IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 11187/16P

In the matter between:

ANTHONY BRINK	Appellant
and	
THEMBILE MTATI N.O. DEPUTY INFORMATION OFFICER LEGAL AID SOUTH AFRICA	First Respondent
THE INFORMATION OFFICER, LEGAL AID SOUTH AFRICA	Second Respondent

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REPLYING AFFIDAVIT
RULE 49(13) APPLICATION

I, Anthony Brink, affirm:

1. Nowhere in his answering affidavit does Hundermark dispute my case for relief under Rule 49(13), which is that that he himself engineered my current financial embarrassment by depriving me of my income, and that he's therefore directly responsible for, and is the direct cause of, my consequent inability to put up security for the costs of my appeal.

2. More specifically, Hundermark doesn't deny that he retaliated against me as a whistleblower by getting me sacked as an acting magistrate and blacklisted from any future appointments for criticising, in my labour litigation against Legal Aid SA ('LASA'), the capital misconduct of then Board chairperson Dunstan Mlambo JP (now before the Judicial Conduct Committee ('JCC') of the Judicial Service Commission), and the capital misconduct of his current

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and erstwhile colleagues in executive management, Chief Executive Officer Vidhu Vedalankar, National Operations Officer Brian Nair and others (now before the Auditor-General ('AG')), including their criminal misconduct.

3. In short, the case I make in this application for the relief I seek is uncontroverted.

4. Because he has no answer to my case, Hundermark tries discrediting it by bloviating irrelevantly with a sandstorm of meretriciously high-toned prevarication, obfuscation and perjury – each and every instance of which will be treated and exposed in this reply.

5. This court's obligation under Article 16(1) of the Code of Judicial Conduct to report Hundermark's perjuries will be dealt with at the end.

6. As he did with his failed application in this court (his 'vexatious application', dismissed by Vahed J) to have me declared a vexatious litigant and interdicted from proceeding with my applications brought in this court ('the main case') and in the Eshowe Magistrate's Court to compel the delivery of records he'd formally pledged to me in his settlement agreement made with me in the latter court – also from requesting access to any more of LASA's records, and from seeking any other relief from LASA in the courts – Hundermark once again falsely depicts my main case and my other litigation against LASA as frivolous and vexatious harassment. That is, he repeats his main excuse contrived in2014 for consistently refusing to comply with my record requests duly made under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA'). But besides being false, his repeated charge false that I've been wasting LASA's time in making pointless record requests is irrelevant to the specific, narrow issue before this court in this application.

7. As mentioned in paragraphs 44 and 78 of my founding affidavit in the main case ('FA') and in paragraph 2.5 of my replying affidavit therein ('RA'), Hundermark has at all times been the actual decision-taker in refusing my PAIA requests since 2010, on ever shifting grounds (quoted and refuted in

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FA annexure 'F'), and likewise in insupportably opposing my several necessary applications to enforce them – his opposition in the Magistrate's Court ultimately abandoned. So in this affidavit I'll drop the fiction that it was any other national management executive whose name he used.

Ad paragraph 2

8. Section 17(6)(a) of PAIA requires that the designation of a public body deputy information officer 'must be in writing'. Unlike the delegations as deputy information officers of then COO Makokoane, then LE Mtati, and NOE Nair by then CEO and information officer Vedalankar, all of which I've seen, Hundermark's written delegation has never been shown to me, not even when formally requested and then sued for under PAIA. So I don't accept his sworn claim here to be a deputy information officer, more especially because as repeatedly shown below, Hundermark lies freely under oath.

Ad paragraph 6

9. Without specifying how and why, Hundermark alleges that my application 'has not been filed in accordance with the rules of court' and is 'very late'. In truth and in fact, it was made before the expiry of my time allowed for filing the record and precisely within the contemplation of Rule 49(13) in all particulars – which is why 'no condonation application has been made'. Hundermark's claims here are untruthful nonsense, made only to generate a false general negative impression of my application.

Ad paragraph 8

10. My several necessary litigations against LASA are detailed in my papers in the main case and summarised below.

11. In short, I'm pursuing a massive corruption case against LASA – about which I comprehensively briefed the *Daily Maverick*'s Cape Town-based Associate Editor and leading corruption-exposing investigative journalist during an interview she requested with me three days ago on 27 October here in Eshowe.

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12. The JCC is currently seized with eight gross misconduct complaints against Mlambo JP and one against Waglay JP; and the AG with a complaint of financial and other grave malfeasance at LASA and with twelve criminal charges against former CEO Vedalankar, destined for referral under section 5(1A) of the Public Audit Act 25 of 2004 ('PAA') to the National Prosecuting Authority ('NPA') for prosecution.

13. It's for the JCC, AG and NPA – not Hundermark, nor this court – to decide whether my extremely serious complaints are 'defamatory' or not. The question is in any event irrelevant to the narrow issue before court in this application.

14. As mentioned in my letter to the Chief Justice last year (annexure 'A' to my founding affidavit) Hundermark previously complained in November 2015 to the Society of Advocates ('the Society') that I'd unprofessionally defamed these judges and his executive colleagues. For the record, I learned last month from the Society's response to a PAIA request for records concerning the disposal of Hundermark's complaint against me, that ultimately, at its meeting on 25 January 2018, the Society's Bar Council didn't agree that I was guilty of and should be struck off for the allegedly unprofessional conduct Hundermark had alleged, and resolved to reconsider the matter, whereupon it fizzled out. Earlier this year, a couple of months after my letter to the Chief Justice, I learned that Hundermark had tried reviving his risible complaint against me by making it again, now to the Legal Practice Council, although that's gone cold too now, which is to say his second head-shot at this whistleblower has also missed.)

Ad paragraph 9

15. This untrue allegation will be refuted below in my reply to Hundermark's description of my several litigations against LASA.

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Ad paragraph 10

16. Hundermark's repeated insinuation, made in the main case, that the number of requests I've made, and the number of records I've requested is somehow untoward, improper and an unlawful abuse of my fundamental right to information, is refuted with reference to decided case authority in my replying affidavit and heads of argument in the main case. (What's been unlawful is Hundermark's refusal to comply with these requests on ever shifting grounds – detailed in the main case and in FA annexure 'F'.

17. Hundermark's point, anyway false, is irrelevant to the narrow issue in this application.

Ad paragraph 11

18. In his compulsive criminal mendacity, Hundermark commits multiple perjuries in this paragraph, to be added to my criminal complaint against him in preparation for his prosecution; his strike-off as an attorney; his removal from LASA's Board as an executive member; and his dismissal from employment as LASA's Chief Legal Executive.

19. In the main case, my *first request* in July 2016 for the legal cost records reflecting what Hundermark wasted in opposing my five PAIA claims in the Magistrate's Court all the way to the point of argument, only to capitulate there, has nothing to do with 'the 2009 recruitment process for the senior litigator post [at] Pietermaritzburg'. The same goes for most of my *second request* in August 2016.

20. My next PAIA application pending in this court (14224/17P) concerns legal cost records reflecting how much public money Hundermark corruptly, irregularly, fruitlessly, wastefully and therefore illegally misspent trying to derail my corruption investigation by trying to have me declared a vexatious litigant; and it has nothing at all to do with 'the 2009 recruitment process for the senior litigator post [at] Pietermaritzburg'.

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21. Hundermark's claim that LASA 'abandoned the filling of the post' is more flagrant perjury. Nair has repeatedly confirmed on affidavit and in court that there's no record whatsoever that LASA as a public entity – as opposed to some corrupt officers acting behind the scenes, without authority, off the record, and illegally– 'abandoned the filling of the post' for any reason. Moreover, the Constitutional Court confirmed in *Zungu* that for LASA to have 'abandoned the filling of the post' would have been illegal under section 53(4) of the Public Finance Management Act 1 of 1999 ('PFMA').

22. Yet more blatant perjury is Hundermark's claim that LASA resolved not to fill the post 'due to budgetary constraints'. (This is after I'd been duly selected and recommended for it, instead of my rival applicant, then Board chairperson Mlambo JP's former long-time judicial colleague in the Labour Court, Ngcamu AJ (as he used to be).) In truth and in fact, as LASA's own financial records show, the vacant critical post was at the time and remains *budgeted* by LASA and *funded* by the National treasury via the Department of Justice and Correction Services ('the Department') upon the annual budget vote of the National Assembly.

23. To conceal this most inconvenient and very disagreeable fact, Hundermark characteristically dishonestly omits to mention that much more than just being 'interviewed' for the post, the full, uncensored selection panel's report, eventually forced out of LASA in 2016 by PAIA litigation, determinedly opposed all the way to the court steps, shows that I was unanimously recommended by the selection panel, and that my rival applicants – including the covertly earmarked favoured candidate, Mlambo JP's long-time former judicial colleague – were disqualified and rejected.

24. I deal with all of this in my papers in the main case.

Ad paragraph 12

25. My labour case was *correctly dismissed* in that I'd wrongly based it on unfair discrimination, inferred from the then available evidence (the labour judge found that I was indeed extremely politically unpopular at the time). As I

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discovered years later from the selection panel's full uncensored recommendation report, the real obstacle between me and my appointment to LASA's top professional post in this province was just everyday jobs-for-pals corruption – which I blocked by assiduously pursuing my appointment, thereby preventing the appointment of Mlambo JP's pal to the post for which I'd been recommended and he'd been positively disqualified and rejected. (In similar recruitment corruption, a former Regional Operations Executive informs me that the applicant appointed to the Mahikeng Senior Litigator post was not recommended by his selection panel.) I canvass this in my papers in the main case.

26. How a top LASA officer, obviously very well connected with Waglay JP, criminally perverted the decision of my petition for leave to appeal by dint of his criminal 'memorandum' (FA annexure 'K') slipped to him behind the registrar's back is the precisely the subject of a gross misconduct complaint currently pending before the JCC.

Ad paragraph 13

27. *First*, the merits of my application to interdict the taxation of LASA's bill of costs in my labour action (the 'interdict application') were never considered and adjudicated, and the case was dismissed only on account of an unanticipated service problem: a mix-up between my attorney and the sheriff who failed to serve my papers duly delivered to him for the purpose.

28. *Second*, Hundermark was himself present in court during the debate of his vexatious application to try shutting down my further investigation, using PAIA, of the pervasive systemic corruption and financial malfeasance I've uncovered at LASA; and with his own ears he heard this court (Vahed J) point out that the judge who dismissed my interdict application for lack of formal service (it had been emailed to the respondents for maximum possible notice) should merely have just struck the case from the roll, and not have condemned me in costs – much less in punitive costs for criticising Waglay JP's capital misconduct, now before the JCC. In other words, the

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order for costs against me was wrongly made. Still, I accept that until it's set aside or abandoned in the inevitable ultimate global settlement between LASA and me, I'm liable to pay them. But after successfully getting me thrown off the bench and deprived of my income as a magistrate with which to pay its costs order in my interdict application, LASA didn't even bother presenting its bill to me in that case to pay.

29. *Third*, Hundermark also heard Vahed J state that in addition to the vexatious application papers, which he said he'd spent a week studying, he'd drawn and studied the file in my interdict application, in which I detailed with supporting documents the corrupt disposal of my petition of leave to appeal in the Labour Appeal Court. (The unstamped, unsigned, undated, anonymous 'memorandum' that perverted the decision of my petition is FA annexure 'K'.)

30. My complaint to the JCC against Waglay JP about this was annexed to my supplementary answering affidavit in Hundermark's vexatious application, and Vahed J found no fault with it. Had he done so, and had he agreed with Hundermark that my complaint is itself unprofessional, he'd have been bound by the Code of Judicial Conduct to report me to the Bar for gross professional misconduct. There was no such thing.

31. My exceedingly serious pending complaint against Waglay JP is pressed in my letter to the Chief Justice, annexure 'A' to my founding affidavit. Yet Hundermark grotesquely raises my complaint against Waglay JP to paint *me* as the malfeasor in the matter for complaining of LASA's staggering, *documented* corruption of the judicial process in the Labour Appeal Court in a case handled by its Judge President.

32. The affair vividly illustrates the depths of the criminal depravity at LASA that I'm faced with. To keep the lid on their corruption, these people in control of this prodigiously corrupt public entity don't stint even at getting at friendly judges behind the scenes to throw cases in their favour.

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Ad paragraph 14

33. For the record only, I should mention that the sheriff's return, which I hadn't seen before, contains numerous surprising false statements. It's untrue I was hard to find and that he battled to find me, because as LASA well knew, I was a magistrate at the local Inkanyezi court in Eshowe, and my home address was repeatedly stated in my PAIA applications to the Eshowe Magistrate's Court across town, to which the sheriff came directly. His claims that I had 'no vehicle' and 'no money in [my] bank account' were also false; I had then and still have the same licensed car, and I used my money in my bank account to pay him R20 000 as a down payment towards settling LASA's bill, the balance to be paid in substantial instalments, discussed below. Nor were there 'various attempts to attach and remove'. It's untrue false that 'Deputy Sheriff Sudesh was in the process of removing goods at 1 Boast Street', the main 'house belong[ing] to Mr[s] J Hawke'; in truth, the sheriff came straight to me at my garden cottage. But certainly he found it too Spartan to distrain, and said so.

34. While I'm on it: The sheriff's return finally explains LASA's complaint in other papers that it never saw any of my said R20 000 down payment – even though as the Constitutional Court pointed out in *Zungu* and again in *Long*, costs don't follow the result in labour matters, unlike in civil cases, so the costs order made against me in my labour case (as in my interdict application) was wrongly made. I see now that instead of turning my payment over to LASA, as I intended, the sheriff misappropriated it and applied it directly to settling his magnificent fee for driving to my home and back again, and hardly anything else.

Ad paragraph 15

35. This tedious, endlessly repeated rubbish is extensively treated and refuted in my papers in the main case, and is in anyway irrelevant to the narrow issue before the court in this application. Clearly Hundermark doesn't remember

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his lesson at law school that under common law a judgment taken by fraud can be rescinded at any time.

36. Paragraphs 14–16 of my instant application and its annexures 'D' and 'E' vouch that, just as I announced I intended doing, I've now commenced reporting to the AG the extraordinarily serious financial malfeasance and criminal corruption that I've turned up at LASA.

37. The involvement of former chairperson Mlambo JP in this corruption and its criminal cover-up, including his false reporting both to the Minister of Justice and Correction Services ('the Minister') and to the Parliamentary Portfolio Committee overseeing that Department ('the Portfolio Committee') to pervert their separate inquiries into it, is a matter currently before the JCC, as mentioned in paragraphs 6 and 7 of my founding affidavit and in my letter to the Chief Justice, its annexure 'A'.

Ad paragraph 22

38. Besides my interdict application, all my litigation against LASA since 2014 has been for orders compelling it to allow me access to duly requested records, persistently illegally and unconstitutionally suppressed by Hundermark in his obstruction of my investigation and reporting of major criminal and financial corruption in his organisation and its now thoroughly disintegrated cover-up.

Ad paragraph 24

39. Pointed out and vouched in paragraph 14 of my founding affidavit, I've filed twelve criminal charges with the AG against former CEO Vedalankar for referral to the NPA under section 5(1A) of the PAA. Eight charges of capital misconduct against former chairperson Mlambo JP, two criminal, are pending before the JCC. As said in paragraph 5 of my founding affidavit, criminal charges against Hundermark and other national executives will follow. Hundermark's several perjuries in his answering affidavit identified herein will be added to my intended criminal complaint against him.

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Ad paragraph 25

40. As mentioned repeatedly in my papers in the main case, and as I've now shown beyond question with annexures 'D' and 'E' to my founding affidavit, my purposes in making my record requests – anyway irrelevant under PAIA section 11(3) – were far wider than Hundermark's false and misleading description of them here. As usual, to misdirect the court, he deceptively omits to mention my repeatedly stated *immediate* purposes.

41. None of the cost records requested in July 2016 (my *first request* in the main case), showing what Hundermark squandered on indefensibly opposing my PAIA litigation in the Magistrate's Court, are relevant to my future intended rescission application. As ever, Hundermark casually lies under oath.

42. Albeit that using PAIA to gather records *for use in intended future litigation* is a perfectly proper use of the Act – indeed, the South African Human Rights Commission ('SAHRC') has observed that a major use of PAIA is to collect documentary evidence to build legal actions against corrupt public entities engaged in tender fraud – in fact only about a third of my records request in August 2016 (my *second request*) had any bearing on my future intended rescission application. Hundermark's description of my second request is deceptively misleading.

43. As said, Hundermark is deceptively silent about my immediate purposes in making my PAIA requests – anyway irrelevant under section 11(3) – namely to use the requested records in support of further complaints to the AG, JCC and NPA.

44. In finding in his judgment that I'd shown that Nair to have been 'not generous with the truth' on the witness stand 'a number' of times, the labour judge himself noted that Nair had repeatedly perjured himself in court – even as the judge believed his central lie (originated by Hundermark in his letter to me in October 2010 that he got Vedalankar to sign), namely that LASA didn't have the budget to fill its remaining vacant Senior Litigator posts (in truth, as LASA's own records show, the posts were budgeted and

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funded) and that LASA had resolved to freeze recruitment to the posts (there's no record of any such decision, which, as the Constitutional Court pointed out in *Zungu*, would anyway have been illegal under the PFMA).

45. In my answering affidavit opposing Hundermark's vexatious application, I identified some of Nair's main lies that defrauded the labour judge; and during the argument of the vexatious application, this court (Vahed J) sympathetically mentioned my complaint that Nair had 'told a pack of lies' at trial (refuted by LASA's own records that I put up with my answering affidavit in that case), and went on to point out that all trial lawyers know that cases are won by perjury sometimes. (Of course; as an advocate, I've encountered this dismal reality *many times* myself.)

46. Hundermark's claim that I 'conceded that the purpose behind the PAIA applications were [*sic*] to launch a rescission application of the Labour Court's judgement [*sic*] against him', is untruthfully false. As my papers in the main case show, I openly stated this ultimate purpose along with my immediate purposes for seeking access to some of the records in specified in my *second request*; I never 'conceded' it, as if I was caught out concealing it in court and constrained to admit it.

Ad paragraph 26

47. Unfortunately LASA's most senior management lawyer Hundermark still thinks that a requester seeking access to public body records needs to show a 'compelling public interest to be served by the disclosure of such information', that disclosure of the records must be 'in the public interest', and that 'a fishing expedition' for public body information (even had it been true of my requests, and it plainly isn't) is illegitimate and somehow negates a requester's '*unqualified right*' to access it, even if he's just being a *'busybody'* quite properly asking for information '*just for the sake of it*' (I'm quoting in italics from Supreme Court of Appeal ('SCA') decisions cited in my notice of appeal that support my main case).

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48. These legal misconceptions about PAIA that still trouble and confuse LASA Chief Legal Executive Patrick Hundermark may be traced to the fact that he very mistakenly thought it unnecessary to present himself for special remedial training in this 'very technical' field of law, as the PAIA Unit of the SAHRC has rightly described it, which special remedial tutorial in constitutional information law the SAHRC found necessary to urgently provide LASA's self-admitted completely clueless head office lawyers in November 2011, after Hundermark had repeatedly illegally and unconstitutionally refused my first three PAIA requests in 2010–11, on spurious grounds, all ultimately abandoned. I discuss all this with reference to supporting records in my RA paragraphs 238–53. Hundermark's clueless justifications for refusing my early PAIA requests, all ultimately abandoned, are quoted and taken apart in FA annexure 'F'.

Ad paragraph 28

49. I've laid the most serious criminal and other capital misconduct charges against some of LASA's former and current top officers, and more will follow. So it's useless for Hundermark to fuss that my charges are 'offensive and defamatory', which is to say are terribly upsetting to him and his colleagues, and also baseless and unlawful.

Ad paragraph 28

50. Hundermark earlier mischaracterised my PAIA and other litigation against LASA as 'frivolous' in his vexatious application, but this court (Vahed J) found his allegation so obviously meritless that I wasn't even called to argue against it. What was indeed 'frivolous' was Hundermark's vexatious application, briskly dismissed by this court.

51. Had my first five PAIA applications in the Magistrate's Court been 'frivolous', Hundermark wouldn't have conceded them.

52. Had my application to compel compliance with the settlement agreement that Hundermark reneged on been 'frivolous', Hundermark wouldn't have

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implicitly conceded it by handing over further records in two successive batches, and his counsel wouldn't have conceded the magistrate's point made in court that LASA's section 23 affidavits given me were defective, just as I'd complained, and he wouldn't have undertaken to the magistrate to see to it that I be furnished with a compliant one.

Ad paragraph 30

53. This is obvious malarkey. The positive outcome of my appeal is certain to any lawyer who understands how PAIA works.

Ad paragraph 33

54. This is for the full bench to decide. What Hundermark says here is all noise.

Ad paragraph 34

55. This is utter nonsense, sprung from LASA's top in-house lawyer's ignorance and incomprehension of basic constitutional information law dismally on display in his paragraph 26, replied to in my paragraphs 47–8 above.

Ad paragraphs 35–36

56. Leave to appeal has been granted so Hundermark's empty flapping here is of no interest.

Ad paragraph 37

57. A glance at my finely particular notice of appeal refutes Hundermark's ridiculously false allegation that my appeal is 'vague' and doesn't precisely specify where, misdirected by Hundermark, this court erred. But his spurious allegation illustrates again his distant relationship with the truth, and his habitual abuse of language in legal proceedings, even in relation to the clearest, simplest, objective facts. As said, he lies freely on oath.

58. Whatever specific ground of appeal I've raised that he thinks is 'unfounded' he must 'answer' whether he likes it or not. If he can't understand my appeal notice, because it's indeed 'very technical' (per the SAHRC on PAIA), he has

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six Senior Litigators at LASA to explain it all to him free of charge in simple terms suitable to his level, and also advise him on LASA's prospects of successfully opposing my appeal before a full bench and the peril LASA faces of being declared a constitutional delinquent.

Ad paragraphs 38–39

59. The fact that this court granted me leave to appeal is inconsistent with Hundermark's alleged contrary opinion, in his demonstrated unfamiliarity with the most basic principles of constitutional information law, that 'it is highly unlikely that the appellant will be successful in the appeal', because if on reading my application for leave to appeal this court shared Hundermark's opinion that 'it is highly unlikely that the appellant will be successful in the appeal' and therefore didn't think there was a reasonable prospect 'that the appellant will be successful in the appeal' before a full bench, it wouldn't have granted me leave to argue my case before it.

60. Sprung from his pitiful ignorance of PAIA again on display in his answering affidavit, Hundermark's alleged 'genuine belief that the appellant has no prospects of success' is evidently not shared by this court.

Ad paragraph 40

61. It's obvious to any intelligent person acquainted with the provisions of PAIA that my success on appeal is assured.

62. Under the Constitutional Court's *Biowatch* rule it's trite that a litigant suing in good faith to vindicate a fundamental right violated by the state is not liable for costs, even if ultimately unsuccessful. So there's no serious prospect that the full bench will uphold the costs order made against me in the main case, and order me to pay the costs of the appeal even if I lose it. (*Zungu* in the Constitutional Court is a precedent for reversing a wrongly made costs order, even where the appellant failed on the merits, both in the court below and on appeal.)

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Ad paragraph 41

63. If my appointment to LASA's top legal professional post in KwaZulu-Natal hadn't been corruptly aborted off the record, following my unanimous recommendation by the selection panel (instead of the earmarked, favoured candidate, whom the panel unexpectedly disqualified and rejected), and the post then corruptly 'frozen', also off the record and in illegal contravention of the PFMA, as the Constitutional Court confirmed in *Zungu*, I wouldn't have had to sue for my appointment.

64. If to corruptly conceal it from me in criminal contravention of section 90 of PAIA, Hundermark hadn't carefully scrubbed with his black Koki pen the pivotal information contained in the selection panel's recommendation report that my rival applicant for the post, Ngcamu AJ (as he used to be), had been then Board chairperson Mlambo JP's long-time judicial colleague in the Labour Court for about six and a half years, I wouldn't have sued on the wrong cause of action, covert unfair discrimination, instead of my true one, everyday recruitment corruption in the form of jobs-for-pals cronyism – as I finally discovered through PAIA litigation years after the trial and judgment.

65. If after the trial Hundermark hadn't persistently illegally and unconstitutionally refused my several PAIA requests duly made in the period 2013–15, I wouldn't have had to repeatedly sue in the Magistrate's Court for the records I'd duly requested.

66. If after capitulating to my five PAIA applications in the Magistrate's Court Hundermark had honoured and not reneged on the settlement agreement he made with me (via Mtati at court taking his instructions over the phone) to hand over all requested documents that I'd sued for or to duly certify any that don't exist, I wouldn't have had to return to court with an application to compel full and proper compliance with the settlement agreement.

67. If the decision of my petition for leave to appeal had not been perverted right in the middle of LASA's condonation application before all the papers were in, by means of that poisonous, lying 'memorandum' (FA annexure 'K')

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slipped to Waglay JP and importuning him to throw the case LASA's way, I wouldn't have had to bring my interdict application to halt the taxation of LASA's bill of costs for its opposition to my labour claim.

68. If Hundermark had not reneged on his express agreement, recorded at the Magistrate's Court, to respond to a final request in the matter of Senior Litigators, and had he not illegally and unconstitutionally hidden the vast wasted costs of opposing my five PAIA applications in that court all the way to argument only to fold just before it, also the costs of indefensibly opposing my application to compel his compliance with his settlement agreement, I wouldn't have had to sue (in the main case) to compel his compliance with my duly made requests for these and other records.

69. If Hundermark had not illegally and unconstitutionally refused my duly made PAIA request for LASA's legal cost records reflecting how much public money he corruptly, irregularly, fruitlessly, wastefully and therefore illegally misspent trying to stop my corruption investigation by trying to have me declared a vexatious litigant, I wouldn't have had to sue for those records in pending case 14224/17P.

70. If Hundermark had not illegally and unconstitutionally refused my PAIA request *made to the Department* for certain financial records, which request the Department referred to LASA to respond to under section 20, I wouldn't have had to sue for those records in pending case 5239/18P.

71. What Hundermark is feebly trying to do here is portray my several necessary applications against LASA as unfounded and spurious. But he substantially conceded my first five PAIA applications by agreeing to hand over all the records I'd requested; substantially conceded my application to compel compliance with the settlement agreement by incrementally handing over further records in response to it, with his counsel also conceding that the section 23 affidavits given me were defective, just as I'd complained; lost his attempt to have me thrown out of court with his vexatious application; and

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lost his opposition to my application for leave to appeal, so his allegation that I've been 'consistently unsuccessful' in my litigation against LASA is false.

72. It's true I lost my labour case, but that's because Hundermark concealed critically relevant information from me and the Labour Court, and only surrendered it at the point of argument when I sued in the Magistrate's Court and was about to argue for the full record containing that pivotal information which Hundermark had cynically and corruptly, illegally and unconstitutionally hidden from me in criminal contravention of section 90 of PAIA.

73. Before my labour case was tried, I succeeded with all pre-trial discovery processes to which I was repeatedly forced to resort to force LASA's discovery of duly requested records that I needed for trial; and under unremitting pressure of each of my returns to court, including two extra, additional special pre-trial conferences held at court under judicial supervision, LASA handed over more and more of the records I needed, the last of them just a week or two before trial.

74. It's true my petition for leave to appeal was dismissed, but that's because LASA criminally perverted it – proving which I have the incontrovertible documentary evidence, now before the JCC (FA annexure 'K').

75. It's true that my interdict application failed, but only on account of an unexpected service hassle, not on the merits.

76. Over and above indefensibly opposing my application in the Magistrates Court to compel his compliance with the settlement agreement, and in this court (the main case) to compel his compliance with my final PAIA request concerning Senior Litigators agreed between us, and for other records including wasted cost records, all at vast unnecessary wasted cost, Hundermark corruptly tried preventing me prosecuting my applications by attempting to have me thrown out of court, at further enormous unnecessary wasted cost to LASA.

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77. Having regard to the contents of my appeal notice, LASA faces certain catastrophic defeat in my appeal, for which Hundermark will undoubtedly be held accountable by LASA's Board and by the higher authorities to which it answers.

78. After the main case has been won on appeal, I'll be requesting the records of all LASA's costs in the matter, including for insupportably opposing my appeal, and I'll be going all out to ensure that all this corruptly motivated, irregular, fruitless and wasteful expenditure – illegally incurred by Hundermark to deny me my constitutional right of access to public body information in our open democracy and to obstruct my corruption investigation – is recovered from Hundermark personally.

Ad paragraph 42

79. This is irrelevant to this application. Hundermark has repeatedly advanced the same limp excuse for his persistent illegal and unconstitutional refusals to share LASA's records with me on duly made request under PAIA.

80. It's abysmal that LASA's top in-house lawyer Hundermark should think that an organ of state can properly tell a court that it's too busy doing other things to find the time to also comply with the Constitution.

Ad paragraph 43

81. This is irrelevant to the issue in this application.

82. None of my PAIA applications would have been necessary had Hundermark not repeatedly illegally and unconstitutionally refused to comply with my duly made record requests over the past decade, starting with the first one filed in August 2010, which he mutely refused by ignoring it, then expressly refused on spurious grounds in October 2010, then again expressly refused on different bogus grounds in January 2011 – as detailed in FA annexure 'F'.

83. My application to compel full and proper compliance with the surrender treaty Hundermark made with me in the Magistrate's Court wouldn't have

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been necessary had he honoured and not contemptuously reneged on his undertaking to hand over all the requested records that he formally promised, and had he duly certified under section 23 of PAIA specified records that don't exist, as he also formally promised to do – instead of 1) delivering only some of them; 2) not complying with section 23; and 3) contemptuously dismissing my repeated pleas to honour his recorded undertakings – only to then belatedly provide further pledged documents in two successive batches over the months under pressure of my application to compel his compliance with the settlement agreement, or to put it more precisely, to compel his full and proper performance of LASA's constitutional obligations as a public body to make its records available on request, as finally undertaken in his surrender treaty.

84. My main case, now on appeal, wouldn't have been necessary had Hundermark honoured and not contemptuously reneged on his recorded undertaking to respond to one final PAIA request in the matter of Senior Litigators. And had he not illegally and unconstitutionally refused my other record requests. Nor would the cost of opposing the application have been necessary had Hundermark not resorted to Zuma-style Stalingrad tactics in defending my litigation at all costs, irrespective of the merits.

85. Hundermark has a lot to answer for regarding his egregious misconduct in persistently illegally and unconstitutionally hiding duly requested records to obstruct my ongoing investigation of top-level corruption and financial irregularity at LASA, and then abusing the legal process and public funds to block my access to them, even going to the extent of trying to bar me from enforcing my constitutionally entrenched right to sight of them by having me declared a vexatious litigant for insisting that he respect my fundamental right to information held by the State and honour his recorded undertakings in this regard.

86. Hundermark's casual lie told under oath, repeated here, that all my PAIA requests have related to the illegal, unauthorised, unrecorded, backroom abortion of my appointment to LASA's top professional post in this province,

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in criminal and other capital contraventions of the PFMA, now before the AG, is exposed by the fact that neither my *first request* for all the legal cost records of his abandoned opposition to my PAIA applications in the Magistrate's Court nor the majority of the other records requested in my *second request*, both of which requests are the subject of the main case, 'relates to the appellant's non-appointment'.

87. How 'LAC finally determined' my claim to my appointment, thanks to LASA's criminal 'memorandum' delivered under the counter to Waglay JP to defeat the ends of justice is the very subject of a pending gross misconduct complaint against him to the JCC.

88. As mentioned in my papers in the main case, I unreservedly accept that my cause of action in my labour case was wrong, thanks to Hundermark's cynical, criminally illegal concealment of critical, pivotal information from me before I sued for my appointment, namely my rival applicant's long professional relationship with then Board chairperson Mlambo JP.

Ad paragraph 44

89. It's Hundermark who has 'litigated with impunity', squandering millions of rands in public revenue to date on 1) hiring a junior advocate to spend several days thinking up ways to spuriously justify Hundermark's refusals of my PAIA requests in 2010–11 (RA annexure 'E' is just the advocate's '4th Acc[ount]', meaning there were others); 2) insupportably opposing *inter alia* my properly founded PAIA applications, necessitated by his abject contempt shown for the information transparency provisions of the Constitution, while hiding documents requested for my corruption investigation; 3) opposing my application to compel him to honour his recorded undertakings; and 4) trying to prevent me prosecuting the latter case and the main case by maliciously and baselessly applying to have me declared a vexatious litigant.

90. This court (Vahed J) has already considered and rejected Hundermark's charge levelled in his vexatious application that in repeatedly seeking access to LASA's public records in the exercise of my constitutionally guaranteed

right to information held by the state in the democratic era, my purpose has been to 'harass legal Aid SA', so it's idle for him to carry on banging the same tired old drum.

91. None of my PAIA litigation would have been necessary had Hundermark realigned himself with the new values of the Constitution and had he changed his mode of thinking characteristic of 'the system of government in South Africa before 27 April 1994' (per the Preamble to PAIA) and quit the 'secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations' during apartheid.

92. My litigation to enforce my PAIA requests that Hundermark repeatedly illegally and unconstitutionally refused has been dealt with on his instructions by LASA's Corporate Services department, briefing private counsel. These in-house attorneys handle litigation for and against LASA, not for and against the public, so Hundermark's statement that 'my requests and the litigations brought as a result thereof ... compels the respondent to divert its already constrained resources to attend to vexatious requests and litigation, compromising the delivery of legal services as mandated to Legal Aid SA' is patently mendacious in his usual style. It's an untruthfully false argument that Hundermark made to this court before in his vexatious application, and this court (Vahed J) has already considered and rejected it.

Ad paragraph 45

93. Had my first five PAIA applications in the Magistrate's Court been 'unmeritorious', Hundermark wouldn't have conceded them by finally agreeing at the point of argument to hand over all the records I'd sued for and certify under section 23 any that don't exist. Instead he would have got his counsel to argue that my allegedly 'unmeritorious' applications be dismissed.

94. Specially trained, qualified and designated to try PAIA disputes under section 91A of that Act, the magistrate didn't think those five PAIA applications 'unmeritorious', because on being told of LASA's total

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capitulation to them when stepping into court to ask how much longer we needed while Mtati was outside taking Hundermark's final instructions on the terms of the surrender treaty, he laughed: 'I thought so, they didn't stand a chance.' (Having abandoned them in the Magistrate's Court, Hundermark then raised the same junk defences in the main case.)

95. Had my application to compel Hundermark's compliance with the settlement agreement been 'unmeritorious', he wouldn't under pressure of that application have incrementally surrendered further documents that he'd pledged in the agreement but not delivered, and his counsel wouldn't have promised the magistrate to provide me with a compliant section 23 affidavit, after the latter pointed out from the bench that LASA's affidavits given me were obviously defective. (Needless to say, in breach of the undertaking given the magistrate, and entirely in character, Hundermark still hasn't provided me with a compliant section 23 affidavit.)

96. What this court (Vahed J) found completely 'unmeritorious' was Hundermark's attempt to prevent me from exercising my fundamental right to information under section 32 of the Constitution in the course of my corruption investigation, and from enforcing it in court under section 34, by trying to get me declared a vexatious litigant.

97. The full bench of this court will be deciding whether my main case is 'unmeritorious' or well-founded – and implicitly whether my two other pending PAIA applications in this court, against which Hundermark raised the same spurious defences, are also 'unmeritorious' or well-founded.

98. As mentioned in paragraph 17 of my founding affidavit, some of the main PAIA cases on which I rely have been victories won by record requesters *on appeal.*

99. I've repeatedly stated that I accept unreservedly that my claim in the Labour Court was 'unmeritorious' to the extent that my cause of action was completely wrong, in that covert unfair discrimination which I'd incorrectly surmised from the then available evidence had nothing to do with why I

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wasn't appointed. As I learned from information eventually forced out of LASA via PAIA litigation long after judgment in my labour case, the actual problem was ordinary, everyday jobs-for-pals recruitment corruption, like the routine tender corruption everywhere in South Africa nowadays. But budget records obtained from LASA after judgment prove categorically that the financial insufficiency excuse that Hundermark dishonestly fabricated in October 2010 under rising pressure to account for the silent unrecorded unauthorised illegal abortion of my recruitment in November 2009 – which excuse Hundermark has perjuriously repeated on affidavit – was false, and that Nair's evidence about it in the Labour Court was perjured, as this court (Vahed J) appreciated. (See paragraph 45 above.)

100. The merits of my petition for leave to appeal the dismissal of my labour claim were never dealt with, because a top LASA officer successfully torpedoed it with his criminal 'memorandum' (FA annexure 'K') before all the papers were in (mentioned in FA paragraph 86).

101. The merits of my interdict application were likewise never considered on account of a service glitch.

Ad paragraph 46

102. Had LASA's top officers followed due process in concluding my appointment, as prescribed by the Recruitment code and Approval Framework (under these regulations it remained only for Vedalankar and Nair to co-approve my appointment); had they not told a pack of contradictory lies to cover their unrecorded, unauthorised, illegal abortion of my recruitment and their so-called 'freezing' of the post in illegal contravention of the PFMA (lies told by Nair to the Board were completely different from those originated by Hundermark in 2010); and had Hundermark not obstructed my investigation of the true reasons for these unlawful irregularities by consistently and repeatedly illegally and unconstitutionally suppressing records duly requested since 2010, all my necessary litigation could have been avoided.

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103. Had Hundermark not tried shutting down my corruption investigation with his vexatious application, many hundreds of thousands of rands in public funds wouldn't have been wasted, to LASA's 'severe prejudice due to the vexatious litigation' he corruptly and maliciously launched against me.

104. This court (Vahed J) has already considered Hundermark's bleating that my PAIA and other litigation has been 'vexatious', and rejected it, so his stuck-gramophone spiel about this is useless.

105. As for the 'cost which the appellant does not have to bear', the professional and financial cost to me of going after the corruption I've uncovered at LASA has been colossal, incalculable and irrecoverable. I mention some of it in the 'Retaliation' section of my letter to the Chief Justice annexed to my founding affidavit. The extremely painful personal price I've paid, and continue to pay, is not relevant to detail in these legal proceedings.

106. Annexed marked 'A' is a report published by the *Daily Maverick* earlier this month, describing similar professional ruin and extreme financial and personal hardship suffered by other whistleblowers on major corruption at public entities and at private corporations corrupting them. I've experienced most of what they've gone through, and worse. Yet Hundermark claims my ten-year struggle has cost me nothing. To the contrary, it's cost me everything. His allegation is obscene.

Ad paragraph 47

107. As ever, Hundermark misdirects this court from my immediate purpose in requesting the documents in question, which is to use them in support of complaints to the AG, JSC and NPA. I've commenced filing these complaints to the AG, as material excerpts annexed to my founding affidavit vouch.

108. My determination to see former chairperson Mlambo JP held to account is evinced by my complaints to the JCC annexed to my supplementary affidavit in Hundermark's vexatious application (12124/16P), and by my letter to the Chief Justice (annexure 'A' to my founding affidavit). And as said, I intend

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filing further complaints against him once I have all the records I've duly requested.

109. No matter how often I nicely explain it to him, LASA's top management lawyer still doesn't get that under common law a judgment taken by fraud can be rescinded at any time, including and especially in light of documents surfaced after judgment proving the court was defrauded.

110. Once Hundermark has turned over all the records I've duly requested under PAIA, the Labour Court will be deciding what my 'prospect of success' will be 'if the matter is brought before the Courts again' on application for rescission and for leave to pursue my claim to my appointment on fresh pleadings, based on the pivotal information Hundermark hid from me in criminal contravention of section 90 of PAIA, and on financial records, both of which surfaced after trial and judgment in the Labour Court. If the case hasn't been settled by then.

Ad paragraph 48

111. I have twelve criminal charges pending against former CEO Vedalankar, and further criminal charges against Hundermark, Nair and other national executives for their perjuries and other crimes will follow. I have eight capital misconduct complaints pending against former chairperson Mlambo JP, two charging crimes, and one against Labour- and Labour Appeal Court head Waglay JP – all founded on supporting documents.

112. The corruption involved in this matter is gargantuan: lying to the Portfolio Committee to defeat its constitutional oversight responsibility; lying in affidavits and in court; perverting judicial proceedings – nothing is beyond these criminals. Yet Hundermark dishonestly discounts my extremely serious, fully and precisely documented complaints about it as 'abusive, defamatory and untoward'.

113. Section 177 of the Constitution expressly envisages that a judge may misconduct himself or herself so badly that he or she must be removed from

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the bench, and the Judicial Service Commission Act provides the machinery for this. (Indeed, the Judge President of this Division recommended last year that Motata J be booted.) Yet Hundermark implies absurdly that it's unacceptable to criticise 'sitting judges'. wow

114. For instance, in Hundermark's opinion, an advocate mustn't complain about a judge repeatedly visibly dozing off during court sessions after lunch in a long and factually dense trial. Such disgraceful inattention to the case mustn't be criticised, in Hundermark's view, because the person snoozing in court is a 'sitting judge', so to complain of it is *ipso facto* disgracefully disrespectful and unprofessional. An advocate likewise mustn't complain when a 'sitting judge' is too bone idle to prepare for oral argument set down for three days in a complex and factually dense case by troubling himself to read the extensive heads of argument filed, and even makes a joke of his shocking indolence in chambers. To Hundermark, my complaints about this are disgracefully disrespectful and unprofessional; and for making them and other serious complaints against Waglay JP and Mlambo JP, he's tried getting me struck off.

115. The unwarranted striking out of my evidence of gross judicial misconduct is precisely under appeal. It's for the JCC to decide whether my complaints to it, founded on supporting documents, are 'unproven and defamatory'. Certainly the Bar Council didn't think so or it would have applied for my strike-off, as Hundermark wanted.

116. None of this stuff has anything to do with the instant application.

Ad paragraph 49

117. Hundermark doesn't deny my central complaint founding this application that he himself rendered me 'impecunious' and unable to settle the costs orders he mentions.

118. Hundermark characteristically dishonestly conceals from this court that I'd commenced paying LASA's bill, in all good faith and obedience to the Labour

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Court's costs order, by way of a down payment of R20 000 and an undertaking to pay the balance at the rate of R10 000 a month from my magistrate's salary, and that Hundermark himself trashed this arrangement by getting me sacked a few days later. (No hearing, not even notice of Hundermark's complaint.)

Ad paragraph 51

119. Hundermark's casual lie that I 'have not pursued paid work' is contradicted and exposed by the facts set out in the 'Retaliation' section of my letter to the Chief Justice (annexure 'A' to my founding affidavit). The fact is, thanks to Hundermark I'm now professionally radioactive: my hitherto spotless professional reputation as an advocate has been fouled by his complaint against me to the Society of Advocates, even though it finally died in 2018; and having been blacklisted by the Department, I'm unable to obtain acting appointments as a magistrate here in Zululand where I'm now settled and where I'm told my services on relief are needed (my last invited bid for an acting apointment was rejected precisely because of Hundermark's complaint against me to the Magistrates Commission ('the Commission'), expressly conveyed to me as the reason), and I'm certain that my application for a permanent civil magistrate post for which I was shortlisted and interviewed in 2017 failed because of Hundermark's complaint to the Commission. The chairperson of the Commission's selection panel thought my CV 'very impressive' and said so; but to an opening enquiry as to whether there were any professional misconduct complaints pending against me, I was bound to report that there were, by LASA to the Commission and to the Bar, the facts of which I'm certain disqualified me.

120. Having worked so assiduously to put me out of and prevent me obtaining 'paid work' in my vocation, and to destroy my legal career and separate me from my livelihood, by claiming to the Commission and to the Bar that I'm unfit to be an advocate or magistrate, Hundermark now mutters with nauseating hypocrisy that I 'have no income to service [my] current debt and potential future debts'.

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121. In fact under the *Biowatch* rule, I'm not exposed to incurring any 'potential future debts' for pursuing my *bona fide* PAIA claims against LASA.

122. Hundermark's allegation that I have a 'nonchalant attitude towards litigation' is utterly false. My necessary litigation has been exceedingly stressful and exhausting, including and especially defending his malicious attempt to assassinate me in this court with his vexatious application. Nonetheless, I'm implacably determined to see the criminal corruption at LASA brought to book, including his own.

123. Like anyone following the news, I appreciate that criminal and other corruption has become entirely normal in politics, public administration, and at public entities in this country – even in parts of the judiciary, according to the well known pending complaints against Hlophe JP, and as my documented complaints against Mlambo JP and Waglay JP also show – but I don't accept it and will not walk away from it, especially where it's harmed me and those closest to me. So I'll continue working to expose the corruption I've uncovered at LASA, and in the judiciary, by all means available to me and for as long as I'm alive.

124. Chief Justice Mogoeng, Former Public Protector Madonsela, President Ramaphosa, and Public Enterprises Minister Gordhan are all on record calling on the public to bring evidence of corruption forward to the relevant authorities, and it's exactly what I'm busy with.

125. Himself criminally implicated in covering up the corruption at LASA – with which he perjuriously persists in his answering affidavit – Hundermark naturally doesn't like it; and short of a bullet he has gone all out to stop me.

Ad paragraph 52

126. I deal with this above.

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Ad paragraph 53

127. In truth and in fact, as I detail in FA annexure 'F', my '*modus operandi*' has been to try avoiding litigation by first calling on the SAHRC and Public Protector to exercise their special statutory powers to intervene where Hundermark has repeatedly illegally and unconstitutionally refused my PAIA requests; and it's only where these calls have proved fruitless that I've exercised my remaining option under section 34 of the Constitution and section 78 of PAIA to approach the courts to compel compliance with them.

128. None of this would have been necessary had LASA, criminally aided and abetted by Hundermark, not revealed itself to be profoundly corrupt. Hundermark has been the direct cause of all my PAIA litigation and the vast cost to LASA of insupportably opposing it, and he squandered an additional fortune in public revenue trying to block my access to LASA records by applying to have me declared a vexatious litigant. But I've never abandoned my fundamental right to information and sure don't intend doing so now. Hundermark's persistence in violating my constitutionally guaranteed right to public body information since 2010 has strengthened, not weakened, my determination to vindicate it – just as the police hardly get less interested in arresting a known thief the more often he steals.

Ad paragraph 54

129. Under the *Biowatch* rule, there's no real prospect of the full bench condemning me in costs, even in the most unlikely event that it dismisses my appeal.

Ad paragraph 55

130. Should Hundermark hand over the records specified in my other two PAIA applications pending in this court, I won't have to continue litigating for them. He spits on my constitutionally enshrined right to public body information and then cries when I look to this court to enforce it.

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131. It's obvious from the contents of my notice of appeal annexed to Hundermark's answering affidavit that the full bench is certain to reverse this court's dismissal of my main case.

Ad paragraph 56

132. This same argument has been made to this court (Vahed J) before, and it rejected it. If Hundermark wants to avoid 'this sort of litigation', all he has to do is start complying with section 32(1)(a) of the Constitution. But that would mean cooperating in and not continuing to obstruct my investigation of corruption and other financial malfeasance and its criminal cover-up, in which he's personally criminally implicated.

Ad paragraph 57

133. Dealt with extensively in my papers in the main case, this is completely irrelevant to this application.

134. I will properly litigate for as long as it takes to disgorge duly requested records from LASA, to which I'm constitutionally entitled, but which Hundermark is illegally hiding from me and from the several authorities to whom I've stated I intend referring them. As I've shown, I've already started filing my complaints to them.

135. My five PAIA applications in the Magistrates Court have zero bearing on this application. Likewise my application in that court to compel Hundermark's full and proper compliance with his settlement agreement made with me there, namely to turn over all requested records or duly certify any that don't exist.

136. The reason the documents were 'never enough' is that Hundermark disgracefully reneged on and dishonoured his settlement agreement with me by failing to hand over *all* specified documents he'd pledged, including key records, and by failing to deliver a *compliant*, unambiguous section 23 affidavit containing all the essential information the section prescribes.

MB BS

137. After he contemptuously spurned my repeated written pleas to comply with the settlement agreement, forcing me to return to court under its default clause to compel it, Hundermark then incrementally surrendered more of the pledged documents – which proves that his claim (made via Mtati) that he'd fully complied with the settlement agreement was a lie, as usual.

138. When, as I'd complained, the magistrate pointed out in court that Mtati's section 23 affidavits were obviously defective, and stated the reason, LASA's counsel undertook from the bar to see to the delivery of a compliant one – which likewise gives the lie to Hundermark's bare denial of my persistent complaint that he didn't comply with that section.

139. Since it emanated from LASA, this promise given the magistrate on the court record was predictably broken, and I've yet to be furnished with a compliant section 23 affidavit.

140. In characteristic bad faith and contempt of his own undertakings recorded in the settlement agreement handed into court and read by the magistrate, Hundermark continues withholding many records that he pledged to turn over to me, including key records.

Ad paragraph 58

141. If Hundermark just handed over the documents he promised in the settlement agreement and duly certified under section 23 those that don't exist, I wouldn't need to cross-examine LASA's employees on the whereabouts/existence of these records promised but not delivered to me.

Ad paragraph 60

142. It's untrue that my next PAIA application in this court (14224/17P) 'concern[s] the appellant's non-appointment as a senior litigator'. The allegation is a casual lie on oath in Hundermark's conventional style. In truth and in fact, as my founding affidavit and its annexures in that case show, the application very differently concerns the cost records of Hundermark's vexatious application to deprive me of my fundamental right

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to information and my fundamental right to enforce it in the courts, under sections 32 and 34 of the Constitution. It has nothing whatsoever to do with my 'non-appointment as a senior litigator'.

143. As said in that application, I intend handing these legal cost records to the AG with a view to seeing this corruptly motivated, fruitless and wasteful expenditure recovered from Hundermark personally. It's illegal for corrupt public officers to corruptly abuse public funds on corruptly driven litigation to cover up corruption.

144. It's equally untrue that my PAIA request for financial records that is the subject of my third application in this court (5239/18P) was 'made to Legal Aid SA', and this false allegation is another casual lie told under oath in Hundermark's familiar manner. In truth and in fact, as my founding affidavit and its annexures in that case show, I made that PAIA request *to the Department*, which referred it to LASA to respond to under section 20, evidently satisfied that it was a serious request and not 'manifestly frivolous or vexatious' (per section 45). Hundermark then predictably refused to respond to it, claiming under section 45 in his usual contemptuous routine that it was just a waste of time.

145. As ever, Hundermark builds his case on readily demonstrable lies.

146. This court (Vahed J) has already considered Hundermark's contention that my PAIA requests and litigation to compel compliance with them have been 'vexatious', and it has rejected it. Yet Hundermark recklessly repeats it.

Ad paragraph 61

147. As said in my founding affidavit, should this court dismiss my application, it will enable Hundermark to get away with violating my fundamental right to information by illegally and unconstitutionally suppressing duly requested public body records that I need for use in support of further complaints of corruption and financial and other serious malfeasance to the AG, JCC and NPA.

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148. The sum of R300,000 that Hundermark demands I put up for security to cover the total cost to LASA of his continuing fight to suppress the public body records I've requested indicates his prodigious profligacy with public funds in straining to keep the records from me and from the said authorities.

Ad paragraphs 62–4

149. As pointed out in paragraphs 7 and 14 of my founding affidavit, neither the JCC nor the AG think my 'accusations are manifestly scurrilous and scandalous'. Before deciding to pass Part One of my complaint to the AG to the Investigation division, his top in-house counsel in executive management told me she would be discussing it with him personally – mentioning the parlous state of the auditing industry in this country that allowed the financial irregularities I reported to have gone unremarked.

150. Nor did this court (Vahed J) think my 'accusations are manifestly scurrilous and scandalous' when refusing LASA's application to strike out much of my answering affidavit in Hundermark's vexatious application, in which affidavit I made the same 'accusations', all closely detailed with supporting records.

151. I very much doubt the NPA and Justice Portfolio Committee will think my 'accusations are manifestly scurrilous and scandalous' when the criminal corruption and gross financial malfeasance at LASA identified in my complaints reach them.

152. Both the Minister and the Portfolio Committee were so concerned by the recruitment corruption at LASA and by Hundermark's repeated refusal to comply with my early PAIA requests brought to their attention in February 2011 that they separately and independently instituted enquiries into it – both enquiries perverted by the sea of lies contained in Mlambo JP's 'confidential' false reports to them, now before the JCC.

153. Actually I make no specific 'accusations' in my founding affidavit. On the other hand, my complaints to the JCC and AG, made under affirmation and

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supported by relevant records, very specifically and particularly charge named respondents.

154. Clearly there's a lot more at stake than mere 'injury to the professional reputation of the parties' implicated. They face criminal prosecution, dismissal, impeachment and imprisonment.

Ad paragraph 72

155. The reason LASA has 'received unqualified audit opinions from the Auditor-General for 19 consecutive years' is that its annual audits are done by an external, private auditing firm, PwC (PriceWaterhouseCoopers); and the AG bases his opinions of LASA's compliance with the PFMA on PwC's audit reports. In other words, the AG trusts and relies on PwC to do the work of auditing LASA, and not charge millions of rands for pretending to. Annexed marked 'B' is a news article reporting that the selfsame PwC gave South African Airways ('SAA') clean audits for five consecutive years, but when the AG itself looked at SAA's finances it found them in a 'shambolic state'. (It's notorious that the SAA became massively corrupt under then Board chair Dudu Myeni.) Indeed, after reading Part One of my complaint to the AG (annexure 'D' to my founding affidavit), his top in-house counsel and business executive remarked to me that there are 'Lots of questions about the profession' in light of 'the AG's testimony on SAA before the Zondo commission'.

156. It's notorious that these prestigious auditing companies have allowed billions of rands to be plundered from our public entities year after year by not reporting it. Minister Gordhan remarked a few days ago that:

> A lot of auditing firms must explain to the South African public and indeed to their own profession as to why they kept silent and did not penetrate the veil of corruption [etc]. In this regard a lot has to be accounted for by accounting and auditing firms for the manner in which they practised their fiduciary duty in relation to institutions and the business sector as a whole.

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A copy of the news report quoting him is annexed marked 'C'.

157. So from LASA's point of view, it's got just the right private auditing firm in PwC to overlook its deliberate illegal under-expenditure of R30–40 million over the last decade, resulting in the indigent being deprived of critical specialised expert litigation service delivery, and not report it to the AG – resulting in 'unqualified audit opinions from the Auditor-General for 19 consecutive years'.

158. LASA's 'unqualified audit opinions from the Auditor-General for 19 consecutive years' will undoubtedly be coming to an end following my complaints to him about LASA's massive non-compliance with and criminal contraventions of the PFMA, currently under investigation by his Investigation division.

159. The rest of Hundermark's effusion in this paragraph is irrelevant. The point of my criminal and other gross misconduct complaints against LASA's corrupt top officers has hardly been to besmirch and intimidate them, whereas Hundermark has been constantly besmirching me and trying to intimidate me right from the beginning of my investigation of the corrupt circumstances in which my appointment to LASA's top job in KwaZulu-Natal was illegally aborted off the record, and then my wider investigation of the general corruption I encountered at LASA. His corrupt aim in defaming me in court papers and in making his counter-attacks on me is that I should back off. Not going to happen.

Ad paragraph 73

160. This court indubitably appreciated from my extensive, finely detailed application for leave to appeal and from the SCA and other cases I relied on in support of it, that its judgment was fundamentally mistaken in all or at least the principal respects I identified, so I can hardly 'mislead this court and distract it from the real issue at hand.' Again, Hundermark's transparent ploy in his answering affidavit is to 'mislead this court and

AB BS

distract it from the real issue at hand', namely his success in ruining me financially and making it impossible for me to put up security for my appeal.

Ad paragraph 73

161. The only 'right of access to justice' relevant to this application is my claim under section 34 of the Constitution to have my constitutional claim to sight of LASA's public records properly determined by a court of law, and that 'matter' certainly has not 'already been dealt with and finalised'.

162. Following the AG's intervention and inevitable future reporting to the National Assembly of the corruption at LASA detailed in my complaints, including more complaints to be supported by records disgorged from LASA by order of the full bench, I doubt that it will be necessary for me to return to court with a rescission application based on LASA's fraud perpetrated on the Labour Court, as subsequently surfaced documents categorically show. I expect my claim will be resolved out of court.

163. This court has no proper interest in the merits of my intended rescission application, should it even be necessary to bring it one day, or I would have made my case for rescission of the Labour Court's judgment in the main case.

164. I shall properly litigate until all the records that I've duly requested have been turned over to me or duly certified under section 23.

165. I shall likewise properly litigate, if necessary, until I have my appointment to the still vacant budgeted and funded critical post for which I was duly selected and recommended over a decade ago.

166. Hundermark's claim previously made in his vexatious application that I'm 'abusing the court process' has already been tried by this court (Vahed J) and categorically rejected. Yet he shamelessly persists in repeating it. '[A]busing the court process' with meritless, insupportable, dilatory defensive and aggressive litigation to obstruct my corruption investigation has been precisely Hundermark's game, in the Zuma manner.

167. Hundermark's claim that I've 'prematurely litigated matters in the past' is ludicrously false. Never before in any prior litigation has he claimed that I've come to court too soon; on the contrary, he moans, spuriously, that I've brought this application too late. (Consistently with this culture of casual mendacity under oath prevailing in LASA's top ranks, Nair first claimed in the Labour Court that I was under-qualified to be a Senior Litigator, then when that story wasn't working out so well for him under cross-examination, claimed I was over-qualified.)

168. Had Hundermark remedied his non-compliance with his settlement agreement with me in the Magistrate's Court, pointed out in three notices, the first finely detailed, and had he handed over all the records he promised me and duly certified those that don't exist, I wouldn't have had to return to court to enforce the settlement agreement under its default clause.

169. Hundermark's lie that I acted *mala fide* in returning to court under the default clause is just empty mud-slinging in his usual style. Indeed I 'decided to litigate on the very same agreement' by suing to compel compliance with it, in accordance with its default clause to which Hundermark himself agreed. This is what happens when a corrupt lawyer pretending to settle a case in good faith dishonourably breaks his formally recorded promises made before a magistrate and reverts to hiding public records in contempt of section 32(1)(a) of the Constitution to obstruct a corruption investigation. And then implicitly concedes his default by disgorging further records in successive batches under pressure of an application to compel him to honour his settlement agreement, with his advocate conceding in court that the section 23 affidavit is defective and promising a compliant one.

Ad paragraph 75

170. I wouldn't be 'constantly bringing legal proceedings against the respondent' if Hundermark and his colleagues had complied 1) with LASA's internal regulations, *viz.* the Recruitment code and Approval Framework; 2) with the law of the country, including PAIA and the PFMA; and 3) with the

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Constitution. And if they didn't 'constantly' flout them and 'constantly' tell contradictory lies to justify doing so, including under oath on affidavit, under oath in the witness stand in court, to the Minister, and to the Portfolio Committee.

171. Hundermark's claim that 'the remedy sought by the applicant is simply unsustainable' will be decided by the Labour Court in due course, if necessary, once the AG is done with the matter.

172. The full bench will be deciding whether 'the remedy sought by the applicant' in the main case, namely *inter alia* an order that LASA's information officer hand over the records I've requested and sued for, is 'simply unsustainable' or not.

173. After reading my appeal notice annexed to his affidavit, with help if necessary, Hundermark will surely apprehend the likely, alarming certain outcome of my appeal. And after his collapse in the Magistrate's Court and then his failed vexatious application, it will be his second major loss against me in the High Court. All of this litigation at colossal wasted financial cost to LASA and severe damage to its reputation. All to corruptly hide LASA's records from me and to obstruct my corruption investigation and hinder my reporting of it to the responsible authorities.

174. The lie to Hundermark's claim, first made in Vedalankar's name in October 2010, that LASA 'is simply not in a position to appoint the appellant as senior litigator or any other senior litigator' is given by the indisputable and undisputed facts that LASA has *budgeted* for the vacant Pietermaritzburg, Durban and Kimberley posts since their creation by resolution of the Board in November 2006, and the three posts have been *funded* by the National Treasury via the Department upon the vote of the National Assembly every year since then, to date.

175. That is, at all material times the three vacant posts, like the other occupied six, have been budgeted and funded, and remain so. As the Constitutional Court pointed out in *Zungu*, for a public body to deliberately not fill a vacant

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budgeted and funded post contravenes the PFMA. Quite 'simply', that's the fact and law of it. No matter how 'simply' Hundermark might imagine otherwise.

176. Hundermark's criminal mendacity is epitomised by his perjury that LASA 'is simply not in a position to appoint the appellant as senior litigator'. In truth and in fact, nothing properly prevents the NOE and CEO from appointing me, under their joint approval power delegated to them by LASA's Approval Framework, to its Pietermaritzburg post for which I was duly selected and recommended in November 2009. The salary budget is there and always has been.

177. Likewise characteristically perjured is Hundermark's similar claim that LASA 'is simply not in a position to appoint ... any other senior litigator' to its two other vacant posts – at Durban and Kimberley, also budgeted and funded.

178. At enormous prejudice to the delivery of critical, high-level, expert, specialist litigation services to the indigent, LASA's remaining three (3/9) unfilled Senior Litigator posts have illegally been kept vacant for fourteen years now. It's the subject of Part One of my complaint to the AG, an excerpt of which is annexure 'D' to my founding affidavit.

179. Based on a supporting record, Hundermark's criminal complicity in this is the subject of my Second Addendum to Part One the complaint. My First Addendum also based on a supporting record, shows the complicity of LASA's Chief Financial Officer and other named top officers. Both addenda are accessible online at illegal-aid.co.za/AG.

180. To defraud this court into falsely believing that what he's brazenly lying about is clearly and indisputably true, Hundermark repeatedly aggravates his perjuries by embellishing them with the word 'simply'. Only, his rhetorical trick is so crudely obvious that his use of the word becomes a sure indication of his perjury.

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Ad paragraph 76

181. It's untrue that 'since' this court (Vahed J) dismissed Hundermark's vexatious application on 30 October 2017, this 'application that is the subject of this appeal' (the main case) was 'instituted'. In truth and in fact, as its earlier case number 11187/16P shows, the main case was instituted the previous year and prior to the launch of Hundermark's vexatious application under later case number 12124/16P.

182. Indeed, 'case number 1118/16' (*sic*: 11187/16P) is mentioned in paragraph 2.2 of the notice of motion as one of my applications that Hundermark was trying to stop (the other being my application to the Eshowe Magistrate's Court to compel his compliance with his settlement agreement with me that he reneged on).

183. I highlight Hundermark's untruthful evidence about this because again it illustrates his habit as a lawyer, as elsewhere in his affidavit, of telling impressive sounding lies under oath, easily shown to be objectively false, to put me in a bad light.

184. He can call it what he likes, and justify it any way he wants, but Hundermark incontrovertibly 'abandoned' his opposition to my five PAIA applications set down together in the Magistrates Court, as brightly shown by the fact that after opposing me all the way to the point of argument at court, he undertook (via Mtati present there) to hand over the records I'd sued for or certify under section 23 any that don't exist. (With one legally irrelevant qualification, *pro non scripto*, discussed in my papers in the main case.)

185. I didn't require any 'admission of wrongdoing', I just wanted the documents I'd duly requested for the several serious purposes stated in my papers.

186. Hundermark's actual bad faith in making his settlement agreement with me became apparent soon afterwards when he 1) failed to deliver what he promised, and retained many key records, 2) opposed my return to court to

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compel his full and proper compliance with the settlement agreement, and then 3) maliciously tried derailing my enforcement application (and the main case) with his vexatious application.

Ad paragraph 77

187. From the start I've stated my immediate purposes in requesting and then suing for the records in question (albeit that under section 11(3) my purposes are irrelevant to the decision of my request), and these are *inter alia* to refer them to the AG, JCC and NPA in support of further corruption complaints, in addition to those I've already filed.

188. My paragraphs 22–23 make *contentions*, not 'allegations', and Hundermark's claim that they are 'unsubstantiated, scandalous and vexatious' is ridiculously false on its face. As is evident from annexures 'D' and 'E' to my founding affidavit, all my complaints to the AG are indeed carefully and comprehensively 'substantiated' with supporting documents. Likewise my complaints to the JCC, copies of which are annexed to my supplementary affidavit in Hundermark's vexatious application (12124/16P).

189. What's 'scandalous' is the criminal and other misconduct I'm reporting. Neither the JSC nor the AG think my complaints 'vexatious'. In using this hot language to disparage my exceptionally grave complaints, Hundermark is telling lies under oath to try discrediting them as spurious, the better to try defeating this application with every sort of distracting irrelevance.

190. In this replying affidavit, I've identified multiple perjuries committed by Hundermark in his answering affidavit, concerning which Article 16(1) of the Code of Judicial Conduct ('the Code') imposes on this court the following obligation:

> A judge with clear and reliable evidence of serious professional misconduct ... on the part of a legal practitioner ... must inform the relevant professional body or a Director of Public Prosecutions of such misconduct ...

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The Preamble to the Code provides:

> 10) section 12(5), read with section 14(4)(b) of the [Judicial Service Commission] Act, specifically provides that the Code of Judicial Conduct shall serve as the prevailing standard [of] judicial conduct, which judges must adhere to and that any wilful or grossly negligent breach of the Code may amount to misconduct which will lead to disciplinary action in terms of section 14 of the Act[.]

In *R v Samuels* 1930 CPD 67, this court emphasized at page 71 that 'perjury is a very serious crime'.

It follows that Article 16(1) of the Code read with section 10 of its Preamble requires this court to report Hundermark's manifold perjuries both to the Legal Practice Council, being the 'relevant professional body', and to 'a Director of Public Prosecutions'.

191. In the situation, I persist with my claim for the relief set out in my notice of application, so I can argue my appeal; access the records Hundermark is illegally and unconstitutionally withholding; and use them in support of further complaints to the AG, JCC and NPA, to be copied to the Minister and the Portfolio Committee.

Signed at Eshowe on 30 October 2020

ANTHONY BRINK

Signed before me at Eshowe on 30 October 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.

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Buthakhane
COMMISSIONER OF OATHS

Name: Phekumusi Wellington Sithathane

BS

Address: Private Bag X505,
73-79 Main Street Estcourt.
Capacity: S/G

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CRUEL, CRUEL COUNTRY

Impoverished State Capture whistle-blowers beg banks for relief

By Rebecca Davis • 17 October 2020

Former employees of state-owned enterprises and big corporates who blew the whistle on State Capture sacrificed their careers and livelihoods to do the right thing. But many of them are now desperate, destitute and unemployable, reduced to extending begging bowls to survive.

First published in Daily Maverick 168

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Cynthia Stimpel was the group treasurer of South African Airways (SAA) — until she blew the whistle on an unlawful R256-million contract in 2016 and lost her job. Unable to find employment elsewhere, she was giving yoga classes to make ends meet until Covid-19 put an end to that meagre revenue stream.

The former Eskom head of legal and compliance, Suzanne Daniels, who revealed the extent of the Guptas' involvement in the parastatal to Parliament in 2017, says she "literally ran out of money" in December last year. She has received a summons for her car.

Masimba Dahwa, who was the chief procurement officer at SAA until his refusal to sign an unlawful R1.5-billion Swissport contract cost him his job in 2016, has been unable to find permanent employment since. In 2019, his family home in Pretoria was auctioned by the bank.

Now a number of other whistle-blowers are joining Stimpel, Daniels and Dahwa in calling on the major banks to write off their debt.

In a letter authored by Stimpel, the whistle-blowers state: "Most of us will lose our cars, our houses for doing what is right... Corporates and banks should show that standing up [against] corruption and wrongdoing does actually have a positive outcome."

Stimpel told Daily Maverick 168 that the banks are "hounding" the whistle-blowers to pay off debt they have no way of settling, because they appear to be effectively unemployable.

"When I left SAA I obviously looked at my debt and thought I would get a job: I have an MBA, banking experience, treasury experience. Every time I sent my CV out I got not even a reply," she said.

"People google you and they don't like what they see."

In letters sent to the banks and seen by DM168, Stimpel has offered to work off her credit card debt "as a clerk, filing, researcher, teller, inquiries — any work which will assist me in paying off my debt".

Other State Capture whistle-blowers report the same difficulties in getting hired again.

"I am one of the pioneers of supply chain [management] in Africa," said Dahwa. "I have over 25 years experience; I did my PhD in supply chain. All that has now come to a heap of thing. I've applied to government and private companies: they think maybe you are not

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one of the good ones."

Dahwa said he is scraping by with intermittent consulting work, but every semester he struggles to pay his children's school fees.

> *I interviewed many whistle-blowers who were successful executives, who sacrificed their life savings and financial security, and have now cashed out their pensions and are living off family members. It's very sad.*

Stimpel believes South Africa's banks should offer debt forgiveness to the State Capture whistle-blowers, not just to send a positive anti-corruption message, but because the banks "were all complicit in State Capture".

She said: "I know, because I've worked in the banks, you need to follow policy. If [a client] is getting a million into their account and their salary is R50,000 a month, you need to be asking about it."

Contacted for comment on the whistle-blowers' plea, FNB, Absa and Nedbank all told DM168 they could not comment on individual clients' debt situations, but assessed requests for debt relief measures on a case-by-case basis. Standard Bank did not respond to a request for comment.

A Nedbank spokesperson added: "Nedbank denies any allegations of being complicit in State Capture."

Abba Omar, head of strategy and communications at the Banking Association of South Africa, described the debt forgiveness proposal as "interesting", but said individual banks would be better placed to comment.

The legal framework in South Africa for protecting whistle-blowers, the Protected Disclosures Act, has long been criticised as inadequate. Unlike in other countries, it does not make any financial provision for those who blow the whistle and find themselves out in the cold.

In the US, the False Claims Act entitles individuals who assist a prosecution to receive some of the money recovered by the government as a result. Ghana's Whistle-Blower Reward Fund works in a similar way.

Legal consultant Gabriella Razzano, who has worked extensively with whistle-blowers, said the fact that Stimpel and her colleagues are having to petition the banks for debt relief is "an indictment of the whistle-blowing system".

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Razzano said that although one might think a demonstrated desire to do the right thing would make whistle-blowers highly sought-after employees, it is often extremely difficult for them to find new jobs.

"There are certain business leaders who don't want what they see as 'difficult' people in their organisations," she said. "Others are under pressure from partners in their sector to not open their doors to people who have burned certain businesses."

Investigative journalist Mandy Wiener, who has just published a book titled The Whistleblowers, said they are also often bled financially dry through legal processes.

"I interviewed many whistle-blowers who were successful executives, who sacrificed their life savings and financial security, and have now cashed out their pensions and are living off family members. It's very sad," she said.

Business ethics lecturer Athol Williams, who has not worked for a year since going public to reveal Bain & Company's involvement in State Capture, says another aspect that is seldom acknowledged is how time-consuming it can be to be a whistle-blower.

Williams, who is due to testify at the Zondo Commission next month, said: "Being a whistle-blower sounds like a once-off: you say stuff and then you carry on with your life."

The reality, he said, is very different.

"I had to trawl through hundreds of emails and documents to put together my affidavit [for the Zondo Commission]. I've had to spend hours and hours with lawyers and investigators. It becomes a full-time job."

The financial toll of whistle-blowing is exceeded only by the emotional tax it exacts on those who go public with wrongdoing at major institutions. All the whistle-blowers who spoke to DM168 said their personal lives had been turned upside-down in the aftermath to their disclosures, which, apart from the strain of lengthy unemployment, also meant living in perpetual fear of retribution. Two reported that their marriages had collapsed as a result.

For Dahwa, the most depressing aspect of his situation is the message it sends to those wondering if they should report corruption.

"There were people across Africa who looked up to me when it comes to procurement," said Dahwa.

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"I don't know what they think now. If you want to be a whistle-blower, do you end up being like Dr Dahwa, who lost his house and couldn't send his children to schools of choice?"
DM/DM168

On 30 September, the Hawks arrested businessman Edwin Sodi, former Free State human settlements department boss Nthimotse "Tim" Mokhesi and former national human settlements director-general, Thabane Zulu, the masterminds behind the R230-million for an unlawful asbestos audit project which only delivered R21-million in actual work

These arrests may be the first of the "Zondo arrests" but ultimately they are a consequence of the work done by Scorpio investigative journalist Pieter-Louis Myburgh. In 2019 he unearthed a spreadsheet of suspicious payments linking the kingpin of the Free State to the dodgy dealings that saw R219-million of taxpayers' money being skimmed for bribes.

It takes brave, skilled, experienced journalists days, weeks, sometimes months to unearth, understand and crystallise information into a piece of reporting that has a genuine impact on South Africa. So much so that it is safe to say that Deputy Chief Justice Zondo's State Capture Inquiry would not be taking place or holding those in power accountable without the work that has been done by *Scorpio*, *amaBhunghane* and others on the #GuptaLeaks.

The commission and the subsequent arrests are a clear demonstration of the critical importance of an independent investigative media.

But independence comes at a price. Without the help of our 14,000 Maverick Insiders we wouldn't be here. Join them and help us keep our investigations going. Help us continue in our mission to **Defend Truth**. Because the more Maverick Insiders we have, the more investigations we can do and the greater the impact it will have on South Africa.

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state capture (https://citizen.co.za/category/news/south-africa/state-capture/) 21.2.2020 08:25 am

Zondo commission: AG official to testify that SAA was in a 'shambolic state'

News24 Wire

(https://citizen.co.za/news/south-africa/state-capture/2244458/zondo-commission-ag-official-to-testify-that-saa-was-in-a-shambolic-state/)
Image: Moneyweb

In a meeting on September 15, 2015, the AG saw it fit to raise concerns about Nkonki's appointment as the sole auditor.

A business executive at the Office of the auditor-general (AG) is expected to testify before the state capture commission on Friday that the AG found SAA in a "shambolic state" after it received clean audits for five consecutive years.

"Chair, the witness will speak to the role that private firms played when they were doing the joint audit of SAA. In the five years of audit work from 2012 to 2016, they received clean audits," said commission evidence leader, advocate Kate Hofmeyr.

"But the AG took over and found a shambolic state at the state-owned entity," she added.

The auditors for the cash-strapped airline at the time were PricewaterhouseCoopers (PwC) and Nkonki.

The appointment was split 60/40 in favour of Nkonki for the 2011/12 financial year.

This joint relationship continued for four years, however, in the fifth year, SAA sought to appoint Nkonki as the sole auditor for the airline.

This was a concern for the AG's office.

On Thursday, the business executive, Polani Sokombela, testified: "We held a view that the appointment of Nkonki should follow a new procurement process – the 2011/12 procurement process was a joint appointment and it was for one year.

"The subsequent years were renewals but when you come in the fifth year and the other entity is taken out, to us, that signifies the end of the relationship and you need to start afresh and seek a new relationship."

In a meeting on September 15, 2015, the AG saw it fit to raise concerns about Nkonki's appointment as the sole auditor.

"I took it upon myself to send them the concerns and recommendations I made. I told them to reconsider the process that they followed to employ Nkonki as the sole auditors and they were welcome to resubmit," the witness explained.

"We also recommended that they should consider adopting a policy for the appointment and re-appointment of auditors," he added.

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The airline submitted documents on December 14 2015, including an excerpt of the draft minutes of the board meeting in which they confirmed the re-appointment of PwC and Nkonki in the 2015/16 year, based on a 50/50 split on the concurrence of the AG.

"Do I understand that this was SAA seeking to comply with your recommendations?" evidence leader advocate Michael Mbikiwa asked.

"Absolutely, my assumption is that they passed a new resolution to comply with the AG's concerns," Sokombela responded.

The commission has shone the spotlight on the role auditors at state-owned entities (SOE) and the public sector played.

Sokombela's testimony continues on Friday and he is expected to tell the commission what the AG found when SAA was audited for the 2017 financial year.

The business executive said his involvement with the troubled entity began around 2015.

"My involvement in the audit of SAA started when the entity was moved from the department of public enterprises to National Treasury. [I think this was] around 2015.

"There were challenges as far as SAA is concerned. The business unit that I am responsible for is responsible for the audit of National Treasury," Sokombela said.

Fin24 reported the AG report tabled before parliament in 2018 recorded that SAA incurred a net loss of more than R5 billion.

In the report, AG Kimi Makwetu stated that the airline had incurred a loss of R5.57 billion and its liabilities exceeded its assets by R17.8 billion.

Fin24 also reported despite bailouts, the airline had failed to table its annual financial statements since the 2016/17 financial year.

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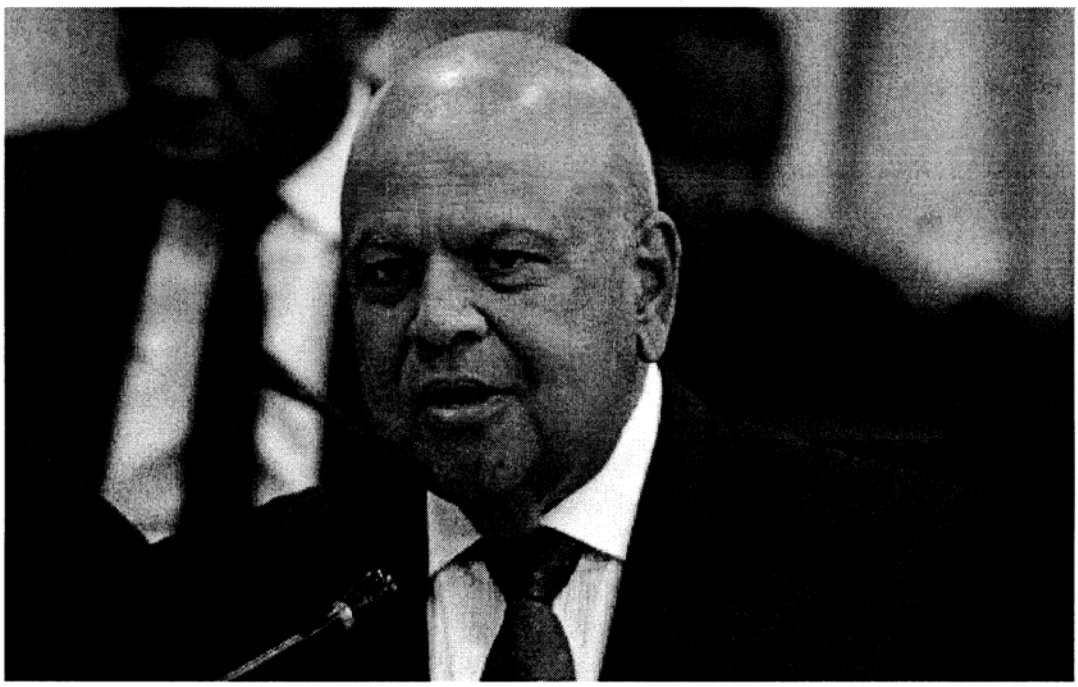
23 Oct

Gordhan: Auditors must explain why they kept silent on state capture

fin24 Lameez Omarjee



Minister of Public Entreprises Pravin Gordhan says they are not going to liquidate SAA and business rescue practitioners must turn it around. Photo by Misheck Makora

- **Public Enterprises Minister Pravin Gordhan want auditors to explain their silence on state capture.**
- **A number of state-owned enterprises had monies extracted through the state capture project, which was not flagged by auditors.**
- **Gordhan says that former board members of state institutions will also have to account for their actions.**

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Auditors of state institutions which have suffered the financial losses due to the state capture project must account for why they did not flag irregularities, Public Enterprises Minister Pravin Gordhan has said.

The minister on Friday was speaking during a briefing, following the release of Transnet's annual financial results for the year ended 31 March 2020.

Auditors of state institutions which have suffered the financial losses due to the state capture project must account for why they did not flag irregularities, Public Enterprises Minister Pravin Gordhan has said.

The minister on Friday was speaking during a briefing, following the release of Transnet's annual financial results for the year ended 31 March 2020.

Transnet is one of few state-owned enterprises which is profitable, with CEO Portia Derby promising that it may indeed pay dividends to the shareholder, which is government, soon.

The group, however, received a qualified audit opinion – chief financial officer Nonkululeko Dlamini explained that since 2018 there has been an increasing focus on reporting irregular expenditure, but auditors still do not feel disclosures have been complete.

Part of the problem is that the irregular expenditure pertains to previous financial years, dating back to 2011/12. Transnet is now combing through 13 000 past contracts to determine if there are any irregularities – along with other measures to improve compliance with the Public Finance Management Act.

But Gordhan wants auditors responsible for Transnet's books during the period of "malfeasance" when monies were extracted and state institutions were repurposed, to give an account of their roles. He lamented:

> "A lot auditing firms must explain to the South African public and indeed their own profession as to why they kept silent and did not penetrate the veil of corruption during the period 2012 onwards, in respective institutions like Transnet and Eskom."
>
> - Public Enterprises Minister Pravin Gordhan

Gordhan wants an explanation for why auditors did not disclose "fully, properly and courageously" the extent to which procurement processes were "refashioned" to serve state capture and corruption.

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"In this regard a lot has to be accounted for by accounting and auditing firms for the manner in which they practiced their fiduciary duty in relation to institutions and the business sector as a whole."

Gordhan said it is important to determine if auditing firms were "willing or silent" partners to state capture.

- **READ** | Transnet exec: We were told to exclude escalation costs from locomotives deal

Gordhan went onto say that former executives and board members will also have to give an account to the Zondo commission and other enforcement agencies like the Hawks.

One route would be to face criminal prosecutions or to have monies recouped through the civil courts, he added.

He said the department is in discussions with the auditor general and National Treasury to ringfence the state capture period, so that it can be dealt with in its own right, without contaminating audit findings in the current environment.

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