

36 Pearson Street
Eshowe 3815
27 May 2020

The Honourable Mr Justice Achmed Jappie
Judge President, KwaZulu-Natal Division of the High Court
By email: rjooste@judiciary.org.za

Cc:

The Honourable Mr Justice Mogoeng Mogoeng
Chief Justice, Constitutional Court
By email: schiloane@judiciary.org.za

The Honourable Mr Justice Anton van Zijl
KwaZulu-Natal Division of the High Court
Case Manager: Brink v LASA: Case No's: 11187/16P, 14224/17P & 5239/18P
By email: tcandy@judiciary.org.za

The Honourable Mr Kimi Makwetu
Auditor-General of South Africa
By email: marissab@agsa.co.za

Dear Judge Jappie

**GROSSLY IMPROPER DIRECTIONS ISSUED BY JUDGE POYO DLAWATI
TO PREJUDICE THE DISPOSAL OF AN APPLICATION FOR LEAVE TO
APPEAL HER JUDGMENT IN BRINK v THE INFORMATION OFFICER,
LEGAL AID SOUTH AFRICA, CASE NO. 11187/16P**

I write to you in your capacity as head of court charged with 'Monitoring and Implementation' (section 6) of the Norms and Standards for judicial officers prescribed by the Chief Justice on 14 February 2014.

Several years ago, on 10 October 2016, I had to apply, yet again,¹ under section 78 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') for an order compelling the deputy information officer of Legal Aid South Africa² ('LASA') to surrender records I'd duly requested, which had been illegally and unconstitutionally withheld³ to obstruct my further investigation and reporting of pervasive, systemic top-level recruitment corruption and its cover-up at LASA, involving the commission of numerous crimes, unlawful contraventions of the Public Finance Management Act 1 of 1999 ('PFMA'), and material irregularities as defined by section 1 of the Public Audit Act 25 of 2004 ('PAA').⁴

One of my record requests had nothing to do with any of this, but concerned other recruitment corruption in the form of grossly inappropriate and unethical job-fixing outside the organisation by a top LASA officer in favour of his equally corrupt mistress.⁵

After multiple delays achieved by LASA's defensive litigation strategy in the Zuma style, I was eventually able to argue my case before Judge Portia Poyo Dlwati ('the judge') nearly three years later on 30 August 2019.

Although section 5.2.6 of the Norms and Standards prescribes under the heading 'Delivery of Judgments', 'Save in exceptional circumstances where it is not

¹ A few months earlier in February 2016, LASA had totally capitulated at court moments before argument to five other such PAIA applications set down together; abandoned all its refusal justifications and defences; agreed to turn over all requested records I'd sued for or certify on oath those that don't exist; and agreed to respond to a final PAIA request in the matter of Senior Litigator recruitment – which request it then contemptuously refused in September 2016 on exactly the same 'frivolous or vexatious' grounds (section 45 of PAIA) just abandoned in February; hence the instant application.

² Following his resignation, I substituted him by consent with 'The Information Officer, Legal Aid South Africa'.

³ As I show in my replying affidavit, the actual decision-maker who's been blocking my access to LASA's records since 2010 is Chief Legal Executive Patrick Hundermark. As then LASA Board member Ela Gandhi observed very correctly in the *Mercury* on 23 November 2011: 'It's only when people have something they are not proud of that they try to hide things.'

⁴ See footnote 7 and below.

⁵ I'd learned of this directly from a former national management executive, and intend filing a gross misconduct complaint about it once I have the records I've requested for it. This includes records requested from the Judicial Service Commission ('JSC').

possible to do so, every effort shall be made to hand down judgments no less than 3 months after the last hearing’, I didn’t mind that she took nearly twice as long to decide my case, because section 5.2.5 headed ‘Finalisation of all Matters before a Judicial Officer’ allows that ‘some cases may, due the complexity and magnitude thereof, take longer to finalise than the norms set out herein.’

My case fell precisely into that ‘exceptional’ category. The PAIA Unit of the South African Human Rights Commission has fairly described PAIA as ‘very technical’, for which reason it’s ‘necessary to ensure that judicial officers had the skills to apply it’.⁶ And in addition to the unusually recondite and intellectually challenging ‘complexity’ of the ‘very technical’ field of constitutional information law that the judge was required to interpret and apply for the first time in her legal career, the ‘magnitude’ of my case was such that it involved a substantial 425 pages of affidavits, canvassing masses of aggravating background facts set out in support of the special orders I claimed, and portended the most serious personal and professional repercussions for the delinquent past and current LASA officers implicated in my papers, including, among others, former Board chairperson Dunstan Mlambo JP, former CEO Vidhu Vedalankar, NOE Brian Nair, HRE Amanda Clark, CLE Patrick Hundermark, and former LE Thembile Mtati, such as getting sacked, impeached, struck off and jailed.⁷

⁶ Per Dr Fola Adeleke, then director of the SAHRC’s PAIA Unit, representing the SAHRC before the Justice Portfolio Committee on 3 December 2012. Section 5.1(viii) of the Norms and Standards stipulates consonantly: ‘Judicial Officers should strive for and adhere to a high level of competence and excellence and to this end are encouraged to participate in regular training under the auspices of the South African Judicial Education Institute.’

⁷ My first eight gross misconduct complaints against Mlambo JP, two charging crimes, are pending before the Judicial Conduct Committee of the JSC. These complaints and my letter to the Chief Justice about them, to which he responded encouragingly in February 2020, are accessible online at illegal-aid.co.za/JSC. Some of the many contraventions of the PFMA, crimes, and material irregularities as defined by the PAA committed by LASA’s management executives are detailed in Part One of my complaint to the Auditor-General, currently in the hands of his Investigation division, to which his in-house counsel referred it, accessible at illegal-aid.co.za/AG. A substantially complete criminal complaint against former CEO Vedalankar on multiple counts will be affirmed, signed and submitted shortly and will be accessible at illegal-aid.co.za/NPA. A summary of my charges is posted there already. Further criminal complaints against other LASA officers are in preparation.

I presume therefore that in justifying to you her delay in delivering judgment, and why it ‘was not possible’ to comply with the prescribed timeframe in which to do so – to inform your own reporting to the Chief Justice under section 6 of the Norms and Standards, which require you to ‘monitor and evaluate performance of the Judicial Officers serving in his or her court on a daily basis to ensure optimal utilisation and productivity’⁸ – the judge’s ‘data’ that ‘All Judicial Officers shall submit ... on their performance and the workflow of cases for collating and analysis following which a comprehensive report by the Head of Court will be compiled’⁹ for ‘submission to the Chief Justice to assess the functioning and efficiency of the courts’¹⁰ – so as to enable him to ‘exercise responsibility over the monitoring and evaluation of the performance of each Judicial Officer as well as the monitoring and implementation of norms and standards for the ... judicial functions of all courts’¹¹ – included the said ‘exceptional circumstances’ going to the extraordinary ‘complexity and magnitude’ of my ‘very technical’ case that made it ‘not possible’ to deliver judgment within the normal time the Chief Justice has prescribed.

For the reasons mentioned below, however, I must allow that the judge never did appreciate, which is to say had no conception of, no idea at all about the ‘complexity’ and ‘magnitude’ of the case, inasmuch as it was ‘very technical’, required her study and comprehension of a huge record, and augured the most extreme consequences for the guilty officers involved; and that instead, she thought it was actually a very simple and uncomplicated case, an obvious waste of everyone’s time,¹² and even ‘a load of shit’.¹³ And that she therefore advanced

⁸ Per section 6(iii).

⁹ Per section 6(ii).

¹⁰ Per section 6(iii).

¹¹ Per section 6(i).

¹² In her paragraph 28, the judge upheld LASA’s reliance on section 45 of PAIA, which permits the refusal of record requests that are ‘manifestly frivolous or vexatious’ or would be unreasonably time-consuming to respond to.

¹³ As Judge Esther Steyn reportedly disparaged my case to the late Adelaide Watt, then a Senior State Advocate, the day before the original set-down on 15 March 2019. I met my long-time friend and colleague outside court after the said judge postponed my case at LASA’s request on the perfectly irrelevant basis that its favourite counsel was busy with another case in another

to you, for transmission to the Chief Justice under section 6 of the Norms and Standards, some other ‘exceptional circumstances’ for not complying with his prescription regarding the normal delivery of reserved judgments within three months, such as that after hearing my case, being deeply concerned about ubiquitous, rampant public sector corruption in our country, even among its highest officers, she’d been terribly busy dealing with and dismissing the former President’s final attempt to stop his prosecution for it.

Her judgment¹⁴ delivered on 6 March 2020 was a complete shambles. It was made up of so many basic factual and legal mistakes and falsifications that identifying and correcting them all took me 200 paragraphs in 1.5 point line-spacing in my 54-page application for leave to appeal.¹⁵

Its introductory first paragraph dismally sums up:

“[The judge] repeatedly and persistently falsifies the applicant’s evidence and contentions on critical points; falsifies even the original respondent Mtati’s evidence and the substituted 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

court on the day my case was to be argued. On conveying my frustration that my long-outstanding PAIA case against LASA had just been kicked down the road for another six months, Adv Watt responded that she knew about my case from a conversation she’d had with the said judge the day before, in which she’d referred to it those dismissive terms (I’ve translated the original Afrikaans expression quoted to me). Judge Steyn’s negative sentiment has an echo in paragraph 34 of the judgment, falsely claiming, in the teeth of all the evidence of corruption at LASA that I placed before her, that I’ve ‘already received tons of information from the Legal Aid’ (false; I hadn’t) but I’m nevertheless ‘still hopeful that [I] might find some wrong doing by or on behalf of the Legal Aid.’ (False, I’d already found plenty; and as said in my papers, evidence of some of it was already before the JSC.) ‘That, to me, seems to be a fishing expedition which cannot be said to be in the public interest.’ (A grotesquely false mischaracterisation of my stated serious purposes in making my requests, and a pitifully clueless misstatement of the test for entitlement to access public body records.)

¹⁴ Accessible online at illegal-aid.co.za/PAIA/PAIA_1.

¹⁵ Ditto.

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 ('LASA') and of her 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;⁹ and generally exhibits her profound incomprehension of and inability to apply first principles of constitutional information law”.

⁹ The learned judge stated these professional connections of hers with LASA, with Mtati, and with LASA Chief Legal Executive Patrick Hundermark before argument, discounting them to the applicant as irrelevant and no reason to apprehend bias against him in LASA's and her former colleagues' favour.

In short,¹⁶ in dismissing my constitutional claim to access the public records I'd sued for; in finding in favour of her former colleagues; and in holding that the records I requested were 'protected'¹⁷ from disclosure to me and from being passed on in turn to the several high authorities mentioned in my papers, the judge made a total hash of the case. To put it politely.

To read the judgment is to recall the Chief Justice's remark about corruption in the judiciary expressed during his 17th Nelson Mandela Lecture on 23 November 2019: 'You must be worried when you read a judgment and you are struggling to make sense of it.' And his suggestion that we ask: 'Who are we [judges] uncomfortably or indecently friendly to?' Also his admonition: 'Watch us closely, otherwise our constitutional democracy is gone', and along with it our 'general

¹⁶ I neglected to include in this summary also the judge's falsification of the record, shown in the main body of the application.

¹⁷ Actually, in an interesting slip in her paragraph 28, the judge applied the word not to the records in question but to LASA. PAIA doesn't 'protect' public bodies under any circumstances.

and unqualified right'¹⁸ to public body information, that terrifically sharp scalpel for lancing and exposing corruption in the state, so that it can be remedied and the officers involved in it held to account.¹⁹

By arrangement with your senior registrar for opposed civil applications, I duly filed my application for leave to appeal by emailing it to her on 27 March 2020, because the lockdown regulations banned me from leaving my district to deliver a hard copy at court in the ordinary course.

After indolently sitting on her hands for over seven weeks, seemingly embarrassed and not knowing what to do, the judge contrived to avoid dealing with the profusion of grounds I advanced for overturning her judgment, by setting me a trap.

On 18 May 2020, her registrar emailed me her order 'to file written submissions of not more than 10 pages long ... by 27 May 2020 as there will be no oral argument in the matter. Judge will deal with the application for leave to appeal on paper.'

The utter mess that Judge made of my case can't possibly be addressed in ten pages. Compliance with her order would require that I abandon most of my appeal grounds. They can't be compressed into a fifth of the space I needed to list them. And this isn't a case in which I can pick out and ride on a few central points; the whole thing counts.

There's anyway no provision in Rule 49 for ordering an appellant to reduce the scope of his appeal in this way, and I will not do so. On the contrary, I stand on and will argue every single ground I've stated, confident that a full and proper

¹⁸ *MEC for Roads and Public Works, EC v Intertrade Two (Pty) Ltd* 2006(5) SA 1 (SCA), paragraph 8: 'Section 32 of the Constitution confers upon every person a general and unqualified right of access to any information held by the State and its organs.'

¹⁹ In his paper 'Freedom of Information and Corruption' in May 2001, Maurice Frankel, director of UK-based Campaign for Freedom of Information, began by noting: 'Transparency is the key way to deter and detect corruption and safeguard the integrity of government.' Gabriella Razzano of Cape Town's Open Democracy Advice Centre in began her presentation to the National Anti-Corruption Forum in Johannesburg in the same year by noting likewise: 'Access to information is a fundamental tool in the fight against corruption.'

consideration of the judge's innumerable radical errors will ultimately achieve the first of the 'Objectives' stated in section 2 of the Norms and Standards, namely the 'quality justice' of which your Division has thus far disappointed me.²⁰

I well understand that the judge would prefer to avoid dealing with all my grounds of appeal stated in my application, showing that she failed abysmally in my 'very technical' case to display the 'high level of competence and excellence' expected of her by section 5.1(viii) of the Norms and Standards, but I'm not going to play along with and participate in the charade to which she's invited me in order to facilitate her rejection of my application for leave to appeal her dismissal of my constitutional claim to sight of the public records her former colleagues are determinedly hiding from me and from the authorities I've repeatedly stated I intend referring them to. As I've done with previously disgorged records.²¹

I appreciate too that it will be very disagreeable and tedious for the judge to have to study my unusually lengthy appeal application, relentlessly picking to pieces the multitude of dismal blunders she made in her judgment, but unfortunately one of the 'core values' listed in section 3 is 'Diligence'. Also 'integrity and impartiality'.

If the judge really wanted a summary of the grounds on which I'll be arguing before a full bench that she botched the case at every possible level, she already has it in my summary introduction quoted above.

Having regard to section 5(1)(ii) of the Norms and Standards, prescribing that 'Every Judicial Officer must dispose of his or her cases efficiently, effectively and

²⁰ Although Judge Rashied Vahed correctly dismissed LASA's corruptly driven, legally incompetent, and factually baseless attempt to prevent me enforcing its settlement agreement made with me at the Eshowe Magistrate's Court, and from proceeding with the instant PAIA application before this court, by having me declared a vexatious litigant (a claim so obviously meritless that I wasn't even called on to argue against it), his reasons for doing so, delivered several months later, surprisingly made light of my underlying complaint of massive corruption in LASA's top ranks, closely detailed in several volumes of papers, including in my affirmed complaints to the JSC* before him, and suggested I was missing a few marbles. (*Thanks to the Chief Justice's intervention earlier this year, my complaints are at last receiving attention; see illegal-aid.co.za/JSC.)

²¹ See footnote 7 and below.

expeditiously’, I respectfully ask that you discharge your responsibility as head of court imposed on you by section 4 of the Norms and Standards to ‘ensure that all Judicial Officers perform their judicial functions efficiently’, also ‘effectively and expeditiously’, and direct the judge to decide my application for leave to appeal under Rule 49 on the papers before her, without trying to scuttle down a short-cut in doing so.

And without further delay. Although LASA is responsible for most of it, the judge’s conduct is aggravating the egregious departure in my case from the Norms and Standards for the ‘Finalisation of civil cases’. Whereas section 5.2.5(i)(a) requires that in the ‘High Court’ they be finalised ‘within 1 year from the date of issue of summons’, my constitutional claim to access to LASA’s public records launched way back in October 2016 has yet to be upheld by the sworn guardians of the Constitution of your Division, and we’re now half-way into 2020.

As the Supreme Court of Appeal (Combrink AJA) put it very pertinently in *Claase v Information Officer of South African Airways* [2006] SCA 163 (RSA), paragraph 10:

Section 9 of the Act states that one of the objects of the Act is:

‘(d) to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible;’

I emphasize the words ‘swiftly’ and ‘effortlessly’.

And in paragraph 1:

‘The present appeal illustrates how a disregard of the aims of the Act and the absence of common sense and reasonableness has resulted in this court having to deal with a matter which should never have required litigation.’

I’ve no objection to the judge disposing of my application for leave to appeal on the papers in her chambers without the oral hearing contemplated by Rule 49(1)(d) & (e), because having regard to the several facts stated below, I accept

that her decision in favour of her friends at LASA is a foregone conclusion, and I'm anxious to get to Bloemfontein on petition as soon as possible.

First, having 'got the vibes' in her chambers, I was appalled by the judge's demand in court that I confine my argument to just forty-five minutes, on the stated basis that she had my heads before her. As said, the case was 'very technical' and involved multiple complex legal issues and masses of aggravating background facts set out in my voluminous affidavits for me to deal with. We had a full court day available to us for a thorough airing of my case, yet for reasons best known to her the judge decided to cramp my presentation of it severely. As a seasoned civil litigator, including in the Supreme Court of Appeal, I got that unmistakable impression that the case was already cooked, and that whatever I had to say would be futile. As it turned out.

Second, although indeed she had my heads of argument, the judge evidently hadn't studied or understood them before the hearing, because she was visibly surprised when in court I had to call her attention to and educate her about the provisions of section 7(2) of PAIA²² mentioned in them.

Third, my application for leave to appeal identifies numerous clear indications that the judge never bothered to read my necessarily lengthy affidavits.²³ That

²² It provides an exception, in the interest of justice, to the ordinary bar imposed by section 7(1) against the use of any record in civil or criminal proceedings where it's been requested and obtained under PAIA after such proceedings have commenced and where it could have been obtained under the court's discovery rules or any other law. Which section was anyway irrelevant to my record requests, because I had no litigation pending in respect of which I'd sought the records, as the judge twice mentioned in her judgment. As it revealed, however, the lesson failed.

²³ In my day at the Pietermaritzburg Bar, going to court unfamiliar with the record ended in blood on the walls. The judge wasn't alone in this disgraceful dereliction, however. When cautiously checking the papers once again to ensure everything was in perfectly place for the hearing on 30 August 2019, to which date Judge Steyn had postponed it on 15 March 2019, I noticed that she'd been commendably assiduously annotating and flagging my founding affidavit until a certain point where she abruptly packed it in – evincing that she'd stopped studying and hadn't read the complete application when the case came up for hearing on 15 March 2019. Gladly postponing the case on the above-mentioned basis that LASA's preferred advocate wasn't available (which LASA knew for months, yet chose not to brief a replacement), Judge Steyn amazingly ordered me, not LASA, to pay the wasted costs. Her postponement order then falsely suggested that the postponement was my fault, by implying that I hadn't complied with the Practice Directions, when in truth and in fact I'd done so punctiliously.

is, she decided the case without considering all the crucial evidence placed before her.

It was for these reasons that I drafted my application for leave to appeal with the superior legal acumen, attentiveness and intelligence of the Supreme Court of Appeal in mind, so manifestly lacking in the particular court below.

Shortly after the hearing in August 2019, I mentioned in my letter to the Chief Justice in November²⁴ and in Part One of my complaint to the Auditor-General in February 2020²⁵ that once I have the records I've sued for, I'll be using them in support of further gross misconduct complaints against Mlambo JP and further parts of my complaint to the Auditor-General regarding rank procedural and ethical recruitment corruption I've uncovered at LASA, a 'material irregularity' on numerous scores within the purview of section 1 of the PAA and therefore of formal interest to him.

Disregarded by the judge, I mentioned in my PAIA application papers that I intend filing criminal complaints against several of LASA's top management executives. The first of these, comprising 306 paragraphs, 53 pages, and 75 supporting documents, charges former CEO Vedhu Vedalankar with eleven crimes, for each of which she's liable to be jailed. Substantially complete, it will affirmed, signed and submitted for prosecution shortly.²⁶

Several of the requested records I've sued for, which the judge obligingly supported her former employer and colleagues in withholding from me, will be used, once I have them, to found more criminal complaints, as well as strike-off complaints, against National Operations Executive Brian Nair, Chief Legal Executive Patrick Hundermark, and former Legal Executive Thembile Mtati, among others. In short the judge's dilatory handling of my case is holding up the long overdue criminal prosecution of these rogues and their expulsion from the legal profession.

²⁴ Accessible at illegal-aid.co.za/JSC.

²⁵ Accessible at illegal-aid.co.za/AG.

²⁶ It will posted at illegal-aid.co.za/NPA. A statement of the charges is already available there.

I've copied this letter (i) to the Chief Justice for his interest in the judge's breaches of his Norms and Standards for judicial conduct, and to account for the delay she's caused me in preparing and submitting further gross misconduct complaints against Mlambo JP, mentioned to him in my above-mentioned letter; (ii) to the Auditor General to account for why the further parts of my complaint regarding other material irregularities at LASA, which in Part One I stated would follow, have likewise been delayed by the judge in upholding LASA's defence that it lawfully suppressed the requested documents I need for them; and (iii) to the case manager Judge Anton Van Zijl to account for why I haven't reverted to him for directions as to the set down of my second and third PAIA applications pending in this court under the case numbers mentioned above.

In the situation, please tell the judge to get a move on. Long delayed, you'll appreciate this is an extremely serious matter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style with several loops and flourishes.

ANTHONY BRINK

APPLICANT/APPELLANT