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7 November 2012

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Chief Justice Mogoeng Mogoeng
Chairperson of the Judicial Service Commission
Constitutional Court
1 Hospital Street
Constitution Hill
Braamfontein
Johannesburg

Dear Judge Mogoeng

MLAMBO JP:
GROSS MISCONDUCT IN LYING TO PARLIAMENT

Further to my letter to you of 8 February this year, covering a copy of my request to Labour Court Judge President Dunstan Mlambo (as he then was) under section 25 of the Supreme Court Act 59 of 1959 for his permission to subpoena him as a witness for cross-examination on oath at the trial of my claim pending in the Labour Court under case number LC D529/11, to which request I received no response, I enclose a copy of my application to court launched last week for leave to do so.

My supporting affidavit includes my charge that in his capacity as chairperson of Legal Aid South Africa ('LASA') Judge Mlambo deliberately misled Parliament by way of a 'Confidential ... Report ... Re: Adv Anthony Brink' that he gave the Minister of Justice and Constitutional Development on 9 March 2011 and in 'updated' form to the chairperson of the Portfolio Committee some months later on 22 June (enclosed) to pervert enquiries they'd separately initiated into my complaints that in breach of the Employment Equity Act 55 of 1998 and the Promotion of Access to Information Act 2 of 2000, LASA CEO Vidhu Vedalankar and NOE Brian Nair had violated my fundamental rights guaranteed by sections 9 and 32 of the Constitution, and then lied about it in the course of a cover-up.

On learning of Judge Mlambo's report to Parliament in late June/early July 2011, I promptly brought it to your predecessor Judge Ncgobo's attention by letter of 22 July 2011, covering

a copy of my statement of claim in the Labour Court, in which I identified and refuted the lies, distortion and deceptively false implications in Judge Mlambo's report, with reference to the then available documentary record (and many further telling records have since surfaced).

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Judicial Conduct Committee secretary Sello Chiloane telephoned me some days later, mentioning that the Committee needed a sworn complaint to act on. I responded that I knew this and intended providing one; I proposed first obtaining from LASA via pre-trial discovery procedure a copy of Judge Mlambo's original report to the Minister before it was changed ('updated') for the chairperson of the Portfolio Committee.

My hope of obtaining it soon enough were frustrated by LASA Corporate Services Executive Thembile Mtati's complete refusal at our pre-trial conference on 26 October 2011 to supply me with this document and 36 others that I requested for trial in my conference agenda sent up a month earlier on 28 September.

On the very proper advice of his Senior Counsel (and Commission member) Mbuyiseli Madlanga SC, however, openly expressed at the conference that the three dozen specified documents I requested would probably be compellable on application to court, Mtati undertook to reconsider his blanket refusal to furnish me with any of them, and on 18 November undertook: 'The persons from whom clarity will be sought on this matter are unavailable. The information will be furnished on or before 25 November 2011.' '[T]his matter' was item 13 of my request for documents in my conference agenda, calling for (i) the Minister's query arising from my complaints of unfair discrimination and non-compliance with PAIA, (ii) Judge Mlambo's report to him, and (iii) his covering letter.

In breach of his undertaking, Mtati failed to furnish these documents; and on 18 January 2012 I was obliged to bring an application to compel their production, among other interlocutory relief claimed.

On 13 February Mtati answered evasively: 'The communication was between the Minister and the Board Chairperson [Mlambo JP] and would not be in our possession as the Chair is independent from Management.'

I replied on 12 March: 'The chairperson is LASA's most senior officer. His communications with LASA's Executive Authority are public records, which have been duly requested for trial, and they are required to be discovered.'

Notwithstanding, in the eight months since passed, Mtati has failed to discover Judge Mlambo's original report to the Minister on 9 March 2011 and their related correspondence.

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My request (under the Labour Court rules) for the disposal of my interlocutory application by way of a pre-trial conference at court was granted, but despite no less than six requests to the registrar to set it down again – after she removed it from the original set-down date, 29 August, several months after my request was granted – the pre-trial conference at court has yet to be set down and held. I've recently asked that my separate application to strike out the unauthorised defence of my claim be set down immediately (CEO Vedalankar has not authorised it as required by the LASA Board's Approval Framework for claims of the instant scale, nor, it looks certain, has the Board been notified of the defence, as equally required).

The upshot is that I've been delayed for well over a year in making my sworn complaint to the Commission. To draw it properly, I must see Judge Mlambo's original report to the Minister on 9 March 2011 and what changes he made to it when he 'updated' it for the chairperson of the Portfolio Committee on 22 June. The hard copy provided me by the latter a few days after receiving it (prompted by my coincidental communication with him that month) is printed in plain black and white, so I can't see the 'blue font' indicating these changes, mentioned in the postscript to the June version.

Having regard to Mtati's success in delaying the prosecution and determination of my claim to date, and the long delay in the convention of the pre-trial conference at court that I requested to disgorge the documents he's withholding from me and from the trial judge, I don't expect to extract a copy of Judge Mlambo's original report and the associated correspondence from Mtati anytime soon, and Judge Mlambo has explicitly warned me off communicating with him again, so I'd appreciate the Judicial Conduct Committee's assistance in obtaining this key piece of documentary evidence from him to equip me to prepare and file my sworn complaint against him concerning his gross misconduct in repeatedly lying to Parliament.

My complaint will also deal with Judge Mlambo's smears in his letter covering his 'updated' report to the chairperson of the Portfolio Committee in June (copy enclosed), manifestly calculated to prejudice him against me and thereby discredit my complaints before their proper assessment.

I expect that the same calumny also features in Judge Mlambo's covering letter to the Minister, and I'd appreciate the Commission's assistance in obtaining it too, along with the Minister's request for a report about my fundamental rights violation complaints.

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I believe the extraordinarily serious sworn allegations made in my supporting affidavit in the enclosed application papers suffice for the Judicial Conduct Committee to make a start in its investigation, and to require Judge Mlambo to surrender a copy of (i) the Minister's request that for a report, (ii) Judge Mlambo's letter to the Minister covering his report, and (iii) his secret report about me that he submitted to the Minister on 9 March 2011 .

Yours sincerely



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Encl: Application papers; and Judge Mlambo's 'updated' 'Confidential ... Report ... Re: Adv Anthony Brink' to the chairperson of the Portfolio Committee on 22 June 2011 with its covering letter.

Cc:

Hon. Jeffrey Radebe MP, Minister of Justice and Constitutional Development;

Hon. Andries Nel MP, Deputy Minister of Justice and Constitutional Development;

Hon. Luwellyn Landers MP, chairperson of the Portfolio Committee on Justice and Constitutional Development, and various Committee members;

The Honourable Mr Johann Kriegler, chairperson of Freedom Under Law.