

Report of Complaints Committee 2

Complaint against Advocate A. R. Brink

1. Membership

According to the latest membership list, Brink is no longer a member of the Society. Brink is apparently presently a contracted additional Magistrate, stationed in Eshowe.

2. The identity of the complainant

An attorney employed as a corporate services executive by Legal Aid South Africa (henceforth 'LASA').

3. The nature of the complaint

The complainant has alleged that Brink's conduct is not befitting of an officer of the court, nor that of a Magistrate. The complaint is in excess of 500 pages in length. The complainant alleges

that Brink's language is 'unprofessional' and he requires sanctioning.

4. Summary of facts

4.1 Brink applied for a job at LASA as a senior litigator at the Pietermaritzburg Justice Centre and progressed to the second round of interviews. The second round of interviews did not proceed as a result of budgetary uncertainties, according to LASA. Brink, however, believed that he had not been successful in securing employment because of his controversial views on the effect of anti-retroviral drugs in treating AIDS (he is a well known, self taught, dissident in this field, believing that ARV's kill rather than cure). He consequently instituted litigation against LASA in the Labour Court alleging, *inter alia*, that he had been unfairly discriminated against in terms of the Employment Equity Act 55 of 1998.

4.2 The litigation was conducted in Brink's name, he being the Applicant. It appears that he drafted the

papers. Brink testified at the hearing. At the hearing in the Labour Court, Brink was initially represented by counsel (Hunt) and an attorney, but at the beginning of the matter dismissed both of them and represented himself.

- 4.3 The matter served before Mr. Justice Cele (henceforth 'Cele J'). On 18 September 2014, Brink's application was dismissed by Cele J, with costs. On 27 November 2014, Cele J refused Brink's application for leave to appeal and to lead new evidence on appeal.
- 4.4 On 7 December 2013 (this should perhaps have been dated 2014), Brink petitioned the Judge President of the Labour Court. His petition was refused on 18 February 2015.
- 4.5 On 7 October 2015, Brink brought an urgent application in the High Court in Pietermaritzburg in an attempt to interdict the Taxing Master in the Labour Court from finalising the taxation of the costs he was ordered to pay by Cele J in the Labour Court. The

Order sought by Brink (who appears to have been represented on this occasion) was pending an application to declare that the dismissal of his petition to the Judge President was a nullity and that it be set aside (he claimed that the Registrar who signed the Order recording the dismissal of the petition was not a Registrar in Durban, that there was no evidence in his petition file that his petition had, in fact, been refused nor was there any evidence that the three Judges who considered it were in Durban on the date the Order issued). This application was dismissed on the day that it was first set down, with costs ordered against Brink on the attorney client scale.

5. **The specific complaints**

5.1 The conduct that the complainant refers to stems largely from allegations that Brink made in his '**Statement of Claim**' in the Labour Court. In that document Brink, **inter alia**, stated that:

- 5.1.1 Mr. Justice Dunstan Mlambo, the Chairperson of LASA (henceforth 'the Judge'), and the CEO of LASA (henceforth 'the CEO) had been motivated by unlawful political prejudice, alternatively racial prejudice, directed at himself;
- 5.1.2 the Judge and the CEO had orchestrated a cover up in order to disguise the true reason why Brink was not appointed to the position in LASA;
- 5.1.3 the Judge had lied about the matter when reporting on the matter to the Minister of Justice and Constitutional Development in order to cover up his and the CEO's unfair discrimination against Brink;
- 5.1.4 the Judge lied to the chairperson of the Parliamentary Portfolio Committee when reporting to it on the matter and thereby misled, *inter alia*, parliament;

5.1.5 the financial justification for not appointing him was a bogus reason concocted by the Judge and the CEO.


5.2 Under cross examination at the hearing, Brink was forced to retract all the allegations that he had made against the Judge and the CEO. He now indicated that he exonerated the Judge and the CEO from any accusations of dishonesty and discrimination. He, however, now stated that another person had concocted the plot against him.

5.3 Brink claimed his statements about the Judge and the CEO were based on '**misconceptions**'. He also stated that he had made the allegations against the Judge and the CEO '**inadvertently**'.

5.4 In his petition to the Judge President of the Labour Court Brink, notwithstanding his earlier retraction of all the allegations against the Judge and the CEO at the trial, stated that:

5.4.1 the matter continued to involve

'the personal and professional integrity of a sitting judge president, formerly of this court,



and that of the the most senior management executives of a major public entity.'

This is clearly a continued reference to the Judge and the CEO.

5.4.2 as a consequence of

'multiple, objectively demonstrable lies'

there had been a perversion of separate Ministerial Parliamentary enquiries. This again refers to a proposition that he had allegedly previously distanced himself from.

5.4.3 the Judge had known that a

'new explanation'

that the Judge had advanced

'was false'

and that the budgetary constraints reason advanced by him

'was another lie'.

5.4.4 The Judge had participated in

'a grossly irregular, prejudicial, and unlawful recruitment process.'

5.4.5 The Judge is an active political promoter of the American and European medical industrial complex's HIV-AIDS-ARV business model,

'under the mantle of human rights.'

5.4.6 Both the Judge and the CEO are partisans of pharmaceutical interests and

'the chemical merchandise they promote'.

5.4.7 The Judge and the CEO concocted a false explanation to cover the true reason for aborting Brink's recruitment.

5.4.8 The Judge

'would later consciously and deliberately tell the same lies, and more lies of his own ... to the Minister of Justice and Constitutional Development, which lies he repeated some months later to the chairperson of the Portfolio Committee.'

5.4.9 Cele J, who heard the matter in the Labour Court, was guilty of

'gravely prejudicial misconduct'

that resulted in him thwarting a full and proper ventilation of the issues and had made several errors in law.

5.4.10 Cele J's judgment against him was a

'deplorably inattentive, glib, crude and perfunctory judgment...'

6. Discussion

6.1 Brink has consistently identified himself as an advocate in the papers that he has drawn, even at a time when acting as a Magistrate. However, it is difficult to discern whether in making the allegations that he has made whether he was acting in his capacity as an advocate or in his capacity as a litigant in person. At best for Brink, the line between these capacities is blurred. He will no doubt allege that he was not expressing himself as an advocate but as a litigant. However, he ought to have conceived that the unsubstantiated allegations that he made might be attributed to him in his role as an advocate. Certainly this is the view adopted by the complainant, and he is justified in taking that view.

6.2 The allegations that Brink made are serious: to call the Judge dishonest and to allege that he has lied cannot be anything but serious. In addition, his disdain for the Bench is further demonstrated in the unpalatable way he has referred to Cele J. To wilfully impugn another's integrity in a profession, such as

law, where integrity is crucial is impermissible. Such allegations ought not to have been made without any evidence justifying them being made. They appear to have been gratuitously made in order to advance Brink's personal agenda of a conspiracy against him.

6.3 The fact that the allegations were withdrawn in the proceedings before Cele J does not stand to Brink's credit. Firstly, in the absence of evidence, they ought not have been made at all. Secondly, it does not appear to have been a true withdrawal, as in his petition he appears to have persisted in the scandalous allegations he had apparently withdrawn. He had had time to reflect on what he had said and pleaded and decided, in drawing his petition, to continue with allegations that he had admitted under oath were not true.

6.4 The statement that Brink had 'inadvertently' slandered the Judge in a most disgraceful way must be considered as a dishonest statement. There was nothing inadvertent about Brink's conduct: it was deliberate and formed part of his strategy.

7. Finding

It is found that there is merit in the complaint.

8. Recommendation

Notwithstanding that Brink is not a member of the Society of Advocates, it is recommended that a striking off application be launched.

Complaints Committee 2

R. G. Mossop S.C.

M. Konigkramer

M. Manikam

17 February 2017.

