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IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

In the matters between:

ANTHONY ROBIN BRINK

Applicant

and

The respondents in the following five applications:

Case no: 257/14

HOPE BAMBISO N.O., DEPUTY INFORMATION OFFICER, EASTERN  
CAPE REGION, LEGAL AID SOUTH AFRICA

Case no: 258/14

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

Case no: 259/14

ZANELE MSWELI N.O., DEPUTY INFORMATION OFFICER, FREE  
STATE AND NORTH WEST REGION, LEGAL AID SOUTH AFRICA

Case no: 1005/15

BRIAN NAIR N.O., DEPUTY INFORMATION OFFICER, LEGAL AID  
SOUTH AFRICA

Case no: 1432/15

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

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 NOTICE OF APPLICATION
 

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Received by WE White Attorney  
Without Prejudice.

Date: 20.07.2016

Time: 2:55

Signature: [Handwritten Signature]

<b>The Court Manager</b>
Private Bag X507
2016-07-21
Eshowe, 3815
<b>Eshowe Magistrate Office</b>

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NOTICE OF APPLICATION

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Take notice that the applicant intends applying to this court on 28 July 2016 at 8h30 or so soon thereafter as the matter may be heard for an order in terms of the draft annexed hereto.

Take notice further that the applicant's affidavit annexed hereto will be used in support of the application.

Signed at Eshowe on 21 July 2016.

Applicant

Anthony Robin Brink

The Cottage

1 Boast Street, Eshowe

t: 035 474 0145 | c: 083 779 4174

f: 086 672 0776 | e: anthonybrink.sa (at) gmail.com

To:

The Clerk of Court

Eshowe Magistrates Court

And to:

W E White Attorneys and Conveyancers

12 Osborn Road, Eshowe

(Mr Munro)

**B19**

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

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SOUTH AFRICA

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SUPPORTING AFFIDAVIT

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I, Anthony Robin Brink, affirm:

1. I am the applicant in the above-cited applications to compel the respondents' due compliance with my several requests for access to certain Legal Aid South Africa ('LASA') records, duly made under the Promotion of Access to Information Act 2 of 2000 ('PAIA') in the exercise of my fundamental right to information held by the state, entrenched by section 32(1) of the Constitution.
2. Set down for argument on 11 February 2016, the respondents conceded my claims before the debate began. LASA chief attorney, Corporate Services Executive Thembile Mtati, announced a radical about-turn, dropped the respondents' opposition to my applications to compel their compliance with my PAIA requests, abandoned all their justifications for refusing them, and at last undertook to provide me with copies of all the documents I'd been requesting since October 2013, or to certify any that don't exist or can't be found, under section 23 of PAIA.
3. As an afterthought, Mtati asked for the inclusion of a provision added in manuscript to the just-printed settlement agreement that where any requested information belongs to a third party, he'll demonstrate that he's sought consent to release it and report the third party's response. (Since this provision had zero application to any of the documents I'd requested, I readily agreed.)
4. In short, after years of prevarication to illegally obstruct my access to LASA's business records in violation of my fundamental right to information held by the state, the respondents finally recorded their agreement to respect my constitutional right to see them, or, where any don't exist or can't be found, to say so on oath under section 23 of PAIA.
5. How Mtati then failed to comply with his obligations under the settlement agreement is comprehensively detailed in paragraphs 3 et seq. of my application

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B19

to the Clerk of Court on 26 May 2016 for a new date on which to move for the referral of my five applications to oral evidence.

6. Commencing with the settlement agreement annexed to it, my new-date application was supported by the complete record of all essential documents exchanged between Mtati and me in the matter.
7. I didn't also annex to my new-date application the 13 cm thick pile of documents that Mtati couriered me in April under the settlement agreement, not expecting any dispute about what he'd given me.
8. Indeed, Mtati hasn't raised any such dispute to date. Besides his mindless one-line rejection of my 18-page complaint in May detailing all his breaches of the settlement agreement, he's simply ignored my three complaints in May, June, and July about missing documents, which he claimed in his April response to have given me, but which in fact he hadn't.
9. Put another way, Mtati hasn't disputed my complaints in May, June and July that he hasn't given me certain documents, which he claimed in his April response he had. In other words, what he's given me, and what I've complained he hasn't given me, isn't in issue, and isn't any dispute for this court to decide.
10. Nor is it any bona fide basis for a new issue to be raised now. Obviously I've no reason to foolishly waste everyone's time by insisting on the delivery of documents that Mtati has already given me.
11. Still, I'll bring what he's given me to court on the 28th, so if he wants he can see for himself the mismatch between what he said he gave me and actually gave me.
12. The respondents' local attorneys' receipt stamp on the face of my new-date application in the 257/14 court file ('the court file') vouches that I duly served them with a copy.



B19

13. Since the original of my new-date application is in the court file, and the respondents have a copy, I haven't attached a copy to this affidavit.
14. On being notified by court of the new date allocation, I prepared a draft order prayed, along with a schedule of witnesses and the issues on which they're to be cross-examined, arising from requested documents not given me and from Mtati's unsatisfactory and unconvincing claims about them.
15. On 11 July 2016 I served the respondents with a notice of set down, together with the draft order and schedule. Vouching this, all three documents in the court file bear the respondents' local attorneys' receipt stamp. (As a favour, I also emailed them to Corporate Legal Manager Solly Sekgota at his request.)
16. Again, since the originals of these three documents are in the court file, and the respondents have copies, I haven't attached copies to this affidavit. For the same reason, I haven't annexed another copy of the bulky 66-page schedule to the notice of motion.
17. After setting my cases down on the 28th, I discovered a couple more records missing from a set I'd requested, which Mtati claimed he'd supplied, and which indeed he'd mostly supplied, but not all. So on 14 July I wrote to ask him to let me have them, failing which I told him I'd amend and amplify my draft order to compel delivery. My letter to Mtati about this and my covering email are bundled and annexed marked 'A'.
18. Like my previous two demands in May and June for other outstanding documents, which he'd also claimed in his April response to have given me, but hadn't, Mtati very characteristically just ignored this third July request as well.
19. I accordingly amended my draft order to include a new paragraph 4, ordering him to hand over the requested records that in February he said he would and in April said he did, only a few short, identified in my July letter.
20. My amended draft order is annexed to the notice of application.

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21. With a view to this PAIA-specialist court's convenience in selecting future dates on which to come up all the way from Durban to preside over my cross-examinations regarding requested documents not given me, and also to enable my cross-examinations to be staggered over successive dates on a timetable to be prescribed by court, so that LASA's head office management in Johannesburg isn't brought to a standstill for several weeks as all its top executives sit around outside court here in Eshowe awaiting their turns to be called in to be sworn in and closely cross-examined on oath under penalty of imprisonment for perjury, with a Senior State Advocate observing and noting their performances on a watching brief (as I intend arranging), I also drew a 'Table of Witnesses, Issues, Expected Duration of the Cross-Examinations, and Dates'. It's annexed to my notice of motion. I'll bring extra copies on the 28th for the blank 'Dates' column to be completed as this court directs.

22. I was about to serve and file my amended draft order and just-completed table on Tuesday the 19th, when Mtati emailed me a demand that 'by the close of business' today, 'the 21<sup>st</sup> July 2016', I remove my applications from the roll, on the grounds that I hadn't applied for the orders I seek on notice of motion with a supporting affidavit, and that for this reason, 'There is no evidence under oath before Court to enable the Court to deal with your complaints and same cannot be dealt with simply with submissions from the bar.'

23. In his covering email, Mtati said he'd filed a copy of his demand at court, so I haven't annexed it.

24. Mtati is wrong for the following reasons.

25. First, it's unnecessary in civil practice in any court to bring a separate application on paper for an order referring a pending application to oral evidence.

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B19

26. Second, I never abandoned my pending applications for orders compelling the respondents' compliance with my several PAIA requests; and my applications remain alive for the determination of my constitutional entitlement to access all the documents I requested under the Act, that are the subject of the applications and which I included in my consolidated list of requested documents that I supplied Mtati under the settlement agreement for him to deliver on the respondents' behalf. (Clause 5 provides: 'In the event that the respondents, through CSE Mtati, fail to deliver any requested document(s)' etc.)
27. Through attorney Mtati, the respondents implicitly conceded my applications by dropping all their idle justifications for refusing my PAIA requests and all their idle defences to my applications to court to compel them to comply with them, and by undertaking to comply with all my requests.
28. Naturally I reserved and recorded my right to return to court to compel full and proper compliance with my PAIA requests in the event that Mtati failed to perform fully and properly on the respondents' behalf, or if I didn't accept his sworn claims under section 23 that any requested documents couldn't be found or didn't exist.
29. There was never any question of starting a fresh application if Mtati defaulted.
30. Third, the history of the respondents' failure 'through CSE Mtati' to honour our February settlement agreement by way of his response in April and his two section 23 affidavits, and my repeated complaints about their deficiencies and my demands for full and proper compliance, all rejected and ignored, is before court, neatly catalogued and annexed to my application to the Clerk of Court in May for a new date. My July demand (annexure 'A' hereto), which Mtati also ignored, completes this documented history before court of the respondents' non-compliance with the settlement agreement.

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B19

31. All this information in different documents is handily cast into the schedule delivered with my original draft order, that is, into a single document to save this court and the witnesses the time and trouble during the cross-examinations of paging back and forward through my consolidated list of requested documents, Mtati's response, his two section 23 affidavits and repudiation of my first complaint, and my three complaints about his non-compliance with the settlement agreement.
32. The complete history of Mtati's failure to fully and properly comply with the settlement agreement by giving me all the documents I'd requested; his failure to demonstrate third party ownership of any documents and his/its refusal to consent to their release; and his failure to certify lost or non-existent records in full and proper compliance with section 23 of PAIA, despite my three May, June and July demands that he do so, is all precisely detailed and already before court in clear black letter.
33. The documents speak for themselves. There's consequently nothing for me to make an affidavit about. There're no new facts I have to give 'evidence under oath' about.
34. In the court file, and in the respondents' possession, are:
- the terms of the settlement agreement in February, handed into court for the public record;
  - Mtati's response in April and (first) section 23 affidavit;
  - his acknowledgement in April that his affidavit was defective;
  - my finely specified complaint in May that both his response and affidavit were massively defective, and my demand for full and proper compliance with the settlement agreement and with section 23;

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B19

- his repudiation in May of my said complaint and demand for full and proper compliance;
  - his second section 23 affidavit in May;
  - my second demand in June for full and proper compliance (ignored);
  - my third demand in July for full and proper compliance (ignored),
35. And that's all the basis I need to move on the 28th for an order referring my applications to oral evidence and for the further relief sought in my amended draft order.
36. The matter is perfectly ripe for argument, and nothing Mtati or any of the respondents can now say in any affidavit (trying to delay the case, to stave off the evil day) can detract from this.
37. There's nothing more for Mtati to say that he hasn't already said in his April response; in his repudiation of my first detailed complaint about his massive non-compliance with the settlement agreement and with the provisions of PAIA; and in his two section 23 affidavits, all demonstrating his contempt for my constitutionally entrenched fundamental right to information and his and his national office colleagues' determination to continue withholding documentary evidence that I've duly requested and require to present to the Minister, to the chairperson of the Portfolio Committee, to the Public Protector, to the Auditor General, to the Judicial Service Commission, to the General Council of the Bar, to the Law Society for the Northern Provinces, to the police and to the National Director of Public Prosecutions, to LASA's legal liability insurer Camargue, and to the Labour Court in an application to set aside its judgment on the grounds that LASA won the dismissal of my claim by defrauding the judge with multiple objectively demonstrable lies.
38. There are no factual disputes holding up this court's decision of my application for the orders I seek.

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39. On the complete papers before court, my motion for the referral of my applications to oral evidence and other relief is accordingly fit without more to be moved from the bar. This court has before it everything it needs to decide my motion. And nothing prevents me from making 'submissions from the bar' in support of the relief I seek, with reference to the complete documents in the court file, exchanged between Mtati and me pursuant to the settlement agreement.
40. No further 'evidence under oath' from me is required, as wrongly claimed by Mtati in his just-sent demand.
41. My object in filing this notice and affidavit, which I don't accept was procedurally essential, is to neutralise Mtati's endeavour to further delay my constitutional claims to access the documents illegally denied me year after year in violation of my fundamental right to information held by the state, and to put an end to his stalling tactics, on which he must have spent a million rands or two of public money on advocates in private practice, drawing several lever-arch files full of useless papers, copied and pasted one to the next, full of total legal junk. Finally abandoned as such.
42. Although Mtati stipulated the inclusion of a face-saving provision in the settlement agreement that 'This agreement is made without any admission of wrongdoing by the respondents', he and they obviously wouldn't have abandoned all their justifications for refusing my PAIA requests and abandoned all their defences to my applications to compel their compliance with them had they not been utterly vacant and unsustainable in fact and in law. Which is to say, on their own showing, notwithstanding the above-mentioned nervous squirting of lavatory spray over the respondents' formal agreement to finally respect my constitutional rights, the respondents acted gravely illegally in violating them, and then in obstructing my applications to court to vindicate them, with wholly meritless opposition, at colossal cost in corruptly driven fruitless and wasteful



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B19

expenditure that the Minister, the Portfolio Committee, and the Auditor General are sure going to be told about.

43. In short, everything Mtati and the respondents have done to date, including his breaches of the settlement agreement and his current attempt to stall my enforcement of it, has been contrived to delay my access to the records I've requested and to obtaining sworn confirmation in some case that they don't exist (thus categorically proving National Operations Executive Brian Nair's several novel perjuries improvised at the trial of my labour claim, inter alia practically calling his own CEO a liar and falsely implicating COO Makokoane and CLE Hundermark in his lying cover-up).
44. The whole history of the respondents' conduct in this litigation, and before I brought it as recorded in my several founding affidavits, is that they will resort to any trick, any dodge to avoid handing over the documents I've requested or properly certifying non-existent documents under section 23.
45. And the reason is this. Expecting them to voluntarily give me the documents I've requested (proving recruitment corruption) or a compliant section 23 affidavit (proving perjury) is like asking them to hand me the bullets for their own shooting. They all know this. LASA is profoundly corrupt at the highest level; it's the next big coming newspaper story: see, for instance, the dozens of sugary, slimy perjuries identified in the schedule to the draft order (there're many others), and the lying, defamatory 'memorandum' turned up in my Labour Appeal Court file that successfully perverted the decision of my petition for leave to appeal, even before the decision of LASA's condonation application for opposing me out of time; I annexed it to my pre-trial conference agenda to illustrate the level of brazen criminal corruption (defeating the ends of justice) I'm talking about; and as said, I intend taking these people to law and to the highest authorities, my complaints to be copied to all national media to ensure that this time they are duly dealt with, and not again furtively perverted with



B19

more secretly told lies, such as were told in 'confidential' reports drawn by Nair, passed on by CEO Vedalankar, and signed and submitted by Board chairperson Mlambo JP (all three of them in full knowledge of the true, different facts) to the Minister and Portfolio Committee chairperson in 2011, behind my back without my knowledge at the time, to pervert their separate enquiries inter alia into my complaint that information officer Vedalankar had illegally refused my first two PAIA requests in 2010, made to probe the true circumstances in which my appointment to the Pietermaritzburg Senior Litigator post, for which I'd been unanimously recommended by a selection panel of LASA's top lawyers in the region, had been silently blocked, off the record, illegally.

46. It's for this reason that Mtati and the respondents will not freely cooperate by giving me the documents I've duly requested or by unequivocally certifying those that don't exist.
47. And this is why I confidently look to this court to 'make any order that is just and equitable' under section 82 of PAIA to help me vindicate my constitutional right to information held by the state, that LASA's highest officers have persistently and deliberately violated year after year to conceal the documentary evidence of their crimes, their corruption, and the wholesale breakdown of the rule of law among them. The matter is extraordinarily serious.
48. And I trust and hope that this court will not allow itself to be played by their latest, last-ditch delaying tactic to further frustrate my exercise of my constitutional right to information. Very incriminating information.
49. In conclusion, although, as said, I don't accept that I needed to bring this application on paper, I've now done so to pull the teeth from Mtati's attempt to delay the hearing of my intended motion for my amended draft order – his and his head office colleagues' basic corrupt object being to continue obstructing my access to the specified documents to which I'm constitutionally entitled, or to receiving unequivocal sworn confirmation where any don't exist.

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50. In the situation, I respectfully seek an order in terms of the amended draft order annexed to my notice of motion.

Signed at Eshowe on 21 July 2016.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 21 July 2016 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true to the best of his knowledge and belief.

*[Handwritten signature]*  
752780-0  
CST - Tunu

COMMISSIONER OF OATHS

Name: *SMANUELE TUNU*  
Address: *73-79 MAIN STREET*  
Capacity: *CST*



B19  
1 Boast Street  
Eshowe 3815  
14 July 2016  
A

Thembile Mtati,  
Deputy Information Officer and Corporate Services Executive  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein

Cc: Solly Sekgota,  
Corporate Legal Manager, Legal Aid South Africa

By email

Dear Mr Mtati

PAIA APPLICATIONS:  
FURTHER UNDELIVERED RECORDS AND  
NOTICE OF INTENTION TO AMEND AND AMPLIFY DRAFT ORDER

Prompted to do so by my accountant Rawlins after serving and filing my notice of set down for 28 July, I examined the dates of the several minutes of Eastern Cape regional management meetings in 2010 that you supplied me in response to my request for them under item A1 of my consolidated list, and found:

1. The minute for the August 2010 meeting, mentioned in the October 2010 minute is missing.
2. No minute for the July meeting was provided either – if there was such a meeting, which the August minute will confirm or disconfirm.
3. I was only given the first page of the November 2010 minute.

Kindly supply me with these outstanding records in compliance with your undertaking to do so recorded on 11 February to provide me with access to all records specified on my consolidated list. If you don't, I'll hand this letter up on the 28th in support of an amplified amended draft order including this new paragraph 4, the original paragraph 4 et seq. to be renumbered:

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4.

Inasmuch as Mtati has partially failed to respond to item A1 of the consolidated list of requested records, i.e. for 'The minutes of all Eastern Cape regional management meetings held in 2010', by providing only the January, April, June and October minutes, and the first page only of the November minute, and not the August minute referred to and approved in the October minute, nor the complete November minute, nor the July minute (if such a meeting was held as will be confirmed or disconfirmed by the August minute), despite the applicant's demand for these minutes on 14 July 2016 –

- 4.1. Legal Aid South Africa deputy information officer Mtati is declared to have unlawfully failed to comply with PAIA by not granting the applicant access to these outstanding records or by furnishing him with an affidavit made under section 23 if they cannot be found or do not exist, and thereby to have violated his fundamental right to information held by organs of state, entrenched by section 32(1) of the Constitution.
- 4.2. Mtati is directed to respond to the said record requests within twenty days, either by furnishing the applicant with copies of these records or by certifying under section 23 of PAIA that they cannot be found or that they do not exist.

To avoid this further order, could you please simply cooperate by complying with your undertaking given at court to provide me with these important documents bearing on the veracity of the several different stories told me, the Board and the courts, including under oath, about why Skibi's appointment to the Mthatha Senior Litigator post was cancelled completely off the record in mid-2010, even as you'd recently implored the Legal Services Technical Committee as Eastern Cape Regional Operations Executive at the time that a Senior Litigator was sorely needed there for the several very convincing and readily accepted reasons you gave it – just as I was coincidentally pressing for my appointment to the Pietermaritzburg Senior Litigator post, eight strangely silent months after I'd been duly selected for it in glowing terms by a unanimous panel of LASA's top lawyers in the region. The outstanding records will be used inter alia for perjury prosecutions.

Yours sincerely



ANTHONY BRINK

AR 2-2

7/21/2016 Brink/LASA PAIA applications: Demand for further missing records and notice of intention to amplify and amend draft order - anthonybrink.sa@gmail.com...

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More

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COMPOSE

Brink/LASA PAIA applications: Demand for further missing records and notice of int  
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Anthony

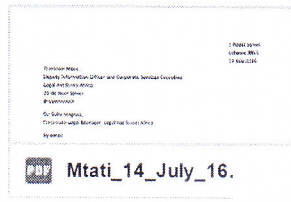


**Anthony Brink** <anthonybrink.sa@gmail.com>

to ThembileM, sollys, bcc: Chris

Dear Mr Mtati  
I attach a letter for your immediate attention and action.  
Yours sincerely  
Anthony Brink

Cc CLM Seggota



No recent chats  
Start a new one



**Chris Rawlins**

to me

Page 4 line 4 you meant to say not the August minute referred to in the Oct minute nor the July minute if  
clear in the first page

----- Original Message ----- From: "Anthony Brink" <anthonybrink.sa@gmail.com>

To: <ThembileM@legal-aid.co.za>; <sollys@legal-aid.co.za>

Sent: Thursday, July 14, 2016 1:50 PM

Subject: Brink/LASA PAIA applications: Demand for further missing records and notice of intention to am



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7/21/2016 Brink/LASA PAIA applications: AMENDED demand for further missing records and notice of intention to amplify and amend draft order - anthonybrink.sa...

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COMPOSE

Brink/LASA PAIA applications: AMENDED demand for further missing records and amend draft order

Inbox

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Krish

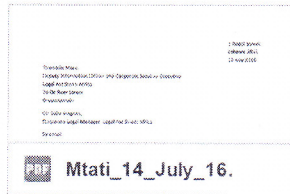
More labels

Anthony



**Anthony Brink** <anthonybrink.sa@gmail.com>  
to ThembileM, sollys, bcc: Chris

PS: Just spotted my month confusion in the draft order on page 2.  
Now fixed to line up with the correct months on page 1.  
Amended demand and notice attached.



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