

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 12124 /2016 P

In the matter between:

LEGAL AID SOUTH AFRICA

Applicant

and

ANTHONY ROBIN BRINK

Respondent



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BRINK'S NOTE: This scan is incomplete in that about 20 pages of the affidavit are missing. A request for a complete scan was ignored.

29 DE BEER STREET

BRAAMFONTEIN

PRIVATE BAG X76

BRAAMFONTEIN, 2017

TEL: 011 877 2000

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C/O: PIETERMARITZBURG JUSTICE CENTRE

183 CHURCH STREET

PIETERMARITZBURG, 3201

TEL: 033 394 2190

REF: T MTATI/S SEKGOTA

TO: THE REGISTRAR OF THE HONOURABLE COURT

PIETERMARITZBURG HIGH COURT

AND TO: **ANTHONY ROBIN BRINK**

RESPONDENT

23 BAKER ROAD

PRESTBURY

PIETERMARITZBURG

CEL: 083 676 0884

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

CASE No: 12124/16P

In the matter between:

LEGAL AID SOUTH AFRICA



Applicant

and

ANTHONY ROBIN BRINK

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the abovenamed applicant intends making application to the above Honourable Court, on a date to be decided by the registrar, for an order on the following terms, the:

1. The respondent's conduct towards the applicant, its officials and board members, as set out in the founding affidavit, is declared as vexatious and frivolous,

2. The applications instituted by the respondent:

2.1 in the Magistrates' Court for Eshowe under case numbers 257/14 (against Bambiso NO), 258/14 (against Vedalankar NO), 259/14 (against Msweli NO), 1005/15 (against Nair NO) and 1432/15 (against Vedalankar NO), and

2.2 in the Kwazulu-Natal Division of the High Court, Pietermaritzburg, against Mtati NO, under case number 1118/16

are stayed pending the respondent's payment of all previous costs orders granted against him in favour of the applicant, *alternatively*, payment of security for the legal costs of the respondents in the above matters in a manner, amount and form as to be determined by the Registrar;

3. The respondent is interdicted from instituting any further legal proceedings against the applicant, its officials or Board Members, which directly or indirectly relate to his non-appointment to a senior litigator position with the applicant, in any High Court or lower court without leave from a judge of such High Court or magistrate of such lower court, as the case might be, *alternatively* that he may only institute such legal proceedings after providing adequate security for costs, as determined by the registrar or clerk of the relevant Court;
4. The respondent is interdicted and restrained from requesting any further records from the applicant under the Promotion of Access to Information Act

- (“PAIA”), which directly or indirectly relate to his non-appointment to a senior litigator position with the applicant;
5. Declaring the issue relating to the respondent’s non-appointment to the position of senior litigator with the applicant was fully and finally determined by the Labour Court under case number D529/11 and the Labour Appeal Court under case number DA21/14.
 6. The applicant is excused from responding to any pending request for records under PAIA which the respondent might have directed to them in the meantime;
 7. The respondent is interdicted and restrained from in anyway harassing and interfering with the duties and functions of the applicant, its officials and Board members by making frivolous requests for information or threats;
 8. The respondent is interdicted and restrained from publishing, in whatever form, false and derogatory remarks and allegations against the applicant, its officials or Board members and any judicial officer;
 9. Costs of suit,
 10. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **THEMBILE VUYO MTATI** together with the annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed an address for service as set out below at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application, you are required:

- a. to notify the applicant's attorney in writing of your intention within **5 (FIVE)** days of service hereof;
- b. to deliver your answering affidavit, if any, within **15 [FIFTEEN]** days after you have so given notice of your intention to oppose the application; and
- c. to appoint in such notification an address referred to in rule 6(5)(b) for service at which you will accept notice and service of all documents in these proceedings.

IF no such notice of intention to oppose be given, the application will be made on

30 NOVEMBER

2016 at ^{09h30}~~10H00~~ or so soon thereafter as

counsel for the applicant may be heard.

KINDLY ENROLL THE MATTER ACCORDINGLY

DATED at PIETERMARITZBURG on this the 28TH day of
OCTOBER 2016.



LEGAL AID SOUTH AFRICA
Applicant

LEGAL AID HOUSE

29 DE BEER STREET

BRAAMFONTEIN

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BRAAMFONTEIN, 2017

TEL: 011 877 2000

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**C/O: PIETERMARITZBURG
JUSTICE CENTRE**

183 CHURCH STREET

PIETERMARITZBURG, 3201

TEL: 033 394 2190

REF: T MTATI/S SEKGOTA

TO:

**THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PIETERMARITZBURG**

2

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

CASE No: 12124/16P

In the matter between:

LEGAL AID SOUTH AFRICA

Applicant

and

ANTHONY ROBIN BRINK

Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

THEMBILE VUYO MTATI

do hereby make oath and state:

1.

N.N



- 1.1 I am an adult male attorney of the High Court of South Africa and employed as a Legal Executive (a position previously defined as the Corporate Services Executive) of Legal Aid South Africa, at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg. I am duly authorised to depose to this affidavit on behalf of Legal Aid South Africa.
- 1.2 The facts contained herein are within my personal knowledge unless otherwise stated or contextually indicated, and are true and correct.
2. I shall, for the sake of convenience, hereinafter refer to:
- 2.1 the applicant as "*Legal Aid SA*";
- 2.2 the respondent as "*Brink*";
- 2.3 the Legal Aid South Africa Act 39 of 2014 as "*the Legal Aid Act*";
- 2.4 the Chairperson of Legal Aid SA, Mlambo JP, as "*Mlambo JP*";

N.N



- 2.5 the Chief Executive Officer of Legal Aid SA, Vidhu Vedalankar, as *"the CEO"*;
- 2.6 the National Operations Executive of Legal Aid SA, Brian Nair, as *"the NOE"*;
- 2.7 the Public Finance Management Act 1 of 1999 as *"the PFMA"*;
- 2.8 the Promotion of Access to Information Act 2 of 2000 as *"PAIA"*;
- 2.9 the Minister of Justice and Correctional Services, as *"the Minister"*; and
- 2.10 The Portfolio Committee on Justice and Constitutional Development as *"the Portfolio Committee"*.

THE PARTIES

3. The applicant is Legal Aid South Africa, a national public entity as provided for in the PFMA, established in terms of section 2 of the Legal Aid Act No 39 of 2014, with its national office, principal place of business and chosen *domicilium*

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citandi et executandi situated at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

4. The respondent is Anthony Robin Brink, an advocate of the High Court of South Africa, who resides at 1 Boast Street, Eshowe, Kwazulu Natal, within the area of jurisdiction of this Honourable Court.

4.1 Brink has ostensibly been admitted as an advocate for over 30 years, nearly eight of which has been spent on the bench as a magistrate, four of them full-time on the civil bench, the rest on the district and regional court benches and 8 years at the Bar specialising in civil law. He was until recently, acting as a Magistrate in Kwazulu Natal but appears to be currently unemployed.

PURPOSE OF THE APPLICATION

5. The purpose of this application is to seek an order of the above honourable court:

5.1 declaring the conduct of Brink, as set out more fully hereunder, as vexatious and frivolous;

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- 5.2 *alternatively*, interdicting and restraining Brink from anyway harassing and interfering with the duties and functions of Legal Aid SA, its officials and Board members by making frivolous request for information or threats;
- 5.3 interdicting and restraining Brink from publishing, in whatever form, false and derogatory remarks and allegations against Legal Aid SA, its officials and Board members;
- 5.4 staying all proceedings in whatever court which have been instituted by Brink against Legal Aid SA and/or its officials and which are still pending, including proceedings under case numbers 257/14; 258/14; 259/14; 1005/15; and, 1432/15 in the Eshowe Magistrates' Court and his latest application before the above honourable court under case 1118/2016, until he pays outstanding costs orders awarded against him in favour of Legal Aid SA and/or provides security for costs.

GROUNDS FOR THE APPLICATION

6. The grounds upon which this application is predicated are, amongst others, that Brink, flowing from his non-appointment to the position of Senior Litigator within Legal Aid SA in 2009:

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- 6.1 unsuccessfully challenged Legal Aid SA's decision not to appoint him in the Senior Litigator position in the Labour Court and Labour Appeal Court, and persists with the issue of his non-appointment;
- 6.2 is persistently flooding Legal Aid SA with requests for records and information under PAIA and his behaviour amounts to an abuse of the provisions of PAIA;
- 6.3 launched 5 different applications under PAIA in the Eshowe Magistrates' Court to compel Legal Aid SA's Information Officer and her Deputies to provide him with the records requested, which applications were eventually settled, but which he now seeks to resuscitate, claiming that Legal Aid SA did not comply with the provisions of the settlement agreement and seeking amongst other relief, to subpoena various officials of Legal Aid SA to give oral evidence. In addition, he has brought another application to compel under PAIA under case number 1118/2016 before the honourable court;
- 6.4 persistently undermined and attacked the integrity and office of judicial officers, including those before whom he appeared or before whom he unsuccessfully brought applications or actions,

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- 6.5 consistently used sarcastic, demeaning, defamatory and degrading language in his court papers and correspondence towards Legal Aid SA's officials. He also publishes these documents on a website which he has specifically created to report on his battles with Legal Aid SA;
- 6.6 copies all and sundry his correspondence and even in some cases court papers in an attempt to embarrass, harass and coerce Legal Aid SA to appoint him to the Senior Litigator position;
- 6.7 sought records under PAIA which directly or indirectly relate to the dispute around his appointment to the Senior Litigator position while the subject matter was either still before the Labour Court and/or already decided upon by the Labour Court and finally the Labour Appeal Court;
- 6.8 continually threatens to lay criminal charges of perjury against Legal Aid SA's NOE, but fails to formally lay a charge with the South African Police Services (SAPS) to enable them to formally investigate such charges, as they are constitutionally mandated to do;
- 6.9 continually threatens to lay complaints against Legal Aid SA and its officials with, amongst others, the Public Protector, the Auditor General, Judicial Services Commission, the Law Society of the Northern Provinces,

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and General Council of the Bar, without actually laying such complaints to enable Legal Aid SA and its officials to formally respond and deal with same;

- 6.10 despite two costs orders amounting to more than R1.5 million awarded against him, in his litigation against Legal Aid SA, has refused, failed or been unable to satisfy same or any part thereof;
- 6.11 proceeded to bring unmeritorious applications before the courts based on or arising out of his failed application for a position at Legal Aid SA;
- 6.12 under the guise and in an abuse of the remedies afforded by PAIA, attempts to re-open and re-try his Labour Court action; when there should be finality in litigation over the same subject matter; and
- 6.13 once again approached the Eshowe Magistrates' Court to now, amongst other relief sought; subpoena various officials to testify over the whereabouts of documents which I already under oath stated either do not exist or cannot be found.

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BACKGROUND FACTS

Summary of the matter

7. The background to this matter is fairly lengthy but necessary to place the matter in its proper context. I will hereunder as far as possible attempt to record the relevant and material events in chronological order. I will, in order to avoid prolixity, not attach a copy of each and every document or correspondence referred to but will make same available upon request.
8. In August 2009, Legal Aid SA advertised in newspapers and other media outlets, inviting suitable qualified and experienced legal practitioners to apply for its vacant Senior Litigator posts at its Pietermaritzburg and Durban Justice Centres. Brink, responded to the advertisement, was shortlisted and interviewed with other candidates for the Senior Litigator position at Pietermaritzburg Justice Centre by the Regional Executive Selection Panel.
9. The said selection panel recommended Brink together with other candidates for the Second Round Interviews by the National Executive Selection Panel. Legal Aid SA however, subsequently aborted the filling of the remaining vacant Senior Litigator posts due to budgetary constraints.

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10. Brink, not being satisfied with Legal Aid SA's decision to abort further appointments to the Senior Litigator posts:

10.1 between August 2010 and March 2011, made three (3) requests for records from Legal Aid SA, using the provisions of PAIA, wherein he requested more than 69 records relating to the Senior Litigator position;

10.2 in July 2011, instituted action in the Labour Court, Durban, against Legal Aid SA, claiming that Legal Aid SA unfairly discriminated against him on the ground of his conscience, belief or political opinion. Brink in essence contended that upon learning of his identity as a so-called "Aids denialist", the NOE did not agree to appoint him and used the budgetary constraints reason purely as camouflage to hide the said discrimination;

10.3 during October 2013, after evidence was led in the Labour Court and the action was postponed for the filing of heads of argument and argument, requested a further 53 records under PAIA from three (3) different Deputy Information Officers of Legal Aid SA, all aimed at testing the veracity of the evidence which was adduced during the Labour Court trial;

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- 10.4 during April 2014, before judgment was delivered in the Labour Court action, launched three applications under PAIA in the Magistrates' Court at Eshowe, against the said Deputy Information Officers, to compel them to produce the records he requested;
- 10.5 after his Labour Court action was dismissed with costs in September 2014 and while his application for leave to appeal was pending, in November 2014, made a further 4 requests for records under PAIA to three different Deputy Information Officers of Legal Aid SA requesting about 97 records, all directly or indirectly relating to the Senior Litigation posts which were aborted, in order to test the veracity of the evidence which was delivered during the Labour Court trial;
- 10.6 after his leave to appeal application was dismissed by the Labour Court in December 2014 and his petition to the Labour Appeal Court was dismissed in February 2015, made a further request for records under PAIA in March 2015;
- 10.7 during August 2015 and November 2015, launched two further application under PAIA in the Eshowe Magistrates' Court to compel production of documents he requested;

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- 10.8 in October 2015, brought an urgent interdict in the High Court, Pietermaritzburg to prevent the taxation of Legal Aid SA's bill of costs relating to the Labour Court action, which application was dismissed with costs on an attorney and client scale;
- 10.9 after the PAIA applications in the Eshowe Magistrates' Court were settled in February 2016 and Legal Aid SA performed in terms of the settlement agreement, launched a further application in the Eshowe Magistrates' Court claiming Legal Aid SA did not perform in terms of the settlement and seeking, amongst others, an order to subpoena various senior officials of Legal Aid SA to testify about the whereabouts of certain records he requested. This application is currently postponed pending the outcome of this application; and
- 10.10 subsequent to the PAIA applications in Eshowe Magistrate's Court being postponed, and with the full knowledge that Legal Aid SA intends bringing this application, Brink launched another application to compel under PAIA in the above honourable court, under case number 1118/2016.

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Brink's conduct prior to litigation

11. On **12 November 2009**, Brink was interviewed with other shortlisted candidates for Legal Aid SA's Senior Litigator post at Pietermaritzburg by the Regional Executive Selection Panel. The selection panel recommended Brink together with other candidates for Second Round Interviews by the National Executive Selection Panel.
12. The Regional Executive Selection Panel selected Brink as the most suitable candidate and the selection was cast as a "Recommendation for Next Round Interviews".
13. The recommendation was forwarded to the NOE and Legal Aid SA decided later on not to proceed with the filling of the remaining vacant Senior Litigator posts due to budgetary constraints.
14. Brink was subsequently, after enquires from him, informed of the reasons why the Senior Litigator position was not filled.
15. On **26 August 2010**, Brink requested fifty-one (51) records from Legal Aid SA under PAIA. All the records related to the abortion of the recruitment process for the Senior Litigator post.

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16. On **1 September 2010**, Brink addressed a letter to the COO, Chief Finance Officer and the Legal Development Executive (now the Chief Legal Executive, Mr Hundermark) wherein he sought intervention and further intimidated the officials that he will be reporting them, including Mlambo JP, for the alleged illegal suppression of records and the abortion of the recruitment process for the Senior Litigator position.

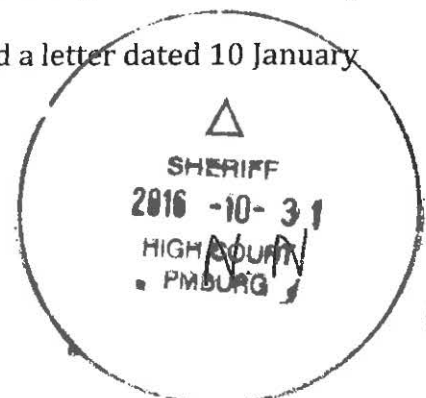
17. On **18 October 2010**, the CEO refused Brink's request for records under PAIA and also provided him with a detailed explanation on what led to the discontinuation of the recruitment process. The explanation from the CEO clearly did not convince Brink as he continued to seek further records to test the truthfulness of the CEO's explanation.

18. On **30 November 2010**, Brink addressed a lengthy 59 page letter to Mlambo JP, the Board of Legal Aid SA and the South African Human Rights Commission (*"the SAHRC"*). In the letter Brink challenged the decision by the CEO not to provide him the records he requested under PAIA and requested them to intervene in the alleged gross illegal breaches by the Management Executive Committee of Legal Aid SA. The said letter is annexed hereto marked **"FA1"**.

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19. In the letter Brink made serious and malicious allegations against the NOE and the CEO of misrepresenting information to the Portfolio Committee and concocting unlawful excuses and reasons with malicious intent for the freezing of the Senior Litigator position. He also accused the NOE and the CEO of singling him out for differential treatment on the basis of his race, conscience and beliefs. He further accused the executives who managed the recruitment process of not being honourable and honest and that they acted illegally and told lies to cover up their alleged illegal actions.
20. Mlambo JP, in a letter incorrectly dated **9 November 2010**, responded to Brink's aforesaid letters and advised Brink that *"I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as alleged by you or at all"*. The letter is annexed hereto marked **"FA2"**
21. On **15 December 2010**, Brink delivered another PAIA request for 18 records. All the records requested related to Legal Aid SA's decision to abort the recruitment process for the Senior Litigator position.
22. On **24 January 2011**, Mlambo JP responded to a number of e-mails and other records that were sent by Brink to various officials of Legal Aid SA including members of its Board. This communication included a letter dated 10 January



2011 addressed to a member of the Board, Adv Pieter Du Randt, a record of the meeting between one Mr Christopher Rawlins (Brink's accountant) and Ms Ela Gandhi, a Board member, at her home and a letter dated 24 January 2011 addressed to Mlambo JP, members of the Board and the SAHRC. The letter is annexed hereto marked "FA3".

23. Mlambo JP advised Brink that *"Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view... For this reason I call on you to desist from communicating with Board members in this regard. I have, in turn, requested Board members to ignore all communications from you and/or on your behalf"*.

24. The CEO, on **28 January 2011** partially complied with the request and provided Brink with 12 of the records he requested. The CEO gave Brink a detailed explanation together with relevant documents on why the recruitment for the Senior Litigator position was aborted. Where records were refused it was done so on the basis of section 44(1) and (2) of PAIA as the records sought related to deliberative processes of Legal Aid SA with third parties.

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25. On **25 February 2011**, Brink, notwithstanding the contents of the letter from Mlambo JP on **24 January 2011** again addressed a letter to the Board of Legal Aid SA requesting them to intervene in Legal Aid SA's refusal to comply with his PAIA request and his alleged unfair discrimination claims. Brink copied the Minister, the Deputy Minister, the special advisor to the Minister and the chairperson of the Portfolio Committee. The letter is annexed hereto marked "**FA4**".
26. On **9 March 2011**, Mlambo JP responded to Brink's letter to the Minister and advised them of the reason why the position Brink applied for was not filled. That letter is annexed hereto marked "**FA5**". The same report with an update was submitted to the Chairperson of the Portfolio Committee on Justice on **22 June 2011**.
27. On **9 March 2011**, Brink filed a further request for records in terms of PAIA wherein he sought 15 records from Legal Aid SA. The records sought once again related to the aborted recruitment for the Senior Litigator position, the recruitment policy, minutes of various Committees of the Board and communications between Mlambo JP and other officials of Legal Aid SA.

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28. The NOE responded to this PAIA request on **8 April 2011** by dealing with each and every question raised and further deposed to an affidavit in terms of section 23 of PAIA. He further provided Brink with those records he could find.
29. On **22 June 2011**, Mlambo JP addressed, upon request from the Portfolio Committee, a report to them, which is attached hereto as "**FA6**", dealing with Brink's behaviour and brought the following under their attention; that:
- 29.1 As far as legally permissible and where records were available, such records were given to Brink;
- 29.2 The allegations of illegal conduct and misrepresentation on the financial statements of Legal Aid SA were incorrect;
- 29.3 The allegations of discrimination against Brink were unfounded and that the termination of the recruitment was purely on the basis of budget constraints.
30. The Portfolio Committee considered and evidently accepted Mlambo JP's response and on **29 June 2011** advised Brink that they do not deal with the day to day operational matters of Legal Aid SA or any other entity in the justice

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family and that they regard the matter as closed. A copy of the response is attached hereto marked "FA7".

31. Brink was apparently not satisfied with the detailed explanation given by Legal Aid SA as to why he was not appointed in the Senior Litigator position, or the responses he received from the Portfolio Committee or Mlambo JP. He approached the Commission for Conciliation, Mediation and Arbitration ("the CCMA") on **22 March 2011** for relief. A conciliation hearing was held on or about **20 April 2011**, at which the CCMA Commissioner unsuccessfully attempted to resolve the dispute and issued a certificate of outcome.

32. On **11 and 28 April 2011**, Brink filed two formal complaints against Legal Aid SA with the SAHRC due to Legal Aid SA's alleged unlawful refusal to comply with his PAIA request. The formal complaints are attached hereto as "**FA8**" and "**FA9**", respectively.

33. On **29 June 2011**, the SAHRC advised Brink that it considered his complaints and will not take the investigation further as the issues complained of were best suited to be ventilated before a court of law. Brink was further advised of the right to appeal. The letter of response is annexed hereto marked "**FA10**".

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34. On **1 July 2011**, Brink lodged an appeal with the Chairperson of the SAHRC and on **18 July 2011** the chairperson of the SAHRC dismissed Brink's appeal on the basis that the SAHRC may reject any complaint which is the subject of the dispute before a court of law.
35. Brink thereafter and on or about **27 July 2011** sued for relief against Legal Aid SA, in the Labour Court, Durban (case number D529/11), under section 6(1) of the Employment Equity Act 55 of 1988.
36. Brink claimed in the Labour Court that Legal Aid SA unfairly discriminated against him on grounds prohibited by section 6 of the Employment Equity Act, namely on grounds of his conscience, belief or political opinion.
37. Brink, in essence at the Labour Court trial, in contrast with his pleaded case, contended that upon learning of his identity, as a so-called "Aids denialist", the NOE did not agree with his appointment and aborted his recruitment and camouflaged the true reason for such refusal as lack of funding.

Brink's conduct during litigation before the Labour Court including towards judicial officers

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38. In his pleaded case in the Labour Court, Brink initially attributed discriminating acts against him, on the part of the CEO, NOE, Human Resource Executive and Mlambo JP. The initial Statement of Claim is 100 pages long and I will therefore for the sake of brevity not attach same but make same available to the court if required to do so.

39. Brink's Statement of Claim was purportedly forwarded to:

39.1 Legal Aid SA's Board Secretary;

39.2 Guardian Employers Association;

39.3 the Minister of Justice and Constitutional Development;

39.4 the Deputy Minister of Justice and Constitutional Development;

39.5 the Chairperson of the Portfolio Committee on Justice and Constitutional Development;

39.6 the Chairperson of the Judicial Services Commission;

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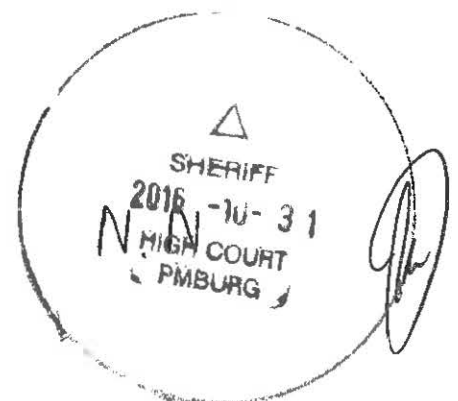
- 39.7 the Public Protector;
- 39.8 the Chairperson of the Public Service Commission;
- 39.9 the Auditor General;
- 39.10 the Director of Public Prosecutions;
- 39.11 the Board and all national management executives; and
- 39.12 together with the respondent's response upon delivery, to all law school deans in South Africa, and to all media.
40. None of the parties copied with the Statement of Claim had any direct or material interest in the litigation.
41. In his initial Statement of Claim Brink made various unfounded, defamatory and demeaning statements towards Mlambo JP and the CEO, amongst others. The following are only some of the many such statements he made:

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- 41.1 *The applicant will show..., the respondent's chairperson Dunstan Mlambo and Chief Executive Officer Vidhu Vedalankar, motivated by unlawful political (alternatively racial) prejudice aborted his appointment off the record and without announcing the fact; and that many months later, under pressure to account, Mlambo and Vedalankar attempted to camouflage their direct discrimination against the applicant on prohibited grounds by concocting and advancing a false cover story for it based on a fake financial justification-unsupported and contradicted by the respondent's business record; conflicting with Vedalankar's CEO report for 2009/10; conflicting with deliberately misleading statements Vedalankar made on two occasions to the Portfolio Committee on Justice and Constitutional Development; and contradicting the express wishes of the Minister of Justice and Constitutional Development known to both Mlambo and Vedalankar.¹*
- 41.2 *The Applicant will further show that in furtherance of Mlambo's and Vedalankar's scheme to cover up their unfair discrimination against the Applicant, Mlambo lied to the Minister on several scores in a "Confidential... report" to him "Re: Adv Anthony Brink", which lies Mlambo repeated to the Chairperson of the Portfolio Committee; and by so doing Mlambo deliberately misled the respondent's executive*

¹ SoC, par 4.



*authority and Parliament in order to (a) allay their further enquiries into the applicant's complaints against the Respondent, which he had copied to the Minister and Committee Chairperson, of unfair discrimination against him and unlawful refusal to surrender material records duly requested under the Promotion of Access to Information Act, and (b) to put them off discovering the falsity of the bogus financial justification for their abortion of the Applicant's recruitment dishonestly advanced by Vedalankar to the applicant and by Mlambo to the Minister and to the Committee chairperson."*²

41.3 *"Having regard to his subsequent recorded conduct in the matter,... that Mlambo supported and was party to 'the decisions we took'... to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so under cover of a lying alibi"*³

41.4 *"Although himself African, Mlambo uncritically subscribes to the American and European industrial complex's HIV-Aids-ARV business model, promoted by the pharmaceutical industry that Africans in South Africa (not whites, coloureds or Indians) are 'new[ly]' riddled with deadly venereal disease... Mlambo actually believes these things and is*

² SoC, par 5.

³ SoC, par 17.

an active political promoter of these immensely lucrative politico-medical construct on the international stage... "4

41.5 *"The respondent's entire Board and executive management structure actively promote and perpetuate the Western HIV/AIDS/ARV – paradigm in South Africa..."5*

41.6 *Because Vedalankar informed Nair that she did not agree with the applicant's recruitment as a political (or racial) undesirable, Nair never 'signed off' the Motivation ... , and the recruitment process to appoint the applicant was thus brought to an end.6*

41.7 *The first strategy adopted by Mlambo and Vedalankar to conceal from the applicant their unfair discrimination against him was deliberate inaction and silence.7*

4 SoC, par 26 and 27.

5 SoC, par 30.

6 SoC, par 31.

7 Soc, par 33.

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- 41.8 *The reason Mlambo and Vedalankar opted for this initial simple strategy was because:*
- 41.8.1 *it entailed the minimum possible risk that the applicant would discover their unfair discrimination against him; and*
- 41.8.2 *they bargained that after being kept waiting in the dark for several months, the applicant would lose hope, conclude that he had been unsuccessful at his interview, give up pursuing the post for which he had applied, and withdraw himself from the recruitment process of his own accord, thus achieving Mlambo's and Vedalankar's objectives in shutting him out and concealing their decision to do so."*⁸
- 41.9 *Appreciating (a) that the applicant had not been put off by Mlambo's and Vedalankar's inaction and silence strategy, and that half a year after his interview he was still agitating for the finalisation of his appointment, and (b) that Mlambo's and Vedalankar's scheme to covertly discriminate against the applicant therefore needed elaboration, ..."*⁹

⁸ SoC, par 34.

⁹ SoC, par 55.

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- 41.10 *Mlambo's and Vedalankar's purpose in sacrificing the successful Mthatha candidate "In July 2010" off the record ..., was to fabricate a factual foundation for their assertion about to be made to the applicant that the respondent had decided, "due to various reasons", impliedly legitimate, not to fill the respondent's three remaining vacant Senior Litigator posts in order to disguise her and Mlambo's unfair discrimination against the applicant..."¹⁰*
- 41.11 *"... it is probable that Mlambo was the author of the false and misleading statement of the law concerning the applicant's right to information..."¹¹*
- 41.12 *"It follows that Mlambo's 'Confidential' allegation to the Minister ...was a blatant lie improvised by him to patch the first gaping hole (amongst many others) in his ... lying alibi uttered variously to the applicant, to the Minister and to the chairperson of the Portfolio Committee to mislead and deceive them all..."¹²*
- 41.13 *"The horror of the applicant's experience of Mlambo's and Vedalankar's dishonestly camouflaged direct unfair discrimination against him has been considerably exacerbated by his apprehension that Mlambo heads*

¹⁰ SoC, par 71.

¹¹ SoC, par 85.

¹² SoC, par 108.

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*the very court in which he is constrained to seek justice-particularly given the history of Mlambo's appalling, brazen dishonesty in his dissimulations to the applicant...; in his false representations to the Minister...; and in his and Vedalankar's mala fide dealing with the applicant and how best to defeat him, in cabals, behind the scenes and off the record."*¹³

42. The Labour Court trial ran from **23 July 2013** to **2 August 2013** (8 days) whereafter it was postponed for the parties to file heads of argument. It was only at the trial under cross-examination, that Brink exonerated Mlambo JP and the CEO and shifted his focus to the National Operations Executive.
43. Brink is in possession of the transcript of the Labour Court trial and I will, in order to avoid prolixity, not attach same hereto but will make same available to the Court if required. Under cross-examination during the Labour Court trial, Brink had for example the following to say:

Page 133	<p>Mr Du Toit "Then just by the way, Judge Mlambo you say is one of the top judges in the country is the person you called a liar about 30 times?"---</p> <p>Mr Brink "This is before I discovered that Nair was abusing his office, abusing his name to convey falsehoods to Parliament and to the Minister."</p>
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Page 137	Mr Brink "I am saying that Judge Mlambo and I mean it with absolutely no disrespect and I really rule about my misconceptions about Judge Mlambo's role in this matter."
Page 154	<p>Mr Du Toit "By the way, Mr Brink, having called Mrs Vedalankar a liar and dishonest in concocting defenses, do you really think that you could possibly be appointed in an organization where she continues to be the chief executive officer?"---</p> <p>Mr Brink "It is my conclusion from reading her two letters to me, that they were written by Brian Nair, consequently it is my relatively late conclusion, after the case began and consequently I believe that the CEO as Judge Mlambo was, the CEO's higher office and Gormy abused by Nair to convey lies to me. Sir I hold CEO Vedalankar clear in this matter."</p>
Page 158	<p>Mr Du Toit "But you have said that it was the chief executive officer who was involved in this plot"---</p> <p>Mr Brink "But I thought so; I thought so, because of her letters to me. But later I discovered I faulted and I am sure it will be confirmed, but she did not write those letters, so I was misled."</p>

Page 159	<p>Mr Brink "In the early days for the better, before one discover that Judge Mlambo was innocent in this thing and I have since formed the conclusion that Vedalankar too. You see, I had her letters to me, full of lies. Judge Mlambo's report to the Minister, full of lies, what could I conclude, it was a nightmare, it was very shocking, so I had to draw what conclusion but that they are the authors, but now I know they are not the authors."---</p> <p>Mr Du Toit "Well let us clarify exactly what you are withdrawing now. You are saying firstly that Ms. Vedalankar not plot or struck your appointment, is that what you are saying?"---</p> <p>Mr Brink "This is my current conclusion in the fullness of the evidence."---</p> <p>Mr Du Toit "And you are saying that Judge Mlambo did not plot to obstruct your appointment"---</p> <p>Mr Brink "Correct"</p> <p>Mr Du Toit "That is right, okay. So she is out of the picture, she did not discriminate against you that is what you say now?"---</p> <p>Mr Brink "That is the look of it to me now, neither may well surprise us all and say, no, no, I neatly discussed it with Vedalankar and she agreed. He may tell us that, I do not know, but the look of it on the evidence before me, that I have assembled, the look of it now, that Vedalankar was not involved, not involved."</p>
Pages 172-173	<p>Mr Du Toit "But you now say this falls away?"---</p> <p>Mr Brink "It does. I hold her clear, unless Mr Nair implicates her, but we will have to see, but I have no knowledge here."---</p> <p>Mr Du Toit "And then in paragraph 17, you again say that the chairperson of the respondent's board, Dunstan Mlambo, supported and was partied to the decisions took, to abort the applicant's recruitment and thereafter to camouflage the true reason for doing so, under the cover of a lying alibi"---</p> <p>Mr Brink "That is right, and that conclusion was founded on my receipt from the chairperson, the portfolio of Judge Mlambo's updated report to parliament, a pack of lies, including the manifestly untruthful alibi."---</p> <p>Mr Du Toit "And this falls away as well?"---</p> <p>Mr Brink "Oh yes"---</p> <p>"Then"---</p>

	<p><i>"Just about everything falls away in my first claim."</i></p> <p>Mr Du Toit <i>"Well, let's just get it clear, because I think it is necessary both for your sake and for the sake of Judge Mlambo at least to get this absolutely clear"---</i></p> <p>Mr Brink <i>"Yes, yes"---</i></p> <p>Mr Du Toit <i>"And then in paragraph 18, we refer to the grounds, Mlambo and Vedalankar rejected was because you were politically undesirable and well, if there was no plot, then this must fall away as well."---</i></p> <p>Mr Brink <i>"Right. It falls away to the extent that they were not the actors, but Nair was."---</i></p> <p>Mr Du Toit <i>"I see, okay. And then in 19 Mlambo's and Vedalankar's decision to reject the applicant's appointment on prohibited ground was taken, communicated to Nair behind the scenes and off the record and accordingly no record exists. Now if there was no decision by them, then it could not have been communicated."--</i></p> <p>Mr Brink <i>"It is quite obvious."---</i></p> <p>Mr Du Toit <i>"Okay, so that falls away. I just want to make a note of these allegations that now are...Withdrawn?"---</i></p> <p>Mr Brink <i>"Withdrawn, yes."</i></p> <p>Mr Du Toit <i>"Then in paragraph 20 you have here at page 44, Mlambo neither consulted nor informed the rest of the board of his decision jointly, Ms. Vedalankar's discriminate, does that also fall away?"</i></p> <p>Mr Brink <i>"Ja"</i></p>
Page 188	<p>Mr Du Toit <i>"Now why would Ms. Vedalankar who you have exonerated already from any participation and any unfair discrimination against you why would she tell you a lie?"---</i></p> <p>Mr Brink <i>"Because she did not write the letter; I am pretty sure she did not write the letter. I could be surprised by this, but I do not think she wrote the letter; I think it was Nair who wrote the letter"</i></p>
Pages 205-206	<p>Mr Du Toit <i>"Then you go on in paragraph 32 at page 49, not only had you expand on this, you say, Nair having been instructed as it were by Vedalankar, informed by Vedalankar, he then deliberately does not do something, because he is now carrying out his CEO's instruction. He is astute not to note, because appreciating the decision to abort was unlawful, so in</i></p>

	<p><i>other words he is now part of the plot, construed by Ms. Vedalankar."---</i></p> <p>Mr Brink <i>"This is my conclusion, because I am many miles away, I am on the other end of the world and I am peacefully developing about bits and pieces that the American Right is taller than these things, bits and pieces. And the accumulation evidence, someone required quite recently as profoundly shifted my understanding of what actually happened in this matter. Now, sir, you can hammer away that my early statement declare but I tell you it was based on numerous fundamental misconceptions to which I had been led by Nair."</i></p>
Page 213	<p>Mr Du Toit <i>"But she could not have joined Vedalankar's scheme, because you already accepted that there was no scheme by Vedalankar."---</i></p> <p>Mr Brink <i>"Correct."---</i></p>
Page 214	<p>Mr Du Toit <i>"Paragraph 48 stands, paragraph 49 stands, 50 stands, 51 stands, save that is no longer Mlambo and Vedalankar's scheme, but Nair's"</i></p>
Page 215	<p><i>"And then the heading, page 57, the scheme, that is also wrong."--</i></p> <p>Mr Brink <i>"Ja, it was wrong to the extent that Mlambo and Vedalankar are named the Nair scheme."</i></p>
Page 219-220	<p>Mr Du Toit <i>"Right, and in paragraph 90, or 89 you attribute lies to Ms. Vedalankar."---</i></p> <p>Mr Brink <i>"Ja."</i></p> <p>Mr Du Toit <i>"That must fall away?---</i></p> <p>Mr Brink <i>"No you must reallocate the blame to Nair."</i></p>
Page 221	<p>Mr Du Toit <i>"In paragraph 99 on page 68, you describe to Judge Mlambo a desire to obstruct your efforts under the Promotional Access to Information Act. Do you stand by those contentions?"--</i></p> <p>Mr Brink <i>"You know I do not."</i></p> <p>-----</p> <p>Mr Du Toit <i>"You really are challenging, I asked you, are you still attributing falsity against Judge Mlambo?"---</i></p> <p>Mr Brink <i>"I have said it a hundred times, that I am not doing so, I am not attributing."</i></p>

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Page 223	Mr Brink "Really, I have no quarrel with Judge Mlambo, I think he was misled, he was given a bad picture and that is the start of this irritable e-mail on the..."
Page 224	Mr Du Toit "Now, in paragraph 108, page 73, you have accused Judge Mlambo of a blatant lie."--- Mr Brink "Ja, it is Nair's blatant lie, it is so easy to show and indeed it is going to be retracted."
Page 227	Mr Brink "I do not, do you want me to repeat bluntly, I do not think Judge Mlambo is a liar, and that is it, I used to I mean what else was there to conclude from the secret report?"
Page 228	Mr Du Toit "You slandered a senior judge in a most disgraceful way."--- Mr Brink "I agree, I agree, M'Lord, I agree and I tell you it was inadvertent and I regret it."
Page 231	Mr Du Toit "You make the allegation that Judge Mlambo made a false allegation concerning the knowledge of the executives; do you attribute falsity against Judge Mlambo?" Mr Brink "I do not. But the rest of the paragraph is absolutely sound, to the actual extent that it is Nair's false allegation via Judge Mlambo."
Page 241	Mr Brink "Well, we got over and over, but you know I hold Judge Mlambo clear..."
Page 242	Mr Brink "No. The financial cover story and the report were fake, but Judge Mlambo is not the author of that lie."
Page 264	Mr Du Toit "Paragraph 265, 122 and I imagine you do not attribute falsity to Judge Mlambo."--- Mr Brink "That is right" ----- Mr Du Toit "Well, just to save us the agony of going through the rest, can we assume that for the rest you have assume I think, exonerated Judge Mlambo and Mrs Vedalankar from any accusation of dishonesty and discrimination?"--- Mr Brink "Yes"
Page 269	Mr Du Toit "And you have attributed delinquency to persons involved in this matter."---

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	Mr Brink "Correct. My scope was broaden, it was broader then than it is now. Because I thought Vedalankar was involved and so on."
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44. It is clear from the above exchange between the counsel for Legal Aid SA and Brink that Brink had no factual basis to impute discriminatory conduct on the CEO and Mlambo JP but did so nonetheless on pure speculation and with reckless disregard to their rights and reputation. It is furthermore aggravating that Brink purportedly distributed his Statement of Claim, wherein all these scandalous claims were also made, to various organisations as mentioned above. As far as I am aware, Brink never informed these parties that he retracted the offending statements under cross-examination, nor did he apologise to the CEO or Mlambo JP.

45. It will further be demonstrated hereunder that Brink notwithstanding his retractions and again without any credible basis, imputed improper conduct to Mlambo JP, as his matter progressed.

Brink's conduct whiles judgment in the Labour Court was pending

46. On or about **1 October 2013**, Brink directed more PAIA request to the following officials:



- 46.1 Hope Bambiso ("*Bambiso*"), Legal Aid SA's Eastern Cape Regional Operations Executive, and one of its Deputy Information Officers, requesting about 7 records, and
- 46.2 the CEO, (Legal Aid SA's Information Officer), requesting about 41 records; this was amplified with the request for an additional record on **17 October 2013**,
- 46.3 Zanele Msweli ("*Msweli*"), who is since deceased, Legal Aid SA's then Regional Operations Executive for the Free State and North West, and one of its Deputy Information Officers requesting about 4 records.
47. The vast majority of these records requested under PAIA, if not all of them, are either directly or indirectly related to the filling of the Senior Litigator positions and/or was requested to refute the evidence which was already led during the Labour Court trial.
48. On **6 November 2013**, Bambiso refused Brink's request for records under PAIA essentially on the grounds that:
- 48.1 the records so requested were already dealt with during the discovery process in the Labour Court and/or

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- 48.2 the request fell under section 7(1) of PAIA, in that the records so requested were requested for the purpose of civil proceedings, so requested after the commencement of such civil proceedings which provide for the production or access to such records and that PAIA therefore does not find application, and/or
- 48.3 the request fell under section 45 of PAIA in that it is manifestly frivolous or vexatious or the work involved in processing the request would substantially and unreasonably divert the resources of Legal Aid SA.
49. The CEO, also on **6 November 2013**, partially complied with Brink's PAIA request and refused some records under sections 7 and 45 of PAIA. Where records, as requested by Brink, did not exist she deposed to an affidavit in terms of section 23 of PAIA to confirm same.
50. On **18 November 2013**, Msweli refused Brink's request for records under PAIA on the grounds that it falls under sections 7(1) and 45 of PAIA.
51. On **29 April 2014**, being aggrieved by Bambiso, Msweli and the CEO's decisions in relation to his PAIA request, Brink launched applications under PAIA in the Eshowe Magistrate's Court under case numbers 257/14, 258/14

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and 259/14 seeking, amongst others, an order compelling them to provide the records he requested.

52. The arguments in the Labour Court action were made during **28-30 May 2014**.

53. It is therefore evident that at the time of Brink's request for records in terms of PAIA to Bambiso, Msweli and the CEO as well at the time of launching his PAIA application to compwel in terms of PAIA against them, the action in the Labour Court was still pending.

Brink's conduct after the Labour Court judgment and towards judicial officers

54. The action in the Labour Court was dismissed with costs on **18 September 2014**, with the Honourable Judge Cele J finding that the defence raised by Legal Aid SA was not a pretext for a discriminatory and impermissible motive. A copy of the judgment is attached hereto marked "**FA11**".

55. Cele J made the following telling remarks in his judgment:

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- 55.1 *"... I conclude therefore, based on Mr Nair's evidence that, with the exception of possibly having read the CV of the applicant, Mr Nair did not know of the applicant." [par 69]*
- 55.2 *"Mr Nair denied having read the CV's which came with the e mail from Mr Mdaka. While this evidence was challenged by cross examination, it was left intact as Mr Nair was not shaken but remained adamant on it." [par 70]*
- 55.3 *"... I hold therefore that the applicant has not succeeded in showing that Mr Nair probably read his CV at around the time of its receipt." [par 71]*
- 55.4 *"Without reading the CV of the applicant and without having prior knowledge of him, Mr Nair could not possibly have aborted the recruitment of the applicant by discriminating him ... It must follow that the applicant has not shown that he was meted with any different treatment than was given to the recommended candidates for Durban and Mthatha. In my view, the defence raised by the respondent is not a pretext for a discriminatory and impermissible motive. Accordingly the presumption of unfair discrimination does not arise. On this basis alone the claim of the applicant must fail." [Par 72]*

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56. On **10 November 2014**, under cover of a letter of the same date, Brink requested about 23 records under PAIA from Patrick Hundermark, Legal Aid SA's then Legal Development Executive and one of its Deputy Information Officers ("*Hundermark*"). The records so requested related to the appointment of one Mzochithwayo Ngcamu ("*Ngcamu*") as Children's Court Practitioner and to Brink's unsuccessful application for appointment to the Senior Litigator position. Brink expressly states in his covering letter that "*In sum, I am now investigating the possibility that (i) I was mistaken about the integrity of the selection process; and (ii) although the interviews were conducted unimpeachable, it had been pre-decided by Mdaka, Nair or even higher that I should not be appointed, and that Ngcamu should be instead, without informing the panel/the other members of the panel, and that this decision had been taken even before Mdaka sent the selection panel's recommendation of me up to Nair; and (iii) the recruitment was thus corrupt, and it was nepotism after all that was behind the abortion of my appointment.*"

57. On **17 November 2014**, Brink under cover of his letter of the same date, directed a further PAIA request to Hundermark requesting an additional 4 records to test the veracity of the NOE's testimony during the Labour Court trial relating to the Senior Litigator post. The covering letter is annexed hereto marked "**FA12**".

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58. Also on **17 November 2014**, Brink also directed a PAIA request to the NOE requesting 14 records all of which relate directly or indirectly to the Senior Litigator position and/or the evidence which was led during the Labour Court trial.
59. On **25 November 2014** under cover of letter of the same date Brink requested 56 records from the Chief Operations Officer, also one of Legal Aid SA's Deputy Information Officers. An amended request for records dated 15 December 2014 was also addressed to the Chief Operations Officer. Most of the records requested once again relate to the Senior Litigator positions. That letter is annexed hereto marked "**FA13**".
60. Brink subsequently, and on or about **3 October 2014**, applied for leave to appeal the Labour Court judgment and for leave to lead further evidence. This application was dismissed by Cele J on **27 November 2014**. In his judgment on Brink's application for leave to appeal, Cele J pointed out that the evidence on alleged discrimination evinced in Brink's version at the Labour Court trial was "*a mere speculation*". A copy of the judgment is attached hereto marked "**FA14**".



61. On **3 February 2015**, Hundermark addressed a letter to Brink requesting that he pays the amount of R900 in terms of section 22 of PAIA before he can reply to his request for records. The letter is annexed hereto marked "FA15".
62. The NOE refused Brink's request for records under PAIA on **13 February 2015** on the grounds that the records requested fall under either sections 7, 37, 47 or 48 of PAIA.
63. After Cele J dismissed Brink's application for leave to appeal the Labour Court judgment, Brink petitioned the Labour Appeal Court (also seeking leave to adduce further evidence) on or about **7 December 2013** (*sic* 2014) and the petition was unanimously dismissed by the Labour Appeal Court on **18 February 2015**. In his petition for leave to appeal to the Labour Appeal Court, Brink had, for example, the following to say about Mlambo JP, Cele J, the CEO and the NOE:

Par 2	<i>"This is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told to me, to the LASA Board, to the SAHRC, and to court(different lies told in the pleadings and interlocutory affidavits, and then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib,</i>
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	<i>crude and perfunctory judgement, riddled with the most basic legal and factual misdirection, omissions and non-sequiturs, and characterized by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair"</i>
Par 3	<i>"I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try."</i>
Par 4	<i>"In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects. To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence."</i>
Par 5	<i>"The judge elliptically conceded his fundamental legal misdirection, identified in my application, that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me instead of on LASA. He then sought to avoid the fatal ramifications of the radical error by two means:"</i>
Par 6	<i>"The judge's response was to silently look away."</i>
Par 7	<i>"And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different-notwithstanding that LASA relied on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth' on numerous scores. Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word, mechanically reciting his evidence as gospel, without any endeavor to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practiced, confident, spontaneously inventive, unctuous, bare-faced, abject liar."</i>
Par 8	<i>"In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose, thus depriving me of some major artillery I'd lined up; and he swept the</i>

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	<i>whole thing-all 59 pages and 323 paragraphs-off the table in a single dismissive paragraph."</i>
Par 22	<i>"Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial-he was a pathetic liar- contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top professional echelon specialist Senior Litigator posts, I showed at trial and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't. The judge evidently didn't read that far."</i>
Par 24	<i>"And what they unequivocally show is that she lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded...The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up."</i>
Par 25	<i>"At trial I mentioned my conclusions from the evidence I'd found of this that Nair had ghost-written Vedalankar's letters, and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my complaints, and for this reason I held them both clear. But in his evidence, Nair denied any hand in Vedalankar's letters to me; and although in evidence he ultimately admitted writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that' (having first insinuated it might have been Vedalankar and then again) i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation. (It's quite clear Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.) That is to say, after I'd told the Judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament."</i>
Par 26	<i>"True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th-but not me, from who she concealed this hotly material fact in her letter to me six days later, the better to maintain her pretence that LASA was still too skint to hire me."</i>

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Par 28	<i>"In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)"</i>
Par 29	<i>"In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE, and HRE all swore the lie was true."</i>
Par 30	<i>"Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalizing my appointment in the initial three-and-a-half month period between the dates he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story-later twice retracted by him on affidavit as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit, then contradicted with a different story he told the judge. Who didn't think to note any of this dismal shambles in his judgment"</i>
Par 31	<i>"In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment-a so-called second round interview-was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error...palpably an error' that Mlambo JP had made. Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.</i>
Par 32	<i>"But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads. The judge didn't note this, and accepted and believed Nair's childishly obvious, self-contradicted new lie told in court, which had featured</i>

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	<i>nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)</i>
Par 33	<i>"So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because no attempt was ever made to do so...So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained in a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection."</i>
Par 34	<i>"Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only...Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly."</i>
Par 35	<i>"My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained."</i>
Par 36	<i>"In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear to me that the judge wanted the evidence contained. He did not want me to lead more evidence beyond the smaller fry."</i>

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Par 38	<i>"After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed to the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch. Both lies. Waffling feebly, Nair was unable to support his first new story and radically changed his second, before which it was repeatedly exposed as a lie by LASA's records."</i>
Par 40	<i>"It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record, not alleged in any affidavit or pleading, and contradicted by LASA's recruitment/vacancy statistics for June 2010. But Nair's new lie in evidence made no impression on the judge, as said, he didn't mention it."</i>
Par 41	<i>"The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment), namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates- unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework. Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice."</i>
Par 42	<i>"His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to-a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits. The judge didn't note this; again the LAC is sure to."</i>
Par 43	<i>"Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence,</i>

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	<i>building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits..."</i>
Par 44	<i>"The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth...It failed to do so, because its various explanations given were obviously untrue. So what?"</i>
Par 47	<i>"I did not expect the judge to be nodding off during the afternoon sessions, and finally claiming perversely, but revealing to his negative animus, that I ought rather to have taken LASA's abortion of my appointment on 'review'. As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way, viciously defamed all the while, contemptuously redoubled when I complained of it. In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour law jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages' suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument the judge hadn't troubled himself to read our heads, and was hearing our oral argument without having prepared for it ten months after the evidence, and relying only on his fading and defective memory of it presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken, wrongly forced by him on the record and improperly pressed by him off it. I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down. And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged."</i>
Par 48	<i>"Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most important high court in the country, and thereby trigger a</i>

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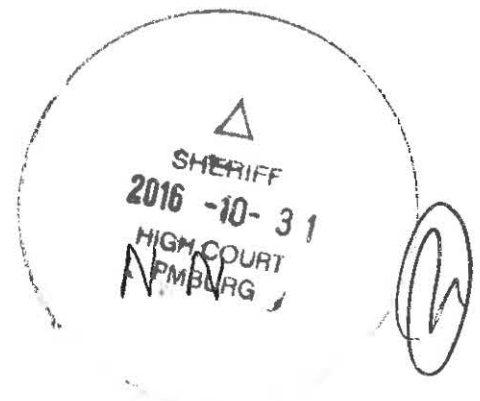
	<i>gargantuan scandal. But the truth must be out, and justice needs doing fearlessly."</i>
Par 49	<i>"An unattended splinter, so easily removed, has led to a widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance."</i>
Par 50	<i>"Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it-successfully so far, like Nixon nearly did after Watergate-your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instruction can offer you no more than hearsay about the case, and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial, and since the judge found Nair to have been untruthful under oath on any number of scores, I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal...The prospect of being jailed may chill any inclination she might have to repeat under oath to your lordships the lies she told me."</i>

64. I have quoted the extracts from Brink's petition to the Labour Appeal Court at length to demonstrate how he once again turned coat and accused the CEO and Mlambo JP of unbecoming conduct notwithstanding the fact that he had withdrawn these allegations under cross-examination. These extracts also demonstrate the little regard Brink held for a sitting judge.

Brink's conduct after the Labour Appeal Court judgment and the costs orders and his conduct towards judicial officers

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65. On **25 February 2015** the Chief Operations Officer also requested from Brink to pay the amount of R1 095.00 in terms of section 22 of PAIA before he can reply to his request for records.
66. Brink addressed a lengthy 21 page letter to the CEO on **19 March 2015**, challenging Hundermark, the Chief Operations Officer, and the NOE's decisions, and requesting her to intervene failing which he will sue. Brink further attached to this letter another PAIA request directed at the CEO, dated 9 March 2015 in which he requested records in relation to Carmargue (an insurance company dealing with *inter alia* cover for Legal Aid SA's labour matters) and records vouching for the time spent by Hundermark and Chief Operations Officer (and their teams) in relation to their section 22 demands. That letter is annexed hereto marked "**FA16**".
67. Brink, in his letter of **19 March 2015**:
- 67.1 persisted with his unfounded claims that the NOE perjured himself during the Labour Court trial notwithstanding the fact that Cele J, who listened to all the evidence presented at trial, considered it and gave a reasoned judgment and did not find that the NOE was dishonest, and furthermore, notwithstanding the Labour Appeal Court dismissing his petition,



67.2 claims that the CEO and other Legal Aid SA officials lied to him, the Board of Legal Aid and others, and

67.3 used sarcastic, belittling, abusive and derogatory language towards Legal Aid SA's officials.

68. I interject with the chronology to mention that Brink also applied for one of two temporary posts of Professional Assistant to serve criminal courts, which was advertised by Legal Aid SA on or about 31 August 2010. He was interviewed for this position on or about late October 2010. Both these posts were not filled at the time and Brink referred a second alleged unfair discrimination dispute to the CCMA's Durban Office for conciliation, on or about 14 February 2014. The referral was out of time and Brink also applied for condonation, if needed. The condonation application, which Legal Aid SA opposed was, after some delay, finally decided by the CCMA Commissioner of Pietermaritzburg under case number KNPM1481-14 on **20 March 2015**, who refused Brink's application for condonation.

69. I requested an extension from Brink in order to respond to his letter dated 19 March 2015, which he granted on **4 May 2015** and simultaneously requested 2 further records.

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70. In my letter dated **26 May 2015**, I responded on behalf of the CEO, to Brink's letter dated 19 March 2015, and attach my response hereto marked "**FA17**". In my response, I requested Brink to desist from his use of abusive and/or derogatory language against Legal Aid SA's management; provided him with some of the records he requested and denied his request on others for the reasons that are apparent from my letter.
71. On **19 June 2015** Brink once again laid a complaint against Legal Aid SA with the SAHRC in relation to my refusal to provide him with all the records as set out in my letter dated 28 May 2015, referred to above ("**FA17**"). The letter of complaint is annexed hereto marked "**FA18**".
72. Brink, in the meantime, not being satisfied with the NOE's response to his PAIA request, launched an application to compel compliance under PAIA against him in the Eshowe Magistrate's Court on **6 August 2015** under case 1005/15.
73. After the decision of the Labour Appeal Court came to its attention, Legal Aid SA prepared a Bill of Costs in relation to the Labour Court proceedings, served it on Brink and set it down for taxation.
74. Brink then brought an urgent application in the High Court, Pietermaritzburg under case 12977/15, seeking an urgent order interdicting the Taxing Master

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from proceeding with the taxation. Legal Aid SA opposed the application and it was dismissed due to lack of urgency with costs on an attorney and client scale on **7 October 2015**. A copy of the order is attached hereto marked **"FA19."**

75. In his urgent application, Brink, in another demonstration of the disdain in which he regards those who dare to find against him, attacked the integrity of Waglay JP who was one of the Labour Appeal Court judges who dismissed his petition for leave to appeal. In his letter to the Registrar of the Labour Court and Labour Appeal Court, dated 7 September 2015 and which was attached as annexure "A" to the Founding Affidavit, Brink made the following remarks:

"In sum, Waglay JP acted alone in rejecting my petition, prematurely before all the papers were in and the matter was ready for decision, and without designating three appeal judges to consider and decide my petition ..."

He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and

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unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct."

It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process ... I landed the written evidence of stunningly dishonest improper influence that caused him to do so. And I have a photocopy of it worth a bar of gold"

76. Needless to say the photocopy "*worth a bar of gold*" was never attached to Brink's papers in the urgent application for it to be dealt with in that forum.
77. Brink, however, later on attached a memorandum, which I attach hereto marked "**FA20**", which he supposedly found in the Labour Appeal Court's court file to his pre-trial agenda for the Eshowe Magistrate matters. It is apparent from this memorandum that the author thereof is unknown. The circumstances around which this document, which could well have been drafted by one of the Appeal Court Judges or their researchers, came on the court file, are also unknown. Brink, however, nonetheless and recklessly impute improper conduct towards Waglay JP on the strength thereof.

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