

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

CASE NO: 5239/2018P

In the matter between:

ANTHONY BRINK

Applicant

and

**VIDHU VEDALANKAR N.O. INFORMATION OFFICER
LEGAL AID SOUTH AFRICA**

First Respondent

**PATRICK HUNDERMARK CHIEF LEGAL EXECUTIVE
LEGAL AID SOUTH AFRICA**

Second Respondent

LEGAL AID SOUTH AFRICA

Third Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PATRICK ROBERT HUNDERMARK

do hereby state under oath that:

1.

- 1.1. I am a major male and the Chief Legal Executive of Legal Aid South Africa, a national public entity established in terms of section 2 of the Legal Aid



South Africa Act, 39 of 2014 (“**Legal Aid Act**”) with its national head office located at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg (“**Legal Aid SA**”). I am duly authorised to depose this affidavit.

- 1.2. The contents of this affidavit fall within my personal knowledge except where otherwise indicated by the context, and are to the best of my knowledge and belief both true and correct.
 - 1.3. Where I make averments not directly within my knowledge, I do so on the basis of information made available to me or which has been ascertained from the persons whose names I disclose. I verily believe such information to be true and correct. Where I make legal submissions, I do so on the advice of the respondent’s legal representatives, which advice I believe to be true and correct.
2. Where I make use of headings in this affidavit, I do so for the purposes of convenience only and do not thereby intend to limit any facts stated under a particular heading only to the topic covered by such heading.

INTRODUCTION

3. On 16 December 2017, the applicant applied in terms of the Promotion of Access to Information Act, 2 of 2000 (“**PAIA**”) to the Department of Justice and Constitutional Development (“**the Department**”) to access Legal Aid SA’s annual budget applications submitted to the Department for the 2015/16; 2016/17;



2017/18 financial years; and the Department's payment vouchers reflecting its transfer of Legal Aid SA's annual baseline budget for the 2010/11 and 2016/17 financial years ("**the PAIA request**").

4. On 22 January 2018, the Department transferred the PAIA request to Legal Aid SA. Legal Aid SA's information officer received the transfer on 2 February 2018.
5. On 2 March 2018, I, in my capacity as a delegated and authorised deputy information officer ("**DIO**"), refused the PAIA request ("**the decision**") on the basis that:
 - 5.1. the PAIA request concerned documents relating to court proceedings between Legal Aid SA and the applicant. Section 7 of PAIA accordingly proscribed access to the documents; and
 - 5.2. the PAIA request formed part of a larger, systematic pattern of substantially similar requests that impermissibly sought to re-litigate the applicant's non-appointment to a senior litigator post, which had been finally determined by the Labour Court and Labour Appeal Court. It followed that the PAIA request was manifestly frivolous and vexatious and the work involved would substantially and unreasonably divert Legal Aid SA's resources. Section 45 of PAIA accordingly proscribed access to the documents.
6. The applicant has now brought the present application to review and set aside the decision. Aligned to this, the applicant seeks various other relief including declaratory



orders, interdictory relief and compensatory awards. Legal Aid SA opposes the application.

SUMMARY OF THE ISSUES

7. Before dealing with the factual issues that arise from this application, I wish to set out the core legal issues that fall for determination in this application. I do so in order to avoid irrelevancies and prolixity evidenced by Brink's laborious application.
8. In sum, and having read the applicant's founding affidavit, the applicant has made clear that:
 - 8.1. the applicant accepts that the 'issue' of his non-appointment to the Pietermaritzburg senior litigator post has been finally determined by the Labour Court and the Labour Appeal Court. And, crucially, the applicant "*accept[s] unreservedly*" that his unfair discrimination claim "*was correctly dismissed*" and "*rightly so in the result*";
 - 8.2. the applicant intends on bringing an application to the Labour Court once more, at some point in the future to rescind the judgment of the Labour Court and Labour Appeal Court that dismissed his claim that Legal Aid SA had acted unlawfully in not appointing him to the senior litigator post at its Pietermaritzburg office;



- 8.3. upon the rescission application being granted, the applicant intends to bring a second action on new pleadings for an order reinstating him to Legal Aid SA's senior litigator post at its Pietermaritzburg office; and
- 8.4. the applicant intends to bring the rescission application and subsequent action against Legal Aid SA on the basis of the records that form the subject of the PAIA request.
9. It is Legal Aid SA's case that the applicant's concession that the purpose of the PAIA request was to solicit information relating to litigation that had commenced and was determined – which determination the applicant unreservedly accepts is correct – is fatal to the applicant's case. This is because PAIA does not apply to this information. Section 7(1) of PAIA is clear. After proceedings have commenced, PAIA *“does not apply”*.
10. The applicant attempts to justify these concessions by relying on section 11(3) of PAIA. The applicant's reasoning is that PAIA does not *“permit the refusal of access to a duly requested public body record because of what it ‘relates to’ – whether it be to past, pending or future intended litigation, or to anything else”*.
11. But, this is incorrect. The exclusion in section 11(3) of the PAIA clearly provides that it is *“subject to this Act”*. Where another section in PAIA, such as section 7(1)(a), clearly provides that a requestor's stated *“purpose”* is of relevance, an applicant cannot rely on section 11(3) where he has elected to



furnish reasons for his request that disqualify the request in terms of another section in PAIA.

12. Having admitted that the PAIA request relates to litigation between the applicant and Legal Aid SA, the applicant attempts to escape section 7 of PAIA by contending that the PAIA request is permissible as he is *“using PAIA to gather evidence for intended litigation [which] is entirely legitimate under the Act”*. And -

“there’s nothing ‘impermissible’ about re-agitating a claim settled by final judgment, by returning to the trial court and demonstrating to it that it was defrauded: that new documents surfaced subsequent to the trial prove irrefragably that it was misdirected... in short that the judgment resulted from a fraud perpetrated by the winning party.”

13. But, the applicant’s reasoning is wrong for two reasons.

14. First, the applicant is wrong in fact. He is not entitled to the rescission he intends to bring. It is the applicant that formulated and brought and prosecuted the claim before the Labour Court and, later, the Labour Appeal Court. The applicant participated actively in these proceedings. The applicant’s claim was dismissed by both courts. The applicant now accepts unreservedly that his claim was correctly dismissed. In these circumstances, it is not open to the applicant to seek a rescission of the Labour Court and Labour Appeal Court’s decisions.

15. But, there is a second, more fundamental, reason why the applicant is wrong in law. The applicant should have and could have exercised the remedies available



to him in terms of PAIA prior to bringing his claim against Legal Aid SA in the Labour Court. The applicant elected not to exercise these remedies. Instead, the applicant, satisfied with information in his possession, elected to formulate and prosecuted his claim through a full trial before both the Labour Court and the Labour Appeal Court, which finally and correctly determined his claim. Having commenced these proceedings, section 7 ousts the application of PAIA insofar as the records requested relate to the applicant's non-appointment to the Pietermaritzburg senior litigator post.

16. For these reasons, Legal Aid SA submits that the decision was correctly taken. As a result, the present application must be dismissed.

17. The remainder of this affidavit is structured as follows:


17.1.1. First, I set out the factual background.

17.1.2. Second, I describe why the PAIA request was correctly refused by Legal Aid SA.

17.1.3. Finally, I respond to the founding affidavit *ad seriatim*.

FACTUAL BACKGROUND

18. On 12 November 2009, the applicant was interviewed and shortlisted as a candidate for the senior litigator post at the Pietermaritzburg offices of Legal Aid



- SA. But, Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints.
19. Dissatisfied, the applicant challenged Legal Aid SA's decision to not fill the post in the Labour Court, Durban. His application to the Labour Court was dismissed. The decision is reported as *Brink v Legal Aid South Africa* (2015) 36 ILJ 1020 (LC).
 20. The applicant filed an appeal application to that Court. That application, too, failed. The applicant petitioned the Labour Appeal Court for leave to appeal. That application, too, was unsuccessful.
 21. This is when the applicant's vitriolic attitude and cumulative conduct not only towards Legal Aid SA but also towards judicial officers who presided in this matter both before the Labour Court and the Labour Appeal Court erupted.
 22. And so, it began. On 26 August 2010, the applicant filed his first PAIA request with Legal Aid SA seeking 51 records relating to the recruitment process for the Senior Litigator Post ("**First Request**"). On 18 October 2010, the First Request was refused. The chief executive officer of Legal Aid SA at the time addressed a letter to the applicant explaining why the recruitment process was discontinued.
 23. Thereafter, the applicant addressed a letter to the chairperson of the Legal Aid SA Board of Directors, Judge President Dunston Mlambo, and the South African Human Rights Commission challenging the refusal of his First Request. The applicant's request was responded to on 9 December 2010, incorrectly dated 9 November 2010.




24. The applicant then filed a second PAIA request – this time for 18 records relating to the decision of Legal Aid SA to discontinue the recruitment process for the Senior Litigator position (“**Second Request**”).
25. On 24 January 2011, the applicant a letter to the Judge President Mlambo and all members of the Legal Aid SA Board accusing the chief executive officer of illegally and unlawfully refusing the First Request. The applicant asked the Board to intervene in ensuring that the chief executive officer provides records in respect of his second request. Judge President Mlambo responded to the letter on 24 January 2011.
26. Judge President Mlambo responded to Second Request on 24 January 2011. Then on 28 January 2011, the chief executive office of Legal Aid SA partially complied with the applicant’s Second Request. She provided 12 of 18 the requested records.
27. Additionally, the chief executive officer gave a detailed explanation and reasons once again for the abandonment of the recruitment process and decision not to fill the post he applied for. In all instances where records were refused the reasons thereof were provided by the chief executive officer.
28. Then came a third PAIA request. On 9 March 2011, the applicant filed a PAIA request for 15 records relating to once again the decision of Legal Aid SA to abort the recruitment process for the Senior Litigator position (“**Third Request**”). Mr Brian Nair, on behalf of Legal Aid SA, responded to the applicant’s Third



Request. By then, between August 2010 and March 2011, the applicant had requested some 69 records under PAIA relating to the Senior Litigator position from Legal Aid SA.

29. On 1 October 2013, the applicant sent a fourth PAIA request to Legal Aid SA's Eastern Cape Regional Operations Executive (now referred to as Provincial Executive) for 7 records ("**Fourth Request**"). This was refused on 6 November 2013. Legal Aid SA refused the applicant's Fourth Request on the grounds covered by PAIA and on the ground that the requested documents were already provided to the applicant at discovery stage of the matter before the Labour Court.
30. On 1 October 2013, the applicant sent a fifth PAIA request to Legal Aid SA's chief executive officer for 41 records relating to either the filling of the Senior Litigator position or were requested to refute the evidence already led during the Labour Court trial ("**Fifth Request**"). On 6 November 2013, Legal Aid SA partially complied with the applicant's Fifth Request and refused some records or request on the grounds covered by PAIA.
31. On 1 October 2013, the applicant sent his sixth PAIA request to Legal Aid SA's Free State North West Provincial Executive for 4 records relating to either the filling of the Senior Litigator position or were requested to refute the evidence already led during the Labour Court trial ("**Sixth Request**"). On 18 November 2013, Legal Aid SA refused the Sixth Request.



32. On 17 October 2013, the applicant sent his seventh PAIA request to Legal Aid SA's chief executive officer for one additional record relating to either the filling of the Senior Litigator position or were requested to refute the evidence already led during the Labour Court trial ("**Seventh Request**").
33. I pause to point out that in October 2013 alone, the applicant requested 53 records under PAIA from three different Deputy Information Officers of Legal Aid SA to test the veracity of the evidence adduced during legal proceedings before the Labour Court.
34. In April 2014, the applicant launched three applications in the Eshowe Magistrate Court to compel Legal Aid SA to provide records he requested from the Fourth Request, Fifth Request and the Sixth Request. These proceedings are currently pending.
35. On 10 November 2014, the applicant sent an eighth PAIA request to myself, in my capacity as the then Legal Aid SA Legal Development Executive (and then appointed as Chief Legal Executive) and one of Legal Aid SA's Deputy Information Officers, for 23 records relating to appointment of Mzochithwayo Ngcamu as Children's Court Practitioner and once again to the applicant's unsuccessful application for appointment to the Senior Litigator Position ("**Eighth Request**").
36. On 17 November 2014, the applicant sent a ninth PAIA request to myself for four records aimed at testing the veracity of the NOE's testimony during the Labour Court trial relating to the Senior Litigator Post ("**Ninth Request**").



37. On the same day, the applicant filed his tenth PAIA request to Legal Aid SA for 14 records which relate directly or indirectly to the Senior Litigator Position or evidence which was led in the Labour Court ("**Tenth Request**"). On 13 February 2015, the request was refused.
38. On 25 November 2014, the applicant sent his eleventh PAIA request to the chief executive officer. The applicant wanted 58 records mostly relating to the Senior Litigator Position ("**Eleventh Request**").
39. I pause to point out that in November 2014 alone, the applicant requested 97 further records relating to the Senior Litigator post to test the veracity of the evidence adduced during legal proceedings before the Labour Court. At this stage the determination of the applicant's application for leave to appeal to the Labour Appeal Court was still pending.
40. On 15 December 2014, the applicant sent his twelfth amended PAIA request to the chief operating officer of Legal Aid SA for records mostly relating to the Senior Litigator Position ("**Twelfth Request**").
41. On 20 March 2015, the applicant sent a thirteenth PAIA request to me for records in relation to Carmague and records vouching for the time spent by the chief operating officer and myself in relation to our section 22 demands ("**Thirteenth Request**").
42. On 16 August 2015, the applicant launched an application to compel compliance with his PAIA request against the NOE at Eshowe Magistrate Court under case



number 1005/15. Later, on 18 November 2015, the applicant launched a further application at Eshowe Magistrate Court under case number 1423/15 to compel compliance with his PAIA request. The chief executive officer was cited as the respondent. By this stage Legal Aid SA and its officials were facing five separate applications to compel compliance that had been brought by the applicant.

43. On 11 February 2016, all PAIA applications at Eshowe Magistrate Court were settled during a pre-trial conference and a settlement agreement was made an order of court ("**Settlement Agreement**"). The applicant provided Legal Aid SA with a consolidated list of all requested documents as envisaged on clause 2 of Settlement Agreement. On 15 April 2016, Legal Aid SA provided the applicant with all the available records and provided a section 23 affidavit records in respect of all records that it could not find or did not exist. Presently, there are five applications to compel brought by the applicant against Legal Aid SA or its officials pending before the Eshowe Magistrate Court. However, these have since been transferred to the Empangeni Magistrate Court.
44. On 29 April 2016, the applicant wrote a letter to Legal Aid SA complaining that it has failed to comply with the terms of the Settlement Agreement. Legal Aid SA responded to Brink by email on 9 May 2016. It advised the applicant that it did not agree that it was in breach of the Settlement Agreement. Legal Aid SA provided the applicant with a supplementary section 23 affidavit to deal with records which could not be found or which did not exist and which were not covered by its earlier section 23 affidavit.

A handwritten signature in black ink, appearing to be 'P.L.', is located in the bottom right corner of the page.

45. On 6 June 2016, Brink addressed a letter to Legal Aid SA and dealt with the supplementary section 23 affidavit and advised further that he was re-enrolling the PAIA applications at Eshowe Magistrate Court and was allocated 28 July 2016 for that purpose. These proceedings are still pending.
46. On 28 July 2016, despite settling the PAIA applications in the Eshowe Magistrates' Court with Legal Aid SA, the applicant set down the applications in that Court claiming that Legal Aid SA did not perform in terms of the settlement and seeking to subpoena various senior Legal Aid SA officials. That application is also currently pending.
47. On 1 August 2016, the applicant filed his fourteenth PAIA request for 30 specific records relating to his non-appointment as a Senior Litigator. On the same date, the applicant further requested for 4 records related to all fees paid to Counsel for all the matters he had instituted against Legal Aid SA ("**Fourteenth Request**"). This request was refused on 26 September 2016.
48. On 4 November 2016, Legal Aid SA brought an application against the applicant seeking to:
- 48.1. declare the applicant's conduct towards Legal Aid SA as vexatious and frivolous;
- 48.2. stay the various applications instituted by the applicant pending payment of all previous cost orders granted against him in favour of



- Legal Aid SA; alternatively, requiring the applicant to provide security for costs;
- 48.3. interdict the applicant from instituting further proceedings against Legal Aid SA relating to his non-appointment to a Senior Litigator post without first obtaining leave from the relevant High Court or lower court; alternatively, upon providing security for costs;
- 48.4. interdict the applicant from requesting any further records from Legal Aid SA in terms of PAIA, which relate to his non-appointment to the Senior Litigator post;
- 48.5. declare that the applicant's non-appointment as a Senior Litigator with Legal Aid SA was fully and finally determined by the Labour Court and Labour Appeal Court under cases number D529/11 and DA21/14, respectively;
- 48.6. excuse Legal Aid SA from responding to any pending PAIA requests that the applicant may have directed;
- 48.7. interdict and restrain the applicant from in any way harassing and interfering with the duties and functions of Legal Aid SA, its officials and Board members by making frivolous requests for information or threats;



- 48.8. interdict and restrain the applicant from publishing false and derogatory remarks and allegations against Legal Aid SA, its officials or Board members and any judicial officer; and
- 48.9. costs of suit.
49. On 27 October 2017, the application was argued in this Court before Vahed J. The application was dismissed without providing reasons. In December 2017, Legal Aid SA indicated that it wished to appeal the dismissal of the application, and, accordingly, requested that the learned judge provide reasons for his decision to dismiss the application. The appeal process is currently pending in anticipation of Legal Aid SA receiving these reasons.
50. On 30 October 2017, the applicant applied to Legal Aid SA to access confidential, private and proprietary information relating to third parties and Legal Aid SA officials, as well as correspondence relating to an ongoing investigation into the complaints of the applicant's misconduct ("**the Fifteenth PAIA request**").

THE PAIA REQUEST WAS CORRECTLY REFUSED

51. PAIA is quite properly premised on the importance of ensuring that people have an effective means of accessing information and records to which they are entitled. But at the same time, PAIA clearly recognises that the right of access to information is never untrammelled, and is not an inflexible imperative.



52. PAIA thus strikes a balance by creating general principles which apply to all records, ensuring that in all cases the adjudication of a request for information weighs (at least) the rights and interests of the requester, the body to whom the request is made, any third parties whose details may be divulged, and the larger society. This is evident from the objects of PAIA, as stated in section 9.
53. To achieve its objects, the Act contains limitations on right of access to information; namely, grounds upon which access to records of public bodies must or may be refused. In my submission, these grounds permit Legal Aid SA to refuse the applicant's PAIA request. I address the items in the applicant's PAIA request in turn.
54. In refusing the applicant's request, Legal Aid SA relied on two provisions in PAIA: section 7; and section 45.

Section 7 of PAIA

55. Section 7(1) of PAIA provides that:

"7 Act not applying to records requested for criminal or civil proceedings after commencement of proceedings:

(1) This Act does not apply to a record of a public body or a private body if-

- (a) *that record is requested for the purpose of criminal or civil proceedings;*
- (b) *so requested after the commencement of such criminal or civil proceedings, as the case may be; and*
- (c) *the production of or access to that record for the purpose referred to in paragraph (a) is provided for in any other law.”*

56. Our courts have held that the purpose of section 7 is to prevent PAIA from having any impact on the law relating to discovery or compulsion of evidence in legal proceedings. After litigation has commenced requests for access to records should be regulated by the Rules of Court. That an applicant may be entitled to information the day before the commencement of proceedings but not the day thereafter, must be seen as a necessary consequence of the Legislature’s intention to protect the processes of the court. *“Once proceedings are instituted then the parties should be governed by the applicable rules of court.”*
57. In his founding affidavit and PAIA request, the applicant makes clear that the purpose for requesting the records is to re-litigate his non-appointment to the Pietermaritzburg senior litigator post.
58. The applicant wishes to do this by:



- 58.1. bringing an application to rescind the decisions of the Labour Court and Labour Appeal Court regarding his non-appointment to the Pietermaritzburg senior litigator post; and, thereafter
- 58.2. bringing a fresh claim in the Labour Court regarding his non-appointment to the Pietermaritzburg senior litigator post.
59. For the reasons already set out in this affidavit, Legal Aid SA will submit that:
- 59.1. in the circumstances of this case, the applicant is not entitled to rescind the decisions of the Labour Court and Labour Appeal Court; and
- 59.2. once the applicant commenced proceedings against Legal Aid SA relating to the applicant's non-appointment to the Pietermaritzburg senior litigator post, he was no longer entitled to request records related thereto in terms of section 7 of PAIA.
60. Accordingly, it is no longer open to the applicant to rely on PAIA for the purpose of requesting records related to the Pietermaritzburg senior litigator post.
61. It is Legal Aid SA's submission that having elected to initiate and prosecute these proceedings to final determination, which determination he accepts is correct, the applicant has brought the subject matter of his claim outside the purview of PAIA in terms of section 7 of PAIA. The reason for section 7 is evident from the facts of this case. The applicant's claim was finally determined. He accepts this determination was correct. Now, years later, the applicant seeks to re-litigate his



claim. He has issued sixteen PAIA requests against Legal Aid SA to do so. Having failed to properly formulate his claim when he brought it, the applicant seeks a second-bite at the cherry and hopes to re-formulate his case to fit the pinch according to his new theory.

62. It would be clearly prejudicial to permit the applicant from relying on PAIA in these circumstances based on:

62.1. The doctrine of waiver and election.

62.2. The spectre of unending litigation.

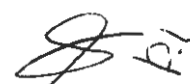
62.3. The strong policy reasons that favour legal certainty and finality.

62.4. The principles of *res judicata* and issue estoppel.

62.5. The heightened test in section 7(2) of PAIA, which provides that where a record is obtained in contravention of section 7(1) it is not admissible in legal proceedings, unless the exclusion of the record would be detrimental to the administration of justice.

62.6. The proscription on manifestly frivolous and vexatious requests in section 45 of PAIA.

63. These matters are largely a matter of legal argument, and will be addressed in detail in Legal Aid SA's written and oral submissions.



Section 45 of PAIA

64. I have set out the history of the PAIA requests levied against Legal Aid SA by the applicant. The present request is the sixteenth of its kind. Legal Aid SA has already devoted over 180 hours to processing the applicant's PAIA requests.
65. The applicant accepts that the PAIA request forms part of a larger, systematic pattern of substantially similar requests, nearly all of which pertain to Legal Aid SA's senior litigator post.
66. Legal Aid SA has a Corporate Legal Division consisting of four legal practitioners and two candidate attorneys. Its main function includes prosecuting litigation by and against Legal Aid SA, and to provide legal support to all business units of Legal Aid SA, including six provincial offices, sixty-four Local Offices and sixty-four Satellite Offices. In 2015/16 the division handled eighty-six litigation matters, reviewed 13 policies, provided 60 legal opinions and drafted 113 contracts.
67. It is clear that the division has limited capacity, yet the applicant's conduct forces Legal Aid SA to unnecessarily divert its already constrained resources to attend to vexatious requests, compromising the delivery of legal services as mandated to Legal Aid SA.
68. Accordingly, Legal Aid SA submits that it was entitled to refuse providing the applicant with information in terms of section 45 of PAIA.



AD SERIATIM

69. I set out below the answer to the individual averments made by the applicants. In order to avoid undue repetition, everything which I have already said above should be understood as forming an answer to the contentions advanced.
70. However, I first note the trend that the applicant has devoted a substantial portion of his application to levelling all sorts of scurrilous and unsubstantiated and scandalous accusations against senior personnel at the Legal Aid SA and the chairperson of its Board. Yet, no relief is sought against these individuals, except myself, and this Court is not enjoined to decide the merits of such accusations. The inclusion of these accusations is entirely irrelevant to the relief sought by the applicant in his notice of motion and result in a factual-disputes not capable of resolution on the papers in this application.
71. The accusations are manifestly scurrilous and scandalous and their introduction in PAIA proceedings, where the applicant claims the law is trite, is therefore impermissible. I also note the concerning trend of the overwhelming number of the allegations in the applicant's founding affidavit being wholly unsubstantiated. The applicant bears the onus of proving what he asserts. This Court will not grant relief based on a factual foundation of baseless speculation.
72. Accordingly, where the applicant has made baseless or scandalous allegations of this sort, which Legal Aid SA will specifically identify in the ensuing paragraphs, Legal Aid SA will apply for the striking out of these allegations at the hearing of



this application. The inclusion of these paragraphs prejudices Legal Aid SA and its officials in that the publication of these unfounded allegations may unreasonably cause injury to the professional reputation of the parties they are directed at. It also seeks to impress that the applicant is entitled to relief in circumstances where the relief is unfounded. A cause of action cannot be premised on speculation, baseless assumptions and conjecture.

73. **Ad paragraphs 1 to 3**

I admit the contents of these paragraphs.

74. **Ad paragraph 4**

Except to state that the correct abbreviation of Legal Aid South Africa is Legal Aid SA, the contents of this paragraph are admitted.

75. **Ad paragraph 5 to 7**

I admit the contents of these paragraphs.

76. **Ad paragraph 8**

I admit the contents of this paragraph insofar as they reflect the relief sought by the applicant in his notice of motion, but deny that the applicant is entitled to the relief he seeks.



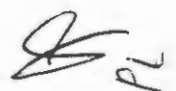
77. **Ad paragraph 9**

77.1. I am advised and submit that setting down different, distinct applications on the same day does not amount to a consolidation. A substantive application for consolidation must be brought in which considerations of convenience and prejudice must be addressed. The applicant is not permitted to rely on information contained on affidavit in one application to further his cause of action in another application.

77.2. I am advised and submit that this Court's inherent jurisdiction empowers it to stay a process before it, pending that a litigant give security for costs for the other side. In response to these various applications, at the hearing of the matter, Legal Aid SA will move an application seeking that the applicant be ordered to provide security for the costs of the two costs orders awarded against him in favour of Legal Aid SA amounting to approximately R1.6 million before he be permitted to prosecute these further applications against Legal Aid SA. In our submission, such an order is appropriate because:



- 77.2.1. The applicant's cumulative conduct to date is holistically vexatious and frivolous.
- 77.2.2. The applicant is currently unemployed and appears to be factually insolvent.
- 77.2.3. The applicant has yet to pay Legal Aid SA's taxed costs in the Labour Court matter and the urgent application to the tune of R1.6 million.
- 77.2.4. When Legal Aid SA issued a writ of execution against the applicant to recover these costs it was met with a *nulla bona* return from the sheriff.
- 77.2.5. In fact, the applicant brought an urgent application seeking to interdict the taxing master from taxing Legal Aid SA's costs, which application was dismissed with costs on an attorney client scale.
- 77.2.6. Legal Aid SA serves a public function. The applicant's conduct has forced Legal Aid SA to unnecessarily divert its already constrained



resources to attend to vexatious litigation, which compromises its ability to discharge its much needed public function.

77.3. The applicant's assertion that Legal Aid SA has unlawfully suppressed access to its records is baseless and falls to be denied outright.

78. **Ad paragraph 10**

78.1. I deny these allegations insofar as they concern Legal Aid SA and its officials. There is no such corruption at Legal Aid SA. The applicant simply provides no proof for his baseless claims.

78.2. On the contrary, Legal Aid SA has received unqualified audits from the Auditor General for the past sixteen (16) years. And, over this period, the Auditor General has also not identified any matters of emphasis in Legal Aid SA's financial statements.

78.3. There is also no basis to claim that Legal Aid SA's officials have squandered public revenue, or that it has engaged in wholly meritless defensive and aggressive litigation. If anything, it is the applicant's relentless pursuit of litigation against Legal Aid SA that has resulted in public revenue being squandered in that Legal Aid SA is forced to defend this litigation. This, despite the applicant being unable to satisfy two costs orders amounting to approximately R1.6 million awarded against him in favour of Legal Aid SA. To avoid prolixity, Legal Aid SA maintains



this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.

78.4. Legal Aid SA has not been obstructive. It has acted within the law in refusing the applicant's unmeritorious PAIA requests. The applicant's claim that Legal Aid abuses the courts and seeks to evade public accountability and obstruct justice is unfounded and incorrect. To avoid prolixity, Legal Aid SA maintains this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.

78.5. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

79. **Ad paragraph 11**

79.1. I deny that there is corruption, maladministration, abuse of power and wholesale breakdown of the rule of law at Legal Aid SA, or that Legal Aid SA has failed to comply with the law. I further deny that Legal Aid SA or I have illegally and unconstitutionally refused the applicant's PAIA request(s), repeatedly or otherwise. To avoid prolixity, Legal Aid SA maintains this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.



79.2. I deny that this application affects the public interest. There is no pervasive serious lawlessness in Legal Aid SA's governing echelons. In bringing this application, the applicant has acted alone, and his concerns are baseless and unfounded.

79.3. I deny that the applicant is entitled to any of the relief sought in this application under any of the sections in PAIA. To avoid prolixity, Legal Aid SA maintains this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.

79.4. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

80. **Ad paragraph 12**

I note that the applicant has elected to structure his founding affidavit by way of headings. However, I deny the assertions contained in the applicant's choice of individual headings that follow.

81. **Ad paragraph 13**

81.1. I admit the contents of this paragraph insofar as it reflects the contents of annexures "A" and "B" to the founding affidavit.

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81.2. Other than admitting that the applicant used a standard form information request form, I deny that the applicant's request complied in all respects with the form prescribed by section 18 of PAIA.

82. **Ad paragraph 14**

I admit the contents of this paragraph insofar as it reflects the contents of annexure "A" to the founding affidavit.

83. **Ad paragraph 15**

83.1. Having decided to lodge the PAIA request with the Department rather than Legal Aid SA, the applicant's reasons for deciding to do so are irrelevant.

83.2. I deny that Legal Aid SA acted unlawfully in refusing the applicant's record requests. It was entitled to do so. I deny that the documents the applicant refers to provide any proof to the contrary. To avoid prolixity, Legal Aid SA maintains this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.

83.3. Legal Aid SA attempted to settle the matter for the sake of finality without waiver to any of its rights. Upon concluding the agreement, Legal Aid SA provided the applicant with all the information that he sought. Yet, the applicant remained unsatisfied. What is clear is that the applicant is on a personal crusade and litigates with impunity. Having



bona fide attempted to settle the matter to no avail Legal Aid SA is now forced at the applicant's instance to litigate constantly against the applicant.

84. **Ad paragraph 16**

84.1. I deny that that Legal Aid SA has refused to comply with its constitutional obligations, or that it illegally refused the applicant's requests. Legal Aid SA's national office executives respect the Constitution and the provisions in the Bill of Rights. To avoid prolixity, Legal Aid SA maintains this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.

84.2. I deny that any information request made by the applicant would be "*futile*". Or that the information request would have been a waste of time. The relevant officials at Legal Aid SA consider and apply their minds to each and every information request made to Legal Aid SA before deciding whether to approve or refuse same. To avoid prolixity, Legal Aid SA maintains this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.

84.3. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.



85. **Ad paragraph 17**

85.1. I deny that Legal Aid SA engages in financial secrecy or illegally and unconstitutionally refuses to open its books. Legal Aid SA was entitled to refuse the applicant's requests, which were unfounded. To avoid prolixity, Legal Aid SA maintains this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.

85.2. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

86. **Ad paragraph 18**

86.1. The applicant has failed to show that he first made the information request he refers to, to Legal Aid SA, which in turn refused the request, only to later permit the request as a result of the Department's monitoring.

86.2. If anything, this paragraph shows that Legal Aid SA indeed approaches each information request made to it with an open mind. There is no basis for the applicant intimating that his information requests are but a forgone conclusion.

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87. **Ad paragraph 19**

I admit the contents of this paragraph insofar as it reflects the contents of annexures “C” and “D” to the founding affidavit.

88. **Ad paragraph 20**

88.1. I admit that the applicant wrote the letter attached to the founding affidavit marked “E” to Legal Aid SA on 23 February 2018. However, the substance of the letter and the applicant’s summary of it in this paragraph are unfounded.

88.2. The applicant miscalculated the 30-day period contemplated by PAIA in that the relevant official of Legal Aid SA only received the PAIA request on 2 February 2018, with the effect that Legal Aid SA’s response was only due on 2 March 2018.

89. **Ad paragraph 21**

89.1. I deny the applicant’s characterisation of me as the *de facto* supreme authority in PAIA matters who sought to obstruct the applicant. The applicant continues to level serious allegations against Legal Aid SA and its officials without providing any evidence in support thereof, which are accordingly denied. To avoid prolixity, Legal Aid SA maintains this stance in respect of the remaining, analogous allegations made by the applicant in the founding affidavit.



89.2. I have already explained the current state of Legal Aid SA's application to declare the applicant as a vexatious litigant and the basis for Legal Aid SA attempting to settle the matters in the Magistrates Court with the applicant.

90. Ad paragraph 21.1

90.1. I deny the contents of this paragraph. In particular, I deny that either Legal Aid SA or its officials have tried to close the applicant down economically and financially, nor do they have the wish or power to do so. I cannot respond to the contents of the supplementary affidavit the applicant refers to, as it is not part of this application or before this Court.

90.2. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

91. Ad paragraph 21.2

91.1. I deny that Legal Aid SA has levied false and malicious attacks against the applicant's personal and professional integrity. The applicant's complaint against Mlambo JP is baseless.

91.2. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and



irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

92. **Ad paragraph 21.3**

92.1. I deny that Legal Aid SA has gone to extreme lengths. At all times, it has simply acted in accordance with its rights.

92.2. The applicant is well-aware that the application to have him declared a vexatious litigant is currently subject to an appeal process and is therefore *sub judice*. The Uniform Rules of Court permit Legal Aid SA, and any litigant for that matter, to seek to strike out material in an affidavit that is scandalous, vexatious, irrelevant or hearsay. Legal Aid SA acted within its rights in seeking to strike out the affidavits the applicant refers to.

92.3. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.



93. **Ad paragraph 21.4**

93.1. I deny that there is any such corruption at Legal Aid SA. I have no knowledge of the memorandum the applicant refers to and deny that it was "*slipped to*" the Judge President of the Labour Appeal Court to achieve the summary dismissal of the applicant's petition or otherwise. Indeed, the applicant himself accepts later in his founding affidavit that the Labour Appeal Court correctly dismissed his petition.

93.2. I deny the remainder of the applicant's bald assertions that Legal Aid SA defamed him, lied, is profoundly corrupt, or has violated the applicant's constitutional right to information.

93.3. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

94. **Ad paragraph 22**

94.1. I have already denied the applicant's allegations that Legal Aid SA has illegally and unconstitutionally denied his PAIA requests. I have no knowledge of the "*extraordinarily serious illegality*" the applicant claims that Legal Aid has concealed. I, in any event, deny the applicant's bald assertions that Legal Aid SA has concealed any illegalities or has engaged in repeatedly false annual and confidential reporting to the SAHRC.



94.2. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

95. **Ad paragraph 23**

I admit the contents of this paragraph insofar as it reflects the contents of annexure "F" to the founding affidavit.

96. **Ad paragraph 24**

The Department transferred part of the PAIA request to Legal Aid SA, which transfer the applicant accepts is correct. Upon doing so, the Department's interest in the matter in respect of that part ceased. There is no basis in law for Legal Aid SA to have to communicate its subsequent decision in respect of that part of the PAIA request to the Department.

97. **Ad paragraphs 25 to 27**

97.1. I deny that I acted *ultra vires* in refusing the applicant's PAIA request.

97.2. On 25 May 2013, the Board of Legal Aid SA passed a resolution to approve that Legal Aid SA's PAIA manual delegated the holders of the various offices in Legal Aid SA as *ex officio* Deputy Information Officers in terms of PAIA; namely, the Chief Operations Officer; the National



Operations Executive; the Chief Legal Executive; the Corporate Services Executive (now Legal Executive); and the Regional Operations Executives (now Provincial Executives). I attach a certified copy of an extract of the Board's approval as "AA_". I am advised and submit that this amounts to a written delegation in terms of section 17 of PAIA.

97.3. By virtue of my position as the Chief Legal Executive of Legal Aid SA, I am *ex officio* a deputy information officer of Legal Aid SA, and thus empowered to refuse the applicant's PAIA request.

98. **Ad paragraph 28**

98.1. I deny that it is standard or characteristic for Legal Aid SA to dodge or leap over hard, unanswerable allegations. He who asserts must prove. Where the applicant has made bald or unfounded allegations, Legal Aid SA has every right to deny them, especially where they are preposterous and have no basis in fact.

98.2. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.



99. **Ad paragraphs 29 to 31**

99.1. Mr Thembile Mtati is the Legal Executive of Legal Aid South Africa. Accordingly, for the same reasons set out in paragraphs 97.1 to 97.3 of this affidavit, Mr Mtati is *ex officio* a deputy information officer of Legal Aid SA.

99.2. Accordingly, the applicant's claims are baseless and wholly irrelevant to the determination of the present application. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

100. **Ad paragraphs 32 to 35**

100.1. I have already addressed the issue of Mr Mtati and myself being lawfully delegated deputy information officers. It follows that the applicant's claims are incorrect.

100.2. The remainder of the allegations levelled by the applicant are wholly irrelevant to the determination of this matter and border on contempt. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.



101. **Ad paragraph 36**

I admit the contents of this paragraph.

102. **Ad paragraph 37**

Save to state that the applicant's use of emotional language is unnecessary, I admit the contents of this paragraph insofar as it reflects the contents of annexure "F" to the founding affidavit.

103. **Ad paragraph 38**

103.1. I admit that section 81(3)(a) of PAIA provides that Legal Aid SA bears the *onus* of justifying that its refusal of the applicant's PAIA request was valid.

103.2. For the reasons, I have already set out, I deny that the applicant's PAIA request was invalidly refused.

104. **Ad paragraphs 39 to 55**

104.1. I have already explained why Legal Aid SA was entitled to deny the applicant's PAIA request in terms of section 7 of PAIA. Accordingly, I do not repeat those responses here. Needless to say, I disagree with the applicant's contentions in these paragraphs.



104.2. The applicant's continued use of emotional language and levying *ad hominem* and defamatory attacks against Legal Aid SA and its officials is regrettable, unnecessary, and takes his application no further. The applicant's continued allegations of corruption and illegality on the part of Legal Aid SA remain baseless, and Legal Aid SA accordingly denies them. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

104.3. I specifically note the applicant's admission that his "*future intention, announced in the contextual notes to [his] request [is] to return to the Labour Court with an application for rescission and other relief, supported by the records [he has] requested*".

105. **Ad paragraphs 56 to 95**

105.1. I have already explained why Legal Aid SA was entitled to deny the applicant's PAIA request in terms of section 45 of PAIA. Accordingly, I do not repeat these allegations here. Needless to say, I disagree with the applicant's contentions in these paragraphs.

105.2. The applicant's continued use of emotional language and levying *ad hominem* and defamatory attacks against Legal Aid SA and its officials are unfounded, unnecessary, and takes the application no further. Legal

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Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

- 105.3. I deny that Legal Aid SA or its officials were biased or favoured in not appointing the applicant. The decisions of the Labour Court and Labour Appeal Court have already vindicated this stance.
- 105.4. I note the applicant's admission that he "*intend[s] returning to the Labour Court with a rescission application with a view to the retrial of [his] claim to [his] appointment*".
- 105.5. I deny that the fact that the unfair discrimination claim has been finally determined is irrelevant. On the contrary, it is Legal Aid SA's case that the application is fatally flawed for this very reason.
- 105.6. I deny that Legal Aid SA has illegally refused the applications made by the applicant in terms of PAIA.
- 105.7. I deny that the applicant was given a truncated record. This submission, made now for the first time several years after the applicant instituted his claim, which was dismissed three times, is clearly opportunistic. It is incongruous for the applicant to have formulated and actively prosecuted a claim to final judgment, on the one hand, yet now *ex post facto* blame Legal Aid SA for his claim's deficient formulation because Legal Aid SA allegedly prevented him from accessing the necessary



information. In any event, the applicant had the rules of discovery at his disposal to collate and obtain any information before commencement of the proceedings in the Labour Court.

105.8. It is impermissible for the applicant to bring his claim piecemeal against Legal Aid SA, changing tack as it suits him. The doctrine of *res judicata* and issue estoppel clearly provide that it is impermissible for the applicant to bring his claim piecemeal against Legal Aid SA in circumstances where the same cause of action and same issues between the same parties has been finally decided.

105.9. Finally, I am advised and submit that in circumstances where an applicant brings a review application without seeking the record of a decision, he does so at his peril. Proceeding in the absence of a record of a decision amounts to a waiver of an applicant's rights, and having made his election he cannot *ex post facto* blame the decision maker for failing to provide him with the record.

105.10. The applicant's case is clearly distinguishable from the *HSF* matter. The most obvious difference being that the applicant commenced proceedings against Legal Aid SA, which were correctly finally determined. The distinction between these cases will be addressed in Legal Aid SA's written and oral argument.



105.11. I maintain that the Legal Aid SA was entitled to refuse the applicant's PAIA requests.

105.12. I deny that Legal Aid SA delayed its response to the PAIA request. Legal Aid SA's responded as soon as it was able, which response was within the 30-day period provided for in PAIA.

106. **Ad paragraphs 96 to 97**

106.1. The contents of the paragraph in Legal Aid SA's letter that the applicant attacks in these paragraphs do not form part of the reasons for Legal Aid SA's decision to refuse the PAIA request. Accordingly, the allegations in these paragraphs do not assist the applicant.

106.2. I repeat that the Auditor General has given Legal Aid SA unqualified audits for the past sixteen (16) years. And, over this period, the Auditor General has also not identified any matters of emphasis in Legal Aid SA's financial statements. There is no need for the applicant to gather information for the Auditor General, which is completely satisfied with how Legal Aid SA has been conducting its financial affairs.

106.3. I note the applicant's admission that he intends to return to the Labour Court to claim his appointment, retrospective to 1 January 2010, with many millions of Rands in back-pay due to him but deny that he is entitled to any such relief.



107. **Ad paragraphs 98 to 103**

107.1. These paragraphs are rife with baseless speculation and conjecture. I accordingly deny their contents. I maintain that neither Legal Aid SA nor its officials are engaged in the corrupt or unlawful activities the applicant claims.

107.2. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

108. **Ad paragraphs 104 to 116**

108.1. I deny that the PAIA request should be granted in terms of section 46 of PAIA, or that Legal Aid SA and its officials have engaged in the misconduct the applicant describes. Nothing in the circumstances of the present case suggests that the information sought by the applicant *“would reveal evidence of a substantial contravention of, or failure to comply with, the law”*. Section 46 of PAIA is not applicable in the circumstances of the present case.

108.2. I moreover submit that it stands to reason that if Legal Aid SA had contravened the PFMA in the manner the applicant suggests then the Auditor General would have reported these contraventions when auditing Legal Aid SA. The Auditor General made no such finding. It does



not lie with the applicant to make a determination as to whether Legal Aid SA has complied with the PFMA or not. If the Auditor General is satisfied that Legal Aid SA has complied with the PFMA, then it follows that Legal Aid SA has complied with the PFMA.

108.3. Moreover, if this Court accepts that section 7 of PAIA applies to the present case then PAIA as a whole, including section 46, does not apply to the subject matter of the PAIA request. For this reason, too, section 46 of PAIA does not apply.

108.4. The applicant's continued use of emotional language and levying *ad hominem* and defamatory attacks against Legal Aid SA and its officials are unfounded, unnecessary, and takes the application no further. It serves to state that the applicant makes such attacks in the knowledge that he is impecunious and therefore that any action for defamation would have no material impact on him.

108.5. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

109. **Ad paragraphs 117 to 128**

109.1. The additional relief sought by the applicant in paragraphs 2, 3, 5 and 6 of the notice of motion is extraordinary and without any basis in law.



109.2. I deny that the legal principles set out by the applicant establish a cause of action, or found a right, in respect of this extraordinary relief. Moreover, the applicant has failed to show why the interests of justice favour granting such relief. Full legal argument will be advanced at the hearing of the matter.

109.3. The applicant's continued use of emotional language and levying *ad hominem* and defamatory attacks against Legal Aid SA and its officials are unfounded, unnecessary, and takes the application no further.

109.4. Legal Aid SA will apply to strike out these allegations at the hearing of the matter on the basis that they are scandalous, vexatious and irrelevant. And, that they prejudice Legal Aid SA for the reasons set out above.

110. **Ad paragraphs 129 to 132**

110.1. The applicant is not entitled to the relief in paragraph 4 of the notice of motion.

110.2. First, I have already stated section 7 excludes the application of PAIA in respect of the information sought by the applicant. Accordingly, the applicant cannot rely on section 82 of PAIA.

110.3. Second, I am advised and submit that it is a well-established principle in our law that an award of monetary compensation is not ordinarily an



appropriate remedy in cases where the exercise of public power is sought to be reviewed and set aside.

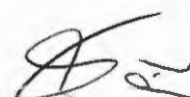
110.4. Third, and in any event, the applicant has not demonstrated why such exceptional relief is warranted in the circumstances of this case, nor has he quantified why the sum of R1 million is appropriate. The reasons advanced by the applicant remain unfounded speculation and conjecture.

110.5. For the reasons set out, I deny that the applicant's opportunistic submission that Legal Aid SA misled him.

111. **Ad paragraphs 133 to 136**

111.1. The applicant has asked that I pay the costs of this application personally. There is no factual foundation for this assertion. The applicant's claim is based on his own speculation in law and in fact. Our courts will only award costs against a public official in the rarest of cases, and even then, only where that official has acted *mala fide*. I have not acted in such a fashion. I maintain that the applicant's new submission that he was hampered in bringing his claim before the Labour Court is opportunistic and simply untrue when regard is had to its timing and the applicant's other admissions.

111.2. A court will almost never grant personal costs absent a constitutional failure on the part of a public official or where an official acted alone in

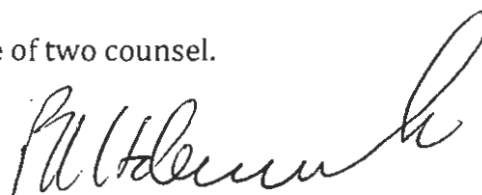


persistently and frivolously pursuing a case on appeal that was “*bound to fail*”. Legal Aid SA’s opposition is not unreasonable. The defences advanced are not frivolous nor for the sole purpose of delay but are meritorious, made in good faith and in line with the prevailing law. I should not be punished for exercising a discretion conferred in law.

111.3. Moreover, the applicant, not being represented by legal representatives is not entitled to costs. The purpose of a costs order is to compensate a litigant for out of pocket expenses, of which the applicant, representing himself, has not incurred.

112. **Ad paragraphs 137 to 139**

I maintain that the applicant is not entitled to the relief he seeks. The application should be dismissed with costs, including those of two counsel.



PATRICK ROBERT HUNDERMARK

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent’s knowledge both true and correct. This affidavit was signed and sworn to before me at Parkview on this the 21st day of **JUNE 2018**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended



by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

7135752-6
Mauema CST

COMMISSIONER OF OATHS

Full Names: Leonard mauema

Designation: CST

Address: 71 Dundalk Ave
Parkview

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by me and that the document was indicated
 English that I have known and understood the
 contents of the statement. The document was
 signed and stamped before me and deposited
 my official stamp and thumbprint was placed thereon
 in my presence.

at Parkview on 2018-06-21 at 13:15

(HANDTEKENING) KOMMISSARIS VAN EDE
 (SIGNATURE) COMMISSIONER OF OATHS
Potjie Leonard Mauema
 VOLLE VOORNAEM EN VAN IN DRUKSKRIEF
 FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS
71 Dundalk Avenue
 WINKELWAGENWEG (STREET ADDRESS)
 BUSINESS ADDRESS (STREET ADDRESS)
Parkview SAPP
 CST
 SA POLISIEDIENS

SOUTH AFRICAN POLICE SERVICE
 STATION COMMANDER
 21-06-2018
 CLIENT SERVICE CENTRE
 PARKVIEW
 SOUTH AFRICAN POLICE SERVICE

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**CERTIFICATE 2 OF 2018/19****CERTIFICATION OF BOARD APPROVAL**

Legal Aid South Africa Manual in terms of section 14 of the Promotion of Access to Information Act 2 of 2000

I, the undersigned, Langa Joseph Lethiba, in my capacity as Board Secretary, hereby certify that-

1. On 25 May 2013, the Board of Legal Aid South Africa considered item 8.2 of the Board Agenda entitled "*Access to Information Manual*" and approved version 05;
2. In terms of the approved version 5, the Board appointed the holders of the following positions as the Deputy Information Officers, namely, Chief Operation Officer, National Operations Executive, Chief Legal Executive, Corporate Services Executive (now Legal Executive), Regional Operations Executives (now Provincial Executives).

Certified on this 5th day of June 2018

LANGA JOSEPH LETHIBA

BOARD SECRETARY