

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

Case No: 11187/16P

In the matter between:

ANTHONY BRINK

Appellant/Applicant

and

THEMBILE MTATI,

DEPUTY INFORMATION OFFICER,

LEGAL AID SOUTH AFRICA

First Respondent

THE INFORMATION OFFICER

LEGAL AID SOUTH AFRICA

Second Respondent

FILING SHEET: RECUSAL AND CONDONATION APPLICATION

TAKE NOTICE that the appellant files his application (a) for the recusal of the Honourable Madam Justice Poyo Dlwati, and (b) for condonation under Uniform Rule 49(1)(b) for applying outside the period it prescribes for leave to appeal her dismissal of his application under Uniform Rule 49(13) for an order exempting him from providing security in the sum of R300 000 demanded by Legal Aid South Africa for its costs of opposing his appeal in his main case brought under

section 78 of the Promotion of Access to Information Act 2 of 2000, leave to argue which she granted.

TAKE NOTICE FURTHER that proof of service of this application on the respondents by email is annexed hereto.

TAKE NOTICE FURTHER that evenly herewith the appellant files his separate application for leave to appeal the said judge's dismissal of his said security exemption application.

Signed at Eshowe on 21 November 2022



ANTHONY BRINK
APPELLANT

36 Pearson Road

Eshowe

anthonybrink.sa@gmail.com

083 779 4174

LOCAL ADDRESS:

55 Ashby Road, Prestbury, Pietermaritzburg

082 880 7318

TO:

The Registrar

High Court of South Africa

KwaZulu-Natal Division, Pietermaritzburg

301 Church Street

Pietermaritzburg

AND TO:

The Information Officer, Legal Aid South Africa

c/o Pietermaritzburg Justice Centre, Legal Aid SA

183 Church St, Pietermaritzburg

(Mr Kaloo)

By email: ashokk@legal-aid.co.za

AND TO:

Chief Legal Executive Patrick Hundermark &

Corporate Legal Manager Solly Sekgota

Legal Aid SA National Office

29 De Beer Street, Braamfontein, Johannesburg

By email: patrickh@legal-aid.co.za & sollys@legal-aid.co.za

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NOTICE OF APPLICATION

TAKE NOTICE that the applicant – the appellant in the main case brought under section 78 of the Promotion of Access to Information Act 2 of 2000, under appeal – applies for the following relief:

1. That the Honourable Madam Justice Poyo Dlwati (‘the judge’) recuse herself from this matter, and that the appellant’s claims below be decided

by a different member of this court, to be appointed by the Judge
President;

2. That the applicant be granted condonation for bringing out of time his application for leave to appeal the judge's dismissal of his application for an order exempting him from providing security in the sum of R300 000, as demanded by the second respondent, for Legal Aid South Africa's costs of opposing his appeal in the main case, leave to argue which before a full bench of this court the judge granted him;
3. That in the event that the second respondent opposes this application, she, alternatively the author of her answering affidavit, be ordered to pay both the applicant's costs and all costs incurred by Legal Aid South Africa personally.

TAKE NOTICE FURTHER that the applicant's founding affidavit in support of this application is annexed hereto.

Signed at Eshowe on 21 November 2020



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FOUNDING AFFIDAVIT

I, Anthony Brink, affirm:

1. I am the applicant in this matter.

REGARDING PARAGRAPH 1 OF THE NOTICE OF APPLICATION

2. On 8 November 2022, I couriered a gross misconduct complaint to the
Judicial Conduct Committee ('JCC') of the Judicial Service Commission

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(‘JSC’) against Acting Deputy Judge President Portia Poyo Dlwati (‘the judge’), in which I charged her with contravening Article 16(1) of the Code of Judicial Conduct. The particulars appear from the copy annexed marked ‘A’. I employed the South African Post Office’s Speed Services courier to deliver my complaint, and its waybill is annexed marked ‘B’.

3. As the respondent in my gross misconduct complaint against her, the judge is conflicted and disqualified from further involvement in my case, and more specifically from determining (a) my application for condonation prayed paragraph 2 of my notice of application, and (b) my application for leave to appeal her dismissal of my security exemption application (‘security application’) filed evenly herewith.
4. My case here is that, applying the standard test, no reasonable and objective person informed about the facts of this matter can reasonably expect the judge to bring an impartial mind to bear on my applications for condonation and leave to appeal and be open to persuasion by the facts and considerations I’ve set out in them. In other words, I’ve a reasonable apprehension of bias from the judge whom I’ve charged with judicial misconduct, and with whom I consequently have a directly antagonistic relationship.
5. In paragraph 3 of her judgment dismissing my security application, the judge stated that the second reason she granted me leave to appeal her dismissal of my main claim (‘main case’) under the Promotion of Access to Information Act 2 of 2000 (‘PAIA’) was ‘due to various personal accusations made by the

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appellant towards me in his application for leave to appeal [the main case], despite the fact that at no stage did he apply for my recusal in the matter.'

6. My 'various personal accusations' were that the judge had worked at Legal Aid South Africa ('LASA').
7. I've recently established that I was wrong about this.
8. As an articled clerk around the turn of the century, the judge brought me a couple of her principal's briefs while I was practising at the Pietermaritzburg Bar. I recall being surprised when not very long after that she was appointed as a judge without the normal decades of practical litigation experience acquired on one's feet at the coal-face in the High Court – where one learned under fire the essential professional skills and survival habits of taking the utmost care with fact, and of observing the same rigour in argument – which in the olden days qualified trial lawyers for appointment as judges, and tended to ensure that only the most competent of them got to decide other people's important legal disputes or heavy criminal charges against them. These thoughts returned to me as I was reading the judge's utterly shambolic judgment dismissing my main case.
9. But a memory slip caused me to recall and believe that the judge had been a candidate attorney at LASA's Justice Centre at Pietermaritzburg. And in the two decades since I quit the Bar – taking an acting appointment on the Regional Court bench; then spending many years in and out of Europe and Russia on single-issue advocacy in the public interest; then returning to law, variously practising independently and working as a magistrate again – I

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mistook the judge for one of those many LASA clerks who used to bring me civil briefs on the instructions of the then-Justice Centre Executive ('JCE') over the years.

10. When in her judgment granting me leave to appeal her dismissal of my PAIA claim the judge disputed that she'd worked at LASA, I tried contacting the JCE at the time to clear this up. At a chance meeting with him several years earlier, he'd described how he'd been squeezed out of LASA and returned to private practice, but his firm's office number rang dead when I called it. So I got an attorney friend in Pietermaritzburg to ask around for me as to where the judge had served her articles, and found out that it had been at attorney Oregon Hoskins' firm. I contacted him on his cell number given to me, and he confirmed this.
11. I apologise for my memory lapse in the many years since the judge came up to my chambers as an articulated clerk to deliver what were actually attorney Hoskins' briefs, not LASA's.
12. But in her judgment granting me leave to appeal her dismissal of my main case, the judge appears to have considered her actual professional relationships with LASA attorneys Hundermark and Mtati, which she volunteered and detailed in court, to have constituted a ground for appeal, albeit that I was mistaken in recalling that she'd worked at LASA and wrongly claiming this in my appeal notice in the main case.
13. Why the judge opined that my mistaken 'accusations' about the law firm at which she'd been taught how to be an attorney constituted a ground for

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appeal isn't clear to me, other than to serve as a fig leaf over her own embarrassing plethora of egregious radical fatal reversible legal and factual errors in her judgment in the main case, pointed up in my necessarily unusually lengthy appeal notice. Certainly it signifies that she subjectively sensed and believed that she oughtn't to have dealt with my PAIA case on account of bias, which is why she stated that she thought it right that I be allowed to argue it again before a full bench. Indeed, her strikingly negative animus towards me in both her judgments in the main and security applications is palpable, and it's especially virulent in the latter.

14. Anyway, this is a further reason for the judge's recusal from adjudicating my condonation application and my application for leave to appeal against her dismissal of my security application.
15. Accordingly I seek the relief claimed in paragraph 1 of my notice of application.

REGARDING PARAGRAPH 2 OF THE NOTICE

16. Detailed below, an accident followed by a spell of acute illness and then prolonged physical and mental debilitation during my unexpectedly long and slow recuperation hindered my ability to draw and file my application for leave to appeal the judge's dismissal of my security application, and likewise this recusal and condonation application and its essential annexure 'A'.

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17. I received the judge's decision of my security application by email on 8 August 2022. When it came in, I was under the weather so didn't immediately open and read it.
18. A day or two later, while cycling at speed in top gear, I misjudged a bump, went over my handlebars, and skated across the road, causing bleeding abrasions on all limbs, bruises and sprains all over, a wrenched knee, and cracked or chipped elbows that remained acutely painful to contact with my desk long after my sores had healed. The speed and force with which I hit the tar threw my phone from my torn trousers so far into the grass on the verge that I had to return later in the day to search for it by calling it from a different one.
19. Shortly afterwards, I went down with severe flu, or more likely pneumonia because it got into and remained in my lungs for a long time, and even now hasn't yet completely cleared. This made me very sick, caused me sharp weight loss, and completely incapacitated me for some weeks.
20. On 5 September 2022, after the worst of my illness was over and I felt fit enough to do so, I opened and read the judgment in my security application, and was amazed to learn that the judge had dismissed it. Since her basic mistakes were so numerous and her reasons so obviously insupportable, I resolved to appeal it.
21. I immediately wrote to LASA Chief Legal Executive Patrick Hundermark on the same day, detailing my health woes and seeking his consent to the filing

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of my application for leave to appeal slightly out of time. A copy of my email to him is annexed marked 'C'.

22. As appears from the cc bar of my email to him, I copied it to the judge's secretary; so from early on this court has been aware of the cause of my delay in filing my appeal, at least as regards the initial cause, my accident and then serious illness, which led directly to the second cause, my unexpectedly long and slow recovery.
23. Taking a leisurely three weeks to decide my simple request, and evidently indifferent to the time he was wasting as he dawdled over it, Hundermark refused it on 27 September 2022 and informed me via LASA Corporate Legal Manager Solly Sekgota that my application for condonation would be opposed. The latter's 'instructions' in this regard are annexed marked 'D'.
24. Hundermark didn't say why he'd refused my eminently reasonable request in the circumstances, so I'm unable to tell whether he means to dispute that I was indeed laid low and to imply that I was lying to him about it, as if after all these years of legal conflict with LASA I've all of a sudden started telling lies, including to court (as said, I copied my email to the judge); or whether his refusal was motivated by pure spite; or whether he simply meant to be as obstructive as possible to block at every possible opportunity arising the march of my persistent litigation against the profoundly corrupt public entity he runs as an executive director of the Board, and to stave off the evil day when its corrupt officers, present and past, himself included, are held to account, including in the criminal courts. (The corruption I've found at LASA

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is detailed in my affidavits in my main case and subsequent security application, and is summed up in my complaint against the judge.)

25. Since reporting my illness to Hundermark and requesting his consent to some extra time to get my appeal notice drawn and filed, my recuperation has been very much slower than I anticipated. Along with persistent lung congestion and coughing, witnessed by those around me, I've experienced constant low physical and mental energy, light-headedness, short-breath, and insuperable lassitude and enervation, during which I've been feeling profoundly fatigued and dazed. My weak-headedness, impenetrable mental fog, and trouble concentrating have greatly hampered my preparation of this application, my complaint to the JCC, and my application for leave to appeal, all of which have required supreme focus, accuracy and precision, given the enormous stakes in the case, in which the most serious imaginable public sector corruption is involved, including in the judiciary; and I've consequently been reduced to working at a snail's pace, achieving a fraction of my usual output in my legal writing, with my daily productivity greatly limited, some days to zero, sometimes day after day, other days able to work just an hour or two despite all the willpower I can muster in my determination to get back to court as soon as possible.

26. My health is gradually improving, even if it feels like four steps forward, three back, and *vice versa* sometimes. The acute illness I experienced gave my general health a hard knock – I'm now 63 – and even now, some months

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later, I still haven't yet recovered my normal strength, and frequently feel groggy with my general health at a low ebb.

27. To illustrate: on Friday 23 September, I sorely missed the enjoyment of a music concert with my friends at a restaurant nearby, because I was feeling too ill and too weak to attend. Again, on Friday 30 September, for the same reason, I was unable to make a roof-wetting party to which I'd been invited, feeling completely washed out by late afternoon and literally in bed by early evening. This has continued, and I've been constrained to decline other social invitations since. On 19 October a neighbour, who'd supported me when I was acutely ill in August, came over and asked how I was. I was still feeling slightly feverish and weak, with my face hot and flushed and my head swimming, and told her so. As I spoke I was conscious that my voice was strained, reedy and cracking; and when I enquired if she could hear this, she replied she could. The previous evening I nearly blacked out while at my desk, and only avoided this by lowering my head a while. On 21 October a filmmaker friend from out of town paid an impromptu visit. I was worn out and resting when he arrived mid-afternoon, and explained to him that I'd been ill and was dismayed by how long it was taking me to resurface. He responded frankly that I looked much worse for wear since he'd last seen me the year before (his actual language was much blunter). After chatting a while I felt exhausted, told him so, ended our conversation, and returned to rest. I felt I was rallying in early November, but this didn't last and I relapsed. I'm still up and down.

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28. This health setback has occurred against a background of chronic debilitating abdominal pain, dyspepsia, hypertension and consequent insomnia with its knock-on consequences for my mental stamina and acuity, which have set in, despite a consciously healthy diet and lifestyle, during my twelve-year struggle to blow this colossal corruption case, with just about every authority I've approached, including the courts, either successfully defrauded by LASA's top officers' confident, high-toned lies and perjuries, or just looking away, seemingly more interested in the lunch menu at Nando's when not actively covering for their corrupt colleagues. This is why, as I informed the JSC in my invited submissions in the Mlambo JP case (see below), I'm preparing to refer the unresolved judicial corruption at the heart of this gargantuan corruption case to the court of international opinion; and I'm not bluffing.

29. The intense unending mental pressure and somatic sequelae of this struggle have undoubtedly been aggravated by LASA's corrupt officers' several efforts to eliminate me as the witness to their corruption by attempting to assassinate me legally, professionally and financially, as described in my security application and in my complaint against the judge. Irrelevant to detail here, the extreme personal costs of these attacks have been frankly catastrophic for me and those close to me across a number of fronts; but unfortunately for LASA's corrupt officers, past and present, rather than deterring me, their missed headshots have worked only to harden my implacable resolve.



30. It's relevant to emphasize that despite my best efforts to get my main case tried and properly determined as promptly as possible, it's been pending since August 2016, which is to say for over six years now; and like my subsequent security exemption application it's been subject to multiple delays, none of my making.
31. These delays include an outrageous attempt by LASA, masterminded by Hundermark, to interdict me from pursuing my main case, which wasted an entire year – his malicious, vexatious, legally and factually baseless application was quickly thrown out by this court (Vahed J) – as well as a forced postponement of the case, treated below, that wasted several months more. And from the date I filed it, my subsequent security application then took nearly two years to decide.
32. Anyone else would have given up trying to enforce their constitutional rights in the Pietermaritzburg High Court, and looking for its assistance in bringing LASA's past and present corrupt officers to law. Any reasonable observer would conclude that the judicial system isn't working properly anymore, especially having regard to the abysmal quality of the judge's two legally and factually chaotic judgments in my matter, oozing with palpably malevolent prejudice.
33. The whole record of my conduct of my PAIA and subsequent interlocutory litigation testifies to my energetic pursuit of the relief sought in both matters, including multiple communications with the judge's secretary over the past two years and my repeated provision of duplicate papers to replace

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those lost at court, in my attempts to get my security exemption application decided, so as to clear the way to setting down my appeal in the main case, after the judge allowed me to argue it before a full bench, appreciating from her study of my voluminous appeal notice that I've a stonewall case for upsetting her very mistaken judgment in LASA's favour.

34. So all things considered, the few months delay caused by my accident, then acute illness, then unexpectedly slow and long recovery is trivial having regard to all the time I've lost since 2016, thanks to LASA's repeated delaying tactics; papers lost at court; the judge going away to act in another court for an extended period; replacement copies of the papers that I repeatedly supplied her not arriving by post or getting lost again; and so on.

35. Point is, I want to argue my appeals in my security and main applications as soon as possible; finally get hold of the records that I duly requested way back in 2016, which LASA (Hundermark) is illegally and unconstitutionally withholding from me very strenuously; and use them in support of complaints to the various high authorities mentioned in my main and security application papers. And, if it's still necessary after that, *i.e.* if my own core claim against LASA hasn't been resolved in a global compromise and settlement that I'm preparing to propose, I'll be using some of the requested records disgorged from LASA by order of a full bench of this court, along with others that I've already obtained, in support of a rescission application to the Labour Court to be brought under common law, in which I'll be proving categorically and incontestably that my labour claim against

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LASA, dismissed nearly a decade ago, was won by fraud on the court, achieved by a profusion of objectively demonstrable perjuries committed by LASA's single witness, National Operations Executive Brian Nair, now an advocate of this court and executive member of LASA's Board.

36. To illustrate the extraordinary criminal depravity involved in this matter, and the gravity of this application and its implications in the wider context: As wild as this sounds at first blush, the record proves absolutely and incontrovertibly that my petition to the Labour Appeal Court ('LAC') for leave to appeal the dismissal of my labour claim was perverted by an anonymous 'memorandum' slipped to the Judge President, suborning him to toss my petition, which he obligingly did on the turn even before all the prescribed papers had been filed. I have the hard evidence of this, namely (a) a photocopy made by the registrar of this criminal instrument, stunningly turned up in the court file during a search for any record that the two other judges named in the fraudulently issued dismissal order, Davis and Sutherland JJA, indeed considered and rejected my petition (no such record exists, which means they had no hand in the case), and (b) the registrar's certification of an inventory of the court file's contents mentioning and including this criminal 'memorandum' used to defeat the ends of justice by an obviously well-connected top officer at LASA, almost certainly then-Board chairperson Mlambo JP, who had a direct interest in seeing my labour claim fail for the reason explained in my PAIA application papers and my complaint against the judge. The 'memorandum' is annexure 'K' to my founding affidavit in the main case.

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37. The 'memorandum' and the registrar's certification of the court file inventory are attached to my complaint made to the JCC against Labour Appeal Court head Waglay JP, still undecided now more than five years since I lodged it in June 2017, despite four written appeals to the then-JSC and then-JCC chairpersons Mogoeng CJ (ret.) and Zondo DCJ (as he then was). The complaint and my four letters are publicly accessible at corrupt-judges.co.za. So are my complaints against Mlambo JP, also filed in mid-2017, in which I show in light of supporting documents that he repeatedly lied to the Justice Minister and to the Justice Portfolio Committee of the National Assembly in 'confidential' reports to them 'Re: Adv Anthony Brink', which I was never intended to see, to successfully pervert the enquiries they'd separately and independently instituted into the vast documented corruption and lawlessness at LASA that I'd brought to their attention.
38. My complaint against the judge (annexure 'A') mentions how the JCC is characteristically slow-walking my still unresolved complaints against Mlambo JP; and, as said, it hasn't dealt with my complaint against Waglay JP at all.
39. It's relevant to mention that Hundermark's grossly unreasonable refusal of my request made in my special circumstances for more time to draw and file my appeal notice, resulting in the proliferation of my litigation with this condonation application, is in keeping with his past equally grossly unreasonable and similarly obstructive conduct in my first round of PAIA litigation against LASA some years ago.

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40. In 2015, paying a premium fee for overnight carriage and delivery the next day, I engaged a courier to deliver to the sheriff in Johannesburg a set of PAIA application papers issued out of the Eshowe Magistrate's Court for urgent service on one of LASA's deputy information officers, the said Brian Nair, so as to ensure I met the time limit prescribed by PAIA within which to sue (unless the court allows longer). The courier failed to perform as contracted, and only delivered the papers two weeks later. The result was that my PAIA application was instituted by service a fortnight outside the prescribed 180 days.
41. Substantiated by supporting vouchers, I demonstrated all this in my request for LASA's consent to my institution of my application slightly out of time. Hundermark, who's been refusing all my PAIA requests and running all litigation between LASA and me, mostly behind the scenes and in others' names, snatched at the delay to try defeating my PAIA claim with this technicality, and refused to consent as requested. This put me to the hassle of drawing a condonation application, which he opposed in pointlessly voluminous answering papers drawn by junior counsel canvassing everything but the point of my case, and then to the further time and trouble of having to reply to it all; and likewise it put the court to the time and trouble of having to study this really unnecessary mound of paper.
42. But at the courthouse, on the morning of the debate, rather than risking the court's assessment of the merits of his vexatious opposition to my condonation application, Hundermark telephonically instructed LASA's

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lawyers, including counsel flown in from Johannesburg, to drop it, along with his opposition of my main PAIA case before that court, and his opposition to my other PAIA cases too, and the entire matter was then settled just before argument on the basis of a recorded undertaking, handed into court, to supply me with the records I'd sued for, or duly certify those that don't exist.

43. The moral of the story is that at Hundermark's instigation, LASA doesn't stint at wasting vast amounts of public revenue on meritless, dilatory, vexatious opposition in the courts.
44. In contradistinction to Hundermark's obstructive approach, the court file in the main case evidences my different, practical and efficient approach to litigating against LASA. In the days before its hearing when first set down, I'd carefully complied with all this court's Practice Directions so as to deny LASA any opportunity to further delay the decision of my claim by forcing a postponement on account of some procedural misstep. (I recall LASA taking a point against me that was sheer nonsense and abandoned.) LASA, on the other hand, failed to observe the Practice Directions, so I filed a formal objection to highlight its indisputable non-compliances. On the day before the hearing, however, I drew a 'Notice of Waiver, Withdrawal and Consent' and filed it at court on the morning of argument. A copy is annexed marked 'E'. Unlike LASA, I just wanted to get on with the case, even though I'd been prejudiced by its casual disregard for this court's Practice Directions.
45. LASA nonetheless succeeded in getting my case postponed against my will by this court (Steyn J) for the reason that its favourite counsel was busy earning

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his fees in another case in another court in another city. The postponement was granted even though LASA had been aware of his unavailability for many months; had requested that I remove the case from the roll right after being informed of the date of set-down (after so much malicious delay, I naturally refused); and had failed to brief alternative counsel in all that ample time, in accordance with its obligation to do so under all applicable case law on the point.

46. For declining to surrender my precious early court date duly allocated by the registrar, after so much delay that LASA had caused me; for standing on my right to have my duly enrolled matter duly heard on the duly appointed day; and for being unwilling to yield to LASA's demand for an indulgence, *viz.* that I agree to postpone and further delay my case so it could get its preferred advocate in (who'd just lost LASA's malicious, vexatious, baseless interdict application against me), I was stung in costs, but such is life in the courts nowadays.
47. Besides one exception mentioned below, I've never in all my litigations against LASA held it to any of the time limits imposed by the rules of court, *inter alia* because I've always anticipated that I might one day need to call in the same favour in seeking more time to get a legal document drawn and filed outside the time limits prescribed by the rules. (Where I've taken more time than the rules stipulate to draw exceptionally detailed and lengthy replying affidavits in my PAIA applications against LASA, and my multi-volume answering affidavit in LASA's abortive vexatious interdict case

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against me, LASA hasn't cared.) But my deliberately relaxed attitude to LASA's non-compliances with the courts' time limits hasn't play out as bargained, because when I finally sought LASA's reciprocation my request for more time was spurned.

48. For specific reasons I had at the time, not relevant to set out here, the single exception I made to the easy latitude I've afforded LASA over the past decade as regards time limits was in the Labour Appeal Court, but it's a long and unpleasant story, and unless invited by the second respondent in her answering papers to dilate on it in my reply (to which I'll then annex damning supporting documents), it would be better for LASA if I said no more about it here, and it didn't either.

49. Finally, it bears mentioning that Hundermark has his own private reasons for and personal interest in opposing this application, with the goal of preventing me arguing and winning my case on appeal; accessing all the records I've sued for; and then referring them to the high authorities I've named – because one of my PAIA requests that I sued to compel in the main case is for all LASA's cost records in the Magistrates Court reflecting the likely millions of rands* that Hundermark squandered on indefensibly opposing my five PAIA applications plus my condonation application in that court, set down on the same day, as well as the further public money he wasted on vexatiously opposing my subsequent necessary application to compel full and proper compliance with the settlement agreement he made with me after capitulating to my claims at court just before argument and

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agreeing to surrender the documents I'd sued for. Which agreement he then dishonoured.

50. *The insupportable opposition to my PAIA claims in that lower court involved literally lever-arch files packed full of risibly dull points and spurious defences, all ultimately abandoned at court. My subsequent application to compel LASA's full and proper compliance with the settlement agreement was likewise vexatiously opposed – only to be partially conceded as two further batches of pledged documents were successively surrendered under pressure of my set-downs. All this lower court litigation involved multiple appearances by junior counsel flown down from Gauteng to oppose me, sometimes two of them together in court on the same day. I've seen one of these junior advocate's fee-notes for rendering a simple service, for which he charged and was paid a staggering amount from the public trough, and it indicates that LASA's insupportable, dilatory opposition to my PAIA and condonation claims in the Magistrate's Court cost it a fabulous sum in legal fees. Which financial amount, disclosed by LASA's records, I'm constitutionally entitled to know under section 32(1)(a) of the Bill of Rights, and PAIA giving effect to it, no genuine question about it. Hence my main case before this court.

51. As I made clear in my papers in the main case, I intend referring all these cost records to the Auditor General for the personal recovery of this fruitless and wasteful expenditure; and Hundermark stands exposed to being ordered to pay it all in from his own pocket. Hence his concern that my appeals both

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in the main case and my security application should not be heard and upheld by a full bench of this court, and that my PAIA claim should die on the road before I get to argue it on appeal, as allowed by the judge who erroneously dismissed it, just because I had the misfortune to fall sick, like everybody does occasionally, at a critically inconvenient time; was left severely weakened after my acute symptoms had passed; and got better very much less quickly than I expected, and therefore couldn't get my application for leave to appeal the judge's dismissal of my security exemption application drawn and filed within the prescribed time.

52. I conclude by underscoring that this is no mere commercial dispute or other narrow private matter. Having been dismally failed by the judge repeatedly, I'm now looking to a full bench of this court to vindicate and give effect to my constitutionally guaranteed fundamental right of access to records held by a public body, the exercise of which right is crucial for (a) my ongoing investigation of public sector corruption of the greatest conceivable magnitude, involving multiple documented crimes committed in the course of attempting to cover it up, including by then-Board chairperson Mlambo JP, and (b) the reporting of this corruption on the fullest available documentary evidence to the responsible authorities named in my papers in my main and interlocutory applications. And having regard to who's directly implicated in it, the case has massive ramifications for the all-important reputation for integrity of our country's judiciary. As noted above, I'm preparing to report this vast corruption case, and the corrupt judges involved in it, to dozens of foreign embassies.

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53. In making this condonation application, I appreciate that I am appealing to this court's discretionary power to grant it or not. I've truthfully explained what's delayed me, and why my application for leave to appeal the judge's dismissal of my interlocutory security exemption application has been brought out of time: in a word, a protracted bout of ill-health, which it grieves me to report I'm still not completely over.
54. If in the answering affidavit opposing this application it's disputed that I've indeed been laid low, and if this court is disinclined to take me at my word about this as an advocate and officer of court (acting *pro se*) and is not satisfied by my account of my acute illness, my unexpectedly long and slow recovery, and my persistent incapacitating debilitation during it, all of which I've provided here on affidavit under penalty of perjury and strike-off, I apply for the issue to be referred to oral evidence so that I might testify and call eye-witnesses to the state of my health at the material time, up until the date of signature of this affidavit.
55. At the hearing I'll adduce contemporaneous records vouching that I indeed fell very ill, during which I couldn't eat for a couple of days, after which I managed liquids only for two days after that, in the form of date-stamped WhatsApp messages exchanged well before I anticipated needing consent or condonation for filing my application for leave to appeal the judge's dismissal of my security application outside the period prescribed by the court rules. Plus some photographs of the damage to my still unrepaired bike. Plus the scratches on my watch where it met the road. Since Hundermark hasn't

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indicated whether he means to dispute that I've been indisposed, I've not put these records up for now.

56. Should this court condone my uncharacteristic delay in prosecuting this litigation, for reasons beyond my control that I've explained, I'll be one step closer to my ultimate goal, which is to report to the authorities mentioned in my main case papers, on the fullest available documentary evidence, the serious financial, criminal and other corruption that I've already turned up at LASA.
57. Practically this court's decision to grant this condonation application will move the resolution of this corruption at LASA one step forward, and will signal its concern that corrupt public servants be held to account.
58. If, on the other hand, this court refuses my supplication for this smallest indulgence in pardoning my unavoidable non-compliance with the time limit prescribed by the court rules for filing my appeal notice, it will prevent my ventilation of this corruption on all the available relevant documentary evidence that LASA is concealing, and will impede its resolution. This will be to LASA's corrupt officers' tremendous relief and gratification. And, for the reasons explained in my complaint against the judge, it will further be to the ongoing substantial prejudice of the indigent in KwaZulu-Natal.
59. In the situation, I seek an order in terms of paragraph 2 of my notice of application.

Handwritten initials 'NB' and 'B-S' in the right margin.

Signed at Eshowe on 21 November 2022

ANTHONY BRINK

Signed before me at Eshowe on 21 November 2022 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

[Signature]
COMMISSIONER OF OATHS



Name: *SHOUBAN S. Ndlovu*

Address: *73-79 MAIN STREET CSITANU SAPS*

Capacity: *WARRANT OFFICER.*

COMPLAINT AGAINST POYO-DLWATI J
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT
ON A CHARGE OF CONTRAVENING ARTICLE 16(1) OF THE
CODE OF JUDICIAL CONDUCT, READ WITH SECTION 10
OF ITS PREAMBLE

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, admitted to practice on 12 April 1983. I reside at 36 Pearson Street, Eshowe, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. Besides my many years of practice as a trial lawyer during which I specialised in civil law, including civil litigation in the Supreme Court of Appeal and the Constitutional Court (where my papers were commended by the Chief Justice from the bench), I served for many years in the District and Regional Courts variously as a criminal and civil court magistrate, and I enjoy a sterling record on appeal. For about a decade, I was engaged full-time in single-issue advocacy in the public interest, during which I addressed and convened innumerable major conferences all over Europe, including in Russia, in an important, highly technical subject in which I'd become an internationally recognised autodidact expert. I've written and published several deeply researched books in the field, comprehensively surveying the relevant scientific literature, and these have been reviewed in acclamatory terms by senior scientists, academics, and other credentialed and respected commentators around the world; and my books have been cited and quoted in their own works, notably in the US and Russia; see openbooks.tig.co.za. I have been interviewed countless times by local and foreign print and television journalists, and my work has been translated into all major

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European languages; see tig.org.za. In short, I have a lifetime's experience in researching, examining, and accurately evaluating disputed facts, and I'm widely recognised for my acumen in this. I am not mentally deficient.

3. Retired from general practice, I'm engaged virtually full-time on litigating and otherwise prosecuting a colossal corruption case involving documented corruption in the judiciary, in which two heads of court are directly implicated. All documents in the latter regard are archived online for easy access at corrupt-judges.co.za under the title, 'The Corruption of the South African Judiciary'. For the information of the South African and international public, this complaint, and all further documents filed herein will be archived there as well. Material documents in what's since become the now thoroughly eclipsed, relatively minor matter of top-level criminal and financial corruption at the public entity where it all began, Legal Aid South Africa ('LASA'), are posted under an explanatory introduction at illegal-aid.co.za.
4. The respondent is Mrs Portia Poyo Dlwati, a judge of the KwaZulu-Natal Division of the High Court, currently acting as its Deputy Judge President. Her secretary's email is nfynn@judiciary.org.za.
5. In view of the likelihood that President Cyril Ramaphosa will be appointing the respondent as next Judge President of the said Division at the recommendation of the Judicial Service Commission ('JSC') (per *News24* report, 8 October 2022; bit.ly/3fRE62L), I'll be furnishing a copy of this complaint to him for his information, and to other interested parties.
6. The respondent is guilty of contravening Article 16(1) of the Code of Judicial Conduct ('the Code'). It provides:

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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Section 10 of the Preamble to the Code provides:

[S]ection 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 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[.]

7. All material documents referred to in this complaint can be downloaded in printable PDF from illegal-aid.co.za/PAIA/PAIA_1 (or bit.ly/3SjKNc1). If required, I'll furnish hard copies upon request.
8. Before particularising the respondent's violation of the Code, the aggravating circumstances in which she contravened it can summarised in one sentence. For whatever reason, the respondent is determinedly obstructing an investigation and the reporting to the relevant authorities on all available documentary evidence a case of exceptionally serious public sector corruption, involving the commission of multiple crimes and contraventions of the Public Finance Management Act ('PFMA') by certain top officers at LASA¹ (some since retired or quit), pertinently called to her attention in my affidavits in an application she tried, brought against a LASA deputy information officer² under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') for an order, *inter alia*, compelling him to grant me access to certain of LASA's public records, which I'd duly requested under the Act, but which he'd³ illegally and unconstitutionally refused to maintain a continuing cover-up of the said corruption; which corruption I treated further in a subsequent interlocutory application made to the respondent, mentioned just below.
9. My complaint is that the respondent is judicially unethically protecting and covering for the architect and chief executor of the ongoing cover-up of this

¹ See generally the summary on the homepage of illegal-aid.co.za.

² After he resigned from LASA, I joined the information officer as second respondent.

³ In form only; in reality another officer mentioned below.

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corruption, attorney Patrick Hundermark, employed by LASA as its Chief Legal Executive, to wit by not reporting to the Legal Practice Council or to the Director of Public Prosecutions, as the said Article preemptorily required of her, the many clear, objectively demonstrable perjuries he committed in the litigation. In my replying affidavit filed in the interlocutory application, in which I sought an order exempting me from paying into court an impossible sum that Hundermark had demanded for security for LASA's costs of opposing my appeal against the respondent's dismissal of my said PAIA claim, leave to appeal which she'd granted, I identified and positively disproved the profusion of lies Hundermark told her under oath to deceive, mislead, and defraud her with the intention and object of perverting her decision.

10. Quoting the said Article of the Code at the end of my replying affidavit, and citing an old Cape High Court judgment underscoring that 'perjury is a very serious crime', which opinion I erroneously assumed the respondent as a 'new generation judge'⁴ shared with her judicial forbears, I pointedly reminded her of her obligation to report Hundermark to one or other of those authorities for the many lies he told her, so she certainly knew of her duty imposed by the Code to act against professional liars in court, with a view to seeing them punished and purged from their professions for the protection of the public and defence and preservation of the integrity of the South African judicial system.⁵
11. For the JSC's Judicial Conduct Committee ('JCC') to fully appreciate the extraordinary gravity of the matter, I'll briefly sketch the essential background. Importantly, since the core material facts of the matter were stated in my several affidavits in the case, the respondent was full well aware of them as she proceeded to violate the Code by not reporting Hundermark's blatant lies about these documented facts and the other manifold lies he told about other matters – all on affidavit, signed after

⁴ Mlambo JP's self-billing at his interview by the JSC for his current job as head of the Gauteng Division.

⁵ I know of two cases in which judges, duly complying with their obligations to do so, reported lying lawyers to their professional bodies, one of whom was struck off and thereafter made his living drawing bills of costs.

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raising his right hand in the air and making a show of solemnly swearing to God that he was telling the truth on pain of the penalty for perjury, namely imprisonment or a heavy fine, and further in his particular case, removal from the roll of attorneys permitted to practise in our country and dismissal from his post in the public service.

- 12. The whole sordid saga extending over many years is rather long, but it's not particularly complicated, and it's readily comprehensible to anyone with sufficient cognitive power paying attention; with an adequately developed moral sensibility susceptible of arousal by clear evidence of grave wrongdoing with many harmful consequences, and of being especially hotly excited by clear evidence that a despicable culture of mendacity and lawlessness has taken root in the managing and governing echelons of an organ of state, and that its officers are given to abusing language, greased with *faux* legal jargon, to baffle and defraud the unintelligent, and further to using words strictly as weapons to win power-plays with a wholesale disregard for the truth, and who persistently and repeatedly commit brazen crimes, easily proved in light of the public body's own documentary record; with a spirit of impartial enquiry and an open mind;⁶ with an approach free of Dunning-Kruger bias; with the necessary diligence to read through all the papers, and not just some of them, perhaps after undergoing a great rush to the head of negative emotional feelings, and, swayed by these swirling feelings about things, deciding very judicially disgracefully and revoltingly indolently that it's not necessary to bother reading and considering the other side's last word stated in his final replying papers in accordance with the rules of court formulated and promulgated to ensure the proper airing of all sides of a case for its proper decision; with the requisite mental stamina to absorb, marshal and intellectually process a considerable body of documented fact set out in legal papers with all their supporting documents – unavoidably voluminous, since it takes an order of magnitude more ink to refute a lie than to tell it,

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⁶ Unlike, by way of another instance, the prejudiced and uninterested approach famously displayed by Seriti JA (ret.) and Musi J at their Arms Deal Commission, noted by the Gauteng Division in reviewing and rebuking their conduct, for which they're currently facing impeachment.

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especially when the lie is smooth and slimy, and confidently told by a practised, habitual liar with a law degree, and the more prolific his lies are the more exponentially the replying papers dismantling them must necessarily swell; with a successfully inculcated and internalised culture, imported from overseas, of fundamental rights guaranteed by a national legal constitution; with the requisite work ethic rather than a traditional culture of parasitic raw power; with an instinct for justice, as distinct from the principle that might is right and grave wrongdoing committed by the powerful with impunity and no accounting for it is and has always been perfectly normal and fine; with the absolute determination to follow the evidence to its ugly and alarming conclusions; with the personal fortitude to respond to these dreadful conclusions, however icy the winds might be in doing so, potentially imperilling one's career ambitions, since pusillanimity, mediocrity, conformity, group loyalty, and craven fealty to power are the royal road and sure rails to advancement; with the integrity to resist the natural human tendency to close ranks around friends and colleagues and kith and kin; and ultimately, with the professional inclination to take high-level corruption seriously, especially after swearing an oath to protect and defend the Constitution, even if documented information about it comes as extremely unpleasant and unwelcome news, because it directly involves and implicates one's judicial peers in such crimes as telling a sea of provable lies to a Portfolio Committee of the National Assembly to pervert a parliamentary enquiry that it's instituted into a complaint of high-level, aggravated recruitment corruption at a public entity, covered by a welter of childishly contradictory, mutually exclusive and destructive lies, and into its top officers' illegal and unconstitutional suppression of duly requested documents with the corrupt intention of hampering the investigation and reporting of this corruption, and slipping a 'memorandum' to a fellow judge, importuning him to throw a case. (Which favour, the court record shows, the judicial chum corruptly obliged on the double, even before all the prescribed papers had been filed and the case was ripe for decision.)⁷

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⁷ See the Waglay JP case at corrupt-judges.co.za or illegal-aid.co.za/ISC.

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13. Here's the score, and if your eyes and ears are open it's really pretty straightforward, like I said: On 12 November 2009, I was duly recommended in glowing terms by the unanimous vote of a selection panel comprised of LASA's most senior lawyers in KwaZulu-Natal ('KZN') for its top specialist legal professional post in the province for which I'd applied, its Senior Litigator position at Pietermaritzburg.⁸
14. What I didn't know at the time was that my rival applicant for the job, Mzochitwayo Ngcamu,⁹ was a long-time judicial colleague of then-LASA Board chairperson Dunstan Mlambo (now Judge President of the Gauteng Division of the High Court), and that over period of about six years he'd repeatedly been appointed as an acting fellow judge of the Labour Court in which Mlambo JP had served.¹⁰
15. I only got to learn of this very many years later from sight of the selection panel's complete, unredacted, uncensored recommendation report, which Hundermark had strained to conceal from me, in the face of my repeated requests for it under PAIA, and which I'd finally had to crowbar out of him with litigation under that Act – with my claim for it strenuously resisted all

⁸ Because my recruitment was aborted as soon as word reached head office that the wrong candidate had been selected and not the secretly earmarked one, the issue is academic really, but Hundermark has repeatedly claimed I was recommended for and subject to second interview for the post. Actually Senior Litigator Recruitment practice at LASA is entirely corrupt, both procedurally and ethically, but this is another matter not relevant to this complaint. I treat this procedural and ethical corruption in fine detail in my draft complaint to the Public Protector; see illegal-aid.co.za/PP.

My shortlisting, interview, selection and recommendation were all above reproach; it was at the approval level in national office that it all went ethically and legally south.

There's a twin such post at Durban, for which interviews were also held by the same panel on the same day.

⁹ Recording his past service on the Labour Court bench, the complete recommendation report also revealed that Ngcamu was positively disqualified and rejected by the selection panel following his interview, after conceding that he didn't have Right of Appearance in the High Court and had never litigated a case on his feet there, let alone in the Supreme Court of Appeal and Constitutional Court. (By contrast, I've litigated civil cases in all these courts. The papers I drew in a case before the Constitutional Court – argued by a silk at the Johannesburg Bar because I was an acting Regional Court magistrate at the time – were commended by the then-Chief Justice from the bench. So the silk reported to me afterwards.

Undisclosed to the LASA selection panel, I independently learned from a news report online that Ngcamu had repeatedly been convicted by the Law Society of KwaZulu-Natal for disciplinary infractions, and that he'd not disclosed them to the judge president who'd repeatedly appointed him to act in the Labour Court before this; and when it emerged at his interview by the Judicial Service Commission for a permanent appointment to that court, his lack of candour in this regard was denounced as unethical and his application for the position was rejected.

¹⁰ And later headed.

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the way to the courtroom, right up to the point that I was about to argue for it, before he finally gave up and yielded to my claim for it.

16. Five strangely silent months after my interview for the top gig, which I sensed had gone very well, I began enquiring about its outcome. The initial response I got from LASA's national Human Resources Executive¹¹ ('HRE') was impressively professional, reassuringly friendly and clearly intended to be helpful, but it left me no wiser. Her next response to my follow-up enquiry a fortnight later, after she'd discussed the matter with National Operations Executive Brian Nair, who'd been out of office when I first called her, was quite the opposite. First she persistently avoided my calls with the standard 'in a meeting' lying excuse conveyed by her embarrassed secretary every single time I called, many times, day after day; and naturally didn't ever phone back as requested. Finally she tried fobbing me off with a shockingly aggressive email that was transparently dishonest, deliberately opaque, falsely accusatory, and unmistakably calculated to cow me, get me to quit asking about the upshot of my interview, and shove off. But in her snarling, she unintentionally and backhandedly confirmed that I was the lucky boy selected and recommended for the big post.
17. I then appealed to LASA's Chief Executive Officer ('CEO') to see to the finalisation of my recruitment as the duly recommended candidate, now eight long months since my successful interview.
18. Nair responded on her behalf by alleging baldly that LASA had decided not to complete its Senior Litigator recruitment processes.
19. Seeing as the vacant KZN Senior Litigator posts had been repeatedly advertised, and even previously interviewed for, I tested the veracity of this odd claim by asking under PAIA for the record of this major operational decision.
20. My request for this and other records was ignored – a deemed refusal under the Act – so I called in the PAIA Unit of the South African Human Rights

¹¹ Since resigned.

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Commission ('SAHRC') to assist me. Prodded to comply with my request, Hundermark promised it that it would be responded to in three weeks.

- 21. Hundermark's promise to the SAHRC was dishonestly false. Ghost-writing for LASA's CEO and information officer, Hundermark now expressly refused my request *in toto* on a variety of grounds, all spurious, unlawful, and ultimately abandoned; and in doing so crudely fabricated a fake dictum from a reported judgment to further falsely justify his refusal – as if as an experienced trial lawyer, and not some ignorant hick in the street, I wouldn't look up the law report he pretended to quote from; find it held precisely the opposite of what he fantastically dishonestly claimed it did; and discover and expose his attempted fraud on me.
- 22. Once again I had to call in the SAHRC for support. Again it didn't help. Discussed below, Hundermark then totally refused my request for a second time, now for a whole bunch of completely different bogus reasons he made up, all incompetent and illegal under the Act, and, as before, all abandoned later on. The few records he did give me were claimed to support some points he was making, and were not intended to be responsive to my PAIA request and to a supplementary one I'd filed.
- 23. Bottom line is, eventually I established that no record of this alleged decision not to finalise the Senior Litigator recruitments exists – positively confirming my suspicion that no such decision had ever been taken by any competent authority at LASA, and that Nair had lied to me about why my recruitment to the critical, long vacant, budgeted and funded post had been aborted: off the record; without authority; in defiance of Parliament's express concerns (a) that LASA hire Senior Litigators to conduct high-powered litigation for the indigent in the upper courts, and (b) that critical posts in the Justice cluster be filled; in breach of LASA's internal regulations; and in contravention of the PFMA, as the Constitutional Court confirmed in the *Zungu* case.¹²

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¹² I canvass this in fine detail in my complaint to the Auditor-General; see illegal-aid.co.za/AG.

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- 24. Among the other documents specified in that first PAIA request of mine was the selection panel's recommendation report. Like everything else, Hundermark repeatedly refused my request for it, so as to hide from me some critically relevant information it contained; but in his second refusal to let me see it for new, different reasons stated a few months later, he gave me a heavily redacted copy from which he'd carefully blacked out with a Koki pen all material detail about the other candidates, including and especially about Mlambo JP's long-time judicial colleague Ngcamu. As mentioned, Hundermark's reason for giving me the censored record was for his own purposes, namely 'to demonstrate' some feeble point he was making, and not to comply with my request for the complete document.
- 25. Hundermark's redaction was unlawful under the Act – indeed it was criminal under section 90 – but even so, I didn't complain about this because I didn't suspect anything sinister, and so didn't press for the complete document at the time. The important thing as I saw it was that report now categorically confirmed that I'd been selected and recommended for the post in question. I had no idea, and no reason to think, that some of the hidden information was critically relevant, and that Hundermark had criminally concealed it from me with intention of violating my constitutional right to it, to prevent me discovering the overwhelmingly likely true reason I'd been done out of the top job I'd been picked for.
- 26. To defraud me into believing that my investigation of the abortion of my recruitment was futile, and to finally persuade me to quit pursuing my appointment, Hundermark told me the further lie – pumping up the lie Nair had told me, to make it sound more substantial and more credible – that due to the global recession in 2008 LASA unfortunately hadn't received sufficient salary budget from the Department of Justice to fill its three remaining vacant Senior Litigator posts, and that for this reason they'd been 'frozen'.
- 27. Since it's elementary under both the Public Service Regulations and LASA's own internal recruitment code on which it's based that a vacant post must be budgeted and funded before it can be advertised, and that the responsible

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human resources officer must first check and confirm that this salary budget is indeed available, I tested Hundermark's insufficient-funds allegation by way of a further PAIA request. As said, he totally refused my request again, now on completely different grounds from those originally asserted to refuse my first PAIA request, which were likewise spurious, unlawful, and later abandoned; but for his own purposes he appended some documents to his refusal notice, reckoning they'd convince me that he and Nair had told me the truth as to why my recruitment had been aborted, and to please just go quietly away now.

28. Some of the records Hundermark put up, for which I hadn't asked, pertained to a duly motivated and duly passed resolution by LASA's Board in July 2010 to temporarily freeze recruitment to some vacant non-critical, junior professional posts (in the result for two months only) – at the same time expressly prioritising recruitment to critical posts, such as Senior Litigator posts at the top of LASA's professional staff establishment – until such time as LASA had received from the Justice Department certain promised funding to pay salary increases to its lawyers, which LASA had already commenced paying. The Treasury allocated this money soon afterwards in the national mid-term budget announced by the Minister of Finance in October, and it was paid over to LASA by the Justice Department right after that in December.¹³ Problem solved; the hiccup wasn't even mentioned in LASA's annual report.

29. Taking me for a stupid fool and a sucker, the crooked lawyer Hundermark dissembled to me that these perfectly irrelevant records showed that LASA lacked the salary budget to appoint me to the Senior Litigator post for which I'd been recommended, and that consequently LASA had duly decided to indefinitely and practically permanently freeze recruitment to its three remaining vacant, critical, budgeted and funded Senior Litigator posts. Like a bent used-car salesman hawking a dud, grinning with gold glinting in his rotten teeth, the sleazy attorney imagined that I was so thick and so gullible

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¹³ All this is vouched by relevant financial records I got out of LASA.

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that he could defraud me with his lies and with his irrelevant documents put in my face and induce me to walk away from the plum post for which I'd been duly chosen.

- 30. In truth and in fact, as proved by financial records I obtained some years later (via a PAIA request addressed to the Justice Department, because Hundermark was routinely illegally and unconstitutionally refusing all my PAIA requests addressed to LASA), LASA's three remaining vacant Senior Litigator posts were indeed budgeted by LASA and funded by the National Treasury via the Department of Justice's Third Party Funds Division.
- 31. In other words, contrary to Hundermark's blatant lie to me about this, LASA did indeed have the salary budget to fill the top posts, always did, and still does – proving absolutely that it wasn't for any lack of cash that my recruitment was aborted, as this lowlife had fraudulently alleged to me.
- 32. Now sixteen years since their creation in November 2006, and having been annually budgeted and funded to the tune of millions of rands every year since then, three out of nine of LASA's Senior Litigator posts remain deliberately kept vacant and unlawfully unfilled in illegal contravention of the PFMA, as the Constitutional Court has pointed out in *Zungu*, with the National Assembly deceived about this, and with the indigent in KZN deprived of expert litigation services all this time. But being so confidently corrupt and cynical, and knowing Mlambo JP has their backs, LASA's top officers couldn't care less about this illegal under-expenditure and denial of essential, critical legal services to the poor.
- 33. Further disproving Hundermark's dishonestly fabricated financial justification for the abortion of my appointment, a record leaked to me by a sympathetic senior LASA insider revealed that Nair thereafter told LASA's Board totally different lies to justify not filling LASA's remaining vacant Senior Litigator posts, quite unconnected with the false financial excuse that Hundermark had cooked up and fed me. Only, as LASA's own records contradicting these fresh new lies showed, Nair's completely different stories,

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told to cover the illegal abortion of my recruitment and to cover his unlawful failure as chairperson of the responsible executive committee to see to the filling of LASA's remaining vacant budgeted and funded Senior Litigator posts, were fakes as well. That is, Nair defrauded the Board, of which he was later appointed an executive director (still is), to deceive it as to why LASA had illegally stopped completing its recruitment of Senior Litigators – a project integral to its approved Strategic Plan drawn in accordance with the express wishes of Parliament.

34. My finely detailed 60-page petition to LASA Board chairperson Mlambo JP, in which I pleaded for his intervention in the manifestly illegal abortion of my recruitment under cover of lies, and in the illegal and unconstitutional suppression of records I'd duly requested, was brushed off by him in two sentences, in which he pretended to have looked into the matter and to have been satisfied that there was nothing remiss and everything was just fine – contrary to my closely particularised complaint, supported by all the documents and evidence I referenced in it.

35. My second appeal to Mlambo JP got flushed down the same can – understandably, as I discovered sick to my stomach many years later, because in my sad ignorance of his erstwhile judicial collegial relationship with my rival applicant Ngcamu I was naively appealing to the rogue at the very centre of the recruitment corruption in question and of its cover-up, soon to descend into crime.

36. With my successive appeals to LASA's managing and governing officers disappointed, I escalated the matter to LASA's executive authority, the Minister of Justice and to its oversight authority, the Justice Portfolio Committee of the National Assembly. Concerned by the grave illegalities I was reporting to them, both instituted separate and independent enquiries, and demanded that Mlambo JP please explain.

37. Mlambo JP successfully perverted both of their enquiries with 'confidential' reports to them 'Re: Adv Anthony Brink' that were packed full of lies.

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38. I sourced and obtained copies of both of these reports at different times, and on both occasions quite by chance or I'd never have known about them and the many unctuous lies Mlambo JP told in them.
39. Since it was inconceivable to the Minister and to the chairperson of the Portfolio Committee that a judge president might be criminally dishonest¹⁴ and tell them one easily verifiable lie after another, both of them took Mlambo JP at his word and closed their enquiries on the spot.
40. My complaints to the JCC in mid-2017 about Mlambo JP's criminally false report to the Portfolio Committee for which he stands exposed to being jailed; about his impeachable conduct in lying to the Minister; and about his other gross misconduct in conniving at and colluding in LASA's repeated violation of my fundamental right to information on four separate, documented occasions, have yet to be finally determined.¹⁵
41. Having established that the reason Hundermark had given me for the abortion of my recruitment was dishonestly false, likewise the totally different, contradictory and mutually destructive fake reasons that Nair gave to deceive the Board, I sued out of the Durban Labour Court for an order instating me to the post – and lost the case, correctly¹⁶ it later turned out, because I'd sued on the wrong cause of action: I'd inferred that as an intensely politically unpopular person at the time for my detonation of what quickly became a highly politicised, morally charged, extremely polarised, and frankly hysterical public health policy controversy¹⁷ (and on page after page of his judgment the labour judge reviewed the evidence of my political odium, and duly accepted it as a proven fact), LASA had blocked my

¹⁴ It's a statutory crime to lie and falsely report to the National Assembly or one of its committees; see my complaints to the JCC against Mlambo JP about this at illegal-aid.co.za/JSC

¹⁵ On 11 September 2022, the secretary of the Judicial Service Commission ('JSC') answered my enquiry about this by informing me that they are still being considered on appeal by Constitutional Court Justices Nkabinde and Mkgoba and Gauteng Division Judge Victor (in Mlambo JP's own court). All relevant documents are posted at illegal-aid.co.za/JSC.

¹⁶ The punchline of the judgment was right, but certainly not the labour judge's preceding factual findings, based on perjured evidence, nor his reasoning, including his radical, fatal error in misallocating to me the final burden of proof, which obviously completely vitiated his judgment.

¹⁷ See tig.org.za. It's blown over now and all but forgotten, with the heat in public discourse over it at the time completely burnt out.

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appointment on account of unfair political discrimination; and I'd based my claim on this. Many years after the final disposal of my labour case,¹⁸ however, I eventually succeeded in extracting from Hundermark via litigation the selection panel's complete recommendation report, unredacted and uncensored, delivered in terms of his settlement agreement with me signed at court.¹⁹ That's when I learned of my rival applicant Ngcamu's long-time judicial relationship with LASA's then-chairperson Mlambo JP, recorded in the selection panel's summary of his professional background. And in a lightening flash, everything became clear at last, including Mlambo JP's hitherto inexplicable unconstitutional and criminal conduct in the matter.

42. Their relationship explained why – in striking contradistinction to me and the other candidates interviewed for the two Senior Litigator posts in KZN – Ngcamu wasn't told by letter that the recruitment process had been (illegally) cancelled (without authority and off the record). Contrariwise, Ngcamu was quickly appointed to a number of other holding posts at LASA and kept waiting comfortably in the wings to be slipped into the post, for which I'd been chosen over him, once I'd given up pursuing it.²⁰ It explained why the qualifying criteria for the re-advertised post had been illegally gerrymandered to rig them in Ngcamu's favour by being jacked up to double the High Court experience that all other past Senior Litigator advertisements had stipulated, including in KZN, without the authority of

¹⁸ Corruptly; see documented complaint against Waglay JP at illegal-aid.co.za/JSC.
¹⁹ Over the telephone, Hundermark was instructing his subaltern present at court, LASA's Legal Executive, as to the terms of LASA's total surrender treaty, after capitulating to my claims moments before argument.
²⁰ That this was indeed the corrupt scheme emerged from a clumsy question put to me in cross-examination in the Labour Court: Why hadn't I concluded from the long silence after my interview that I'd been unsuccessful and not just walked away?
 As noted above, I've established that Senior Litigator recruitment at LASA is grossly corrupt, both ethically and procedurally:
 1. A former national management executive who chaired the selection panel that interviewed for the Mahikeng Senior Litigator post informed me that the candidate his panel selected was passed over, and a rejected candidate was appointed instead.
 2. As in all public sector recruitment, the recommendation and approval procedure in staff recruitment at LASA is precisely codified and governed by its internal regulations. In the case of Senior Litigator recruitment, however, several LASA records show that these regulations are entirely disregarded. A comprehensive complaint to the Public Protector about this illegality is substantially complete and will be filed when it's ready; see the draft at illegal-aid.co.za/PP.

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any recorded resolution to do so, on the mistaken assumption in head office apparently that the local selection panel would consider Ngcamu's many years of shuffling files as an attorney and sitting on the bench listening to labour quarrels to count for actual litigation experience in fighting on his feet in the High Court and beyond, and that this qualified him for the high-end specialist litigation work in question.

43. This stunning information about Ngcamu's connection with Mlambo JP also explained why Hundermark had persistently and furtively obstructed my access to the full recommendation report that I'd repeatedly requested under PAIA and finally had to sue for; why he'd strenuously opposed me all the way to the courtroom, throwing in my way lever-arch files full of legal garbage in mountains of answering papers (all dumped in the end); and why this critical, key, all-explanatory record was only surrendered at the last minute as I was about to argue before the magistrate for an order granting me access to it.

44. The relationship, and Mlambo JP's preference for his former judicial pal in the top vacant post instead of me, explained the lies he told me, the Minister and Parliament as he was trying to cover up the whole putrid mess – only, in doing so, criminally aggravating the quotidian root illegality, namely everyday jobs-for-pals recruitment corruption, in which he was centrally involved.

45. In sum, it wasn't that Mlambo JP, Hundermark, Nair, and the HRE didn't want me appointed because they considered me a politically undesirable person, and that LASA had unfairly discriminated against me for this reason as I'd wrongly surmised on all the facts known to me at the time; it was nothing more than cronyism: Mlambo JP simply wanted his colleague in the job instead of me.

46. During the trial of my labour case, Nair gushed lies on the witness stand like a burst sewer: some old; some new, improvised to escape the pinch of my

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cross-examination; and some risibly contradictory.²¹ So right after the two-week trial, as soon as I'd drawn and filed my written heads of argument, and long before oral argument and then judgment many months later, I used PAIA yet again to test and objectively expose Nair's profusion of perjuries in court, intending to have him prosecuted for his crimes committed in his casual, fearless violation of his oath administered by the labour judge to tell him the truth in the matter²² – perhaps fortified in lying so freely and confidently by the happy knowledge that none other than Mlambo JP, his boss and the central miscreant in the case,²³ for whom he was covering in his evidence, headed the very court I was suing in.

47. In keeping with his past dishonest and illegal refusals to comply with my earlier PAIA requests, Hundermark refused all my requests made after the trial of my labour claim, so I sued out of my local Magistrates Court²⁴ for orders compelling compliance with them. As noted above, he finally capitulated on the morning of argument; agreed in a written settlement to turn over the records I'd requested; and undertook to respond to a final PAIA request regarding LASA's Senior Litigator posts that I foresaw needing to make after examining all the records received under the settlement agreement.²⁵
48. Hundermark and his immediate subordinate the Legal Executive promptly reneged on their agreement with me; retained many of the key records formally pledged to me in the settlement; and failed to duly certify under

²¹ Vahed J on the KZN bench well appreciated this, because after spending a week (he informed us) studying *inter alia* my seven volumes of answering papers in LASA's (Hundermark's) corrupt attempt to interdict me from accessing any more of its records and from seeking relief in the courts in the future, in which papers I detailed the profusion of lies that Nair had told the labour judge under oath (see illegal-aid.co.za/VPA), he remarked very correctly from the bench that all trial lawyers know that cases are won by perjury sometimes. Indeed so, just about all trial lawyers have observed this in their own experience.

²² A few months after the trial, Nair was admitted as an advocate, entitled to practise in the High Court, whose judges will assume he's an honest person and not a habitual liar and serial perjurer.

²³ I didn't know this at the time, and only discovered it much later. For reasons irrelevant to detail here, I told the trial judge in my labour case from the bar at the start of the trial that I held Mlambo JP clear. As said, I only learned of his central role in the matter years afterwards.

²⁴ A PAIA-trained magistrate from a distant court was appointed *ad hoc* to deal with my applications.

²⁵ This had happened before; new lines of enquiry had sometimes been generated by surprising records turned up by PAIA requests and during discovery in my labour litigation.

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section 23 of PAIA those records that didn't exist or couldn't be found,²⁶ as expressly undertaken to me in the settlement handed into court.

49. And in contemptuous breach of his recorded agreement to respond to a final PAIA request in the said matter, when I filed it as agreed Hundermark totally refused it as a waste of his time.
50. So under the default clause that I'd presciently written in – knowing I was dealing with unscrupulous, dishonourable, untrustworthy, agreement-incapable, and corruptly obstructive public servants who'd repeatedly lied to me, to the Justice Minister, to Parliament, and to the courts, in other words with a gang of criminal psychopaths in shiny shoes – I returned to court with an application to compel full and proper compliance with the settlement agreement.
51. It's currently on ice, because after failing to get the High Court to interdict me from proceeding with that application (see below) Hundermark then applied to the same court to transfer the case up from the Magistrate's Court – at first blush an appealing idea when mooted to me, except that it's procedurally incompetent having regard to the rules of court and relevant case law precisely on point, and I've failed in my endeavour to get this through and into Hundermark's head by patiently explaining it to him in simple English. Anyway, Hundermark's pending application to the High Court to transfer my application in the Magistrate's Court to compel LASA's compliance with the settlement has effectively jammed the works for the time being.
52. For reasons irrelevant to detail here,²⁷ I now elected to approach the High Court for orders compelling LASA's compliance (a) with that agreed final PAIA request in the matter of Senior Litigators that Hundermark had

²⁶ When I returned to court with an application to compel full and proper compliance with the settlement agreement, the magistrate noted this failure on the record, and LASA's counsel responded by promising to him that I'd be provided with a compliant section 23 affidavit. The undertaking was naturally dishonoured.

²⁷ They're set out in my complaint to the Magistrates Commission; see illegal-aid.co.za/MC.

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illegally refused, in breach of his express agreement to respond to it;²⁸ and (b) with another, separate, unrelated PAIA request, also illegally refused, namely for all LASA's cost records²⁹ in Hundermark's fruitless, financially wasteful, indefensible opposition, ultimately abandoned, to my necessary litigation in the Magistrate's Court to enforce my constitutional right to information that he'd persistently and contemptuously violated to try keeping the lid on the disintegrating cover-up of the multiplying criminality at LASA, even as his risible, bogus financial alibi for the abortion of my appointment had entirely fallen to pieces – unsupported and contradicted by LASA's records, and contradicted by Nair in his November 2011 'Report to the Board'.

53. As I made clear, I intend referring these financial records *inter alia* to the Auditor General for the personal recovery of this massive, corruptly incurred, fruitless and wasteful expenditure on insupportably opposing five successive PAIA applications made to that lower court in order to maintain a recruitment corruption cover-up and to avoid accountability for the crimes and other capital misconduct committed in the course of it.³⁰
54. Hundermark's devious response to my application to compel LASA's compliance with the settlement agreement he'd made with me and with my application to compel compliance with my just-mentioned two PAIA requests, including one he'd expressly undertaken to respond to, was to slink over to the High Court with an application to interdict me from accessing any more of LASA's records, including those he'd pledged to me in his settlement agreement; from proceeding with my just-mentioned pending application to the High Court to compel compliance with the final PAIA request he'd expressly agreed to respond to, then refused, and for all LASA's Magistrate's Court cost records (among some others); and from ever approaching the

²⁸ My request sought other unrelated records as well.

²⁹ Plus a couple of other records.

³⁰ See for instance my twelve criminal complaints against then-CEO Vidhu Vedalankar at illegal-aid.co.za/NPA. Worse, see my criminal complaints against Mlambo JP for lying on multiple counts in a 'confidential report' to the Justice Portfolio Committee of the National Assembly to pervert a Parliamentary enquiry. The complaints are posted at illegal-aid.co.za/JSC.

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courts again, on the basis of the fatuous allegation that I'm a vexatious litigant – even as he'd just conceded all my PAIA litigation in the Magistrates Court; had agreed to respond to a final PAIA request in the matter of Senior Litigators, then contemptuously refused it, which required that I had to sue to enforce it; and had partially conceded my application to compel compliance with the settlement agreement by incrementally surrendering further documents, pledged in the settlement, in two successive batches under pressure of my successive set-downs of the case.

55. The High Court quickly dismissed Hundermark's obviously baseless interdict application – the classic last resort in any major failing cover-up³¹ – and after LASA's counsel thankfully ended his hopeless argument I wasn't even called on to answer him.³²
56. In a further attempt to kill off the implacably determined and unrelenting investigator of the top-level criminal and other corruption at LASA, and to discredit the complainant about it, Hundermark moved behind my back to get me summarily fired from my post as an acting magistrate on contract – without a hearing, without even notification of his complaint against me to the Magistrates Commission, and I only learned of his hidden hand in knifing me through the curtain eighteen months later. The Chief Magistrate at Pietermaritzburg, and head of the Zululand court cluster, had phoned to ask me to please apply for an acting appointment at Ulundi where she needed me in the temporary absence of the resident magistrate there, and emailed me the necessary forms to complete and submit. After I'd done so, she reported that the Deputy Minister of Justice had refused to appoint me

³¹ See Wikipedia entry on 'Cover-up'.

³² Duly requested under PAIA, Hundermark is suppressing LASA's cost records in that High Court case, to conceal what he squandered in public revenue to obstruct my continuing corruption and financial malfeasance investigation and reporting it to the relevant authorities with all available supporting records. My application to the High Court for an order compelling LASA's (Hundermark's) surrender of these duly requested public records is pending. And I have a third PAIA application pending in the same court to compel LASA's delivery of further financial records regarding the Justice Department's funding of LASA's Senior Litigator posts that I duly requested under PAIA from the Department, but which it duly referred to LASA to respond to, and which Hundermark has illegally and unconstitutionally refused in his usual routine to hamper my investigation and reporting of the LASA's gross contraventions of the PFMA at immense prejudice to critical service delivery to the indigent in need of specialist expert litigation services.

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on account of Hundermark's complaint against me. In other words, Hundermark had got me permanently blacklisted by the Justice Department from getting any further acting judicial appointments, even as the Chief Magistrate told me she very much needed my services on relief in Zululand where I'm settled, and had expressed her gratitude for making myself available for such locums as and when required.

57. Hundermark's complaint was that I'd professionally disgracefully attacked Mlambo JP's integrity in my labour and related litigations against LASA. Mlambo JP's impeachable misconduct on multiple counts, including his crimes, was indeed identified in my papers in those cases, and as said above, my complaints made to the JCC about it all have yet to be finally determined, now many years on.
58. In a corrupt attempt to get me struck off the roll of advocates, and thereby totally discredited as a witness against Mlambo JP, Hundermark made the same complaint to the Society of Advocates of KwaZulu-Natal. His complaint hadn't been decided by the Bar Council by the time the Legal Practice Council ('LPC') began its work, and the LPC inherited the matter.³³ From the very long silence since I provided my response to the LPC,³⁴ it seems the complaint has either fizzled out or its eventual decision has been made contingent on the JCC's final determination of my complaints against Mlambo JP.
59. Such are the pains and occupational detriments of going after high-level corruption in the New South Africa, including and especially in the judiciary.³⁵ It's frankly cost me everything but my life itself.³⁶ In retrospect,

³³ Under section 116(1) of the Legal Practice Council Act.

³⁴ See illegal-aid.co.za/LPC.

³⁵ LASA, almost certainly Mlambo JP himself, went so far as to pervert the decision of my labour appeal by slipping a poisonous 'memorandum' to Waglay JP, his long-time judicial colleague in the Labour Court and successor as Judge President there (whom Waglay JP had actually urged to apply for the leadership of the court – so Mlambo JP told the JSC interviewing him for the Chief Justice post), which 'memorandum' I discovered purely by chance during a search of the court file for any record that Sutherland and Davis JJA had concurred in the dismissal of my petition for leave to appeal, as the order falsely claimed, before all the prescribed papers had been filed and the case was ready for decision. (Aggravating the matter, there's no record either in the court file or on its cover that either of these judges had any hand in the case at all: no 'I concur', no signatures by them anywhere – as if definitive judicial decisions can be made without any record of

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it really would have been much better for me had I disregarded the repeated calls made by former Chief Justice Mogoeng, former Public Protector Madonsela, and President Ramaphosa to report evidence of corruption to the relevant authorities so that the wrongs can be set right and the corrupt held to account. (A few days ago the President urged publicly that whistle-blowers be protected.) After spending more than a decade working on cracking this extremely hard nut, I realise with hindsight that it would have been much more sensible had I followed the respondent's example and just looked away from the corruption I'd run into. Especially after discovering that the corruption at LASA has metastasised into the judiciary and has corrupted judicial decision-making,³⁷ from which the JSC has looked away likewise.³⁸ Never in my wildest dreams did I imagine that I'd be dealing with corruption in the judiciary itself, that the root problem in my case is corrupt judges, and that the judges on the JCC would prove indifferent to this and would shamelessly cover for their mates.³⁹

them whatsoever.) My still unresolved complaint to the JCC against Waglay JP about this, filed in June 2017, to which a photocopy of the 'memorandum' is attached, is still undecided more than five years later, despite four letters protesting the delay to then-JSC chairperson Mogoeng CJ and to then-JCC chairperson Zondo DCJ (as he then was). Along with this correspondence, the complaint is accessible at illegal-aid.co.za/JSC.

³⁶ My late partner was less fortunate.

³⁷ See illegal-aid.co.za/JSC, and my complaint against Waglay JP and reply to his response in which I identify Mlambo JP as the likely culprit who perverted his decision of my petition for leave to appeal with the 'memorandum' I later found in the court file.

³⁸ More than five years since I filed my complaint about Waglay JP's documented judicial corruption, the JCC has yet to decide it, despite four repeated written appeals to Mogoeng CJ and Zondo DCJ (as they then were), then-chairperson and then-deputy of the JSC, protesting this delay and pleading for the JCC to get cracking. The complaint and my four letters are accessible at corrupt-judges.co.za.

Zondi JA's move, following the rancid precedent set by his brother Seriti JA (ret.) at the Arms Deal Commission, to sweep my eight criminal and other capital complaints against Mlambo JP under the rug is under appeal; and now eleven months after considering my appeal on 10 December 2021, the JCC Appeal Committee has yet to deliver its now very overdue decision. Zondi JA's 'patently dishonest'* dismissal of my complaints against Mlambo JP, and my extensive appeal notice taking it to pieces, are accessible at corrupt-judges.co.za.

(*in the language of a former Constitutional Court judge criticising another judge president)

In view of the disinclination of the JSC and its JCC to hold these corrupt judges to account, I'm preparing to refer the documented judicial corruption I've turned up in this matter to the court of international opinion by dint of a fusillade of letters to dozens of likely interested foreign embassies, in which I'll be inviting their intelligence analysts to review the evidence and then advise their respective governments as to the integrity of the South African judiciary, one of the three legs of our state, for the information and shaping of their future foreign relations with this country. And in the language of Russian Federation President Putin, I'm 'not bluffing', as recently shown in his case, and soon to be in mine.

³⁹ See preceding footnote.

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60. My application to compel LASA's compliance with my final PAIA request regarding Senior Litigators that Hundermark agreed to respond to,⁴⁰ and my request for the cost records of Hundermark's fruitless and financially wasteful, insupportable, dilatory, corruptly-motivated opposition to my PAIA litigation in the Magistrates Court (finally abandoned in the courtroom), finally came before the respondent for argument, after many years of delay by Hundermark and his colleagues, including his just-mentioned attempt to kill the case in the egg by interdicting me from proceeding with it and his attempt to rub me out professionally and financially – like a mobster murdering the witness before trial – dodging which intended kill-shots were tremendously time consuming.
61. In court, the respondent stated her past professional associations with Hundermark (author of and deponent to the answering affidavit) and with LASA's Legal Executive (formal signatory of Hundermark's refusal of my record requests),⁴¹ but alleged to me that her relationships with them wouldn't bias her judgment in the case against me. I was singularly queasy when I heard this, particularly after the strikingly cool glint in her eye and the chilly vibe I picked up in her chambers before we went down to court, but the important case had been so very long delayed already that I decided to just roll with it and hope for the best.
62. I was aghast when the respondent then instructed me to confine myself to just forty-five minutes of argument,⁴² manifestly inadequate in view of the volume of the papers; the many complex issues they raised in the 'very technical' case, as the SAHRC has fairly described the Act; and the

⁴⁰ Actually, only a minority of the records I requested concerned Senior Litigators; the majority went to unrelated matters not hit by the limitation imposed by the settlement agreement in the Magistrate's Court.

⁴¹ Drawing my appeal notice in the main PAIA case, I misremembered the nature of those relationships, misdirected by my mistaken recollection as to the firm to which the respondent was articled as a candidate attorney. I recall her bringing me a couple of briefs while I was in practice at the Pietermaritzburg Bar. My memory failed me in that for all these years I thought that she was articled to LASA. I've recently ascertained that her principal was in fact attorney Oregon Hoskins, and he's confirmed this to me. In other words, in the cases that the respondent, while an articled clerk, was bringing up to my chambers Hoskins was briefing me, not LASA.

⁴² Described below, the respondent later on pulled a similar prejudiced and prejudicial move on me, which I succeeded in parrying with the assistance of the Judge President.

exceptional gravity of the matter in its wider context – evincing to me that she'd already decided to toss my case, irrespective of what I might have to say about Hundermark's vexatious revival of exactly the same spurious defences to my PAIA claims that he'd just abandoned in the Magistrate's Court as I was poised to address and refute them in argument there. Before which, as said, he'd successively abandoned an ever-changing junk-heap of other spurious reasons for blocking my access to LASA's public records. Like a thief fleeing from the police, throwing all sorts of trash at them grabbed from the gutter to try putting them off their pursuit of him.

63. My foreboding was compounded by the respondent's startling defence in court of LASA's clearly perplexed senior counsel, also hopelessly at sea in the 'very technical' case, when she upbraided me, not him, for repudiating his unbelievably dull imputation to me of a nonsensically false legal principal that I'd never asserted. The respondent didn't reprove him for misleading her with a crude misrepresentation of my actual claim as to the law, supported by the Supreme Court of Appeal and stated in my papers; instead, she gunned at me for insistently correcting this tragically inept and confused person who really should have been in the Magistrates Court defending shoplifters. It was already plain to me whose side she was on in the case, and it sure wasn't mine.
64. It was also clear that the respondent had uncritically swallowed Hundermark's portrayal of me as a sore loser with a bee in his bonnet endlessly harassing LASA for no good reason, and that she'd not studied my refutation of his lies about me and my claims; and that having taken this poisoned view of me, she approached my case on the assumption that it was all a load of rubbish. So she was going to help LASA put an end to it.
65. I left court with the heavy impression that the respondent didn't know what was going on in the 'very technical' case; and her truly pitiful judgment delivered six months later confirmed it – revealing to anyone even remotely familiar with the Act that she was completely out of her depth in the matter and didn't know whether she was coming or going.

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66. Before particularising my grounds of appeal in my appeal notice, I summed them up⁴³ by noting that the respondent's judgment was 'riddled with pivotal, fundamental, reversible errors', namely:

it repeatedly and persistently falsifies the applicant's evidence and contentions on critical points; falsifies even the original respondent Mtati's evidence and the substituted [actually second] respondent's contentions; falsifies the undisputed facts; relies on entirely irrelevant facts; fails to treat and consider crucially relevant facts objectively vouched by supporting documents; relies on incomplete and thereby distorted quotation of provisions of the Promotion of Access to Information Act 2 of 2000 ('PAIA', 'the Act') corrupting its purport; relies on incomplete and thereby distorted paraphrase of provisions of the Act likewise corrupting its purport; misstates, misinterprets, and misapplies the Act; fails to properly apply the Act; invents and applies irrelevant tests for constitutional entitlement to access public body records not found in the Act and at odds with it; disregards, contradicts, and deviates from judgments of the Constitutional Court, Supreme Court of Appeal, and other divisions of this court, *i.e.* fails to observe *stare decisis*; misapplies and relies on irrelevant case authority in a matter involving incomparably dissimilar, fundamentally distinguishable facts; relies on unsound factual and legal premises stacked on each other to arrive at findings that are both wrong in fact and bad in law; makes factual findings that contradict each other; makes legal rulings that contradict each other; makes rulings contradicted by facts she expressly accepted and relied upon; employs broken logic; displays manifestly defective legal reasoning; evinces palpable prejudice in favour of her former employer Legal Aid South Africa

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⁴³ In point of fact, I drew this summary after analysing the judgment and setting out my grounds of appeal against it, and then inserted the summary at the head of my otherwise complete appeal notice.

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(‘LASA’)⁴⁴ and of former attorney colleague in the organisation Thembile Mtati (‘Mtati’), the original respondent, with whom she also served together as a fellow member of the Rules Board; and generally exhibits her profound incomprehension of and inability to apply first principles of constitutional information law – and that all the learned judge’s gross reversible errors stand to be corrected by a full bench of this court as her judgment is set aside, the law is properly applied to the undisputed facts, and the applicant’s constitutionally entrenched right to access public body information is at last vindicated and upheld.

This was no cheap rhetoric; *au contraire*, I instantiated every single one of these hard criticisms in the particulars of my appeal notice.

67. Interpreted charitably, the respondent’s judgment revealed that she hadn’t successfully learned, understood, and internalised the fundamental importance of public information transparency in our Constitutional democracy, and of the crucial role that this evidently alien legal value held in unearthing and combatting the ubiquitous public sector corruption and financial malfeasance in our country that has become locally and internationally notorious.⁴⁵
68. Back in the day, in my professional experience, judges normally got agitated by evidence of lawlessness and corruption coming out in a case before them; but, for whatever reason, LASA’s criminal, financial, and other corruption finely detailed in my papers made zero impression on the respondent. The corruption I described to this particular judge strangely didn’t trouble her one bit; quite the opposite, she turned Nelson’s Eye to it.
69. As said, the respondent’s judgment was such an abysmal, chaotic shambles of basic errors that my notice of appeal was necessarily a phone-book thick in

⁴⁴ In her judgment granting leave to appeal her dismissal of the main application, the respondent denied having ever worked for LASA. As noted above, I misremembered this.

⁴⁵ In January 2019, the US, UK, Dutch, Swiss and German governments jointly wrote directly to President Cyril Ramaphosa demanding that he get a grip on the runaway corruption in this country.

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picking them all apart and laying them bare as my grounds for appealing her utterly clueless reasons for dismissing my clear-cut claim to access LASA's public records – which I'd duly requested under the Act in the exercise of my entrenched constitutional right of access to public body information; for which records I'd had to sue; and against which fundamental right, guaranteed by our Bill of Rights, the respondent decided to oppose herself, punishing me in costs in the bargain, as if this would finally kick me away from pursuing LASA's top officers for their documented criminal, financial, and other corruption.

70. My exceptionally lengthy appeal notice put the respondent to the irksome task of reading it all and seeing what a total hash she'd made of the case and what a pathetically incompetent mess her judgment was, and having all her mistakes corrected for her in humiliating detail with reference to chapter and verse of the Act; to reported case authority supporting my claim to the records I was suing for; to the indisputable facts of the case set out in my papers, supported by documents vouching my allegations about them; and to the arguments actually raised in the papers and at the hearing, as opposed to her false claims in her judgment about them.
71. Naturally desirous of avoiding this disagreeable exercise, and no doubt fretting about the damage to her career ambitions that an ignominious reversal of her judgment would cause when the full bench's upset showed up in the law reports, knocking her decision over in terribly scathing terms, perhaps even directing in conclusion that the papers and her judgment be referred to the JSC for an investigation as to whether she shouldn't be removed from the bench by the National Assembly under section 177(1)(a) of the Constitution for gross incompetence, the respondent had a go at hamstringing my application for leave to appeal by instructing me via her secretary to make my case for leave to appeal again, now in no more than ten pages.
72. I protested this in a letter to the Judge President, in which I conveyed my flat refusal to be hobbled in making my case on appeal by the respondent's

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unlawful and highly prejudicial directive, and I insisted that my application for leave to appeal be decided on all the grounds set out in my very extensive and comprehensive appeal notice already before her, which I'd duly drawn and filed under the court rules.

73. The Judge President presumably set the respondent straight about this by explaining to her nicely that she'd acted *ultra vires* in trying to curtail my case for leave to appeal, the more easily to dismiss it, because she abandoned her illicit demand; considered my application for leave to appeal on my case fully made in my appeal notice before her; and granted me leave to appeal her dismissal of my PAIA case to a full bench.

74. As with his corruptly-driven vexatious interdict application, the corrupt attorney Hundermark now moved to block my road to court for the second time, so as to prevent me from arguing the merits of my appeal; from accessing the records I'd duly requested; and from referring them to the several high authorities I'd specified. His trick now was to demand I pay R300 000 cash into court as security for LASA's costs.

75. I responded under the court rules by applying to the respondent for exemption from this ordinary security obligation. The nut of my case for this relief was that Hundermark had himself maliciously engineered the destruction of my legal career in his counter-offensive to quash my corruption investigation, thereby putting me out of pocket and unable to find this enormous sum, and that in the circumstances it would be grossly inequitable to prevent me vindicating my constitutional rights in court in this extraordinarily important matter involving top-level corruption merely because, thanks to him, I was no longer rich enough to come up with this kind of cash. I raised the overwhelming likelihood that my appeal would prevail, having regard to my case set out in my appeal notice, and that in any event, even if I lost, the Constitutional Court's Biowatch rule protected me from being ordered to pay LASA's costs, provided the appeal court was satisfied that my litigation to vindicate my constitutionally guaranteed right of access to LASA's records was *bona fide* – the fact of which the respondent

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herself had implicitly recognised in granting me leave to appeal her completely botched judgment in the main case.

76. Indisputably demonstrating my *bona fides* generally, and debunking Hundermark's false picture of me as a delinquent disrespectful of court orders, I mentioned that I'd obediently commenced paying the Labour Court's costs order against me⁴⁶ in massive agreed instalments volunteered from my salary as a magistrate, when Hundermark moved to take the bread out of my mouth and make sure I got no more by getting me sacked and blacklisted, and by fouling my reputation as an advocate.⁴⁷
77. Opposing my exemption application, and to defeat it with fraud in his standard habit, Hundermark forged and uttered a multitude of high-toned lies under oath in his answering affidavit to mislead and deceive the court (the respondent) and pervert the decision of my application (by her), all of which perjuries I precisely identified and objectively disproved in my replying affidavit. (It's obviously essential therefore that this complaint be read with that affidavit; see paragraph 7 above.)
78. I concluded the affidavit by expressly calling the respondent's attention to her obligation under Article 16(1) of the Code to report Hundermark's criminal misconduct to the Legal Practice Council or Director of Public Prosecutions; and to her exposure to disciplinary sanctions by the JSC under section 14 of the Judicial Service Commission Act should she not do so, as the

⁴⁶ Even though it was wrongly made according to the Constitutional Court in *Zungu* and in *Long*, both of which held that, unlike in civil actions, costs don't normally follow the result in labour claims. Since LASA was seeking punitive costs against me, I expressly asked the labour judge during argument if he was minded to fault my conduct in the litigation in any way so I might defend myself, but he cheerfully waved me away; and giving judgement a few months later he actually complimented LASA and me from the bench for our conduct of the case. In other words there was no basis for his costs order in the Labour Court, but of course this is irrelevant to my liability to pay it for as long as it stands. *En passant*, LASA oppressively inflated its bill of costs to do me in, but to his credit, acting *mero motu* because I didn't go to oppose, the taxing master cut it in half.

⁴⁷ As I recount at length in my response filed with the Legal Practice Council, invited after it resolved to investigate Hundermark's complaint *de novo*, the Society of Advocates had grotesquely mishandled the complaint, trashing my professional reputation on the way, locally and nationally, but neglected to finally determine the complaint, thereby leaving my reputation severely stained. The conduct of Mossop J, then a silk, in my matter was particularly egregious, and repeatedly, going from bad to worse, as I show in my said affirmed response in light of relevant records sourced from the Society under PAIA. See illegal-aid.co.za/LPC.

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Preamble to the Code warned. My affidavit quoted both the Article and the Preamble in this regard.

79. For several reasons not relevant to recount here, but having nothing whatsoever to do with me, my security exemption application took nearly two years to decide, and in the result the respondent dismissed it. Obviously I'm appealing the glaring deficits of the judgment, so as to clear the financial barricade that Hundermark has set in my path in his criminal cunning to prevent me going back to court and arguing the obvious merits of my appeal in the main case before a full bench, and thereafter accessing all the records I've had to sue for, and passing them on to the several authorities I've mentioned in support of further corruption and financial malfeasance complaints to them, including about his own. All of which intentions, both Hundermark and the respondent know, because I stated them repeatedly in my papers.

80. In breach of the obligation imposed on her by the Code to do so, the respondent did not report the criminal attorney Patrick Hundermark's clearly demonstrated perjuries to his professional body for disciplinary action or to the Director of Public Prosecutions for criminal prosecution, thereby contravening Article 16(1) thereof, for which she's liable to be sanctioned under section 14 of the Judicial Service Commission Act, as contemplated by section 10 of the Preamble to the Code.

Signed at Eshowe on 4 November 2022

ANTHONY BRINK

Signed before me at Eshowe on 4 November 2022 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

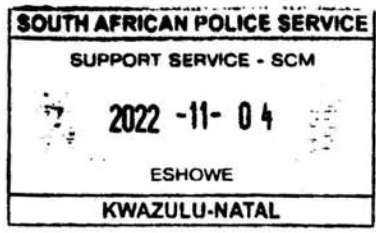
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[Signature]
Commissioner of Oaths

Name: SITHEMOILE NGEMA
Address: 73-79 MAIN STREET ESHOWE
Capacity: SERGEANT



[Signature]
B.S

[Signature]



188, 14th Road, Noordwyk, Midrand, 1685
Private Bag X10, Marshalltown, 2107
Tel: +27 10 493 2500 (Switchboard)
E-mail: info@judiciary.org.za
www.judiciary.org.za

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JUDICIAL CONDUCT COMMITTEE

Enq: Kutlwano Moretlwe
Tel: (010) 493 2652

18 November 2022

Adv A Brink

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/1054/22

Dear Adv Brink

RE: COMPLAINT AGAINST JUDGE POYO-DLWATI OF THE KWAZULU-NATAL DIVISION OF THE HIGH COURT

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaint. Your Complaint will be forwarded to the Judicial Conduct Committee for consideration. The Secretariat will notify you of the outcome of your complaint in due course.

Yours Sincerely,

Ms. Ndivhuwo Tshubwana
Secretariat for the Judicial Service Commission

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Anthony Brink <anthonybrink.sa@gmail.com>

**Brink v Info officer, LASA: 11187/16: Application for leave to appeal the dismissal of security exemption application**

1 message

Anthony Brink <anthonybrink.sa@gmail.com>
To: patrickh <patrickh@legal-aid.co.za>
Cc: Norma Fynn <NFynn@judiciary.org.za>

5 September 2022 at 16:18

Patrick Hundermark

Chief Legal Executive, Legal Aid SA

Dear Mr Hundermark

Yesterday, Sunday 4 September 2022, I opened my email to read the judgment sent me on 10 August 2022 by Judge Poyo Dlwati's secretary in the matter of my application for an order exempting me from putting up security for the costs of my appeal in my first PAIA case against Legal Aid SA in the High Court, case 11187/16P, leave for which she'd granted me.

I was obviously stunned to read that she'd entirely disregarded my case and dismissed my security exemption application, and naturally I intend seeking leave to appeal this to the full bench, either on application or, failing which, on petition to the SCA.

The judgment is a shambles like the one she delivered in the main case, detailed in my unusually but necessarily very lengthy appeal notice, the merits of which she implicitly recognised in granting me leave to appeal.

The reason I only got to read the judgment yesterday, about three weeks after it was delivered, is that I've been a man down.

Soon after the judge's secretary's email came in, I went out on my bicycle to assist a friend across town with a computer problem, and on the way hit a sharp bump in the road at speed, flew over my handlebars and skidded over the road, wrenching my right knee, and leaving me with bruises and muscle aches all over, and deep abrasions of my elbows, knees, left hand and right foot – with scabs and scars to show. My bike's headlight was smashed, its pedestrian bell crushed, and its front cogs' gear shift cable snapped – all still to be replaced.

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Maybe induced by the shock of the accident, I then went down with an especially vicious bout of flu that had me bed-ridden for a week with fever and chills and a persistent cough. I was unable to eat at all for two days, after which I started again managing fruit juices only for a couple more. In the three weeks or so that I've been ill and recuperating, I've lost five

kilograms, and literally had to drill another hole in my belt to tighten it and keep my trousers up. C

To add insult to injury, when I visited an optician last week to get some new glasses to replace those I'd broken, and my blood pressure was tested, I was told I have hypertension – explaining the angina I've been suffering recently (sharp pain beneath my sternum) and maybe compounding my general indisposition. As late as Friday last week, still too weak to attend, I had to decline a social invitation.

The upshot is that I've been unavoidably delayed in filing my appeal notice. Because the main case is exceptionally important, I intend doing a careful and thorough job on it, just as I did on my appeal notice in the main case, and this will take me some time.

The purpose of this letter is to record the facts of the matter immediately and to enquire whether you'll consent to the slightly late filing of my appeal notice to spare me the hassle of making a formal case for condonation under Uniform Rule 49(1)(b).

Yours sincerely

ANTHONY BRINK

Cc: Norma Fynn, Secretary to Judge Poyo-Dlwati

PS: Right after reading the above-mentioned judgment, I opened and read the Judicial Service Commission's answering affidavit in my PAIA case against it launched in April this year, which the State Attorney also emailed me a few weeks ago.

I was gratified to see that the JSC has substantially conceded my application by attaching many of the documents I'd specified in my PAIA request for them made late last year, and has duly accounted under section 23 of the Act for those it doesn't have.

In other words, when given a legal nudge the JSC ultimately respects its constitutional information transparency obligations, and, unlike LASA, doesn't corruptly waste millions of rands in public funds on re-enacting the Battle of Stalingrad. I'm expecting that my quibbles with a couple of the JSC's responses will be ironed out and the case settled out of court without proceeding to argument and judgment.

What a pleasing and refreshing change in the 'New South Africa'! Unlike LASA, the JSC is a public entity of judges and lawyers, mostly, that actually takes the information rights guaranteed by section 32 of the Bill of Rights seriously, and doesn't faff and waffle and talk complete, mentally retarded rubbish to justify violating them, the better to continue a major corruption cover-up.

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Our Ref: Solly Sekgota

Your Ref: A Brink

Date: 27 September 2022

Advocate Anthony Brink

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222

www.legal-aid.co.za

Email: Anthonybrink.sa@gmail.com

Dear Advocate Brink,

**RE: REQUEST FOR CONSENT FOR THE LATE FILING OF THE APPEAL
NOTICE- CASE NUMBER 11187/2016**

1. We refer to your email dated 5 September 2022 addressed to Patrick Hundermark. The email has been referred to me for reply as the attorney of record.
2. I confirm the instructions that Legal Aid SA does not consent to the late filing of your appeal notice and any application for condonation will be opposed.

Yours Sincerely,



Mr. Solly Sekgota
Attorney for the Legal Aid South Africa

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

Case No's: 11187/16P;
14224/17P & 5239/18P

In the three matters between:

ANTHONY BRINK

Applicant

and

THEMBILE MTATI N.O. AND OTHERS

Respondents

NOTICE OF CONSENT, WITHDRAWAL, AND WAIVER
IN REGARD TO THE RESPONDENTS' NON-COMPLIANCES
WITH THE PRACTICE DIRECTIONS

TAKE NOTICE that, now that the respondents have filed their short heads of argument and cover notes, albeit out of time, the applicant in the above three applications, hereby:

1. *Withdraws* his notice of objection of 7 March 2019 to the respondents' failures to have complied with Practice Direction 9.4.1, to wit, by neglecting, seven court days before the hearing of the applications, to deliver short heads of argument under cover notes containing the prescribed information.
2. *Consents* to this court granting condonation, for which the respondents have applied, of their failures to have filed short heads of argument seven court days before the hearing of the applications.
3. *Waives* the point that the respondents have not sought condonation for their failures to have filed cover notes for their short heads of argument seven court days before the hearing of the applications.

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Signed at Eshowe on 13 March 2019



ANTHONY BRINK

36 Pearson Street, Eshowe

083 779 4174

anthonybrink.sa@gmail.com

SERVICE ADDRESS:

23 Baker Road, Prestbury, Pietermaritzburg

083 676 0884

TO:

The Registrar

High Court of South Africa

KwaZulu-Natal Division, Pietermaritzburg

301 Church Street

Pietermaritzburg

AND TO:

Pietermaritzburg Justice Centre

Legal Aid South Africa

183 Church St, Pietermaritzburg

(Respondents' local correspondent: Mr Kaloo)

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