
**COMPLAINT TO THE AUDITOR-GENERAL
AGAINST:**

**1. LASA CFO REBECCA HLABATAU, ARISING FROM HER
WILFUL DERELICTION OF HER PROFESSIONAL OBLIGATIONS IN
REGARD TO LASA'S COMPLIANCE WITH SECTION 53(3)&(4) OF THE
PUBLIC FINANCE MANAGEMENT ACT AND SECTION 21 OF THE
LEGAL AID SOUTH AFRICA ACT; AND,**

**2. LASA'S BOARD SECRETARY AND OTHER NATIONAL
MANAGEMENT EXECUTIVES OF LASA, IDENTIFIED HEREIN,
CONCERNING THEIR SAME WILFUL DERELICTION OF THEIR
RELATED RESPONSIBILITIES –**

**IN EACH CASE A 'MATERIAL IRREGULARITY' WITHIN THE
PURVIEW OF SECTION 1 OF THE PUBLIC AUDIT ACT**

I, Anthony Robin Brink, affirm:

1. I am an advocate residing at 36 Pearson Road, Eshowe, KwaZulu-Natal, and the complainant in Part One of a complaint to the Auditor-General made in February 2020 and acknowledged in March regarding major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA') by certain past and current national management executives of Legal Aid South Africa ('LASA'), and multiple acts of serious 'material irregularity' committed by them within the contemplation of section 1 of the Public Audit Act 25 of 2004.
2. Part One of my complaint and proof of dispatch and receipt are accessible online at illegal-aid.co.za/AG.
3. In this Addendum to Part One of my complaint, I show that Rebecca Hlabatau, Chief Financial Officer ('CFO') of LASA, has been deliberately derelict in her professional obligation to ensure LASA's compliance with section



53(3)&(4) of the PFMA, and with section 21 of the Legal Aid South Africa Act 39 of 2014 ('LASA Act'), and that LASA's Board Secretary and other national management executives have likewise been deliberately derelict in discharging their similar obligations, rendering all of them complicit in their national office colleagues' serious non-compliance with the PFMA and other corruption called to their attention. An error contained in footnote 16 of Part One of my complaint is corrected in the Appendix annexed to this Addendum.

4. Hlabatau's and these other top LASA officers' non-compliance with their professional obligations to LASA, thereby enabling to continue unchecked the grave contraventions of the PFMA brought to their attention (detailed in the main body of Part One of my complaint to the Auditor-General), comprise in each case a 'material irregularity' within the definition given in section 1 of the Public Audit Act 25 of 2004 ('PAA'). In a word, had they done their jobs they could have ended (i) the illegal deliberate underexpenditure of LASA's budget in the sum of many millions of rands, (ii) the resulting prejudice to the indigent, and (iii) the massive reputational harm to which LASA now stands exposed.

5. On 8 January 2019, a year before delivering Part One of my complaint to the Auditor-General, I addressed a six-page letter to Hlabatau under the heading, 'LASA'S ONGOING, REPEATED, GROSSLY ILLEGAL BREACH OF THE PFMA INVOLVING IRREGULAR EXPENDITURE OF MANY MILLIONS OF RANDS', in which I pertinently called the matter to her attention.

6. A copy of my letter and proof of delivery by email are annexed marked 'A' and 'B' respectively.

7. As CFO of LASA, Hlabatau is responsible, or at least shares responsibility for ensuring compliance with section 21 of the LASA Act. It provides:

21 The funds of Legal Aid South Africa consist of—

- (a) money appropriated by Parliament; and
- (b) money received from any other source,

and must be budgeted for, managed and accounted for, in terms of the Public Finance Management Act.

8. In an egregious, unlawful failure to comply with her professional duty to LASA, CFO Hlabatau ignored my letter and took no steps to ensure that her delinquent fellow national management executives Chief Executive Officer Vidhu Vedalankar (retired some months later), National Operations Executive Brian Nair, and Human Resources Executive Amanda Clark remedied their non-compliance with section 21 of the LASA Act, by seeing to it that the 'money appropriated by Parliament', 'budgeted for' by LASA, and paid to it by the Treasury via the Justice Department for the employment of nine Senior Litigators at various seats of the High Court is duly 'managed and accounted for, in terms of the Public Finance Management Act' – specifically 'in terms of section 53(4), requiring that the 'expenditure of [a] public entity is in accordance with the approved budget', and of section 53(3) prohibiting the 'accumulat[ion] of surpluses unless the prior written approval of the National Treasury has been obtained' – by filling all nine of these critical budgeted and funded posts. As the Constitutional Court confirmed in principle in the *Zungu* case, mentioned in my letter, three of these posts at Pietermaritzburg, Durban, and Mthatha* have unlawfully been left vacant for a decade since the selection and recommendation of suitable candidates to fill them in November 2009 and May 2010. (*The budget for the Mthatha post appears to have been restored to the original Kimberley post, still vacant.)

9. As the cc list at the head of my letter to Hlabatau and the cc bar of my covering email show, I copied my letter to then CEO Vedalankar, NOE Nair, and HRE Clark, all implicated in it, as well as to Chief Operations Officer Jerry Makokoane, Internal Audit Executive Sethopo Mamotheti, and Board Secretary Langa Lethiba.

10. In view of his primary role in covering up the pervasive and systemic corruption at LASA detailed in Part One of my complaint (and more will be charged in further parts to follow), I didn't copy Chief Legal Executive Patrick Hundermark. Nor did I copy Legal Executive Thembile Mtati, who until his later resignation had functioned only as Hundermark's ventriloquist's puppet in multiple dishonestly false documents given to him to sign.

AB

CM.

11. Being centrally involved in the corruption and its cover-up detailed in my letter to Hlabatau, I didn't expect Vedalankar, Nair, and Clark to respond to my letter copied to them, and indeed they didn't. My purpose in copying them was to confront them squarely, on the record, with the grave illegality detailed in my letter; but also to create an opening for a conciliatory resolution of my claim to my appointment to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended a decade ago.

12. I was preparing to meet Vedalankar's 'challenge' to me in her letter of 28 January 2011 (quoted below), in which she'd strangely furtively refused for the third time my PAIA request of August 2010 for access to key public records I'd asked for, chiefly regarding her and Nair's cancellation of my recruitment to LASA's Senior Litigator post at Pietermaritzburg (my request was first mutely refused in September by being ignored; then expressly refused in October on spurious grounds, abandoned under SAHRC pressure; then refused again in January 2011 on different spurious grounds, also eventually abandoned under legal pressure):

You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

13. As said, I also copied my letter to Hlabatau to Board Secretary Lethiba, who is responsible (per LASA's annual report 2009/10) for:

identifying key issues that should form the focus of the directors' attention. The Board Secretary also ensures that all relevant matters are placed on agendas for discussion. The Secretariat, together with the other assurance functions, monitors Legal Aid South Africa's compliance with the requirements in terms of the Public Finance Management Act, Legal Aid Act and other legislation, and regularly reports to the Board in this regard.

14. Lethibe's deliberate failure to carry out these specific responsibilities, after receiving my letter copied to him, prevented the Board, and specifically its Audit and Risk Subcommittee, from discharging its oversight function over the executive management of LASA's operations, and prevented it from remedying Vedalankar's, Nair's and Clark's illegal, unauthorised, unrecorded, substantial departure from a key objective of its Strategic Plan 2009–12 and subsequent strategic plans, namely to employ Senior Litigators to render specialist constitutional and other complex litigation services to the indigent in KwaZulu-Natal and in the Eastern Cape to enable them to realise their 'Constitutional rights and socio-economic rights and [to] develop jurisprudence on social justice matters' 'through impact litigation', as LASA's Strategic Plan 2015–20 puts it, which strategic objective Vedalankar and Nair obstructed and frustrated by criminally illegally aborting the substantially complete Pietermaritzburg, Durban and Mthatha recruitments, off the record, without authority, and by illegally leaving these three budgeted and funded critical Senior Litigator posts vacant.

15. I also copied to IAE Mamotheti my letter about Vedalankar's, Nair's and Clark's egregious contraventions of the PFMA, some criminal, and other gross misconduct in trying to cover it up. By rights, Mamotheti should have been appalled and been moved to protect LASA against the tremendous risk to which my letter showed it was exposed. Instead, siding with his corrupt head office colleagues, Mamotheti turned a blind eye to it, did nothing, and allowed the illegality I described to continue unchecked.

16. COO Makokoane's indifference to the corruption I'd brought to his attention, in which he was not directly involved, and his failure to respond to and act upon my letter (like previous correspondence he also ignored), detailing the most serious non-compliance with the PFMA, involving many millions of rands and the obstruction of critical specialist legal service delivery to the poor, evinces his election with Lethibe and Mamotheti to close ranks around their delinquent national office colleagues Vedalankar, Nair and Clark and to make common cause with their unlawful, criminal and other gross misconduct detailed in my letter. As corporate executive attorneys Hundermark and Mtati long ago did.

17. In sum, besides new CEO Mantiti Kola, virtually the entire top management structure of LASA has shown itself to be complicit in the illegality in question; and since Nair and Hundermark are now members of LASA's Board and are certain to misdirect and corrupt its deliberations and decisions, there's scant prospect that LASA's contraventions of the PFMA and the material irregularities detailed in Part One of my complaint will be remedied by the Board, by instituting disciplinary proceedings against the delinquent officers I've identified and by directing that the executing officers delegated by section 8.2.2(b) of LASA's Approval Framework to co-approve selection panels' Senior Litigator candidate recommendations – namely the NOE (Nair, who 'Originates' and has 'Final approval' authority) and the CEO (Kola, who 'Must agree' with him) – carry out their joint responsibility in this regard, so as to put an end to LASA's ongoing contravention of sections 53(3)&(4) of the PFMA in deliberately keeping its remaining three budgeted and funded critical Senior Litigator posts unfilled, in further contravention of section 21 of the LASA Act, to the massive prejudice of critical expert litigation service delivery to the indigent.

Signed at Eshowe on 1 June 2020

ANTHONY BRINK

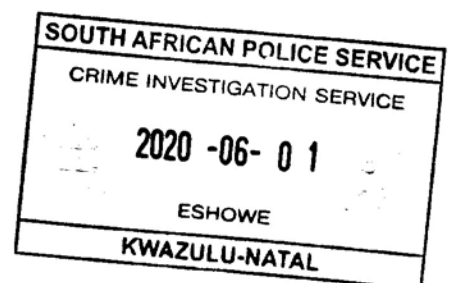
Signed before me at Eshowe on 1 June 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

[Signature]
0498820-5
COMMISSIONER OF OATHS

Name: CLEOPAS MGEEMA

Address: 23-79 Main Str; Eshowe

Capacity: Warrant Officer.
035-4734200



36 Pearson Road
Eshowe 3815
KwaZulu-Natal
8 January 2019

Chief Financial Officer Rebecca Hlabatau
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

Cc:

CEO Vidhu Vedalankar

COO Jerry Makokoane

NOE Brian Nair

HRE Amanda Clark

IAE Sethopo Mamotheti

Board Secretary Langa Lethiba, for consideration by the Board

Lwazi Bam, Chairperson: South African Institute of Chartered Accountants

Martin Welz, Editor and Publisher: *Noseweek*

And to other national newspaper editors later on

Dear Ms Hlabatau

LASA'S ONGOING, REPEATED, GROSSLY ILLEGAL
BREACH OF THE PFMA INVOLVING IRREGULAR EXPENDITURE
OF MANY MILLIONS OF RANDS

1. Your primary responsibility as Chief Financial Officer of Legal Aid SA ('LASA') is to ensure that your employer and its officers comply with the Public Finance Management Act 1 of 1999 ('PFMA').
2. One year ago our **Constitutional Court** observed in paragraphs 8 and 9 of its unanimous judgment in *Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018) that for an organ of state to allow a budgeted and funded post to be '**left vacant**' constitutes a '**breach of the**



provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.'

3. Since November 2009 – that is, *for nearly a decade now* – CEO Vidhu Vedalankar, NOE Brian Nair and HRE Amanda Clark have deliberately illegally '**left vacant**' LASA's budgeted and funded Senior Litigator posts at Pietermaritzburg and Durban in a flagrant '**breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant.**'
4. For almost as long, since May 2010, LASA's budgeted and funded Senior Litigator post at Mthatha – duly transferred two months earlier from Kimberly by resolution of LASA's Legal Services Technical Committee to meet the reported pressing need for it – has been deliberately illegally '**left vacant**' by these management executives in the same flagrant '**breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.**'
5. This is despite the recommendation by selection panels of eminently qualified candidates for the three posts in those months, myself included. NOE Nair has repeatedly admitted on affidavit and in his evidence given in court that no record whatsoever exists to show that any decision was ever duly taken by any competent authority – indeed by anyone at all – to abort the said three Senior Litigator recruitment processes and not to fill the budgeted and funded posts for any reason.
6. The specific '**provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant**' and which make it *seriously illegal* for a budgeted and funded post to be '**left vacant**' by the management executives of a public entity, and which '**provisions of the Public Finance Management Act**' also make it a *serious criminal offence* to fail to 'keep full and proper records of the financial affairs of the public entity' – for which the guilty executives can be jailed for five years – are enumerated and discussed with their extreme implications in my founding affidavit in my third of three applications currently pending before the Pietermaritzburg High Court for orders compelling access to certain financial records I duly requested under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), which your

resident legal moron, Chief Legal Executive and deputy information officer Patrick Hundermark, illegally and unconstitutionally refused me in his usual, furtive routine, starting with his advice in 2010 to repeatedly illegally and unconstitutionally refuse my first PAIA request in August, which I made at the outset of my investigation of the corrupt true circumstances in which the recruitments were cancelled. (These finally came to light in April 2016, after Hundermark's total capitulation at court two months earlier to five other PAIA applications I'd previously brought, and his final forced delivery of a crucial record that he'd previously illegally refused repeatedly in 2010, then released in 2011 heavily censored illegally with a black Koki, then illegally refused again in 2015, namely the uncensored, complete recommendation report of the selection panel that picked me, containing the pivotal, long-suppressed information that my rival for the gig was none other than Board chairperson Mlambo JP's long-time former judicial colleague, whom he'd repeatedly appointed as an acting judge of the Labour Court over a period of about six years, while Judge President there before moving on to the Gauteng High Court.)

7. To refresh your understanding of these basic principles of public finance management, namely the *serious illegality* of a budgeted and funded post being '**left vacant**' by a public entity, and the *serious criminality* (jail time) of failing to 'keep full and proper records of the financial affairs of the public entity', I've posted a material excerpt of my said affidavit for you to read. It's accessible online via a list of hyperlinks I've prepared and posted at goo.gl/QEYbwe. My complete affidavit and all the others filed in my three PAIA applications, all set down together for argument in a few weeks time on 15 March 2019, are accessible via the same link.
8. I suggest you make a careful study of the '**provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant**' that I cite and discuss in my affidavit, which '**provisions**' make it *seriously illegal* for budgeted and funded posts to be '**left vacant**', and also make it a *serious criminal offence* (jail time) to fail to 'keep full and proper records of the financial affairs of the public entity', such as a record of a backroom decision involving many millions of rands taken in the course of a cover-up of top-level recruitment corruption, especially when this



backroom decision is corruptly motivated, unauthorised, and itself illegal. And therefore obviously unrecorded to dishonestly conceal it.

9. Numerous chopping and changing, radically contradictory, mutually destructive, lying cover-stories have been told to me, to the Justice Minister, to the Justice Portfolio Committee (a crime), to the SAHRC, and to the courts (a crime) to mask the true reason the posts haven't been filled, in illegal breach of the PFMA, namely everyday recruitment corruption in the form of jobs for pals (which corrupt plan I frustrated by insistently pressing for my appointment). The recruitment corruption of which I speak, and Board chairperson Mlambo JP's central involvement in it (he wanted his chum in the post for which I was selected and recommended), and the multiplying, chaotic, now hopelessly disintegrated cover-up that your national office colleagues mounted, is finely particularised with piles of supporting documents in my answering affidavit filed in Pietermaritzburg High Court case 12124/16, which I quickly won *without even being called on to argue* and which LASA (Hundermark) lost on 27 October 2017, at vast wasted cost of many hundreds of thousands if not millions of rands (which amount Hundermark is naturally illegally resisting revealing to me in his characteristic contempt for the information transparency provisions of the Constitution, hence my second PAIA application to the High Court to compel him to open LASA's books to me, to be argued in March). My answering affidavit in the big case that LASA (Hundermark) brought and lost against me is accessible at the above-mentioned link. The recruitment corruption is further described in my founding and replying affidavits in my pending PAIA applications mentioned in paragraph 7, likewise accessible via the same link.

10. Luckily for you, the said recruitment corruption and all the wildly divergent lies told over the years to cover it – including such criminal lies as perjury, lying and false 'confidential' reporting to the Justice Portfolio Committee to successfully pervert an enquiry it instituted, and false and misleading annual reporting – has nothing to do with you, and you're not to blame for it. But as LASA's CFO you're directly responsible for checking and ending Vedalankar's, Nair's and Clark's deliberate illegal failure to apply the many millions of rands in salary budget which the National Assembly has voted year after year to fund the top specialist legal professional posts (created at the special instance of the

National Assembly, expressly concerned about inadequate legal professional expertise at LASA, repeatedly conceded by Mlambo JP and Hundermark), and which LASA has received year after year from the Treasury via the Justice Department's Third Party Funds division, in an ongoing, annually repeated **'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position[s] ... vacant'**, which **'provisions of the Public Finance Management Act'** make it seriously illegal for LASA's budgeted and funded Senior Litigator posts at Pietermaritzburg, Durban and Mthatha to be **'left vacant'** for nearly a decade now, as I said. Even as CEO Vedalankar criminally misled the Portfolio Committee, the Minister, and the public in her CEO report for 2011/12 by falsely claiming in regard to the completion of the Strategic Plan 2009–2012 that 'Senior Litigators employed are working on complex matters in the higher courts.' And again: 'We employed Senior Litigators who are working on complex matters and matters in higher courts.' The same half-truth (= whole lie) was told in the 'Report on Completion of Strategic Plan 2009–2012' included in LASA's Annual Performance Report for 2011/12, signed off as the perfect truth for the true information of the Portfolio Committee, the Minister, and the public by Board chairperson Mlambo JP and CEO Vedalankar: 'Senior Litigators employed are working on complex matters and matters in higher courts' – when in truth and in fact one third of these top posts – six out of nine – had been corruptly 'frozen' off the record, right after suitably qualified and experienced candidates had been selected for them. HRE Clark lied similarly in LASA's 'Business Plan 2011/12': 'No longstanding vacancies' – when in truth and in fact the Pietermaritzburg and Durban Senior Litigator posts at the top of LASA's professional ranks had been vacant for many years since their creation in November 2006, and the Mthatha post since its creation in March 2010. The multiple criminal lies Board chairperson Mlambo JP has told in the matter, strenuously trying to kick away this unwanted dog pursuing him very determinedly, are the subject of several capital complaints against him currently pending before the Judicial Service Commission. They're accessible online, together with his dismal response, and my invited reply to it, via the above-mentioned link.

11. To be copied to the Minister, the Portfolio Committee and other interested parties once I've completed it after the argument of my PAIA applications in March, I have a substantially complete, comprehensive report in preparation for the Auditor General, in which I closely detail the massive illegal financial irregularity and corruption in question and request a special audit of LASA; and I intend including in my report your response or non-response to this letter.
12. Your response or non-response will reveal whether as CFO of LASA you take seriously your professional responsibilities and obligations to your one-and-a-half-billion-rands-a-year public entity, or whether like COO Jerry Makokoane, you've decided rather to make common cause with the lawless, corrupt clique running LASA by looking away from the gross illegality and criminality I've pertinently called to your attention, and would consequently like to end your career sacked and disgraced like former ESKOM CFO Anoj Singh.
13. There's big trouble coming for your colleagues this year, so you need to choose sides wisely. You might even consider asking them: *Wouldn't it be better to start talking to Brink with a view to finding out on what generously compromised terms he's prepared to settle his indisputable claim to his long overdue appointment, as well as all his pending and intended future litigation and all his pending and intended future complaints against us, before this cancerous, suppurating boil finally bursts very publicly, and blows its pus all over the place, including over bystanders like me?*
14. For reporting to the Auditor General, I look forward to your advice of your intentions, by email please.

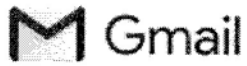
Yours sincerely



ADV ANTHONY BRINK
anthonybrink.sa@gmail.com

08/01/2019

Gmail - ONGOING CONTRAVENTION OF THE PFMA BY LASA INVOLVING MANY MILLIONS OF RANDS



Anthony Brink <anthonybrink.sa@gmail.com>

B

ONGOING CONTRAVENTION OF THE PFMA BY LASA INVOLVING MANY MILLIONS OF RANDS

1 message

Anthony Brink <anthonybrink.sa@gmail.com>


8 January 2019 at 17:07

To: RebeccaH@legal-aid.co.za, vidhuv <VidhuV@legal-aid.co.za>, briann <BrianN@legal-aid.co.za>, JerryM@legal-aid.co.za, SethopoM@legal-aid.co.za, AmandaCl@legal-aid.co.za, langal@legal-aid.co.za, saica@saica.co.za, Martin Welz <editor@noseweek.co.za>

Rebecca Hlabatau
Chief Financial Officer, Legal Aid SA

Dear Ms Hlabatau
I attach an important letter for your careful attention and response.
Yours sincerely
Anthony Brink

Cc:
CEO Vidhu Vedalankar
COO Jerry Makokoane
NOE Brian Nair
HRE Amanda Clark
IAE Sethopo Mamotheti
Board Secretary Langa Lethiba, for consideration by the Board
Lwazi Bam, Chairperson: South African Institute of Chartered Accountants
Martin Welz, Editor and Publisher: *Noseweek*

 **Hlabatau 8.1.19.pdf**
52K

MB CM

Appendix

Footnote 116 of Part One of my complaint to the Auditor General contains an error, identified here in italics:

116. The irregular manner in which the selection panel framed its recommendations of the two candidates after duly selecting them will be discussed in another part of this complaint to follow, as will the many unlawful irregularities committed by LASA's national executives in the matter, *inter alia* by unlawfully gerrymandering the qualifying criteria for the posts in a failed attempt to bias the process in favour of one of the applicants, Ngcamu AJ (as he used to be), a long-time judicial colleague of LASA chairperson Mlambo JP, *who was then head of the Labour- and Labour Appeal Courts, and who'd repeatedly got him appointed as an acting judge of the Labour Court over a period of about six years prior to the interviews.* To be discussed in another part of this complaint to follow, this long suppressed, determinedly concealed, critically relevant information was finally forced out of LASA through PAIA litigation in April 2016, years after the trial of and judgment in the misconceived, correctly dismissed labour action mentioned above (LC D529/11), which had been wrongly founded on unfair discrimination.

I've just discovered that I was misinformed about this. Though Ngcamu and Mlambo JP were indeed judicial colleagues in the Labour Court, the latter was only appointed to head the Labour- and Labour Appeal Courts in 2010. The italicised portion of the footnote therefore stands to be corrected by deletion.

ALB CM