

Can we just clarify that last sentence:

“This panel does not have to recommend...”

What, what does that mean? --- [No audible reply].

In your view, I do not want to... (Inaudible). My Lord, the second round of interviews was not a rubber stamp (indistinct) was recommended as a suitable candidate from the first round of interviews.

In fact, a specific requirement of the second panel was that all candidates who were interviewed or shortlisted for the first round, their CVs had to be sent... (intervenes)

10 COURT: Sorry, it was that all candidates were... (intervenes) --- All candidates who were shortlisted for the first round of interviews... (intervenes)

Ja. --- **Their CVs also had to be sent to the, so that the second round panellists could consider if there was anyone else they would be interested to interview.** And that is the reason why in the earlier letter we saw today the HR Managers and Vela and the Regional had sent what was stated as four CVs. **The practice of the second, Ja, the...** (intervenes)

20 So four had been interviewed, they were the only candidates interviewed for the first level? --- Yes, so all four were interviewed, My Lord, their CVs were sent to me. Because in deciding who will be in interview for the second round, we look at all four again and not only the person that the first round panellist interviewed or recommended. I can

also confirm, My Lord, that on previous occasions the second round panel did not always support the recommended candidates from the first

round and often came to a contravene recommendation.

MR DU TOIT: Right, and in paragraph... (intervenes)

COURT: Sorry.

MR DU TOIT: Sorry.

COURT: (Indistinct) at 6.4 you are saying this panel, you mean the first panel, this panel refers to the first one or the second? --- In 6.4, My Lord, it refers to the second panel; those are the panellist of the second.

10 The second panel does not have to recommend? --- Does not have to rubber stamp any decision or recommendation made from the first, by the first panel. It has, it is free to make the decision it wants to make and to interview whoever it wants to interview.

MR DU TOIT: At 6.5 the following is said:

20 "The recommendation of the second stage of interviews are finalised by the responsibility Executive in terms of section 8.2.2.b of the Legal Aid SA Approval Framework. As per this approval framework, the relevant Regional Operations Executive, in the case of Durban, Pietermaritzburg, the positions of ROE for KwaZulu-Natal together with the LOE and the CEO approve the founding appointment. The approval framework is approved by the Board of Legal Aid SA from time to time. It was last approved on 27 February 2010. The relevant extract of the approval framework is hereby made available and attached for ease of reference."

Well, that is just setting out the procedure. Do you agree with that? --- Yes.

your candidature for the senior litigator in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege at all.”

Now, if you look at the right-hand page, 187, that is a, I think it has been described as a photo shot, but I am not quite sure that that is the right expression. --- Document properties.

Of the document properties, it comes from a computer as we can see. And it says there:

“Author: Brian N.”

Oh, sorry:

“VDV, VDV.”

Sorry:

“VDV.”

Sorry, I am confusing it with the other one. It is:

“VDV.”

Correct. And did you author this letter? --- No.

Okay. Then we have at page 209, we have a letter to the applicant by Judge Mlambo in this italic script. Did you author this letter? Did you have anything to do with it? --- No.

And then can we go to page 1012, and here I would like you to

have your finger at 1012 and 505 of the (indistinct). Now, this is a report to the Minister by Judge Mlambo and on the basis of the

Photostat which appears at 1015. Do you see that? --- (Inaudible).

Sorry, yes, on the basis of the Photostat which appears at 1015, do you see that? --- Yes.

Okay, this is the one I could not read and the other one, but this one does Brian N, I think? --- Yes.

All right. It is suggested that you drafted this report, is that correct? --- I confirm that I did the initial draft.

Now, we note that there was no signature at page 1014? --- (Indistinct).

Let us go to page 505 where another version of this document appears. --- Got it.

Are the two documents the same? --- My Lord, I can confirm that the documents are not the same (inaudible). There has been some additions and amendments in different paragraphs.

The document at 505, if you look at 507 in fact bears the signature which I think we can identify as that of Judge Mlambo? --- Correct.

Can we just turn to page 506 and you can perhaps point out something there. You see in the middle of the page there is a paragraph starting:

“A Brink subsequently referred a dispute.”

Do you see that? --- Correct.

Does that appear in your draft? --- No.

COURT: You said it is A Brink subsequently referred?

MR DU TOIT: Ja.

COURT: So that is not in the draft, that will be above paragraph 3. Oh, I see.

MR DU TOIT: Do you know who authored that paragraph, who drafted

that paragraph? --- My Lord, when I did the draft I would have sent it to the CEO for her to discuss further with our Chairperson. So I cannot

say for sure who actually (indistinct) it, but it was certainly not me.

There are also other changes.

Are there? --- Yes, if you look at background under paragraph, under background, the second paragraph, second sentence.

In my initial draft I had:

“Whilst the initial reason of this panel (indistinct) sitting was caused by delays...” (intervenes)

COURT: You said the second, under paragraph 1, the second paragraph? --- Second paragraph, second sentence.

Oh, second paragraph, second sentence, the reason for freezing? --- No, we are dealing with background. Second paragraph, second sentence starts with:

“Whilst.”

Yes. Yes. ---

“Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting in time suitable for all members of the panel, other pressing financial...”

If you look at that part that I read, in the version that was signed by Judge:

“Whilst the initial reason for the panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel [and then this is in addition] of which the Chairperson of the Board of Directors is one.”

under my watch have never sought to make any decisions regarding the senior litigated posts on any ground other than the budget constraints which you have rejected.”

Now, you cannot speak for Mrs Vedalankar, but you can speak

for:

“Legal Aid under my watch.”

And as far as you are concerned, does this correctly reflect your view? --- Absolutely.

Now, look at page 869. Now, if you look at page 871, there is a little Photostat of a computer panel and it attributes this to Gudu, M. But

in fact, who wrote this report? --- My Lord, I did. I was the author of this.

Yes.

COURT: You were the author? --- Yes.

Okay.

MR DU TOIT: And that in particular in the third paragraph on page 869, you say:

“A two-stage interview process was implemented in order to identify candidates for the appointment. Six senior litigators were called in our recruitment processes. The other three posts have remained vacant due to recruitment changes. We have since decided not to fill the main positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.”

Now, it is the accusation against you is that you are here

And a date, you see that? --- And what recommendation, may I ask the applicant, do you think this is referring to?

Look at the heading. --- For the second round of interview?

Yes. --- But there was no dispute that there was going to be a second round to look... (intervenes)

That is not what we are talking about... (intervenes) --- If... (intervenes)

We are talking about whether you needed to sign for approval or disapproval of the recommended candidate for a second round interview. You agree that you were required according to this form and (indistinct)? --- My Lord, this was a regional initiative; they would have compiled that form. So if they actually put a box to say recommended or not recommended, it did not mean that it was a requirement of the organisation. But I confirm to the Court that it was my intention to call a second round interview when I could coordinate a date and time that all members would be available. And as I indicated to the Court yesterday, I immediately realised that that would only be possible sometimes in February.

COURT: If I understand you, once you shall have, you would have coordinated the dates, what would you do? You would then send the email you received to them... (intervenes) --- Yes.

With the attachment? --- Yes.

And then what? --- Because Your, My Lord, would recall I did indicate that we only, ~~we do not only~~ interview the recommended candidates. The panellists can look at all people who were interviewed

at the first round and they can say, "We would also like to see X, Y and Z".

So at what stage is the decision taken? Is it taken by correspondence or is it taken on the date of hearing on those allocated days that you people have agreed on? In other words, when you send the emails, is it so that the members would say, "Look, we want all four", in which case you then tick your box and say all four are recommended for the second level? Or you, I do not know... (intervenes) --- It is... (intervenes)

How would that happen, how... (intervenes) --- I would send it to the five panellists and say, "Please advise who you would like to see", and then you put, you create a small template and you see where there is consensus... (intervenes)

So... (intervenes) --- And eventually you propose, "Okay, we have seen X, Y and Z, all agreed", then they say yes... (intervenes)

That is by correspondence, that is what I am asking? --- Email, it is sent through... (intervenes)

By email, Ja. --- Yes.

For correspondence. --- Yes.

Okay, so by email that is done? --- Yes.

And then what is your role thereafter, do you tick any boxes... (intervenes) --- Once... (intervenes)

In light of... (intervenes) --- No.

That or you do not do anything? --- Once that is done, I will inform the HR Department to coordinate the interview, to get the

logistics of this.

Okay.

MR BRINK: It is your evidence then that your second level or second round interview panel is at large to interview a candidate found unsuitable, rejected by the selection panel of your senior legal professionals in the region? And not, the same follows, and it is also at large not to interview the recommended candidate found under the requirement code to be the most suitable for employment, for appointment? --- My Lord, I have indicated in the past that we, the panel does not confine itself to only the person that is recommended. The panel, as in the past, requested to see other candidates who were interviewed. The panel has also in the past as is stated in the evidence, we have also rejected recommended candidates of first (indistinct). That has already been stated in the evidence.

Stated in the evidence and I have it written down that previously the second panel often, often did not support the recommendation of a selection panel. Now, I know the case of Kalu, who else? --- [No audible reply].

Or is he the only one? --- [No audible reply].

Is that the truth of the matter? --- My Lord, immediately I know of Mr Kalu and if my memory serves me correctly I think there was one other person that was recommended as possible, as possibly appointable that we did not like. This would have happened in 2008 in the first round of interviews, in the first time (indistinct). I do not know have specific names or places.