to him in simple English. Anyway, Hundermark's pending application to the High Court to transfer my application in the Magistrate's Court to compel LASA's compliance with the settlement has effectively jammed the works for the time being.

52. For reasons irrelevant to detail here,[27] I now elected to approach the High Court for orders compelling LASA's compliance (a) with that agreed final PAIA request in the matter of Senior Litigators that Hundermark had

[26] When I returned to court with an application to compel full and proper compliance with the settlement agreement, the magistrate noted this failure on the record, and LASA's counsel responded by promising to him that I'd be provided with a compliant section 23 affidavit. The undertaking was naturally dishonoured.
[27] They're set out in my complaint to the Magistrates Commission; see illegal-aid.co.za/MC.

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illegally refused, in breach of his express agreement to respond to it;[28] and (b) with another, separate, unrelated PAIA request, also illegally refused, namely for all LASA's cost records[29] in Hundermark's fruitless, financially wasteful, indefensible opposition, ultimately abandoned, to my necessary litigation in the Magistrate's Court to enforce my constitutional right to information that he'd persistently and contemptuously violated to try keeping the lid on the disintegrating cover-up of the multiplying criminality at LASA, even as his risible, bogus financial alibi for the abortion of my appointment had entirely fallen to pieces – unsupported and contradicted by LASA's records, and contradicted by Nair in his November 2011 'Report to the Board'.

53. As I made clear, I intend referring these financial records *inter alia* to the Auditor General for the personal recovery of this massive, corruptly incurred, fruitless and wasteful expenditure on insupportably opposing five successive PAIA applications made to that lower court in order to maintain a recruitment corruption cover-up and to avoid accountability for the crimes and other capital misconduct committed in the course of it.[30]

54. Hundermark's devious response to my application to compel LASA's compliance with the settlement agreement he'd made with me and with my application to compel compliance with my just-mentioned two PAIA requests, including one he'd expressly undertaken to respond to, was to slink over to the High Court with an application to interdict me from accessing any more of LASA's records, including those he'd pledged to me in his settlement agreement; from proceeding with my just-mentioned pending application to the High Court to compel compliance with the final PAIA request he'd expressly agreed to respond to, then refused, and for all LASA's Magistrate's Court cost records (among some others); and from ever approaching the

[28] My request sought other unrelated records as well.
[29] Plus a couple of other records.
[30] See for instance my twelve criminal complaints against then-CEO Vidhu Vedalankar at illegal-aid.co.za/NPA. Worse, see my criminal complaints against Mlambo JP for lying on multiple counts in a 'confidential report' to the Justice Portfolio Committee of the National Assembly to pervert a Parliamentary enquiry. The complaints are posted at illegal-aid.co.za/JSC.

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courts again, on the basis of the fatuous allegation that I'm a vexatious litigant – even as he'd just conceded all my PAIA litigation in the Magistrates Court; had agreed to respond to a final PAIA request in the matter of Senior Litigators, then contemptuously refused it, which required that I had to sue to enforce it; and had partially conceded my application to compel compliance with the settlement agreement by incrementally surrendering further documents, pledged in the settlement, in two successive batches under pressure of my successive set-downs of the case.

55. The High Court quickly dismissed Hundermark's obviously baseless interdict application – the classic last resort in any major failing cover-up[31] – and after LASA's counsel thankfully ended his hopeless argument I wasn't even called on to answer him.[32]

56. In a further attempt to kill off the implacably determined and unrelenting investigator of the top-level criminal and other corruption at LASA, and to discredit the complainant about it, Hundermark moved behind my back to get me summarily fired from my post as an acting magistrate on contract – without a hearing, without even notification of his complaint against me to the Magistrates Commission, and I only learned of his hidden hand in knifing me through the curtain eighteen months later. The Chief Magistrate at Pietermaritzburg, and head of the Zululand court cluster, had phoned to ask me to please apply for an acting appointment at Ulundi where she needed me in the temporary absence of the resident magistrate there, and emailed me the necessary forms to complete and submit. After I'd done so, she reported that the Deputy Minister of Justice had refused to appoint me

[31] See Wikipedia entry on 'Cover-up'.

[32] Duly requested under PAIA, Hundermark is suppressing LASA's cost records in that High Court case, to conceal what he squandered in public revenue to obstruct my continuing corruption and financial malfeasance investigation and reporting it to the relevant authorities with all available supporting records. My application to the High Court for an order compelling LASA's (Hundermark's) surrender of these duly requested public records is pending. And I have a third PAIA application pending in the same court to compel LASA's delivery of further financial records regarding the Justice Department's funding of LASA's Senior Litigator posts that I duly requested under PAIA from the Department, but which it duly referred to LASA to respond to, and which Hundermark has illegally and unconstitutionally refused in his usual routine to hamper my investigation and reporting of the LASA's gross contraventions of the PFMA at immense prejudice to critical service delivery to the indigent in need of specialist expert litigation services.

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on account of Hundermark's complaint against me. In other words, Hundermark had got me permanently blacklisted by the Justice Department from getting any further acting judicial appointments, even as the Chief Magistrate told me she very much needed my services on relief in Zululand where I'm settled, and had expressed her gratitude for making myself available for such locums as and when required.

57. Hundermark's complaint was that I'd professionally disgracefully attacked Mlambo JP's integrity in my labour- and related litigations against LASA. Mlambo JP's impeachable misconduct on multiple counts, including his crimes, was indeed identified in my papers in those cases, and as said above, my complaints made to the JCC about it all have yet to be finally determined, now many years on.

58. In a corrupt attempt to get me struck off the roll of advocates, and thereby totally discredited as a witness against Mlambo JP, Hundermark made the same complaint to the Society of Advocates of KwaZulu-Natal. His complaint hadn't been decided by the Bar Council by the time the Legal Practice Council ('LPC') began its work, and the LPC inherited the matter.[33] From the very long silence since I provided my response to the LPC,[34] it seems the complaint has either fizzled out or its eventual decision has been made contingent on the JCC's final determination of my complaints against Mlambo JP.

59. Such are the pains and occupational detriments of going after high-level corruption in the New South Africa, including and especially in the judiciary.[35] It's frankly cost me everything but my life itself.[36] In retrospect,

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[33] Under section 116(1) of the Legal Practice Council Act.

[34] See illegal-aid.co.za/LPC.

[35] LASA, almost certainly Mlambo JP himself, went so far as to pervert the decision of my labour appeal by slipping a poisonous 'memorandum' to Waglay JP, his long-time judicial colleague in the Labour Court and successor as Judge President there (whom Waglay JP had actually urged to apply for the leadership of the court – so Mlambo JP told the JSC interviewing him for the Chief Justice post), which 'memorandum' I discovered purely by chance during a search of the court file for any record that Sutherland and Davis JJA had concurred in the dismissal of my petition for leave to appeal, as the order falsely claimed, before all the prescribed papers had been filed and the case was ready for decision. (Aggravating the matter, there's no record either in the court file or on its cover that either of these judges had any hand in the case at all: no 'I concur', no signatures by them anywhere – as if definitive judicial decisions can be made without any record of

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it really would have been much better for me had I disregarded the repeated calls made by former Chief Justice Mogoeng, former Public Protector Madonsela, and President Ramaphosa to report evidence of corruption to the relevant authorities so that the wrongs can be set right and the corrupt held to account. (A few days ago the President urged publicly that whistle-blowers be protected.) After spending more than a decade working on cracking this extremely hard nut, I realise with hindsight that it would have been much more sensible had I followed the respondent's example and just looked away from the corruption I'd run into. Especially after discovering that the corruption at LASA has metastasised into the judiciary and has corrupted judicial decision-making,[37] from which the JSC has looked away likewise.[38] Never in my wildest dreams did I imagine that I'd be dealing with corruption in the judiciary itself, that the root problem in my case is corrupt judges, and that the judges on the JCC would prove indifferent to this and would shamelessly cover for their mates.[39]

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them whatsoever.) My still unresolved complaint to the JCC against Waglay JP about this, filed in June 2017, to which a photocopy of the 'memorandum' is attached, is still undecided more than five years later, despite four letters protesting the delay to then-JSC chairperson Mogoeng CJ and to then-JCC chairperson Zondo DCJ (as he then was). Along with this correspondence, the complaint is accessible at illegal-aid.co.za/JSC.

[36] My late partner was less fortunate.

[37] See illegal-aid.co.za/JSC, and my complaint against Waglay JP and reply to his response in which I identify Mlambo JP as the likely culprit who perverted his decision of my petition for leave to appeal with the 'memorandum' I later found in the court file.

[38] More than five years since I filed my complaint about Waglay JP's documented judicial corruption, the JCC has yet to decide it, despite four repeated written appeals to Mogoeng CJ and Zondo DCJ (as they then were), then-chairperson and then-deputy of the JSC, protesting this delay and pleading for the JCC to get cracking. The complaint and my four letters are accessible at corrupt-judges.co.za.
Zondi JA's move, following the rancid precedent set by his brother Seriti JA (ret.) at the Arms Deal Commission, to sweep my eight criminal and other capital complaints against Mlambo JP under the rug is under appeal; and now eleven months after considering my appeal on 10 December 2021, the JCC Appeal Committee has yet to deliver its now very overdue decision. Zondi JA's 'patently dishonest'* dismissal of my complaints against Mlambo JP, and my extensive appeal notice taking it to pieces, are accessible at corrupt-judges.co.za.
(*in the language of a former Constitutional Court judge criticising another judge president)
In view of the disinclination of the JSC and its JCC to hold these corrupt judges to account, I'm preparing to refer the documented judicial corruption I've turned up in this matter to the court of international opinion by dint of a fusillade of letters to dozens of likely interested foreign embassies, in which I'll be inviting their intelligence analysists to review the evidence and then advise their respective governments as to the integrity of the South African judiciary, one of the three legs of our state, for the information and shaping of their future foreign relations with this country. And in the language of Russian Federation President Putin, I'm 'not bluffing', as recently shown in his case, and soon to be in mine.

[39] See preceding footnote.

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60. My application to compel LASA's compliance with my final PAIA request regarding Senior Litigators that Hundermark agreed to respond to,[40] and my request for the cost records of Hundermark's fruitless and financially wasteful, insupportable, dilatory, corruptly-motivated opposition to my PAIA litigation in the Magistrates Court (finally abandoned in the courtroom), finally came before the respondent for argument, after many years of delay by Hundermark and his colleagues, including his just-mentioned attempt to kill the case in the egg by interdicting me from proceeding with it and his attempt to rub me out professionally and financially – like a mobster murdering the witness before trial – dodging which intended kill-shots were tremendously time consuming.

61. In court, the respondent stated her past professional associations with Hundermark (author of and deponent to the answering affidavit) and with LASA's Legal Executive (formal signatory of Hundermark's refusal of my record requests),[41] but alleged to me that her relationships with them wouldn't bias her judgment in the case against me. I was singularly queasy when I heard this, particularly after the strikingly cool glint in her eye and the chilly vibe I picked up in her chambers before we went down to court, but the important case had been so very long delayed already that I decided to just roll with it and hope for the best.

62. I was aghast when the respondent then instructed me to confine myself to just forty-five minutes of argument,[42] manifestly inadequate in view of the volume of the papers; the many complex issues they raised in the 'very technical' case, as the SAHRC has fairly described the Act; and the

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[40] Actually, only a minority of the records I requested concerned Senior Litigators; the majority went to unrelated matters not hit by the limitation imposed by the settlement agreement in the Magistrate's Court.

[41] Drawing my appeal notice in the main PAIA case, I misremembered the nature of those relationships, misdirected by my mistaken recollection as to the firm to which the respondent was articled as a candidate attorney. I recall her bringing me a couple of briefs while I was in practice at the Pietermaritzburg Bar. My memory failed me in that for all these years I thought that she was articled to LASA. I've recently ascertained that her principal was in fact attorney Oregon Hoskins, and he's confirmed this to me. In other words, in the cases that the respondent, while an articled clerk, was bringing up to my chambers Hoskins was briefing me, not LASA.

[42] Described below, the respondent later on pulled a similar prejudiced and prejudicial move on me, which I succeeded in parrying with the assistance of the Judge President.

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exceptional gravity of the matter in its wider context – evincing to me that she'd already decided to toss my case, irrespective of what I might have to say about Hundermark's vexatious revival of exactly the same spurious defences to my PAIA claims that he'd just abandoned in the Magistrate's Court as I was poised to address and refute them in argument there. Before which, as said, he'd successively abandoned an ever-changing junk-heap of other spurious reasons for blocking my access to LASA's public records. Like a thief fleeing from the police, throwing all sorts of trash at them grabbed from the gutter to try putting them off their pursuit of him.

63. My foreboding was compounded by the respondent's startling defence in court of LASA's clearly perplexed senior counsel, also hopelessly at sea in the 'very technical' case, when she upbraided me, not him, for repudiating his unbelievably dull imputation to me of a nonsensically false legal principal that I'd never asserted. The respondent didn't reprove him for misleading her with a crude misrepresentation of my actual claim as to the law, supported by the Supreme Court of Appeal and stated in my papers; instead, she gunned at me for insistently correcting this tragically inept and confused person who really should have been in the Magistrates Court defending shoplifters. It was already plain to me whose side she was on in the case, and it sure wasn't mine.

64. It was also clear that the respondent had uncritically swallowed Hundermark's portrayal of me as a sore loser with a bee in his bonnet endlessly harassing LASA for no good reason, and that she'd not studied my refutation of his lies about me and my claims; and that having taken this poisoned view of me, she approached my case on the assumption that it was all a load of rubbish. So she was going to help LASA put an end to it.

65. I left court with the heavy impression that the respondent didn't know what was going on in the 'very technical' case; and her truly pitiful judgment delivered six months later confirmed it – revealing to anyone even remotely familiar with the Act that she was completely out of her depth in the matter and didn't know whether she was coming or going.

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66. Before particularising my grounds of appeal in my appeal notice, I summed them up[43] by noting that the respondent's judgment was 'riddled with pivotal, fundamental, reversible errors', namely:

> it repeatedly and persistently falsifies the applicant's evidence and contentions on critical points; falsifies even the original respondent Mtati's evidence and the substituted [actually second] respondent's contentions; falsifies the undisputed facts; relies on entirely irrelevant facts; fails to treat and consider crucially relevant facts objectively vouched by supporting documents; relies on incomplete and thereby distorted quotation of provisions of the Promotion of Access to Information Act 2 of 2000 ('PAIA', 'the Act') corrupting its purport; relies on incomplete and thereby distorted paraphrase of provisions of the Act likewise corrupting its purport; misstates, misinterprets, and misapplies the Act; fails to properly apply the Act; invents and applies irrelevant tests for constitutional entitlement to access public body records not found in the Act and at odds with it; disregards, contradicts, and deviates from judgments of the Constitutional Court, Supreme Court of Appeal, and other divisions of this court, *i.e.* fails to observe *stare decisis*; misapplies and relies on irrelevant case authority in a matter involving incomparably dissimilar, fundamentally distinguishable facts; relies on unsound factual and legal premises stacked on each other to arrive at findings that are both wrong in fact and bad in law; makes factual findings that contradict each other; makes legal rulings that contradict each other; makes rulings contradicted by facts she expressly accepted and relied upon; employs broken logic; displays manifestly defective legal reasoning; evinces palpable prejudice in favour of her former employer Legal Aid South Africa

[43] In point of fact, I drew this summary after analysing the judgment and setting out my grounds of appeal against it, and then inserted the summary at the head of my otherwise complete appeal notice.

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('LASA')[44] and of former attorney colleague in the organisation Thembile Mtati ('Mtati'), the original respondent, with whom she also served together as a fellow member of the Rules Board; and generally exhibits her profound incomprehension of and inability to apply first principles of constitutional information law – and that all the learned judge's gross reversible errors stand to be corrected by a full bench of this court as her judgment is set aside, the law is properly applied to the undisputed facts, and the applicant's constitutionally entrenched right to access public body information is at last vindicated and upheld.

This was no cheap rhetoric; *au contraire*, I instantiated every single one of these hard criticisms in the particulars of my appeal notice.

67. Interpreted charitably, the respondent's judgment revealed that she hadn't successfully learned, understood, and internalised the fundamental importance of public information transparency in our Constitutional democracy, and of the crucial role that this evidently alien legal value held in unearthing and combatting the ubiquitous public sector corruption and financial malfeasance in our country that has become locally and internationally notorious.[45]

68. Back in the day, in my professional experience, judges normally got agitated by evidence of lawlessness and corruption coming out in a case before them; but, for whatever reason, LASA's criminal, financial, and other corruption finely detailed in my papers made zero impression on the respondent. The corruption I described to this particular judge strangely didn't trouble her one bit; quite the opposite, she turned Nelson's Eye to it.

69. As said, the respondent's judgment was such an abysmal, chaotic shambles of basic errors that my notice of appeal was necessarily a phone-book thick in

[44] In her judgment granting leave to appeal her dismissal of the main application, the respondent denied having ever worked for LASA. As noted above, I misremembered this.
[45] In January 2019, the US, UK, Dutch, Swiss and German governments jointly wrote directly to President Cyril Ramaphosa demanding that he get a grip on the runaway corruption in this country.

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picking them all apart and laying them bare as my grounds for appealing her utterly clueless reasons for dismissing my clear-cut claim to access LASA's public records – which I'd duly requested under the Act in the exercise of my entrenched constitutional right of access to public body information; for which records I'd had to sue; and against which fundamental right, guaranteed by our Bill of Rights, the respondent decided to oppose herself, punishing me in costs in the bargain, as if this would finally kick me away from pursuing LASA's top officers for their documented criminal, financial, and other corruption.

70. My exceptionally lengthy appeal notice put the respondent to the irksome task of reading it all and seeing what a total hash she'd made of the case and what a pathetically incompetent mess her judgment was, and having all her mistakes corrected for her in humiliating detail with reference to chapter and verse of the Act; to reported case authority supporting my claim to the records I was suing for; to the indisputable facts of the case set out in my papers, supported by documents vouching my allegations about them; and to the arguments actually raised in the papers and at the hearing, as opposed to her false claims in her judgment about them.

71. Naturally desirous of avoiding this disagreeable exercise, and no doubt fretting about the damage to her career ambitions that an ignominious reversal of her judgment would cause when the full bench's upset showed up in the law reports, knocking her decision over in terribly scathing terms, perhaps even directing in conclusion that the papers and her judgment be referred to the JSC for an investigation as to whether she shouldn't be removed from the bench by the National Assembly under section 177(1)(a) of the Constitution for gross incompetence, the respondent had a go at hamstringing my application for leave to appeal by instructing me via her secretary to make my case for leave to appeal again, now in no more than ten pages.

72. I protested this in a letter to the Judge President, in which I conveyed my flat refusal to be hobbled in making my case on appeal by the respondent's

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unlawful and highly prejudicial directive, and I insisted that my application for leave to appeal be decided on all the grounds set out in my very extensive and comprehensive appeal notice already before her, which I'd duly drawn and filed under the court rules.

73. The Judge President presumably set the respondent straight about this by explaining to her nicely that she'd acted *ultra vires* in trying to curtail my case for leave to appeal, the more easily to dismiss it, because she abandoned her illicit demand; considered my application for leave to appeal on my case fully made in my appeal notice before her; and granted me leave to appeal her dismissal of my PAIA case to a full bench.

74. As with his corruptly-driven vexatious interdict application, the corrupt attorney Hundermark now moved to block my road to court for the second time, so as to prevent me from arguing the merits of my appeal; from accessing the records I'd duly requested; and from referring them to the several high authorities I'd specified. His trick now was to demand I pay R300 000 cash into court as security for LASA's costs.

75. I responded under the court rules by applying to the respondent for exemption from this ordinary security obligation. The nut of my case for this relief was that Hundermark had himself maliciously engineered the destruction of my legal career in his counter-offensive to quash my corruption investigation, thereby putting me out of pocket and unable to find this enormous sum, and that in the circumstances it would be grossly inequitable to prevent me vindicating my constitutional rights in court in this extraordinarily important matter involving top-level corruption merely because, thanks to him, I was no longer rich enough to come up with this kind of cash. I raised the overwhelming likelihood that my appeal would prevail, having regard to my case set out in my appeal notice, and that in any event, even if I lost, the Constitutional Court's Biowatch rule protected me from being ordered to pay LASA's costs, provided the appeal court was satisfied that my litigation to vindicate my constitutionally guaranteed right of access to LASA's records was *bona fide* – the fact of which the respondent

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herself had implicitly recognised in granting me leave to appeal her completely botched judgment in the main case.

76. Indisputably demonstrating my *bona fides* generally, and debunking Hundermark's false picture of me as a delinquent disrespectful of court orders, I mentioned that I'd obediently commenced paying the Labour Court's costs order against me[46] in massive agreed instalments volunteered from my salary as a magistrate, when Hundermark moved to take the bread out of my mouth and make sure I got no more by getting me sacked and blacklisted, and by fouling my reputation as an advocate.[47]

77. Opposing my exemption application, and to defeat it with fraud in his standard habit, Hundermark forged and uttered a multitude of high-toned lies under oath in his answering affidavit to mislead and deceive the court (the respondent) and pervert the decision of my application (by her), all of which perjuries I precisely identified and objectively disproved in my replying affidavit. (It's obviously essential therefore that this complaint be read with that affidavit; see paragraph 7 above.)

78. I concluded the affidavit by expressly calling the respondent's attention to her obligation under Article 16(1) of the Code to report Hundermark's criminal misconduct to the Legal Practice Council or Director of Public Prosecutions; and to her exposure to disciplinary sanctions by the JSC under section 14 of the Judicial Service Commission Act should she not do so, as the

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[46] Even though it was wrongly made according to the Constitutional Court in *Zungu* and in *Long*, both of which held that, unlike in civil actions, costs don't normally follow the result in labour claims. Since LASA was seeking punitive costs against me, I expressly asked the labour judge during argument if he was minded to fault my conduct in the litigation in any way so I might defend myself, but he cheerfully waved me away; and giving judgement a few months later he actually complimented LASA and me from the bench for our conduct of the case. In other words there was no basis for his costs order in the Labour Court, but of course this is irrelevant to my liability to pay it for as long as it stands. *En passant*, LASA oppressively inflated its bill of costs to do me in, but to his credit, acting *mero motu* because I didn't go to oppose, the taxing master cut it in half.

[47] As I recount at length in my response filed with the Legal Practice Council, invited after it resolved to investigate Hundermark's complaint *de novo*, the Society of Advocates had grotesquely mishandled the complaint, trashing my professional reputation on the way, locally and nationally, but neglected to finally determine the complaint, thereby leaving my reputation severely stained. The conduct of Mossop J, then a silk, in my matter was particularly egregious, and repeatedly, going from bad to worse, as I show in my said affirmed response in light of relevant records sourced from the Society under PAIA. See illegal-aid.co.za/LPC.

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Preamble to the Code warned. My affidavit quoted both the Article and the Preamble in this regard.

79. For several reasons not relevant to recount here, but having nothing whatsoever to do with me, my security exemption application took nearly two years to decide, and in the result the respondent dismissed it. Obviously I'm appealing the glaring deficits of the judgment, so as to clear the financial barricade that Hundermark has set in my path in his criminal cunning to prevent me going back to court and arguing the obvious merits of my appeal in the main case before a full bench, and thereafter accessing all the records I've had to sue for, and passing them on to the several authorities I've mentioned in support of further corruption and financial malfeasance complaints to them, including about his own. All of which intentions, both Hundermark and the respondent know, because I stated them repeatedly in my papers.

80. In breach of the obligation imposed on her by the Code to do so, the respondent did not report the criminal attorney Patrick Hundermark's clearly demonstrated perjuries to his professional body for disciplinary action or to the Director of Public Prosecutions for criminal prosecution, thereby contravening Article 16(1) thereof, for which she's liable to be sanctioned under section 14 of the Judicial Service Commission Act, as contemplated by section 10 of the Preamble to the Code.

Signed at Eshowe on 4 November 2022

ANTHONY BRINK

Signed before me at Eshowe on 4 November 2022 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

S.N

Ngema Sgt

COMMISSIONER OF OATHS

Name: SITHEMBILE NGEMA

Address: 73-79 MAIN STREET ESHOWE

Capacity: SERGEANT

SOUTH AFRICAN POLICE SERVICE
SUPPORT SERVICE - SCM
2022 -11- 04
ESHOWE
KWAZULU-NATAL

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JUDICIAL CONDUCT COMMITTEE

Enq: Kutlwano Moretlwe
Tel: (010) 493 2652

18 November 2022

Adv A Brink

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/1054/22

Dear Adv Brink

RE: COMPLAINT AGAINST JUDGE POYO-DLWATI OF THE KWAZULU-NATAL DIVISION OF THE HIGH COURT

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaint. Your Complaint will be forwarded to the Judicial Conduct Committee for consideration. The Secretariat will notify you of the outcome of your compliant in due course.

Yours Sincerely,

Ms. Ndivhuwo Tshubwana
Secretariat for the Judicial Service Commission

JUDICIAL CONDUCT COMMITTEE

In the matter between:

ADVOCATE ANDRE BRINK **APPELLANT**

and

JUDGE PRESIDENT DUNSTAN MLAMBO **RESPONDENT**

Coram: Nkabinde J, Mathopo J and Makgoka JA
19 February 2024

APPEAL RULING

NKABINDE J and MAKGOKA JA):

This ruling has taken inordinately long. The inordinate delay, deeply regretted, is a result of a confluence of factors, including personal circumstances and other

judicial responsibilities. We apologise for the inconvenience it must have caused to all concerned.

Introduction

[1] This is an appeal in terms of section 17 of the Judicial Service Commission Act[1] (JSC Act) against a decision of the Judicial Conduct Committee, per Zondi JA, who was designated in terms of section 17 (the Designated Judge) to investigate eight complaints lodged by Advocate Andre Brink (the appellant) against Judge President Dunstan Mlambo of the Gauteng Division of the High Court (the respondent). During the relevant period to the complaints, the respondent was the Judge President of the Labour Court and the Labour Appeal Court, and later, the Judge President of the Gauteng Division. The appellant alleged that the respondent committed "impeachable" gross misconduct as envisaged in terms of section 14(4)(a) of the JSC Act, as well as breach of Articles 5 and 6 of the Code. The Designated Judge dismissed the complaints for lack of substance.

[2] The complaints against respondent do not relate to the discharge of his judicial functions. They arose in his capacity as the then Chairperson of the Board of the Legal Aid South Africa (LASA). However, the Judicial Service Commission has jurisdiction to deal with the complaint under section 14(4) of the JSC Act, which we turn to next.

[1] 9 of 1994.

Background

[10] The appellant had responded to LASA's advertisement for a Senior Litigator post at its Pietermaritzburg office, one of the three, the others being for Durban and Mthatha. He was shortlisted, and on 12 November 2019 he, together with other candidates, was interviewed by LASA's selection panel for the position. By April 2010, almost five months after the interview, LASA had not communicated with the applicants about the outcome of the interview. The appellant made enquiries with LASA about the outcome of his interview. His letter was not promptly responded to until 23 August 2010, when he was informed, at the direction of LASA's National Operations Executive, Mr Brian Nair (Nair), that a decision had been taken not to fill the vacancy.

[11] Upon receipt of this information, in August 2010, the appellant made a request for information to LASA's Chief Executive Officer, Ms Vidhu Vedalankar (Vedalankar) in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA), for access to a number of specified documents including the selection panel's recommendation report.

[12] On 18 October 2010 Ms Vedalankar responded to the appellant's letter and refused his request on the basis, among others, that the requested information involved "privacy of a third party and constituted confidential information of a third party". She explained that given the seniority of the Senior Litigator positions, it was decided to implement a two-stage interview process in filling them. The first phase would take place at Regional Office level where the

Interview Panel would make a recommendation for candidates to proceed to the second stage of interviews.

[13] According to Vedalankar, the second phase would be conducted by a national office panel, including the Chairperson of the Board – respondent, the National Operations Executive, Mr Nair (Nair), the Human Resource Executive and the Chief Operations Officer. This panel does not have to recommend for appointment any of the recommended candidates from the first phase. In terms of section 8.2.2 (b) of the November 2009 Legal Aid SA Approval Framework (the Approval Framework) the recommendation of the second phase would be finalised by the responsible executive.

[14] Vedalankar also pointed out that in terms of section 8.1.2 (b) of the Approval Framework, the National Operations Executive may motivate for a change in the organisational structure of LASA, including the freezing of positions, for discussion and finalisation with the CEO. Furthermore, she stated that in early 2010, Management had identified potential positions to be frozen. These were all Senior Litigator posts, i.e. one of the positions for which the appellant had applied. Vedalankar mentioned that in July 2010 she and Nair, decided to freeze all the Senior Litigator posts with immediate effect. Additionally, Vedalankar explained to the appellant as follows:

> "7.1 You were interviewed together with other candidates in the first round of interviews.
>
> 7.2 You were recommended together with other candidates, for the second round of interviews. As explained above that [was however not] a guarantee that you would get the position. We have instances in the past when our nationally constituted panel has not recommended for appointment any of the recommended candidates from the first phase interviews conducted by the region.

7.3 The NOE and CEO took the decisions that all senior litigator posts that were vacant would be frozen. The three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.

7.4 You were sent a final letter of regret from our Regional Operations Executive dated 23 August 2010 indicating that [LASA] will not be proceeding with the filling of the Senior Litigator Post. A copy of the aforementioned letter is also attached for your reference.

7.5 Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions. The above information is provided to clarify the position and to definitively address your suspicion that your right to a fair administrative process is threatened breached or may be rendered unenforceable.

Accordingly, your request for the detailed information requested in your letter, other than the information and explanation provided above, is declined as it is not relevant to you exercising any right you may have in law."

[15] To the letter was attached, among others, the Interview Panel's recommendation report dated 6 November 2009 in which it appeared that the appellant had been recommended for the next round of interviews for the Pietermaritzburg post. The report was, however, redacted. It concealed the identity of the other candidates and the Interview Panel's comments on them.

[16] Dissatisfied, on 30 November 2010 the appellant addressed a petition to the respondent as the Chairperson of the LASA Board and to the Board, requesting them to intervene in Vedalankar's rejection of his PAIA request, and her alleged blocking of his appointment. Among other things, the appellant alleged that there was an "illegal political/racial discrimination – covered with false reasons advanced to justify" his non-appointment, and that "two African candidates selected and recommended for similar posts sacrificed to effect [the alleged political/racial discrimination]." The appellant accused the Management

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Executive Committee of: (a) failure to execute a key component of Legal Aid South Africa's Strategic Plan, concealed from the [Board] and from Parliamentary Portfolio Committee for Justice and Constitutional Development the fact the Senior Litigator posts had not been filled; (b) multiple contraventions of the Public Finance Management Act, including the presentation of false financial information in Legal Aid South Africa's 2009/10 Annual Report; and (c) refusal to comply with a request for records in terms of [PAIA] on bogus and factual grounds.

[17] On 30 December 2010 the respondent replied to the appellant as follows:

> "I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege or at all."

[18] This response forms the basis of the appellant's second complaint.

[19] On 24 January 2011 the appellant addressed a second petition to the respondent and the Board seeking their intervention in Vedalankar's refusal to grant him access to LASA's records pursuant to his PAIA requests. In that petition, the appellant complained that the respondent's "perfunctory one-line response" of 30 December 2010 did not address his complaint against Vedalankar's refusal to grant his PAIA request. The appellant further asked the respondent whether he was the author of the said letter. He asked:

> "Did you actually write the letter? According to its PDF properties file, Vedalankar did – on 15 December 2010, while you were still away in the US. It [is] even signed off with 'Regards', just as she does – a strikingly unconventional and inappropriate style for formal business letters. . . All this suggests a legally unqualified person wrote your letter, and indeed Vedalankar has left her fingerprints on it."

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[20] The appellant threatened to launch a PAIA application in February 2011 to vindicate his right of access to the LASA's records. He pointed out that the financial reason for aborting his recruitment was a lie, stating that the Senior Litigator posts for which he was selected and recommended, "had been budgeted for and funded as part of LASA's critical professional senior staff establishment since as far back as 2007/2008." He accused Vedalankar of defying the Minister's opposition to the freezing of posts when she reported to the Portfolio Committee in October 2010. The appellant said that if he did not receive a response he would petition the Minister, Deputy Minister and Members of the Portfolio Committee, as the next levels of authority and accountability, to intervene in his main alleged discrimination complaint. Failing which, he warned, he would claim his constitutional right in court "with its patient and efficient machinery for separating truth from lies."

[21] In response, on the same day, the respondent reiterated his view expressed in the letter of 30 December 2010 – that he had found nothing untoward in how the appellant had been treated by LASA. He stated that the appellant's persistent correspondence bordered on harassment and that he and the Board would in the future ignore it. This response forms the basis of the appellant's third complaint.

[22] On 28 January 2011 Ms Vedalankar sent an email to the appellant in which she totally refused his second PAIA request made on 15 December 2010 on the basis that it merely repeated the first one made in August 2010. She also revisited his first PAIA request and, for additional reasons, refused it again. To the email Vedalankar attached additional documents, most of which were aimed at demonstrating that LASA was facing budgetary constraints and that a range of cost-cutting measures were considered by its Board. The email was copied to the respondent. This forms the basis of the fourth complaint.

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[23] On 25 February 2011 the appellant addressed a third petition to the respondent and LASA's Board members, in which he detailed his earlier petition to him, again seeking their intervention in his PAIA request to Ms Vedalankar. In the letter, the appellant, stated, among other things, that the reason furnished to him for not proceeding with the filling of the Senior Litigator posts the alleged budgetary constraints, was false, given LASA's own records.

[24] The appellant pointed out the following: the single cost-cutting measure agreed by the Management Executive Committee of LASA on 16 July 2010 in its report to the Board, and approved by the Board on 31 July 2010, was the reduction of some junior criminal practitioner posts serving the district and regional courts. According to him, Senior Litigator posts were never identified as part of the cost-cutting measures, nor were they approved for abolition as a cost-saving measure. On the contrary, the report to the Board specifically distinguished vacant critical posts, of which the Senior Litigator posts were, from the rest and prioritized them for recruitment.

[25] That, asserted the appellant, was shown by: (a) Board meeting minutes; (b) Management Executive Committee's Report to the Board; (c) Nair's recommendations for cost-saving and (d) Vedalankar's letter to the Director-General on 16 April 2010 contemplating the abolition of some junior criminal defense practitioner posts, which was ultimately proposed, agreed and approved by the Board. He also pointed out that Vedalankar's report to the Portfolio Committee on 12 October 2010 did not mention the freezing of the positions.

[26] In the circumstances, the appellant requested that his non-appointment to the Senior Litigator post (Pietermaritzburg) be discussed at the Board's meeting the following day, 26 November 2010. He copied, among others, the Minister and the Chairperson of the Justice Portfolio Committee of the National Assembly (the

Portfolio Committee) charged with oversight over LASA by section 55(2) of the Constitution. True to his word earlier, the respondent ignored the appellant's third petition. This forms the basis of the fifth complaint.

[27] Upon receipt of the appellant's third petition to the respondent and the Board, referred to above, the Minister apparently requested the respondent to respond to the allegations against LASA and its CEO with specific reference to the appellant's recruitment as Senior Litigator-Pietermaritzburg and the refusal to comply with PAIA as well as the freezing of posts. The report referred to below was a sequel to the Ministerial request.

[28] The respondent reported to the Minister on March 2011. In his report, he explained that the appellant was interviewed and recommended by a regional selection panel to the second stage of the interview process, that was to be conducted before a nationally constituted interview panel. The latter panel, however, did not sit to consider applicants recommended for the second stage of the interviews. The initial reason for the national panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel.

[29] The respondent further said that financial constraints facing LASA resulted in a decision not to proceed with the filling of the vacant posts, and that the appellant was informed of the decision. This was because "LASA was going through an uncertain period with regard to the provision of funding by the Department of Justice to finance the LASA's OSD phase 1 implementation, which resulted in an unbalanced budget for 2010/2011." It is not clear from the papers what the Minister's response to the report was. The contents of the report to the Minister form the basis of the sixth complaint.

[30] On 22 June 2011, in response to the Portfolio Committee, the respondent attached a report he had submitted to the Minister as explained above. The report

to the Portfolio Committee contained additional information which did not appear in the one to the Minister. It was stated that the appellant had, in the conciliation before the CCMA, sought monetary compensation of R55 000 per month from January 2011 (the compensation allegation). Subsequently, the Portfolio Committee advised the appellant that neither the Portfolio Committee nor its Chairperson become involved in the day-to-day operational matters of the LASA. The Portfolio Committee then regarded the matter as closed. The contents of the respondent's report to the Portfolio Committee form the basis of the seventh complaint.

[31] Subsequently, the appellant instituted an action in the Labour Court, based on section 6 (1) of the Employment Equity Act 55 of 1998, claiming that his non-appointment as the Senior Litigator was due to unfair discrimination against him because of his political views.[3] On 31 October 2012, he lodged a substantive application in which he sought an order in terms of section 25 of the then Supreme Court Act 59 of 1959 for leave to subpoena the respondent for cross-examination in the pending trial of his claim against LASA (the subpoena application).[4]

[32] The respondent opposed the subpoena application. He authorised Mr Thembile Mtati (Mtati), LASA's in-house attorney, to depose to the answering affidavit on his part. For present purposes, the relevance of Mtati's affidavit is two-fold.

[33] The first relates to the reason for not proceeding with the second round of interviews (the delay reason). It should be recalled that, the reason initially furnished by LASA for not proceeding with the second phase of the interviews

[3] Apparently the appellant is a so-called AIDS denialist.
[4] Because the respondent is a Judge, section 25 of the Supreme Court Act required that leave be granted for him to testify at the trial.

was the alleged difficulty in coordinating a date on which various management executives would all be available for the second round of interviews. According to the respondent, this was discarded, as Mtati conceded that this was not correct, and put it down to an error, which Mr Nair confirmed in a confirmatory affidavit.

[34] The second arises from paragraph 51 of Mtati's affidavit, in which it was alleged that the appellant had, despite pending litigation between him and LASA, "unannounced and without warning", attended at the respondent's judicial chambers in the (then) South Gauteng High Court to serve documents. This forms the basis of the first complaint.

[35] The trial of the action commenced on 28 May 2014 in the Labour Court. At the outset of the hearing before evidence was led, and before his opening address, the appellant informed the Court that he held the respondent and Vedalankar clear of all wrong-doing in respect of his non-appointment. He later repeated this under cross-examination by LASA's counsel, during which he conceded that he had no facts to prove the allegations he had initially made against the respondent and Vedalankar, in his original statement of claim.

[36] The appellant had amended his Statement of Claim to leave out the allegations he had initially made against the respondent. In his original statement of claim, the appellant had alleged that the respondent had: (a) "aborted" his appointment motivated by unlawful political (alternatively racial) prejudice; (b) attempted to cover up the discrimination referred to above, by "concocting and advancing a false cover story based on fake financial justification"; (c) lied to the Minister and the Portfolio Committee about the reasons for his non-appointment. Thus, in the amended statement of claim, he laid the blame squarely on Nair.

[37] Nair testified on behalf of LASA. According to the appellant, the following emerged from Nair's evidence that: (a) the budgetary-constraint reason originally given to him for not proceeding with the second round of interviews, was not true; (b) he was the main author of the report given to the Minister by the respondent in March 2011, and later to the Portfolio Committee in June 2011. Nair testified that the compensation allegation in the report to the Portfolio Committee was not inserted by him. He assumed that it was inserted, possibly, by the respondent.

[38] On 18 September 2014 the Labour Court dismissed the appellant's action with costs.[5] His subsequent application for leave to appeal was also dismissed. The appellant petitioned the Labour Appeal Court for leave to appeal. Of relevance for present purposes, is that consistent with his evidence during the trial, the appellant asserted that Nair was the author of the reports the respondent had presented to the Minister and to the Portfolio Committee. The appellant accused Nair of lying when he testified that the respondent had added the compensation allegation to the report submitted to the Portfolio Committee). In this regard, the appellant said that "[i]t is quite clear that Nair lied to [the respondent] about this, and that he, not [the respondent] amplified the report with these additional lies . . ."

[39] In the same breath, however, the appellant revived his allegation that the respondent knew that the reasons stated in the report to the Minister and to the Portfolio Committee for not proceeding with the second phase of the interview, and for freezing the posts, were false. To recap, those reasons were the

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[5] The judgment is reported *sub nom Brink v Legal Aid South Africa* [2014] ZALCD 49; [2014] 12 BLLR 1188 (LC); (2015) 36 ILJ 1020 (LC).

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unavailability of members of the interviewing panel and budgetary constraints. As mentioned earlier, the first reason was later abandoned before the trial, and it was attributed to an error. Of the second reason, the appellant said:

> "[The respondent] also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason [why] my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he [had] chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal courts posts only . . ."

[40] The appellant's petition for leave to appeal was dismissed by the Labour Appeal Court. He then turned his focus to his PAIA requests to have access to LASA's records. By then, the applications to force LASA to accede to his requests for information, were pending in court. The appellant said:

> "[A]fter the conclusion of the extraordinarily time and energy intensive labour litigation, my time and energy were again diverted by no less six separate court applications I had to bring to, compel LASA's compliance with my requests for access to its records I [had] duly made under . . . PAIA…"

[41] In April 2016 the appellant's application to court to compel LASA to comply with his PAIA request was settled. He was furnished with, among other documents, the selection panel's full uncensored recommendation report. That report revealed that the person who was vying for the Pietermaritzburg post against the appellant, and who was not recommended, was a Mr Mzochitwayo Ngcamu (Ngcamu).

[42] According to the appellant, Ngcamu had a close relationship with the respondent when the latter was the Judge President of the Labour Court, and the former enjoyed extended acting appointments as a Judge in that Court. Thus,

surmised the appellant, the true reason for the freezing of the Senior Litigator posts was that the respondent's preferred candidate was not recommended. According to him, the respondent had "hijacked" the recruitment drive to get Ngcamu appointed, despite having been eliminated for not meeting the qualifying criteria.

[43] However, the appellant readily conceded that he did not have direct evidence to back up his claim and invited the Committee to draw inferences for this conclusion. He said:

> "Obviously I don't have a record to put up of [the respondent's] communication(s) with Vedalankar, National Operations Executive Brian Nair and/or the KwaZulu-Natal Regional Operations Executive Vela Mdaka that [the respondent] wanted his former colleague in and not me, but on a preponderance of probabilities the surrounding factual countryside in the matter detailed below, and [the respondent's] extraordinary misconduct in the cover-up described in this and my preceding complaints, makes the inference irresistible on any reasonable conspectus."

The complaints

[44] Conveniently, the appellant's complaints can be classed into two categories. The first category relates to his PAIA requests and how the respondent answered his petitions for intervention. That relates to second to fifth complaints. The second category of complaints relates to the appellant's allegations that the respondent knowingly made false statements. These are first, sixth, seventh and eighth complaints. Below, we summarise the essence of the complaints; the respondent's response to them; and a discussion on whether any of the complaints has been established.

First category of complaints

Second complaint

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effect thereof is that the respondent stands by them. This somehow undermines the assumption that the allegations could have resulted from miscommunication.

[79] In our view, the Designated Judge erred by attributing the allegations against the appellant to miscommunication between the respondent and his former secretary. Properly considered and regard being had to all the circumstances, the Designated Judge, having broad investigative powers, should have asked the respondent to clarify the facts around the allegations against the appellant. Since this did not occur, we, as the Appeal Committee, are none the wiser about why the respondent made the allegations against the appellant. The appeal in this regard must therefore be allowed.

Sixth, seventh and eighth complaints

[80] The essence of these complaints was that the respondent lied to the Minister and the Portfolio Committee in the reports he made to them in March and June 2011, respectively, about the reasons why the interview process for the Senior Litigator posts was terminated, and the posts permanently frozen. To recap, in those reports, which were essentially identical, the respondent gave two reasons for not proceeding with the interview process not proceeding and for freezing the posts. First, that the initial reason for the panel of interviews not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel, of which the respondent was one (the delay reason). Second, that the posts were permanently frozen due to LASA's financial constraints (the financial constraints reason). The appellant asserted that both reasons were false, and that the respondent was aware of that.

[81] The report to the Portfolio Committee contained additional information that the appellant had, in the conciliation before the CCMA, sought monetary compensation of R55 000 per month from January 2011 (the compensation

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allegation). The appellant complained that the compensation allegation was untrue, and, that by including this in his report, the respondent deliberately misled the Portfolio Committee about his basic dispute with LASA and "disparaged [him] as a money-grabber."

[82] As to the delay reason, it would be recalled that it was first mentioned in Vedalankar's letter to the appellant on 18 October 2010. The appellant alleged that in the subpoena application, he established that no effort was ever made to convene the panel at all, and that no one on it was asked for available dates, including the respondent. He stated that Mtati, on behalf of the respondent in the subpoena application, conceded that this was not correct, and put it down to an error.

[83] With regard to the financial constraints reason, the appellant asserted that it was false, and that the respondent, as Chairperson of LASA, was fully aware of this when he reported to both the Minister and the Portfolio Committee and cited it as a reason for freezing the Senior Litigator posts. The appellant's complaint had two subsets. The first was that LASA had no financial constraints as far as the Senior Litigator posts were concerned, as the posts had been properly budgeted for in the relevant financial year. He pointed to LASA's own records to support his assertion.

[84] The second was that there is no lawful and official decision by LASA to freeze the Senior Litigator posts. That decision, asserted the appellant, was an unofficial one, taken for ulterior motives. He characterised it as "an illegal, unauthorised, unapproved, off-the-record, corruptly motivated abortion" of his appointment after he was successfully interviewed for the position. He said that if such a decision had been legitimately taken by LASA, it would appear in its minutes of meetings, annual reports, and engagements with the Ministry.

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[85] The appellant pointed out that none of the above reflects such a decision. Had it been made, he said, it would have been mentioned in at least the following records:

(a) the minutes of a meeting of the Board with the Deputy Minister on 29 May 2010, which record the respondent's presence, which meeting was also mentioned in his 2010/11 Chairperson's Report;

(b) a meeting with the Portfolio Committee on 14 July 2010; and

(c) the respondent's Chairperson's Report for 2012/13.

The appellant pointed out that none of these has any reference to such a decision.

[86] To contrast the decision to freeze the Senior Litigator posts with legitimately taken decisions, the appellant cited two examples of decisions by the Board which were properly recorded, thus evidencing their legitimacy. Firstly, a decision in March 2010 to abolish the vacant Kimberley post, where it was reportedly redundant to create a new one at Mthatha, where it was reportedly needed for several compelling reasons, and for all ancillary decisions. Secondly, he referred to a Board meeting in July 2010, which the respondent chaired. That meeting approved the temporary freezing of recruitment to some non-critical lower criminal court public defender posts until the OSD funding issue was sorted out. By these examples, the appellant argued that if a legitimate decision had been taken by the Board to freeze the posts, it would have been properly reflected in like the others, as those above, more so, he said, because it involved critical posts.

[87] The appellant further asserted that the respondent concealed from the Deputy Minister and the Portfolio Committee in his meetings with them as set out above, and in his annual report, the fact that the Senior Litigator posts had not been filled. According to him, this concealment confirmed that his non-

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appointment "was aborted unofficially and silently for ulterior motives", a fact which alleges, the respondent was aware of.

[88] In this regard, the appellant refers to his first petition to the respondent on November 2010 in which he explained in detail and with reference to relevant documents, why the budgetary constraint reason advanced by Vedalankar for his non-appointment, was not true. He repeated this in his second and third petitions to the respondent in December 2010 and February 2011, and pleaded that his appointment be finalised. Given the contents of his three petitions to him, the appellant charged that the respondent "was well aware that the financial cover-story I [had] been told was a lie' as he had 'presented the then available evidence that it was a lie in my first petition."

[89] The appellant also pointed out that Nair, in his response to his PAIA request, repeatedly confirmed on oath that no record exists of any "decision being made [by LASA] not to proceed with the filling of vacant senior litigator posts". He further asserted that a decision to freeze the Senior Litigator posts could not have been legitimately taken because, on its own version in the Labour Court pleadings, the posts were critical, and their filling was "a priority in the implementation of LASA's Strategic Plan 2009–12". He pointed out in this regard, among other things, to Vedalankar's repeated mention of the employment of Senior Litigators in her CEO report for 2012/13 on the completion of the Strategic Plan.

[90] By not mentioning the freezing of the Senior Litigator posts in his 2012/13 Chairperson's Report, charged the appellant, the respondent deceived and misled both LASA's executive authority and its oversight authority into believing that these budgeted and funded critical specialist legal professional posts had been filled. The appellant further stated that a further reason why in their respective

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reports for 2012/13 the respondent and Vedalankar did not mention that the three Senior Litigator posts had not been filled, was that they knew that the Deputy Minister and the Portfolio Committee had expressly opposed the freezing of posts, especially critical ones.

[91] The appellant further referred to a July 2010 Report to the Board. There, reference was made to the minutes of a Board meeting on 29 May 2010 which the Deputy Minister had attended and made it clear that that he did not want any posts frozen and assured the Board that LASA's OSD phase 1 funding for legal professional staff salary increases was going to be included in the mid-term national budget later in the year.

The respondent's response to the fifth, sixth, seventh and eighth complaints

[92] In his response to the Chief Justice dated 7 June 2018, the respondent set out the factual background, a summary of the complaints, the dismissal of the appellant's Labour Court case and the fact that during that case, the appellant "exonerated" him of any wrong-doing. He attached a schedule of excerpts from the evidence during which, under cross-examination, the appellant stated that he had come to appreciate that the person behind his non-appointment as a Senior Litigator, was not the respondent or Vedalankar, but Nair. The respondent also pointed out that the appellant owed LASA over R1 million in taxed costs from his unsuccessful Labour Court case. He accused the appellant of abuse of process by seeking" to re-litigate" his matter on a "new basis" that he was not appointed due to alleged corruption by the respondent.

[93] Under the heading, "[S]ubmissions" the appellant denied all allegations against him. In particular, he denied that he had been involved in recruitment and the appointment of staff at LASA. He denied the appellant's the allegation that he was involved in the cancellation of the recruitment process for the filling of

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the Senior Litigator posts, and the permanent freezing of those positions, in order to have Ngcamu to be appointed.

[94] As to the complaints against him, the appellant said the following:

> "[T]he report to the Justice Portfolio Committee confirmed that the reason for not proceeding with the second round of interviews was budget related which I still maintain.
>
> I deny that I 'falsely reported and lied to the Minister of Justice and Constitutional Development (as he was then described) to pervert his enquiry into the CEO's repeated illegal and unconstitutional refusal to comply with PAIA, and thereby cover this up, with the object of covering up my own gross misconduct exposed by the illegally refused records'. The report to the Minister also explains the reasons why the second round of interviews was not proceeded with which related to budgetary constraints."

[95] Other than these remarks, the respondent did not specifically deal with any of the appellant's sixth, seventh and eighth complaints, much of which were referenced by LASA's own records. The appellant referenced them to contend that the reasons advanced by LASA and the respondent for not appointing him, were false, and that the respondent was aware of their falsity when he furnished them to the Minister and the Portfolio Committee. The bare denials by the respondent leave many questions unanswered.

[96] One of the lingering questions is this: if indeed it was LASA's official decision to freeze the Senior Litigator posts, why is there no record of such a decision in the minutes of the relevant meetings of its Board or annual reports? It is not disputed that these were critical posts, of which the Deputy Minister had warned against freezing. The very fact that there is no official record of the freezing decision, makes it difficult to argue against the appellant's characterization of the decision as "an illegal, unauthorised, unapproved, off-the-

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record, corruptly motivated abortion" of his appointment after he was successfully interviewed for the position. He said that the respondent, as the Chairperson of LASA's Board, was aware of this, but nevertheless lied about it when he reported to the Minister and the Portfolio Committee.

[97] The appellant's response to the Designated Judge's request does not address the worrisome aspects of the complaints including that in the November 2011 Board meeting, to which the appellant referred, Nair gave another, third reason why the interview process for the Senior Litigator posts were not proceeded with, and ultimately frozen. This time around, he suggested that there was a shortage of suitable candidates. But this could not be true because the first interviewing panel in 2009 had found the appellant to be suitable for the post.

[98] The appellant also alleged that during the Labour Court trial, Nair recanted on all the reasons hitherto given to him for his non-appointment and sought to blame Vedalankar for not proceeding with his appointment. If this is true, it must be accepted that the reasons furnished to the appellant for his non-appointment were false, and that his non-appointment was for an ulterior, unlawful reason. The question is: how much of this did the respondent know, or should reasonable have known? "All of it", says the appellant. As mentioned, the appellant asserted this with reference to LASA's records.

[99] These allegations, undoubtedly of a serious nature, called for meaningful, comprehensive, and *seriatim* answers from the respondent. The respondent elected not to do so. The upshot is that before Designated Judge there was only the uncontroverted version of the appellant. Seen in this light, we are of the respectful view that the Designated Judge was not correct to dismiss the sixth, seventh and eighth complaints as unsubstantiated. The appeal in respect of these complaints should similarly be upheld.

The remedy

[100] The appellant's complaints against the respondent were dismissed by the Designated Judge in terms of section 17(2) of the JSC Act as being unsubstantiated. We are therefore concerned with an appeal pursuant to section 17(7)(a). The powers of the appeal Committee when considering an appeal pursuant to section 17(7)(a) are set out in section 18(4) of the JSC Act, in terms of which the Appeal Committee may: (a) confirm the dismissal; (b) set aside the dismissal, and find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in section 17(8) on the respondent; or (c) set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19.

[101] Because of the unanswered questions we have identified above, the Designated Judge should have used his inquisitorial powers to probe the complaints further. We, as the Appeal Committee, have no such powers. Equally, we have no powers to remit the matter to the Designated Judge to investigate or clarify the issues. We are therefore left with either of the remedies provided for in section 17(4)(b) or section 17(4)(c).

[102] A finding in terms of section 17(4)(b) is to the effect that "the complaint had been established" and that a respondent Judge "has behaved in a manner which is unbecoming of a Judge." It is followed by a sanction prescribed in section 17(8), namely one or a combination of the following remedial steps: (a) an apology; (b) a reprimand; (c) a written warning; (d) compensation; (e) counselling; (f) attendance of a specific training course; and (g) appropriate corrective measure. These sanctions can only be imposed once a finding is made that "the complaint had been established" and that a respondent Judge "has behaved in a manner which is unbecoming of a Judge." We cannot make such a

finding against the respondent when the complaints against him have not been fully investigated. Thus, it would be premature, and highly prejudicial against the respondent, to make that finding at this stage.

[103] The option open to us as the Appeal Committee in terms of section 18(4)(b)(iii), is to make a recommendation to the Commission that the second category of complaints should be investigated by a Tribunal in terms of section 19.

The second ruling

[104] It remains to comment briefly on the second ruling by our colleague, Mathopo J. The second ruling identifies the issue as being "whether a party burdened with the onus of proof has succeeded in discharging it." It goes on to hold that "[s]ight should not be lost that the onus lies with [the appellant]." The second ruling then concludes that appellant had failed to discharge such onus, and that the first ruling, has "unwittingly shifted the onus on [the respondent]." Thus, the second ruling rests on one central plank – the discharge of onus.

[105] This with respect, is at odds with the express provisions of section 17 of the JSC Act, in terms of which these proceedings are conducted. Section 17(2) is plain, instructive, and worth repeating:

> "Any inquiry contemplated in this section must be conducted in an inquisitorial manner and *there is no onus on any person to prove or to disprove any fact during such investigation*." (Emphasis added.)

[106] In light of this clear legislative provision, the substratum of the second ruling (that the appellant bore the onus and that he had failed to discharge it), is fatally flawed. In terms of section 17(3)(a) the respondent was enjoined, when

[109] Lastly, the second ruling holds that the appellant's complaints should have been dismissed because during the trial the appellant had withdrawn the complaints against the respondent. We disagree. There is a difference between court proceedings and those in terms of the JSC Act. Whereas the former are concerned with the determination of parties' rights, the latter are about judicial probity and accountability. This explains why there is a difference in approach.

[110] In the present case, the first complaint was that the respondent had suborned Mtati to lie under oath. This stemmed from the answering affidavit in the subpoena application. However, the appellant did not proceed with the application. He did not "withdraw" the application, as the second ruling erroneously states. Be that as it may, the second ruling holds that because the subpoena application was not proceeded with, that in and of itself served as a complete answer to this complaint. That cannot be correct. The complaint is self-standing, and has a life of its own outside of the subpoena application. This is because the complaint about perjury did not form part of the subpoena application. It was also never an issue in the main action in the Labour Court.

[111] Similarly, with regard to the sixth, seventh and eighth complaints, the fact that the appellant had withdrawn allegations of impropriety against the respondent, is no bar to the lodging of a complaint in terms of the JSC Act. This is because the objectives of the complaint mechanism in terms of the JSC Act are different from what was sought in the Labour Court case. These are distinct processes that should not be conflated.

[112] In any event, none of the allegations in these complaints (that the respondent lied to the Minister and the Portfolio Committee) were issues before the Labour Court. The issues in the trial could perhaps have had some relevance

to the second, third, fourth and fifth complaints, as those related to the reasons why the appellant was not appointed. However, as far as these complaints are concerned, what happened in the Labour Court has no bearing whatsoever on these complaints.

[113] Therefore, the conclusion to partly uphold the appeal and recommend a referral to a Tribunal, is unassailable.

[114] In the result the following order is made:

1. The appeal is partly dismissed and partly upheld.
2. The dismissal of the appellant's second, third, fourth and fifth complaints is confirmed.
3. In terms of section 18(4)(b)(iii) we recommend to the Commission that the second category of complaints should be investigated by a Tribunal in terms of section 19 of the JSC Act to investigate whether the respondent:

    (a) suborned Mr Mtati to lie under oath in the subpoena application under Labour Court case number (D529/11); and

    (b) lied to the Minister of Justice and Correctional Services and the Parliamentary Portfolio Committee for Justice and Constitutional Development."

NKABINDE J

Member of the Judicial Conduct Committee

MAKGOKA JA

Member of the Judicial Conduct Committee

MATHOPO J

[115] I have had the pleasure of carefully reading the judgment prepared by my colleagues, Nkabinde J and Makgoka JA (first judgment), and while I concur that the first category of complaints lack substance and should therefore be dismissed, I regrettably do not agree with the proposed outcome and reasons marshalled in support of the second category of complaints. I am of the view that the complaints levelled against Judge President Mlambo (JP Mlambo) in the second category of complaints cannot be sustained, purely on the basis of lack of *prima facie* evidence.