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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

REPLYING AFFIDAVIT

A.I.D



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I, Anthony Robin Brink, affirm:

1. Ad paragraph 3 of the answering affidavit. On his own showing, Mtati hasn't read the all-important schedule to the amended draft order – even though in addition to formally serving it on his local correspondent on 11 July 2016 along with my notice of set down, I emailed Mtati a link to it on my OneDrive cloud the same day so he could download and read it immediately, and three days later emailed it to Corporate Legal Manager Sekgota as a file attachment, as requested. My email records vouching this are annexed marked 'A' and 'B'.
2. Whereas in his answering affidavit Mtati has addressed some of the disputes featuring in the amended draft order, and after studying it has decided to turn over further records, including some he'd again expressly refused, he doesn't address any of the disputes defined in the schedule, seemingly because he hasn't read it yet. When he does eventually read it, he may decide to give me more records, as before.
3. I record that I've no objection to him filing a supplementary affidavit if he wants, once he's studied the schedule – as long as he does so by 26 August 2016, so I can reply to it if needs be.
4. And it's high time he starts applying his mind properly, including to the issues enumerated in the schedule, for the reason stated at the end of my letter to him after the last court appearance concerning his shocking indolence exhibited in this matter. It's annexed marked 'C'.
5. Ad 8. Mtati's 'attempt to paraphrase' my draft order cunningly obscures his multiple failures to have complied with his undertakings given on the respondents' behalf. The devil is in the detail, and he's left it all out.
6. The further records Mtati has now provided me (evenly with his answering affidavit), which he earlier expressly refused or silently just didn't deliver or certify, alone shows the respondents' non-compliance with their agreement to

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comply with my PAIA requests at last. Just as I complained before returning to court to compel.

7. Ad 9–15. This is all wrong. As I've said before, this court has in black and white before it the complete, incontestable, documented history of the respondents' multiple failures to comply with their obligations under the settlement agreement and imposed on them by PAIA, and of Mtati's disregard for my three demands for their full and proper compliance. And it's transparently dishonest and foolish to pretend otherwise.
8. Ad 14. As said, if Mtati wants 'an opportunity to deal' with the issues defined in the schedule 'insofar as may be required', he can have it. It's obvious from this trick that he's again trying to play for time.
9. The schedule duly defines the disputes to be tried and decided on oral evidence, and it presents Mtati with two options: to reduce these disputes by handing over more records, or to increase them by raising new factual issues in a supplementary answering affidavit.
10. But unless he changes his mind again and finally complies with PAIA, as undertaken at court on 11 February 2016, by giving me all the outstanding records I've requested or by duly certifying those that don't exist, nothing he can say in a supplementary answering affidavit can change the course down which this litigation is headed, which his response to my consolidated list and his section 23 affidavits has inexorably set for it, namely trial on oral evidence to test and determine the adequacy, diligence, and bona fides of Mtati's and/or other officers' searches for and claims about the records they haven't given me.
11. Ad 16.2. As said, Mtati hasn't read the schedule. Had he done so, he'd have seen that all the factual disputes arising from documents not supplied me – disputes that I want resolved by trial on oral evidence tested by cross-examination – are precisely enumerated there.

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12. Ad 16.2.1. This is nonsense. Before the respondents reversed their refusals to allow me access to LASA's records, or to certify any that don't exist or can't be found, the essential disputes in my five applications were *legal* – the central one being whether LASA was justified in denying me access to its business records that I'd requested. The *factual* disputes have arisen from the respondents' performance, via Mtati, under the settlement agreement, and they're all identified for trial in the schedule.
13. The contention that the settlement agreement 'imposed new obligations on the various parties' is nonsense again. The respondents undertook, through Mtati, to comply with my PAIA requests at long last.
14. Ad 16.2.2. This is more nonsense. If Mtati troubled himself to read the schedule, he'd find all the factual disputes precisely enumerated there in relation to every document he hasn't supplied me, about which he's made all sorts of unconvincing claims and lame excuses.
15. 16.3. As I said before, the respondents have said what they wanted to say in Mtati's response to my consolidated list, his section 23 affidavits, and his express repudiation of my first notice of breach and demand for compliance, and mute repudiation of my second and third notices.
16. Just as I anticipated, Mtati's answering affidavit says nothing of interest. All that's now changed is that under pressure of this application the respondents have surrendered a few more records – in one case implicitly conceding the illegality of repeatedly refusing me access to one set of them:
17. I'm referring to LASA's several employment contracts with Board chairperson Mlambo JP's long-time judicial colleague in the Labour Court, Ngcamu AJ (as he used to be), my rival for the post for which I'd applied, but which post was strangely 'frozen' off the record for any number of completely different reasons

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given to me and different authorities after I was duly selected for it, and not him.

18. 16.4. In disparaging my purpose in returning to court in this pathetically dishonest manner, Mtati is lying. He and his head office colleagues know my stated intentions are serious, because they expressly acknowledged (in a request for a section 26 extension on 11 December 2014) that 'your requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid SA.'
19. Ad 18. 'RES JUDICATA IN THE FORM OF "ISSUE ESTOPPEL"' isn't a basis for refusing a PAIA request, because the closed list of such justifications in Chapter 4 of Part 2 of the Act doesn't include it.
20. My basic complaint is that my claim to my instatement to the post was defeated by perjury, which is to say by a successful fraud on the court. As I've said before, I'm going back to court to show this, once I have the documents I've duly requested.
21. One of the documents Mtati furnished in April 2016 contained the stunning revelation that my rival for the post and LASA chairperson Mlambo JP had been judicial brethren for six-and-a-half years.
22. This potentially relevant information, to be pleaded in the Labour Court when I return, had been furtively concealed from me in January 2011 by carefully blacking it out with a Koki pen (annexure 'D') before the thus redacted recommendation report was given to me. Since the redaction to suppress this information was unjustified under any provision of PAIA, it was illegal – and Mtati representing Vedalankar implicitly conceded this when at legal gunpoint he finally gave me a complete, unredacted copy of the recommendation report in April 2016, five-and-a-half years after I first requested it.

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23. To illustrate LASA's determination to conceal material information, and the sort of chicanery this court is dealing with: my PAIA request in August 2010 for the record of the recommendations was first ignored, a mute refusal under section 27, so in September I called the SAHRC in. Then in October it was expressly refused, so I appealed to the SAHRC again. Then in January 2011 it was furnished to me mutilated to prevent me seeing the most probable true reason my appointment had been silently aborted.
24. The illegal concealment of this staggering information about the long professional relationship between Mlambo JP and Ngcamu AJ (as he used to be) threw me off track in regard to the most likely reason my recruitment was cancelled, off the record, without authority under LASA's internal regulations, and therefore unlawfully. It explains the record mentioned below of Mlambo JP's peculiar interest in my case behind the scenes.
25. It's too late to start cooking up tricky new excuses for not handing over the records I've duly requested, because the respondents agreed at court on 11 February 2016 via Mtati to either give me the records I asked for, or duly certify any that don't exist or can't be found, or show a third party's refusal to consent to its release if he owns it. And not to continue ducking and diving with more trying-to-be-clever stories.
26. Ad 20. It's an open secret why my petition for leave to appeal was prematurely dismissed before all the papers were in, because I attached the reason for this to my agenda for the pre-trial conference in February to illustrate the scale of the corruption I'm up against in my case.
27. The only question (for the Judicial Service Commission to decide) is who had the exceptional power, influence, and personal and professional connections to slip that lying, defamatory 'memorandum' past the registrar, unstamped by him, directly to the current Judge President of the Labour Appeal Court. And who was especially concerned that my petition should fail.

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28. Ad 28. Since Mtati attended the trial of my labour claim, he has first hand knowledge of the facts he's dishonestly misrepresenting here. Indeed I subpoenaed LASA's CEO, NOE, HRE and a Board member. But I didn't subpoena Mtati or Mlambo JP. Understandably desperate to avoid being cross-examined by me in light of LASA's own records blowing to pieces their ridiculous sorry-we-later-discovered-we- didn't-have-the-budget- to-hire-you defence for not appointing me, they anxiously applied to quash my subpoenas on the first day of trial, but lost. So they just ran away. When the time arrived to call my subpoenaed witnesses to examine them under oath, I found that all besides Nair had returned to Johannesburg and Pretoria without having been excused. Since the judge, in his dismal ignorance of civil procedure, had already ruled that I couldn't cross-examine them on their objectively contradicted, demonstrably false claims in their correspondence to me – defeating the very object of my subpoenas – I decided, instead of demanding they return to court, to accept affidavits from most of them answering brief interrogatories I'd drawn.
29. But CEO Vedalankar wouldn't cooperate even at that level. Having been banned by the judge from asking her any hard questions about the many clear lies she'd told me in her October 2010 and January 2011 letters and reiterated on oath in April 2011, and with limited time allocated for the trial, I decided against stopping the case and waiting for her to fly back to Durban, and gave up on her.
30. For several tactical reasons, not relevant to recount here, I didn't pursue my application for leave to subpoena Mlambo JP, and instead subpoenaed another high-ranking Board member, Adv Pieter du Rand, the Department's representative on it.
31. I wanted, but the judge wouldn't allow me, to call and cross-examine Mtati, who attended the entire trial, inter alia on the answering affidavit he made on Mlambo JP's behalf in my application to subpoena him, in which he repeatedly admitted (on Mlambo JP's behalf, supported by NOE Nair on oath) that one of

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the excuses given to the Minister and to the Portfolio Committee in the National Assembly for not proceeding with my appointment was totally untrue – a lying excuse Nair himself had invented in ghost-writing Mlambo JP's reports to these highest authorities in the land. They called it 'an error', 'palpably an error' – like calling a flat tyre excuse for coming to court late, really due to a hangover, 'an error', 'palpably an error' when exposed as a blatant lie told by a brazen liar.

32. I mention all this, not because it's directly material to my application, but to set the record straight and not to allow Mtati's endless glib lies pass uncorrected; and also to show that he lies freely under oath, so whatever he claims even under oath about documents he hasn't given me can't be trusted.
33. Ad 30. My application and the orders I want are crystal clear.
34. Ad 41. In response to my return to court to compel, Mtati has now given me more documents, which only shows he 'did not comply with [his] obligations under the settlement agreement', just as I complained. So his denial that I made a fair complaint about this is another foolish lie.
35. Ad 43. It's really useless to falsely and untruthfully claim due compliance with the settlement agreement like this. My three demands for full and proper compliance, all disregarded, comprehensively detailed the respondents' failures to have complied with it and with PAIA. If Mtati had duly complied as alleged here, he wouldn't have just handed over more records. Obviously.
36. Ad 45. Mtati now admits the August minute wasn't given to me, after ignoring my request for it and forcing my return to court. He sneakily doesn't mention the incomplete November minute he gave me in April, about which I'd also complained, a complete copy of which he's now supplied me too, and for which I was also forced to return to court.
37. Ad 46. My third demand in July was for some Eastern Cape regional management meeting minutes which Mtati said he'd given me but hadn't. He's

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now finally done so. So it's a typical smooth lie, told in his usual crooked lawyer-talk, to pretend that he 'did not deem it necessary to respond to [my] letter, preferring to refer same to argument'. Because there was nothing to argue about.

38. Ad 47. It's good that this 'is noted', because I'm already talking to a Deputy Director of Public Prosecutions in Pietermaritzburg.
39. Ad 49. I'm not asking this court to revive my main claim to my appointment and damages, I'm asking it to order the respondents to comply with PAIA.
40. For the record, and contrary to Mtati's perjury about this, the South African Human Rights Commission has indeed intervened on my behalf in its attempts to get LASA to comply with PAIA, and it's done so over and over again. Some of these interventions since 2010 are described in my five main applications.
41. It's true that besides formal written acknowledgments and two phone-calls from senior officers in its Gauteng and national offices, I've never had any joy from the Public Protector, for different reasons immaterial to detail here.
42. For the same reason, I'll not go into how ministerial and parliamentary enquiries into my complaints about Vedalankar's persistent illegal refusals to comply with my PAIA requests in 2010 and 2011 were perverted by false reports full of lies. About which, LASA should watch this space, because it's a crime to tell lies to a committee of the National Assembly.
43. Ad 52. Since Mtati's final clause 9 that he wanted added obviously had no bearing on any of my requests and didn't affect my rights in the least, I consented to its inclusion to make him happy.
44. Ad 53. I intend going all out to ensure that all this expenditure is recovered from the pockets of LASA's rogue officers responsible for this loss, under the relevant provisions of the Public Finance Management Act and LASA's Approval Framework.

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45. If Mtati was concerned about conserving LASA's budget rather than hiding documents from me for as long as possible, and from the authorities he knows I'll be sharing them with, we wouldn't be in court again. We'd be talking sensibly out of court to iron out and resolve his many failures to perform fully and properly under the settlement agreement.
46. As promised in paragraph 11 of my founding affidavit, I brought to court the pile of documents Mtati had sent me in April, so he could see for himself what was missing. Immediately after the case was postponed, I suggested he examine them, but he wasn't interested. I made and delivered a contemporaneous record of this. It's annexure 'C'.
47. Ad 54. Mtati and the respondents understand very well that I just want the records I'm constitutionally entitled to, or due certification of those that don't exist. And that armed with this new evidence, hitherto illegally suppressed, I'll be returning to the Labour Court to pursue my appointment to the still vacant, fully-funded, top professional post for which I was duly selected nearly seven years ago. Mtati's low personal attacks on me here characterise his disgraceful, dishonest opposition of my litigation against LASA from the start.
48. Ad 56. The 'memorandum' that perverted my petition for leave to appeal, a copy of which I annexed to my pre-trial conference agenda, epitomises the ethical depravity at LASA to which I refer.
49. Ad 57. As I said, the respondents should stay tuned.
50. Ad 58. It's annexed to my conference agenda.
51. Ad 59. Yes, also to see to it that like other corrupt public entities, LASA is thoroughly cleaned out by the Minister, the Portfolio Committee, the Public Protector, the Auditor General, the National Director of Public Prosecutions, the General Council of the Bar, and the Law Society of the Northern Provinces.

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52. Ad 61, about items B16–18. Mtati casually tells the dull lie that he gave me the documents described in items B16–18 of my consolidated list. In truth, he entirely failed to address these items in his response and section 23 affidavits, and disregarded my repeated demands that he attend to them.
53. Let me make it easy for him. What we both know is that renegeing on its several minuted undertakings given the SAHRC, no one at LASA lifted a finger to remedy the serious problems LASA had in complying with PAIA (i.e. my requests), which were identified at the special PAIA training workshop that the SAHRC gave LASA's clueless head office staff on 6 October 2011. (Item B16 in my consolidated list quotes the SAHRC's minute recording their repeated confessions of ignorance of PAIA.)
54. Welshing on their promises to the SAHRC, LASA did nothing to 'review' their illegal refusals of my requests. They did nothing to 'create guidelines ... to ensure misapplication does not recur'. There was no remedial follow-up, as undertaken to the SAHRC.
55. So the true, correct, and easy response to items B16–18 on my consolidated list is the sworn declaration under section 23 simply that 'No such records exist.'
56. This sworn admission, when eventually made, will be included in my substantially complete 75-page specimen 'SPECIAL REPORT' on LASA's corruptly motivated PAIA delinquency over the past seven years, which I've drawn for the SAHRC to give the Minister and Portfolio Committee. To vouch this, I annex its 'Executive Summary' and last page marked 'E'.
57. It's obvious at a glance that the documents Mtati has marked 'B16–18' and annexed to his answering affidavit bear no relation to items B16–18 specified in my consolidated list.
58. Again he gives me LASA's response to the SAHRC's PAIA audit and covering emails in early 2013, which he duly gave me back in November 2013 in response

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to items B22–5, and which I accordingly struck off my consolidated list by ruling them out before sending it to him, with the note: 'Ignore items 21 to 27. These have been satisfactorily disposed of.'

59. I got directly from the SAHRC a copy of its demand in August 2012 that LASA amend its false section 32 report for 2011/12 so as to declare its illegal refusals of my PAIA requests that the SAHRC had duly pronounced 'unlawful' in June, but which refusals LASA had concealed by omission. (Mtati refused to amend the report, and LASA was accordingly reported to the National Assembly in October 2012 as 'a case in point' of failure by public bodies to duly report their handling of PAIA requests.) And that's why I didn't ask LASA for the record of this demand again. It's very pointless for Mtati to be giving me documents I didn't ask for.
60. To conclude: Mtati is required to respond to my requests B16–18 by certifying under oath that no such records exist. Or by giving me the specified documents.
61. Ad 62, about item B31. After illegally keeping me waiting nearly two years for it, COO Makokoane's delegation as deputy information officer has now been furnished, so it can be crossed off the list of outstanding documents requested, and removed from the amended draft order. A 'Second Amended Draft Order' to be filed evenly with this affidavit will reflect my reduced claim, now that Mtati has handed over a few more records under pressure of this application.
62. Ad 63, about item H32. As I've mentioned, LASA has already given me one of these fee-notes (annexure 'F' hereto), and a whole lot more of them in relation to my labour claim, to inspect and decide whether to contest on taxation. Annexure 'G', for example, is senior and junior counsels' highly significant charge for a lengthy consultation with LASA Board chairperson Mlambo JP before the trial of my claim, in which he had zero legal interest under any of LASA's internal regulations, and in which he was supposed to be completely uninvolved – only, as we see now, he was deeply involved.

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63. Section 81(3)(a) of PAIA puts the onus on Vedalankar to satisfy this court that counsel's fee-notes are hit by section 34(1), as Mtati fatuously claims, which is to say these ordinary commercial invoices for legal services rendered to a public entity comprise or contain personal information that it would be unreasonable to disclose. And that one bunch of such invoices is secret but another bunch isn't.
64. Mtati's previous story was that the invoices belong to a third party who hasn't consented to releasing them. But he still hasn't demonstrated that he sought his counsel's consent and that he refused it – as contemplated in clause 9 added to the surrender treaty he signed at court on 11 February 2016 – so he's out of court there too. Even produced now, such written refusal would be irrelevant, because counsel doesn't have the power to refuse my access to these public body records.
65. Nor are counsels' fee-notes covered by legal professional privilege, in case Mtati wants to try that one in court at the last minute. I cite decided case authority against that misconception under item H32 on page 15 of my first complaint – annexure 'G' to my notice of set-down.
66. Ad 64, about item H12. These records weren't 'sent to' me, as Mtati falsely claims on oath here, only some of them. This is why I asked for the rest, and then, when my request for them was contemptuously ignored, sued for them. He really mustn't keep telling lies under oath like this. It shows he lies reflexively without thinking.
67. After illegally being kept waiting nearly two years for them, I've at last now been given all these records under pressure of this application, so prayer 3 of the amended draft order regarding item H12 falls away and my second amended draft order will take care of this.
68. Ad 65, about item A1. Again Mtati casually lies on oath that I was given the records described in item A1. If so, I wouldn't have asked him for the missing

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and incomplete ones, and then sued for them when I was ignored. And he wouldn't have now given them to me, again.

69. After illegally being kept waiting nearly three years for these records, I've been given them at last, so prayer 4 regarding item A1 falls away and I'll drop it from my second draft order.

70. Ad 66, about items G2, H31 and H48. Mtati doesn't even try resolving his failure to have given me these precisely described documents, either by giving me the specified records or by declaring them non-existent or lost under section 23, so I persist with prayer 5 of my amended draft order regarding these items. I'll renumber it in my second amended draft order.

71. Mtati has given me totally different records that I never asked for, pretends that there's something wrong with the way I 'want to see' them, and reckons it's 'a matter for argument' whether the records he's given me fit my specification. Actually, it's a matter of examining them; and to do so is to appreciate that Mtati either can't read, and needs new glasses, or can't read documents, in which case he needs a new job on the railways.

72. I annex the records he's given me, so this court can see for itself that his response is non-compliant.

73. Instead of the records I specified in item G2, he's given me a document called 'Summary of Scoring' by Mlambo JP and some national executives following second interviews conducted by them. I annex it marked 'H'.

74. The different records I asked for were:

The recommendations made by the selection panels of candidates (i) for the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, (ii) for the Pietermaritzburg Senior Litigator post when it was first advertised, and (iii) for the Kimberly Senior Litigator post – if a recommendation was made – showing inter alia the

names of (a) the shortlisted and interviewed candidates, (b) the recommended candidates, and (c) the members of the selection panels.

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75. To clearly show the difference between what he's given me and what I asked for, and as examples of what I asked for in relation to similar posts, I annex marked 'J' the KwaZulu-Natal selection panel's recommendation of me and Mngadi for the Pietermaritzburg and Durban Senior Litigator posts, and the Eastern Cape selection panel's recommendation of Skibi for an equivalent post at Mthatha, marked 'K'.
76. Instead of the email or letter Mngadi received in 'April/May 2010' (his words to me), Mtati has given me the letter Mngadi was later sent in August 2010 – which I specifically told him in my Note under item H31 I don't want because I already have it.
77. Instead of the record of the decision (by LASA's Legal Services Technical Committee chaired by Nair) to reduce the number of PAs serving the lower criminal courts, specified in item H48, he's given my Nair's emailed announcement of this alleged decision.
78. I want the records I asked for, which the respondents agreed in court to give me, or a declaration under oath under section 23 concerning any that don't exist or can't be found, made on pain of being jailed for perjury and for the further crime of contravening section 90 by concealing them with a view to violating my constitutional right to them. LASA's IT chief can help search for that 'April/May' 2010 email to Mngadi; and if he can't find it, swear it.
79. Ad 67, about item E18. After illegally being kept waiting for these records for nearly two years, I've now been given them, so prayer 6 regarding item E18 falls away, and my second amended draft order will omit it.
80. Mtati's spectacular incompetence and dishonesty in handling PAIA requests is on full display here. Section 63 doesn't even apply to public body records. No

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consent to the release of the records was ever necessary. Instead of honestly conceding my point about this, he pretends that the third party Negamu changed his mind about refusing me access, and decided to sweet-heartedly consent after all to my examination of his several employment contracts concluded with LASA after he was rejected for the Senior Litigator post for which I was recommended.

81. Ad 68, about item H32. I've dealt above with the illegality of Mtati's refusal to allow me access to counsel's fee-notes, and I persist with my claim for an order that these invoices be surrendered. Prayer 7 of my amended draft order about them will be renumbered in my second amended draft order.
82. Ad 69, about items K1-4. Mtati has never told me on what section of PAIA he had in mind to rely in persistently refusing me access to these insurance records – likely to disclose criminal and civil insurance fraud. He's just left me guessing. Now I discover from annexure 'K1' to his answering affidavit, namely CLM Sekgota's request for the insurer's consent and its refusal, that it's 'sections 64, 65, 67, and 68' and that 'Our view is that this information falls within that parameters.' One of them, two of them, all of them, whatever.
83. Refusing to consent, I see the insurer responded that I'm 'not entitled to these documents under PAIA as this information is privileged.' How or why it doesn't say, not even which of these or any other sections of PAIA it had in mind, if any at all, in claiming the requested records are 'privileged'.
84. Mtati and Sekgota, LASA's most senior attorneys running its Corporate Services department, missed the fact that none of the sections Sekgota mentioned are available to a public body to justify refusing a record request. The only justifications from which a public body information officer may pick are those provided by sections 34 to 45. And since Sekgota's several cited section numbers are bigger than those, they don't count.

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85. The ignorant opinion of Camargue Underwriting Managers (Pty) Ltd is irrelevant, because this so-called third party didn't have the prerogative to consent to or refuse my access to the several different insurance records described in items K1-4 in LASA's undisputed possession. PAIA vested information officer Vedalankar (or newly appointed deputy information officer Mtati handling my request for these records on her behalf after the settlement agreement) with the sole discretion to decide whether to grant them or to refuse them on a ground listed in Part 2, Chapter 4 of the Act.
86. So Sekgota's request for the insurer's consent was an unnecessary waste of time, and the insurer's refusal (annexure K1 to Mtati's answering affidavit) is pro non scripto and of no account.
87. Accordingly, I persist with my claim for an order compelling the surrender of these insurance records. I'll include prayer 8 of my amended draft order in my second amended draft order, renumbered, and will amend it to include declarators regarding the irrelevance of the PAIA sections LASA has relied on in seeking the insurer's consent, and the equal irrelevance of the insurer's refusal.
88. Ad 71, about item H35, namely:
- Former Board Secretary Bee-Marie Schoeman's resignation or dismissal letter, and/or any other record vouching her information to Brink that she left LASA on account of permanent or long-term mentally disabling concussion and amnesia sustained in a motor vehicle accident, alternatively identifying any other reason she quit LASA.
89. I don't care what I 'was informed' about, because my repeated experience of LASA's head office managers and lawyers is that when I'm 'informed' by them about something, and proceed to test it with PAIA, I find that I was lied to. So I don't accept Mtati's unverified implication that this record contains personal information that it would be unreasonable to disclose. This court has the power

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to decide whether the record in question is 'protected in terms of section 34(1)', as Mtati alleges – irrespective of whether it 'relates to a person that is deceased', as correctly but irrelevantly alleged, because this is not a ground for refusal under the section or under any other.

90. I therefore persist with my claim for an order that Mtati deliver the record(s) to court for examination under section 80(1), and I'll renumber my prayer 9 about it in my second amended draft order.
91. Ad 72. None of this properly answers my complaint that Mtati's section 23 affidavits are non-compliant and unlawfully defective for the several reasons identified in prayer 10 of my amended draft order.
92. On 11 February 2016, Mtati undertook, on the respondents' behalf, to 'furnish the applicant with an affidavit ... made under section 23 of PAIA ... [i]n the event that any requested documents do not exist or cannot be found. ... The affidavit will contain all the detailed information prescribed by that section'. His bovine excuses for not doing so, for not obeying the law, are irrelevant.
93. I accordingly persist with my prayer 10 for a compliant, properly made section 23 affidavit, to be included, renumbered, in my second amended draft order.
94. As to Mtati's costs prayer: on 28 July 2016 this court ruled: 'No order as to costs', which means the costs of the day will lie where they fall. As costs were not ordered to be in the cause, there's no question of me ever paying LASA's costs of the appearance on that date – which I intend ensuring are later recovered from the rogue officers personally, as mentioned above, and below.
95. I've just made a PAIA request for counsels' fee-notes and all other cost vouchers reflecting LASA's total expenditure on the respondents' persistent and determined obstruction of my constitutional right of access to LASA's business records over the period November 2013, when my first three PAIA requests before this court were illegally refused, to 28 July 2016, when the respondents

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appeared via counsel to oppose my application to compel their full and proper compliance with their agreement at court on 1 February 2016 to respect my fundamental right to information at last. A response is due at the end of this month. I'll naturally be passing all these costs vouchers on to the Auditor General, Public Protector, Minister, and Portfolio Committee for the personal recovery of the misspent public revenue.

96. As contemplated in my letter to Mtati on 29 July 2016 (annexure 'C'), I've included an order for costs de boniis propriis in my second amended draft order. I've framed it substantially in the form ordered by Legrange J in the recent *Solidarity v SABC* case, just published on the Department's Labour Court website, but not yet reported. For quick and easy reference, I annex marked 'L' the first page of the judgment and the last four on costs.
97. In support of the special costs prayer that I propose this court make, and quoting from the judgment of the Supreme Court of Appeal in *Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng*, cited by Legrange J, I highlight the deplorable 'attitude' and 'behaviour' displayed by the respondents in response to my applications to this court to assist me vindicate my constitutional right to information that they had violated; the manner in which they 'attempted to turn turpitude into rectitude' and 'appeared indignant and played the victim' inter alia by smearing me as a reprobate throughout their answering affidavits, wantonly insulting and abusing me in violation of my constitutional right to dignity guaranteed by section 10 of the Bill of Rights: 'Everyone has inherent dignity and the right to have their dignity respected and protected'; their mendacity everywhere in their papers; their persistence to date in advancing manifestly indefensible justifications to continue illegally suppressing compromising records; and all in all their 'flagrant disregard of constitutional norms'.

B22

98. The respondents' decision at court on 11 February 2016 to reverse their refusals and to grant my PAIA requests shows beyond serious question that their denials of my access to LASA's records were unjustifiable under the Act. It shows equally that their opposition to my applications to compel their compliance with my requests was indefensible. When they failed to honour their settlement agreement, and rejected and ignored my repeated demands for full and proper compliance with it and with PAIA, and I was constrained to return to court to compel, they decided instead of acting to resolve my complaints and to fully and properly comply, rather to oppose me with an answering affidavit that can best be described as pathetic.

99. In *Gambling Board*, the SCA held: 'It is time for courts to seriously consider holding officials who behave in the high-handed manner described above, personally liable for costs. This might have a sobering effect on truant office bearers.' As Legrange J put it in *Solidarity*: 'if a more considered, reflective and financially accountable approach been taken' the respondents 'would not have ... persisted in opposing this application'.

100. In the situation, I seek an order in terms of the second amended draft order filed evenly herewith.

Signed at Eshowe on 18 August 2016.

ANTHONY ROBIN BRINK

B22

Signed before me at Eshowe on 18 August 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.

A. I. Oubi

COMMISSIONER OF OATHS

Name: *A. I. Oubi*
Address: *73-79 MMN Street*
Capacity: *CONSTABLE*



A.i.D

AB

All these annexures to the original replying affidavit
in the court file are duly initialled.

7/12/2016

Gmail - Brink v LASA: PAIA applications: Eshowe Magistrate's Court: Set down on 28 July



Anthony Brink <anthonybrink.sa@gmail.com>

Brink v LASA: PAIA applications: Eshowe Magistrate's Court: Set down on 28 July

5 messages

Anthony Brink <anthonybrink.sa@gmail.com>
To: ThembileM@legal-aid.co.za
Cc: wewmfm@telkomsa.net

11 July 2016 at 15:53

Dear Mr Mtati

I have today served on you local correspondent and filed at court a notice of setdown, draft order prayed, and schedule of issues and witnesses to be cross-examined.

I annex the first page of the notice showing its service and filing stamps. To save your local correspondent the time and trouble of scanning and faxing all the many pages to you, I've uploaded the documents to my OneDrive cloud where you can download and print them. And forward the hyperlink to whoever you want to send the documents to.

The three documents are accessible here:

https://1drv.ms/f/s!Agt8nu3maFXieQgxJVer6mzRk_U

I've done this rather than emailing them, because the PDF of the Schedule is a bit over 3 MB, which exceeds your MailMarshal email size limit.

See you in court on the 28th.

Anthony Brink

PS: Please note my new gmail address.

Notice of setdown stamped lo.pdf
68K

Anthony Brink <anthonybrink.sa@gmail.com>
To: Chris Rawlins <cfmrawlins@telkomsa.net>

11 July 2016 at 16:03

----- Forwarded message -----

From: Anthony Brink <anthonybrink.sa@gmail.com>
Date: 11 July 2016 at 15:53
Subject: Brink v LASA: PAIA applications: Eshowe Magistrate's Court:
Set down on 28 July
To: ThembileM@legal-aid.co.za
Cc: wewmfm@telkomsa.net

Dear Mr Mtati

I have today served on your local correspondent and filed at court a

8/15/2016

Gmail - Brink PAIA applications: Schedule of issues and witnesses to be cross-examined to determine them



Anthony Brink <anthonybrink.sa@gmail.com>

Brink PAIA applications: Schedule of issues and witnesses to be cross-examined to determine them

1 message

Anthony Brink <anthonybrink.sa@gmail.com>

14 July 2016 at 10:02

To: sollys@legal-aid.co.za

Dear Solly

Here's the schedule of issues and witnesses to be cross-examined to determine them, annexed to the draft order.

The annexures to the schedule will follow next.

AB

**3.Schedule of issues and the witnesses to be cross-examined to determine them.pdf**

1023K

1 Boast Street
Eshowe 3815
29 July 2016

DIO and CSE Thembile Mtati
Legal Aid South Africa
29 De Beer Street, Braamfontein

By hand to LASA's local attorney

Dear Mr Mtati

YOUR ONGOING FAILURE TO DELIVER RECORDS YOU SAID YOU DID BUT DIDN'T

This is to record that as undertaken in paragraph 11 of my founding affidavit in my application to refer my cases to oral evidence, I duly brought to court yesterday all the records you couriered me on 15 April, so as to enable you to examine and see for yourself that several records which you claimed in your response of the same date to have furnished me were missing, as I complained in my May, June and July demands for full and proper compliance with the settlement agreement.

I record further that when after judgment postponing my application I invited you to examine the records for this purpose, you declined to do so. Since the records remain outstanding and you evidently have no intention of passing them on as agreed, I'm forced to continue with my application to compel their delivery, in a complete waste of time and money.

This is to inform you, CEO and information officer Vedalankar, and NOE and deputy information officer Nair, that for your collective persistent, contemptuous violation of my constitutional rights and your transparent abuse of the legal process to frustrate my access to LASA's records to which I'm constitutionally entitled, I intend seeking a special punitive costs order against the three of you personally, jointly and severally, de bonis propriis, on the scale as between attorney and own client, such as was granted by Judge Robert le Grange on Monday against the lawless thugs who fired the SABC seven in contempt of every law and constitutional value.

Yours sincerely



ANTHONY BRINK

Received on 29 July 2016 by LASA's local attorney Malcolm Munro



29/7/2016
@ 16L30

The selection panel consisted of the following members:

Mr Vela Mdaka	-	ROE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (Pmburg JC)
Mr Julian Butler	-	HCU Manager (Pmburg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE							AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu							
Mr Anthony Brink							
Mr Johannes van Wyk							
Mr Bongani Mngodi							

Notes:-

All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amico*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

[REDACTED]

[REDACTED]

SPECIAL REPORT ON LEGAL AID SA:

AN AGGRAVATED CASE OF REPEATED WILFUL NON-COMPLIANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO OBSTRUCT ACCESS TO AND SUPPRESS DULY REQUESTED RECORDS, AND REPEATED FALSE ANNUAL REPORTING TO CONCEAL THIS FROM THE NATIONAL ASSEMBLY

EXECUTIVE SUMMARY

This report describes an egregious case of persistent, wilful, recalcitrant PAIA delinquency by an organ of state, Legal Aid South Africa ('LASA'), escalated into a criminal cover-up of its repeated non-compliance with the Act carried out at the highest level of the organisation.

It details how since 2010 LASA has deliberately neglected to comply with its constitutional information transparency obligations by repeatedly illegally refusing access to its business records duly requested under PAIA; and how, to conceal this, it has repeatedly falsely reported to the Commission, to the Minister of Justice and Correctional Services, and to the Portfolio Committee for that Department in the National Assembly.

It relates how, after receiving a detailed complaint about LASA CEO and information officer Vidhu Vedalankar's illegal denial of access to LASA's records on wholly spurious grounds, including on the basis of a fraudulently manufactured quotation from a reported judgment, LASA Board chairperson Dunstan Mlambo JP dishonoured his judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it' by actively colluding with her to continue violating the record requester's constitutional right to information; and how in a cover-up perpetrated in concert with Vedalankar and National Operations Executive Brian Nair, Mlambo JP furnished the chairperson of the Justice Portfolio Committee with a false 'Confidential Report' containing multiple objectively demonstrable lies, under cover of a defamatory letter containing more such lies, in criminal contravention of sections 17(2)(d) and (e) of the Powers, Privileges and Immunities

of Parliament and Provincial Legislatures Act 4 of 2004, to successfully pervert the Committee's enquiry into a complaint about Vedalankar's repeated illegal denials of access to LASA's records – thus stultifying and defeating the Portfolio Committee's oversight responsibility over LASA as a public entity, imposed by section 55(2)(b)(ii) of the Constitution, and successfully evading detection and accountability over a period of five years for its illegal refusals to comply with PAIA and its repeated violations of section 32(1)(a) of the Constitution, 'Everyone has the right of access to ... any information held by the state'.

It describes the Commission's repeated failed interventions to achieve LASA's compliance with PAIA.

It quotes false pleading and perjury repeatedly committed in judicial proceedings, falsely alleging LASA's due compliance with PAIA to dishonestly counter and discredit true complaints to the contrary.

And it reports protracted, filibustering, factually and legally groundless opposition maintained for years to five applications to court for orders compelling LASA's compliance with PAIA – opposition persisted with in bad faith as a delaying tactic and abuse of court, culminating in LASA's total capitulation and reversal at court on the day of trial and its recorded undertaking within two months to surrender all requested documents or to certify any that do not exist on oath. And then on the agreed date for delivery, LASA's gross non-compliance with its undertaking; its persistence in illegally suppressing duly requested records; and its disregard for repeated demands for full and proper compliance – necessitating a return to court to compel, which LASA continues opposing in bad faith to avoid surrendering records it had undertaken to furnish, or to certify where they do not exist, in full and proper compliance with section 23 of the Act.

All at the cost of massive, corruptly motivated 'irregular and fruitless and wasteful expenditure' of public revenue, prohibited by section 38(1)(c)(ii) of the Public Finance Management Act 1 of 1999.

And all in a determined bid to suppress (further) documentary evidence of gross maladministration involving millions of rands and directly affecting service delivery; the wholesale breakdown of the rule of law and due process at LASA, involving, inter alia, the routine illegal flouting of LASA's internal regulations by Board chairperson Mlambo JP and national management executives; and pervasive systemic corruption in the conduct of LASA's recruitment operations.

275. In their persistent, determined obstruction of Brink's access to LASA's business records, and with the corrupt object of suppressing and concealing documentary evidence of pervasive corruption in its top ranks, including further evidence of such crimes as perjury, defeating the ends of justice, and lying to the Portfolio Committee, as well as of gross maladministration involving millions of rands and directly affecting service delivery; of the wholesale breakdown of proper corporate governance, of the rule of law and of due process at LASA, involving, inter alia, the routine illegal flouting of LASA's internal regulations by Board chairperson Mlambo JP and national management executives; and of pervasive systemic corruption in the conduct of LASA's recruitment operations, information officer Vedalankar, deputy information officer Nair and in-house attorney Mtati have since 2010 to date run up legal costs to LASA of R..... million.⁴²²

⁴²² Bundle 3 {Put up all counsel's invoices, LASA's attorney bills, and their travel vouchers, when delivered under court order – requested under PAIA in November 2014 and on 1 August 2016, but persistently illegally refused.}

10 years in the business of satisfying legal practice

ADV. THABISO MACHABA BA LLB LLM LLM (TAX LAW) WITS[†]

PITJE CHAMBERS: TRANSFORMATION INITIATIVE

7th Floor

81 PITJE CHAMBERS

Cnr Pritchard & Von Wielligh Streets

Johannesburg

South Africa

Cell: 082 634 6486

P.O. Box 4038

Johannesburg

2001

Tel: + 27 11 223 8000 o/h

Tel: + 27 11 223 8031 a/h

Fax: + 27 11 223 8004

Email: tmachaba@telkomsa.net

VAT NO: 4060233725

TAX INVOICE NO: 13/11

To: THE LEGAL AID BOARD

Attention: Mr Solly Sekgota

Your Fax: (011) 887 2000

Your Tel: (011) 887 2011

Date: 31 Mar. 2011

Your Ref: Mr Sekgota

My Ref: 4TH Acc/LAB/A.BRINK PAIA/INV. 13/11

Re: ACCOUNT IN THE SETTLING OF DRAFT MEMORANDUM IN VIEW OF THIRD REQUEST BY A BRINK AND CONSEQUENT CONSULTATION WITH MR T. MTATI IN A BRINK'S APPLICATION FOR ACCESSTO INFORMATION I.T.O. PAIA 2000

HEREWITH IS MY FOURTH ACCOUNT FOR YOUR SETTLEMENT

Activity	Dates	Fees
On consultation with Mr Mtati and on considering the papers afresh and preparing to settle a memo to the LASA in view of Mr Brink's 3 rd request for access for information	11 Mar. 2011	@ R10000.00
On researching the law after consideration of Mr Brink's third request and on settling the required memorandum in answer to various questions posed by Mr Mthati o.b.o LASA and on emailing same to Mr Mthati and Mr Sekgota for 3.5 days	16 – 19 Mar. 2011	@ R60000.00

[†] "Forgiveness is the key to action and freedom." – Hannah Arendt

On perusal of Mr Brink's referral of a complaint to the Human Rights Commission and considering same; and incorporating its contents to the final memo and on settling memo on whether the LAB completely responded to Mr Brink's 15 December 2010 request for access to information.	26 – 28 Mar. 2011	@ R30000.00
On perusal of Mr Brian Nair's affidavits and considering the laws that arise therefrom and researching the law to see if same complies with PAIA and administrative law principles for 2.5 days.	29 – 31 Mar. 2011	@ R40000.00

TOTAL BALANCE DUE TO ADV. T MACHABA: R140000.00

ADD VAT AT 14% @: R19600.00

TOTAL PAYABLE: R159600.40

Herewith are Adv. Machaba's banking details for effecting payment.

Bank and branch: Standard Bank (Small Street City Branch)
 Account type: Cheque Account
 Account No: 001087673

Thank you for the above brief and do enjoy words of wisdom below.

Please provide proof of payment to Adv. Machaba for filing and records.

**THABISO MACHABA
 PITJE CHAMBERS
 JOHANNESBURG**

*Recommended
 for payment
 M. Pitje
 31/03/2011
 Pay from legal provision*

12 years in the business of satisfying legal practice

1126

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ADV. THABISO MACHABA BA LLB LLM LLM (TAX LAW) WITS[†]

PITJE CHAMBERS: TRANSFORMATION INITIATIVE

7th Floor

81 PITJE CHAMBERS

Cnr Pritchard & Von Wielligh Streets

Johannesburg

South Africa

Cell: 082 634 6486

P.O. Box 4038

Johannesburg

2001

Tel: + 27 11 223 8000 a/h

Tel: + 27 11 223 8031 a/h

Fax: + 27 11 223 8004

Email:tmachaba@telkomsa.net

VAT NO: 4060233725

TAX INVOICE NO: 005/12

To: LEGAL AID SOUTH AFRICA

Attention: Mr T. Mtati

Your Fax: (011) 877 2748

Your Tel: (011) 877 2000

Date: 24 Mar. 2013

Your Ref: Mr Brink

My Ref: Acc/BRINK/ACCOUNT/ACC: 005/12

Re: ACCOUNTS MADLANGA AND MACHABA IN THE HEARING OF A
BRINK v LEGAL AID OF SOUTH AFRICA
Case No:

*R331 040-55
Accrued as a legal
provision
Recommended for
payment
M. Machaba
23/03/2013*

HEREWITH IS MY ACCOUNT FOR YOUR SETTLEMENT

Activity	Dates	Fees
On perusal of the Applicant's Request for further particulars and other documents filed off record for 8 hours	29 Nov. 2011	@ 2/3 of Madlanga SC R15,200.00
On perusal of the Applicant's Core Facts on which the Applicant relied for his case; Request for Pre trial Conference before a Judge; and Pre-Trial Addendum for 1 day	1 Dec. 2011	@ 2/3 of Madlanga SC R19,000.00

2013-03-23

[†] "Forgiveness is the key to action and freedom." – Hannah Arendt

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On perusing the Replying affidavit and considering same for 8 hours	29 Mar. 2012	@ 2/3 of Madlanga SC R15,200.00
On settling the Respondent's notice of motion on counter-application and affidavit for 1 day	28 Mar. 2012	@ 2/3 of Madlanga SC R19,000.00
On perusing the interlocutory application and documents filed off record in preparation for a consultation with the JP, and on consult with Mlambo JP, T Mtati, S Sekgota for 1 1/2 days	2 – 3 Apr. 2012	@ 2/3 of Madlanga SC R31,666.60
On perusal of Mr Brink's answering affidavit to our counter application for 8 hours; and on drafting our replying affidavit 2 days	3; 5 – 6 May 2012	@ 2/3 of Madlanga SC R38,000.00
On emailing the final draft reply to Mr Mtati with a view to consult on 17 May 2012 and on Consulting on the document with Mr Mtati and Sekgota (10 hrs)	15 and 17 May 2012	@ 2/3 of Madlanga SC R19,000.00.
On incorporating comments from LASA Mr Mtati and Sekgota on 11 June 2012 and on emailing Madlanga the finalised draft for his settlement and on receiving same for 1 day	11, 27 June 2012	@ 2/3 of Madlanga SC R19,000.00
On perusal of Mr Brink's letter to the Registrar seeking hearing in Chambers, on settling a response thereto, and on emailing same to Mr S. Sekgota for correction on content for 7 hours	10; 11 Aug 2012	@ 2/3 of Madlanga SC R13,300.00

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On perusing of A Brink's response letter to our letter of 11 Aug. 2012 for 1 hour	17 Aug 2012	@ 2/3 of Madlanga SC R1,900.00
On perusal of correspondence on setting of the matter down, with clients and registrar of Labour Court for 3 hours	5 Sept. 2012	@ 2/3 of Madlanga SC R5,700.00
On perusing AB's proposed shortening of the application before the hearing on Pre-trial before Judge in Chambers for 8 hrs	30 Sept. 2012	@ 2/3 of Madlanga SC R15,200.00
On perusing AB's application to subpoena Mlambo JP and considering the issues arising therefrom for 1 day	15 Nov 2012	@ 2/3 of Madlanga SC R19,000.00
On settling draft affidavit in response to the subpoena application and emailing same to adv Madlanga SC for settling for 2 days	1 - 4 Dec. 2012	@ 2/3 of Madlanga SC R38,000.00
On perusal of the supplementary affidavit from Mr Brink for 7 hours	19 Jan 2013	@ 2/3 of Madlanga SC R13,300.00
Perusal of the file received from client in preparation for the Durban Pre-Trial hearing for 3 days	20 and 23 - 24 Jan 2013	@ 2/3 of Madlanga SC R57,000.00
On appearance in the Labour Court before Gush J with Madlanga SC and on finalising the pre-trial conference	25 Jan 2013	@ 2/3 of Madlanga SC R19,000.00

TOTAL : R498,433.20

ADD VAT AT 14% @: R69,780.65

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TOTAL: R568,213.85ON ATTACHED MADLANGA'S ACCOUNT

On Madlanga SC's disbursement in the relevant period	2011, 2012 & 2013	R262,827.00
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TOTAL PAYABLE IN THIS ACCOUNT INCLUDING MADLANGASC'S DISBURSEMENTS:R831,040.85

Herewith are Adv. Machaba's banking details for effecting payment.

Bank and branch: Standard Bank (Small Street City Branch)
 Account type: Cheque Account
 Account No: 001087673

Thank you for the above brief and do enjoy words of wisdom below.

Please provide proof of payment to Adv. Machaba for filing and records.

**THABISO MACHABA
 PITJE CHAMBERS
 JOHANNESBURG**

*Recommended for
 payment*
*Emile Pitje
 30/07/2013
 CSE*
Achmed

MBUYISELI R MADLANGA SC

Vat Reg. No.: 472019358Z

The Pitje Group
6th Floor
Pitje Chambers
81 Pritchard Street
Cnr Von Wielligh Street
JOHANNESBURG
2001

Tel. No: (011) 223 8000
Fax No: (011) 223 8004
Cell No: 082 443 1324
Fax-to-mail: 086 623 7415

E-mail: mbuyimad@telkomsa.net

30 March 2013

LEGAL AID SOUTH AFRICA
JOHANNESBURG

ATTENTION: MR T MTATI

RE: BRINK / LEGAL AID SOUTH AFRICA

DATE	DESCRIPTION	AMOUNT
22/01/12	Perusing the applicant's request for further particulars, the applicant's core facts on which the applicant relies for his case, request for pre-trial conference before a judge, pre-trial addendum and other documents filed of record since the previous fee note (including a number of items of correspondence between the parties) – full day (@ R29 000.00 per day)	R 29 000 .00
23/01/12	Settling the respondent's notice of objection to the applicant's request for further information with Adv T Machaba – 3 hrs (@ R2 900.00 per hour)	R 8 700.00
25/01/12	Perusing the applicant's response to the objection referred to above (alone) and settling the respondent's response with Adv T Machaba – 4 hrs	R 11 600.00
9/02/12	Perusing an interlocutory application instituted by the applicant (alone) and settling answering affidavit with Adv T Machaba – full day	R 29 000.00
27/03/12	Settling counter-application with Adv T Machaba – full day	R 29 000.00
3/04/12	Preparing for consultation with Judge President Mlambo, Mr T Mtati and Mr S Sekgota and	

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	consulting with the said persons – 2 hrs 30 mins	R 7 250.00
26/06/12	Perusing applicant's answer to the counter-application and settling reply thereto – full day	R 29 000.00
4/12/12	Perusing a variety of documents received from the applicant and / or exchanged between the parties and settling affidavit resisting an application to subpoena Judge President Mlambo – full day	R 29 000.00
24/01/13	Preparing for pre-trial conference to be held before a judge in Durban and travelling there – full day	R 29 000.00
25/01/13	Attending pre-trial conference before Gush J – day's fee	R 29 000.00
	SUB - TOTAL	R 230 550.00
	14% VAT	R 32 277.00
	TOTAL	R 262 827.00

10/01/13

LEGAL AID BOARD

1132

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SUMMARY OF THE SCORING FOR SENIOR LITIGATOR POSITIONS (LVL LP-10)

LEVEL OF COMPETENCY			
1	2	3	4
Poor	Average	Above Average	Excellent
0 %- 49 %	50 %- 64 %	65 % - 79 %	80 % - 100 %
Falling short of required standard	Meeting the required standard	Meeting the required standard to an above average level	Exceeding the required standard

CANDIDATE	TOTAL WEIGHTED SCORE	COMPETENCE	COMMENTS
1.Wilson Rambau	54%	Meeting the required standard	Not recommended for the position
2.Heman Alberts	80%	Meeting the required standard	Recommended for the position(Pretoria)
3.Patrick Loots	60%	Meeting the required standard	Not recommended for the position
4.Ashok Kaloo	52%	Meeting the required standard to an above average level	Not recommended for the position
5.Lilla Crouse	75%	Meeting the required standard to an above average level	Recommended for the position(Port Elizabeth)
6.Mornay Calitz	74%	Meeting the required standard to an above average level	Recommended for the position(Cape Town)
7.William Karam	76%	Meeting the required standard to an above average level	Recommended for the position(Johannesburg)

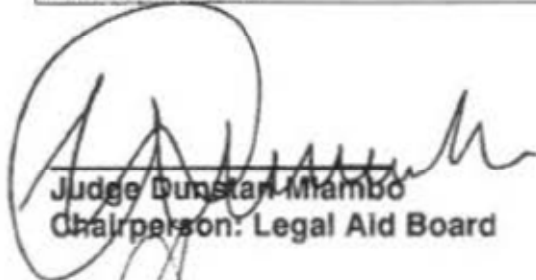
Names of panel members who interviewed the candidates

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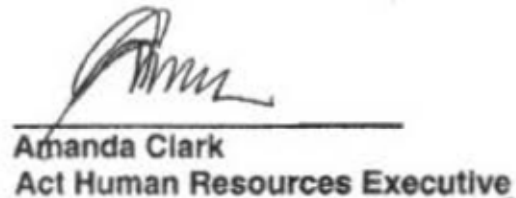
NAME	DESIGNATION
Judge Dunstan Mlambo	Chairperson Legal Aid Board
Brian Nair	National Operations Executive
Patrick Hundermark	Legal Development Executive
Amanda Clark	Acting Human Resources Executive
Jerry Makokoane	Chief Operations Officer

Consensus of the panel to appoint the following candidates in the position as Senior Litigator at the Legal Aid Board

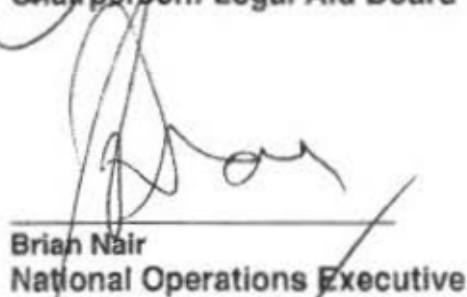
NAME	High Court UNIT Centre
Herman Alberts	Pretoria
Lila Crouse	Port Elizabeth
Mornay Calitz	Cape Town
William Karam	Johannesburg



Judge Dunstan Mlambo
Chairperson: Legal Aid Board



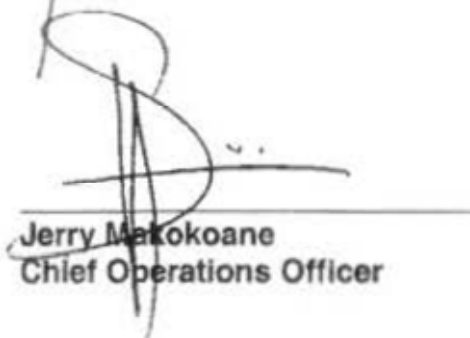
Amanda Clark
Act Human Resources Executive



Brian Nair
National Operations Executive



Patrick Hundermark
Legal Development Executive



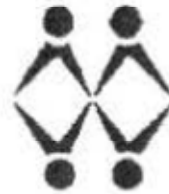
Jerry Makokoane
Chief Operations Officer

NAME	RECOMMENDATION ACCEPTED	NOT ACCEPTED	DATE
VIDHU VEDALANKAR CHIEF EXECUTIVE OFFICER	<i>V. V. Vedalankar</i>		5.12.2008

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Candidate	D Mlambo	J Makokoane	B Nair	P Hundermark	A Clark	Average
Wilson Rambau	55	54	55	52	55	54
Herman Alberts	85	76	85	74	80	80
Patrick Loots	60	64	60	53	65	60
Ashok Kaloo	55	50	55	43	55	52
Lilla Crouse	75	71	75	78	75	75
Mornay Callitz	75	72	75	72	75	74
William Karam	80	74	80	76	70	76



TO	NOE
FROM	ROE (KZN)
DATE	05 th NOVEMBER 2009

SENIOR LITIGATOR INTERVIEWS
RECOMMENDATION FOR NEXT ROUND INTERVIEWS

1. PURPOSE

To recommend the following candidates for the next round of interviews:-

- Mr Anthony Brink
- Mr Bongani Mngadi

2. BACKGROUND

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply.

Candidates must possess the following:

- Admitted Attorney / Advocate.
- B Proc or LLB degree, with right of Appearance in the High Court.
- A LLM will be an advantage.
- At least 12 years post qualification legal experience of which 10 years must be high court experience. Must be performing at least 80% active court litigation.
- Valid code 08 drivers licence.
- Excellent leadership & people development skills with a track record in training.
- Experience in budget preparation & management thereof.
- Advanced computer skills (MS Word, Excel, Outlook, PowerPoint & Ad Infinitum).
- Strong communication, problem solving & interpersonal skills.
- Innovative, creative & analytical thinking skills. Strong research skills.
- Ability to interpret & apply policies.

Envisaged for this position is a senior Attorney or Advocate, with a good standing in the legal fraternity, proven track record in criminal and civil litigation, a motivated, self-driven & mature individual who is a team player.

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

The selection panel consisted of the following members:

Mr Vela Mdaka	-	ROE (KZN)
Mr Baboo Brijlal	-	Reg. HR Manager (KZN Region)
Mr Kishore Mehta	-	JCE (Durban JC)
Mr Bertus Appel	-	JCE (PmBurg JC)
Mr Julian Butler	-	HCU Manager (PmBurg JC)
Mr Vis Nair	-	JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	Vela Mdaka	Baboo Brijlal	Kishore Mehta	Bertus Appel	Julian Butler	Vis Nair	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	25	29	33	25	35	31	29.66 / <u>59.33%</u>
Mr Anthony Brink	25	32	38	33	37	26	31.83 / <u>63.66%</u>
Mr Johannes van Wyk	18	26	31	27	35	31	28.00 / <u>56.00%</u>
Mr Bongani Mngadi	42	35	38	27	36	32	35.00 / <u>70.00%</u>

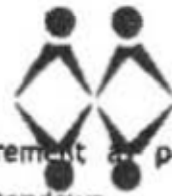
Notes:-

All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

Mr Mzochithwayo Ngcamu

Mr Ngcamu has a B. Proc degree and is an admitted Attorney (Feb 1983). He is currently practicing for his own account. Candidate has acted in the Labour Court on numerous occasions (±6 years). Candidate also worked as an Assessor and a Justice College mentor to magistrates. Despite having a good knowledge of the law, candidate does not have any High Court experience (does not have right of appearance in the HC). Therefore candidate



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does not meet the minimum High Court requirement as per the advert. Therefore candidate is not recommended for next round of interviews.

Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (5 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has ±8 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amico*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

Mr Johannes van Wyk

Mr Van Wyk has a LLB degree and was admitted as an Attorney in July 1986. Candidate is currently practicing for his own account (Jan 1997 to date). Prior to that candidate worked as Partner (Sept 1991 to Dec 1996), State Attorney (July 1986 to Feb 1991) & (Jan 1984 to July 1986) and as a Lecturer (Jan 1981 to Dec 1981). Candidate also served pupillage at the Pretoria Bar (Mar 1991 to July 1991). Candidate has limited HC experience having briefed Counsel in most matters. Candidate also does not have any experience in the SCA (briefed Counsel) or CONCOURT. Candidate has a fair grasp of the law. Candidate did not demonstrate his ability to undertake high level research and training. Candidate does not meet minimum HC experience in terms of the advert. Therefore candidate is not recommended for next round of interviews.

Mr Bongani Mngadi

Mr Mngadi has a B.Proc, LLB and MBA degrees. He was admitted as an Attorney in January 1990 and has been in private practice for 13 years (since Feb 1991 to Sept 2005). Prior to joining the Legal Aid South Africa, candidate also worked as a Magistrate (Nov 1981 to August 1985), Lecturer (UNIZUL) & Legal Assistant in Government. Candidate is currently employed as High Court Unit Manager (June 2009 to date). Candidate previously served Legal Aid South Africa as JCE at the Port Shepstone JC (Sept 2005 to May 2009). Candidate

has trained and supervised more than Candidate Attorneys directly articled to him - has a good understanding of training CAs. Candidate also has financial management, budgeting and management experience. Candidate demonstrated his understanding of strategic management reasonably well. He further displayed good problem solving and decision making skills. He possesses good communication skills and is an assertive individual. The Candidate has a good knowledge of criminal & civil work. Candidate also acted as a Small Claims Commissioner for a period of time. Overall presentation to Interview panel was very good. Candidate has 9 years experience in the High Court. Candidate does not have any SCA and CONCOURT experience. After having considered the candidate's overall presentation to the panel, the candidate is recommended for the next round of interviews.

5. EMPLOYMENT EQUITY STATUS

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
TOTAL	36	32	68

Equity Stats as at 06.11.2009.

The PmBurg JC staff complement, including this appointment, will be as follows: -

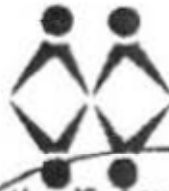
RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
TOTAL	39	27	66

Equity Stats as at 06.11.2009.

6. RECOMMENDATION

The panel recommends the following candidates for the next round of interviews:-

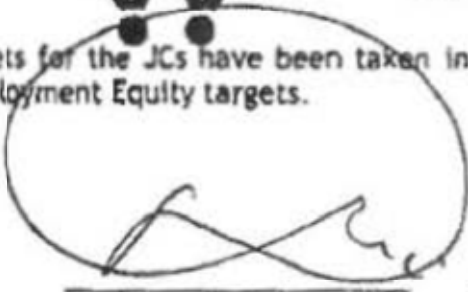
- > Mr Anthony Brink - External Candidate
- > Mr Bongani Mngadi - Internal Candidate



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We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

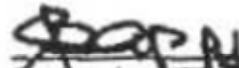

Baboo Brijlal
Reg. HR Manager (KZN Region)




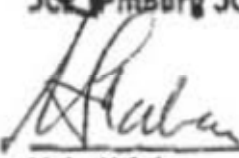
Vis Nair
JCE (Pinetown)

23/11/2009


Kishore Mehta
JCE (Durban JC) 17/11/09


Vertus Appel
JCE (PmBurg JC) 23/11/09.


Julian Butler
HCU Manager (PmBurg JC)
23/11/2009


Veia Mdaka
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION; NOT ACCEPTED	DATE
BRIAN NAIR NOE			

TO: HUMAN RESOURCES EXECUTIVE

FROM: Thenjiwe Magazi

DATE: 24 May 2010

FILING OF THE ADVERTISED POSITION OF SENIOR LITIGATOR IN THE EASTERN
CAPE REGION
(UMTHATHA JUSTICE CENTRE)

1. PURPOSE

The purpose of this recruitment process is to fill the vacancy of the Senior Litigator Position in Mthatha Justice Centre in the Eastern Cape region, taking into consideration the Employment Equity status of the region.

2. BACKGROUND

2.1 The above-mentioned position was advertised internally and externally and 11 applicants were received and 5 applicants were short listed and were considered for the interviews as they met the minimum requirements of the position. One (1) candidate did not show up for the session.

2.2 The incumbent must be able to show the following:

- Admitted as an Attorney/Advocate
- B Proc or LLB degree with right of Appearance in the High Court
- At Least 10 years post qualification, litigation experience (both criminal and civil) of which 5 years must be high court experience.

The following dimensions were considered when assessing the candidates, experience in trials, court procedure, ability to lead and delegate, ability to take decisions, knowledge and application of the law, culture fit and demonstrated by practical experience, communication ability and administrative ability.

Five (5) candidates were interviewed by the panel which consisted of the following members from Eastern Cape Region.

Thembile Mtati - Regional Operations Executive
 Thenjiwe Magazi - HRM
 Lynette Franklin - Justice Centre Executive

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview questionnaires. The score was out of 55.

The results are shown in the table below

NAME OF CANDIDATE	TVM	LF	TLM	Percentage
Nzame Skibi	41	32.5	40	68
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

4. THE RESPONSES ARE AS FOLLOWS:

4.1 Nzame Skibi:

Nzame posses an LLB and B Juris Degree, he was admitted as an advocate in 1999. He has been in the legal field for 11 years and is currently employed as a Senior Litigator in Mafikeng JC. He is familiar with the requirements of the job and managed to articulately apply his mind when responding to questions posed to him as he occasionally substantiated his responses with relevant examples. He has appeared in the SCA on a number of occasions. He is recommended for this position.

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5 RECOMMENDATION

Nzame Skibi came across as a strongest candidate as compared to others in terms of the knowledge, experience and the understanding of what the job entails. He has the advantage as he is currently occupying the same position. He has the most court experience as compared to other candidates and has appeared at the SCA on a numerous occasions. His appointment will also personally benefit him as he will be closer to his family in Bizana. He is recommended for this position.

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Thembile Mtati – Regional Operations Executive

Thenjiwe Magazi- Regional HRM

Lynette Franklin – Justice Centre Executive

NAME	RECOMMENDATION ACCEPTED	NOT ACCEPTED	DATE
NOE : Brian Nair			
HRE: Amanda Clark			





Reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**JUDGMENT**

Case no: J 1343/16

In the matter between:

SOLIDARITY

First Applicant

FOETA KRIGE

Second Applicant

SUNA VENTER

Third Applicant

KRIVANI PILLAY

Fourth Applicant

JACQUES STEENKAMP

Fifth Applicant

And

**SOUTH AFRICAN BROADCASTING
CORPORATION**

Respondent

Heard: 22 July 2016**Delivered:** 26 July 2016**Summary:** (Urgent interdict – unlawful summary dismissal – dismissals in breach of contractual right to disciplinary procedure and in breach of right to freedom of expression - dismissals *void ab initio* – costs)

JUDGMENT

LAGRANGE J

[192] It is an employee whose dismissal is unfair that requires an order of reinstatement. An employee whose dismissal is invalid does not need an order of reinstatement. If an employee whose dismissal has been declared invalid is prevented by the employer from entering the workplace to perform his or her duties, in an appropriate case a court may interdict the employer from preventing the employee from reporting for duty or from performing his or her duties. The court may also make an order that the employer must allow the employee into the workplace for purposes of performing his or her duties. However, it cannot order the reinstatement of the employee."

[72] Consequently, an order declaring the applicants' dismissals invalid, will have the legal effect that their dismissals never took place and can be accompanied by an order that the SABCC must allow them into their workplaces for the purpose of performing their duties.

[73] There is also the question of the suspensions and the incomplete enquiries which were initiated prior to the applicants' dismissals. It was argued by the SABC that those would fall away as the fact of the applicants' dismissal would have that effect. However, if the legal consequence of the final relief is that the dismissals did not happen, it does not seem to follow in my view that everything preceding them has no application. As those enquiries were essentially initiated for the same reason as the dismissal or because of the applicants' disagreement over adopting the policy, it would follow from the analysis above that those instructions and steps were unlawful because they were premised on the enforcement of an unlawful policy.

[74] Paradoxically, the applicants did not amend their prayer only for interim relief in respect of the suspensions and pending disciplinary proceedings, linked to the final outcome of the other proceedings. However, if final relief is competent on the papers in respect of the dismissals and because the continuation of those other measures would be unlawful, it is appropriate to make an order for final relief in respect of those too.

Costs

[75] In the amended papers, the applicants also sought an order compelling the SABC to reveal the identity of officials involved in taking the decisions

to terminate the applicants' employment. The object of this was to put them on terms to show cause why they should not be held personally liable for the costs of the application.

- [76] The reason for this unusual prayer is that even if it cannot be shown that the SABC proceeded with the dismissals in a wilful attempt to avert the possible consequence of the Constitutional Court application and this one which were launched on 15 July, whoever took the decision to dismiss the applicants did so with reckless regard for the pending applications and arguably if a more considered, reflective and financially accountable approach had been taken, the SABC would not have proceeded with the dismissals or persisted in opposing this application after agreeing to the order in the Suzman Foundation application.
- [77] In *Gauteng Gambling Board And Another v MEC for Economic Development, Gauteng*¹⁶ the SCA made the following observation:

[54] In the present case the best that can be said for the MEC and her department is that their conduct, although veering toward thwarting the relief sought by the board, cannot conclusively be said to constitute contempt of court. However, that does not excuse their behaviour. The MEC, in her responses to the opposition by the board, appeared indignant and played the victim. She adopted this attitude while acting in flagrant disregard of constitutional norms. She attempted to turn turpitude into rectitude. The special costs order, namely, on the attorney and client scale, sought by the board and Mafojane is justified. However, it is the taxpayer who ultimately will meet those costs. It is time for courts to seriously consider holding officials who behave in the high-handed manner described above, personally liable for costs incurred. This might have a sobering effect on truant public office bearers. Regrettably, in the present case, it was not prayed for and thus not addressed.

- [78] I am satisfied that there is no question that the applicants should not bear the costs of bringing this application including the costs of two counsel. I am also concerned that the dismissals were authorised with reckless disregard for the pending applications and with little regard for the relative costs and benefits to the SABC of doing so. That, this should occur during

¹⁶ 2013 (5) SA 24 (SCA)

a time of financial crisis makes it more worrying. The only question is whether these costs should be levied on those who took the decision or on the SABC as an entity. Accordingly, I think it is appropriate that the person who appears to have authorised the dismissals when signing the dismissal letters should be given an opportunity to explain why he should not be held liable, at least in part, for the costs. The same applies to Tebele who seems to have played an active role in the events.

Order

[79] In light of the above it is ordered that,

79.1 The forms and rules of this Court are dispensed with and this matter is dealt with as a matter of urgency.

79.2 The respondent's dismissals of the second to fifth applicants are unlawful and void *ab initio*.

79.3 The second to fifth applicants are entitled to return to work at the SABC and to continue with their respective duties and responsibilities in accordance with their job descriptions.

79.4 The respondent is interdicted from proceeding with the disciplinary proceedings initiated against the second to fifth applicants prior to their dismissal.

79.5 Within five days of this order, Seboleto Ditlhakanane, the respondent's General Manager: Radio News & Current Affairs and Mololo S Tebele, Acting Group Executive: News and Current Affairs, must file affidavits showing cause why they should not personally be held liable for all or part of the costs of this application, such costs to be paid on the attorney-own client scale and including the costs of two counsel.

79.6 The determination of the final apportionment of liability for payment of the applicants' costs of the application including the costs of two counsel, as between the respondent and any of its officials or employees is postponed *sine die*, and may be enrolled by any party

for determination once 20 days have elapsed from the date of this order.

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Lagrange J

Judge of the Labour Court of South Africa

APPEARANCE:

For the Applicants: S Budlender assisted by V Bruinders instructed by Serfontein, Viljoen & Swart Attorneys

For the Respondent: D T Skosana SC assisted by Z Madlanga instructed by Ningiza Horner Inc.