

1 Boast Street  
Eshowe  
26 May 2016

B11

The Clerk of Civil Court  
Eshowe Magistrate's Court

Cc: Chief Magistrate Leon Venter  
Eshowe Magistrates Court

Malcolm Munro  
WE White Attorneys and Conveyancers  
12 Osborn Road, Eshowe  
Local correspondent for the respondents

And other interested parties

Dear Sir/Madam

APPLICATION FOR THE ALLOCATION OF A NEW DATE (ONE DAY)  
FOR  
BRINK v THE INFORMATION OFFICER OF LEGAL AID SOUTH AFRICA  
AND THREE DEPUTY INFORMATION OFFICERS  
CASE NUMBERS 257, 258 AND 259/14; 1005 AND 1432/15  
FIVE APPLICATIONS TO COMPEL COMPLIANCE WITH THE  
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

1. Please establish from Senior Magistrate van Rooyen at Umlazi, the PAIA-specialist magistrate appointed under section 91A of the Act to try my above-mentioned PAIA applications, how soon he'll be available to return to the Eshowe Magistrate's Court for one day to hear a simple interlocutory application. And let me know.
2. Under rule 55(1)(k)(ii), I intend moving for orders:
  - referring my PAIA applications to oral evidence;
  - directing that the deponents to the answering- and confirmatory affidavits, Vidhu Vedalankar, Brian Nair, Thembile Mtati, Solly Sekgota, Hope Bambiso and Thenjiwe Magazi, appear personally to be cross-examined about

documents that haven't been furnished to me and haven't been explained to my satisfaction or at all; and,

- granting me leave to subpoena LASA Human Resources Executive Amanda Clark, Chief Operations Officer (and alleged deputy information officer) Jerry Makokoane, Chief Legal Executive (and alleged deputy information officer) Patrick Hundermark, LASA's Board Executive Subcommittee chairperson, and chief IT officer (in charge of LASA's computer servers storing its electronic business records) for the same purpose.
3. The need for this arises from LASA's contemptuous failure to deliver under the settlement agreement, by making a desultory, token show of compliance with it, and then refusing to remedy its non-compliance when identified to it. Two affidavits made about documents not provided are both clearly perjured.<sup>1</sup>
  4. To recapitulate: On 11 February 2016, a couple of minutes into the pre-trial conference on the first day of the hearing of my applications to compel LASA's compliance with my PAIA requests, which applications LASA had obstinately opposed all the way to court to frustrate and delay my access to its business records, in violation of my fundamental right to information, LASA suddenly changed its tune.<sup>2</sup> Exposed to the massive reputational damage of a judgment declaring that it had violated my constitutional rights, and forcing it to respect them, it now reversed its manifestly unlawful refusals to allow me access to the documents I'd duly requested under PAIA; dropped its obviously idle defences to my applications; and at last agreed and undertook to provide me with copies of all the records I'd duly requested (obtaining third-party consent where necessary; none was) and to certify under section 23 of PAIA any records that don't exist or can't be found. I annex for easy reference a copy of the settlement agreement handed into court for the public record, marked 'A'.
  5. As agreed, I duly emailed LASA a consolidated list of all the records I'd requested since October 2013 that were the subject of my five applications (annexure 'B'); and LASA Corporate Services Executive Thembile Mtati duly emailed me his delegation as deputy information officer (annexure 'C').<sup>3</sup>
  6. On 15 April, the due date for performance under the settlement agreement, Mtati couriered me a number of documents under a covering letter

(annexure 'D') and emailed me an affidavit about documents not furnished (annexure 'E').

7. Four days later on the 19th he emailed to tell me that his 'section 23 affidavit does not address certain requested information' and that he would be 'filing a supplementary affidavit to address this' (annexure 'F').
8. I immediately replied that upon a quick perusal of what he'd given me, I'd already noticed this and many other basic problems too, and that after thoroughly auditing the documents he'd supplied me I'd provide him with a comprehensive memorandum identifying all the issues I'd found. At my suggestion, he agreed to hold back until he'd seen it.
9. My audit established that LASA's performance under the settlement agreement was massively defective, deficient and non-compliant with PAIA in multiple respects; and on 29 April I emailed Mtati a 'Notice of Breach of Settlement Agreement and Demand for Compliance' specifying precisely how and why (annexure 'G').
10. I pointed out in my Notice, inter alia, that the basic contradictions throughout Mtati's affidavit were mutually destructive, and for this reason couldn't be remedied with a supplementary affidavit; and that to cure them and to comply with section 23 he'd need to redraw it completely.
11. Mtati repudiated my Notice on 9 May: 'I indicated to you through e-mail that I will be forwarding you a supplementary affidavit. This will be attended and sent to you before Friday 13 May 2016. We deny that we are in breach of the settlement agreement at all' (annexure 'H').
12. As anticipated, Mtati's supplementary affidavit emailed to me on 12 May (annexure 'J') didn't remedy his two general fundamental failures to comply with section 23 nor his many other specific failures to comply with the settlement agreement that I'd identified in my Notice, save that six records were now certified unequivocally not to exist: four credibly, one dubiously, and one certainly falsely. Several records remain unaddressed: neither furnished nor certified non-existent or untraceable. None of the outstanding documents enumerated in my Notice were provided.

13. Clause 5 of the Settlement Agreement reserved my right 'to apply to this court to compel' should 'the respondents, through CSE Mtati, fail to deliver any requested document(s) and the applicant is not satisfied with Mtati's evidence on affidavit under section 23 that it/they does/do not exist or cannot be found'.

Hence my necessary return to court.

14. I'll index and paginate all the application papers before the hearing, and will file a schedule specifying the issues on which each of the above-mentioned deponents and other witnesses are to be cross-examined, that is, who's to be cross-examined about what documents not furnished and not satisfactorily explained or not explained at all. (I intend asking the Provincial Director of Public Prosecutions, KwaZulu-Natal, to provide a watching brief to a Senior State Advocate to come and observe the proceedings, because my cross-examination of the above-named deponents about missing documents will begin by showing that all of them have previously lied under oath, so nothing they say about the missing documents can be trusted. And they need to learn that when you tell lies under oath you go to jail.)

15. An early new date will be much appreciated.<sup>4</sup> As said, a single day will do for now, because my application won't take long – the respondents (Mtati speaking for Vedalankar) have all themselves insisted in their answering affidavits that my applications can't be decided without oral evidence.

Yours sincerely



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<sup>1</sup> In collusion with his national office colleagues, CSE Thembile Mtati has a history of perjuring himself about records in LASA's possession in order to conceal them. A record among those he sent me in April 2016 proves that his discovery affidavit in my labour case was also perjured, and that material documents I requested for trial were falsely alleged on oath not to exist and thereby concealed from me and the trial court. These documents have now shown up after trial.

<sup>2</sup> LASA's new appreciation that its refusals of my PAIA requests and its money demands were illegal, and that the defences to my applications set up by its original very junior counsel Thabiso Machaba in the answering affidavits were a pile of ignorant legal trash, coincided with the entry into the case of its second junior counsel Chris Carelse, briefed by Mtati for the trial. Formerly employed as a legal quality auditor in the Internal Audit department at LASA's national office, the attendance register for the special training workshop the SAHRC gave LASA on 6 October 2011 shows Carelse received training in constitutional information law. (On the other hand, LASA's top attorney Mtati, who states on affidavit that he decides PAIA requests at LASA, failed to attend: the unsigned open entry alongside his name in the attendance register shows that was expected to present himself to be taught how PAIA works, but that he bunked the lesson. Consequently, as a legally untutored person in this critically important field of law involving constitutional rights, Mtati is a legal ignoramus, as amply illustrated by the abysmal quality of his correspondence and answering affidavits concerning PAIA. And by his progressively corruption of LASA's PAIA manual that he claims in an answering affidavit to have been 'developing', which several corruptions the SAHRC pointed out to information officer Vedalankar on 25 January 2016 at my instance, including his innovation of legally incompetent appeal provisions.) Carelse evidently benefited from his lesson from the SAHRC in how to understand and work with PAIA, because after years of violating my fundamental right of information on Machaba's advice since 2010 (annexure 'K'), by obstructing and frustrating my access to LASA's records, LASA did an abrupt 180-degree about-turn on its big day in court. A similar thing happened at the first pre-trial conference for my labour claim: on Machaba's equally inept advice, Mtati refused to discover all thirty-seven documents that I'd requested for trial; but when LASA brought in Madlanga SC (now a Constitutional Court judge) for the conference, he openly advised both Mtati and Machaba that the documents I'd requested were indeed discoverable and were compellable, whereupon Mtati agreed to deliver them. Then didn't, and it required an application to compel discovery and two judicially supervised pre-trial conferences at court to disgorge them, at huge cost in wasted time, energy and money. The same is happening again.

<sup>3</sup> Dated 16 January 2016, Mtati's delegation shows he was designated as a deputy information officer long after he'd claimed under oath in his answering affidavits, 'I am, without question a Deputy Information Officer'; 'I have shown that I am a Deputy Information Officer'; and he, Hundermark and Makokoane as 'Deputy Information Officers have been duly appointed, alternatively duly designated by law'. That is, Mtati's recent delegation proves that he repeatedly perjured himself in dishonestly disputing my true charge, made repeatedly in my applications, that he held no written delegation as deputy information officer as required by section 17(6).

<sup>4</sup> I've lost a couple of weeks in analysing Mtati's supplementary affidavit and in approaching you for a new date, because I've been occupied with analysing and alerting information officer Vedalankar and others to Mtati's latest fraudulent section 32 report on LASA's performance under PAIA in 2015/16, which I recently obtained from the SAHRC – now the fifth false and defective section 32 report LASA has filed – contrived to cover up and conceal from the SAHRC, and ultimately from the National Assembly in the SAHRC's section 84 report, Mtati's illegal refusals in 2015 to allow me access to 88 of LASA's records/sets of records duly requested under PAIA, and thus LASA's violation of my fundamental right of information entrenched by section 32(1) of the Constitution – an exceedingly serious matter certain to appall the National Assembly, charged by section 55(2)(b)(ii) of the Constitution with oversight over LASA. A copy of my letter to Vedalankar about this is annexed for information marked 'L'.