

36 Pearson Avenue

Eshowe, KZN

29 January 2021

The Honourable Deputy Chief Justice Raymond Zondo

Member of the Judicial Conduct Committee

Judicial Service Commission

c/o Commission of Enquiry into State Capture

Hillside House, 17 Empire Road

Parktown

Johannesburg 2193

And to cc list

Dear Judge Zondo

THE FAILURE OF YOUR JUDICIAL CONDUCT COMMITTEE TO
DETERMINE LONG OUTSTANDING GROSS MISCONDUCT COMPLAINTS
AGAINST MLAMBO JP AND WAGLAY JP

I regret the inconvenient timing of this letter in view of former President Zuma's all-important imminent second appearance before your Commission of Enquiry into State Capture ('Commission'), compounded by the fast approaching conclusion of its term, but I write about a matter of extraordinary importance, and unless it's attended to without further undue delay, the consequences promise to be dire.

On 30 November last year, intending the most rapid possible guaranteed delivery, I dispatched a letter addressed to you for delivery directly to your Commission's work address by the state-owned courier, Speed Services Couriers.

It never arrived. The Post Office's online parcel tracking system records only that my letter was received for despatch; but my telephonic enquiry made to the

courier's call centre established that it reached the Braamfontein Post Office five days later – where it remains, undelivered, despite my 'Front Door Delivery' entry on the waybill.

My subsequent attempts to reach the call centre by phone and then email to enquire how such stranded post might be released and forwarded have gone unanswered. Small surprise, because I read in the news two weeks ago that the South African Post Office is again 'on the brink of collapse'.

Hence my decision to send my November letter to you again, this time by ordinary post. To ensure you see it, however, I'll copy it to Judicial Service Commission ('JSC') Secretary Sello Chiloane by email with the request that he forward it to you, copying the Chief Justice in.

If you don't receive this letter and its enclosures by post, Post Office inefficiency will be the likely cause. If you don't receive it from Secretary Chiloane by email, and only get to read it later on when the scandal blows, he'll have to explain why he prevented your remedial intervention by keeping it from you. I say this considering the indications, mentioned just below, that my critically important preceding letter to JSC chairperson Mogoeng CJ in November 2019 in the same matter, promptly delivered by courier on 4 December according to the tracking report, was not passed on to him by his staff, despite my having marked it 'For Personal Attention' and 'Exceptionally Important'.

Mentioning other complaints, Mogoeng CJ was strangely silent about mine against Mlambo JP and Waglay JP at his presentation of his office's annual report in November 2020. And again he didn't mention them last month when remarking (according to the Independent Online on 11 December) that the Hlophe JP case:

was one of three matters against judges that have taken long to be heard. One of these is against Judge Nkola Motata in Gauteng, who

was convicted of drunk driving in 2009. “So, we should be happy as the South African public, though the matter took long. We should be pleased the Judicial Conduct Tribunal sat and judges testified and the Judge President testified. We are held accountable.” Justice Mogoeng said the public would have been worried if the matter had been swept under the carpet.

Besides the Hlophe JP case, Mogoeng CJ’s mention of the relatively trivial Motata J one strongly suggests that the third unspecified ‘matter’ wasn’t any of my several exceptionally serious complaints against Mlambo JP and Waglay JP that ‘that have taken long to be heard’, and indeed have yet ‘to be heard’, more than three-and-a-half years since I lodged them. It seems clear from this that Mogoeng CJ is unaware of them. And it’s precisely because I’m neither ‘happy’ nor ‘pleased’ about the outrageous delay in the prosecution of my complaints that I’ve been writing both to him and to you since November 2019.

Enclosed are (a) my letter to you in November 2020; (b) my letter to Mogoeng CJ in November 2019 – answered by a night-time phone call from Secretary Chiloane in February 2020, urgently requesting copies of all my complaints, and assuring me of their prompt disposal at last; and (c) my letter to Chiloane six silent months later in August 2020, pressing for the decision of my complaints, which he ignored.

I’ve enclosed also a copy of the courier’s waybill for my November letter to you. A messenger sent to the Braamfontein Post Office, quoting its reference number, will be able to retrieve the original.

At the time I couriered my November letter to you, I mailed hard copies by ordinary post to Mogoeng CJ, his office’s Secretary General Memme Sejosengwe, Chief Director Jakes Jacobs, and Spokesman Nathi Mncube. For his general information, I also copied your Commission’s Evidence Leader Paul

Pretorius SC. (Vouching this, I have a photograph of all the envelopes stacked on the Post Office teller's counter about to be stamped.)

Expecting that you'd have my November letter a couple of days after dispatch, I delayed emailing copies to most of the other cc addressees listed at the foot of it, namely Secretary Chiloane; Marianne Thamm, Deputy Editor: *The Daily Maverick* (mentioned in my November letter); and Adv Marissa Bezuidenhout, head of Corporate Legal and Provisioning Services at the Auditor-General South Africa ('AG') and a member of the Management Executive Committee. (After studying my extensive, documented, affirmed complaint about the financial corruption, maladministration and criminality at Legal Aid South Africa under Mlambo JP's tenure as chairperson – in which he was centrally involved – she referred it to the AG's Investigation division.)

The reason I delayed emailing them is because I thought it proper that as principal addressee you read my November letter first, and I intended emailing them once I'd seen from the post office's parcel tracking system that you'd received it. As it turned out, you never did.

I'll now email the rest of my November letter cc addressees. I've already emailed Hlophe JP for his direct interest stated in all three of my enclosed letters covered by this one: to Mogoeng CJ, to you, and to Secretary Chiloane.

I'll also copy this letter and its enclosures to a senior investigative and legal journalist working for a prime-time television news programme. Tipped by a concerned 'member of the legal community', she contacted me ten days ago on the 19th about 'the complaint[s] that you laid with the JSC against Judges Mlambo and Waglay [which] have been pending for an extended period of time' – remarking that it's 'very important to keep a close eye on the functioning of the judiciary, including the proper functioning of the disciplinary process.'

I provided her with the hyperlink to my complaints, to the accused judges' responses, and to my invited comments on them, all publicly accessible online, and she told me she's studying them.

The horrifying evidence given to your Commission earlier this week by Loyiso Jafta, acting Director General of the State Security Agency ('SSA'), that there's 'very strong circumstantial evidence' that around R22 million in cash was paid to bribe and corrupt the judiciary during the SSA's rogue operation 'Project Justice' – confirmed by your next witness 'Ms K' on the team that investigated the matter – will surely have been noted by governments abroad, especially those that took the unusual step of writing together to President Ramaphosa in January 2019 about the problem of rampant public sector corruption in our country.

As said in my November letter, I appreciate that the prosecution of my complaints against Mlambo JP and Waglay JP will massively (further) damage the reputation of our judiciary, both locally and internationally, but for the Judicial Conduct Committee, of which you and the Chief Justice are mandatory members, to practically cover up their extraordinarily serious misconduct by giving my complaints the 'File-13' treatment will certainly be far worse.

In paragraph 78 of its unanimous decision in your Commission's favour yesterday, the Constitutional Court reiterated the point you made after former President Zuma's illegal walk-out, quoted in my November letter: 'In our system, no one is above the law.' Which is to say, neither former State Presidents nor sitting Judge Presidents.

Since you didn't receive my November letter, I hereby extend the time limit for a response that mentioned in it to the end of February. Considering the pressure you're under to complete your State Capture Commission's work in the next few weeks, I'm amenable to a further extension, if requested.

If the Judicial Conduct Committee continues abnegating its crucially important disciplinary obligations by leaving my capital complaints against Mlambo JP and Waglay JP mouldering in the bottom drawer, contradicting Mogoeng CJ's unquestionably sincere assurance in December that 'We are held accountable', and should my complaints practically be 'swept under the carpet' (his reported words), I'll proceed as indicated in my November letter – first by going international in March, in the manner I mentioned, adding copies of this letter to the others; and then by applying to the High Court for an order compelling the JSC's determination of my disgracefully, indeed unlawfully long unresolved complaints.

Yours sincerely

ADV ANTHONY BRINK

anthonybrink.sa@gmail.com

083 779 4174

Cc:

The Honourable Chief Justice Mogoeng Mogoeng: Chairperson of the JSC;

Sello Chiloane: Secretary of the JSC;

The Honourable Justice John Hlophe JP: Head of the Western Cape High Court;

Adv Marissa Bezuidenhout: member of the Management Executive Committee and Head of Corporate Legal and Provisioning Services, Auditor-General SA;

Marianne Thamm, Deputy Editor: *The Daily Maverick*.

This letter and all documents to which it refers are accessible in PDF online at illegal-aid.co.za.