

ROTTEN TO THE CORE

Corruption at Legal Aid SA

VOLUME 1

**Eight gross misconduct
complaints to the Judicial Service
Commission against LASA Board
chairperson Dunstan Mlambo,
Judge President of the Gauteng
Division of the High Court of
South Africa**

INDEX

Volume 1

Eight complaints of gross misconduct made to the Judicial Service Commission against Legal AID SA ('LASA') Board chairperson Dunstan Mlambo, Judge President of the Gauteng Division of the High Court of South Africa

For best print resolution and legibility, this bundle contains prints of the final PDFs of the complaints before signature, but scanned copies of the signed and attested complaints can be accessed in a Dropbox folder online at: <https://goo.gl/5KQ7RV>. For easy reprinting and electronic distribution, this document bundle is accessible in the same folder.

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	Court which he headed at the time; and, (b) the unauthorised, off-the-record, unlawful, permanent freezing of the fully funded critical posts, substantially disrupting specialist legal professional service delivery in KwaZulu-Natal and the Eastern Cape, unlawfully deviating from LASA's approved Strategic Plan, and unlawfully contravening the Public Finance Management Act in multiple other respects – in the case of the false report to the Portfolio Committee, in criminal contravention of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act	
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Volume 2 will include several further gross misconduct complaints against Mlambo JP to the JSC.

Volume 3 et seq. will include, inter alia:

- (a) perjury charges, supported by records evidencing them, against: LASA CEO Vidhu Vedalankar; NOE Brian Nair; HRE Amanda Clark; CE Thembele Mtati and CLM Solly Sekgota;
- (b) professional misconduct complaints against: Adv Nair to the General Council of the Bar, and attorneys Mtati and Sekgota to the Law Society for the Northern Provinces, arising from their perjury, including contradictory perjury, variously in testimony and in interlocutory and condonation affidavits to defeat the ends of justice; and in discovery and PAIA section 23 affidavits and confirmatory affidavits to conceal duly requested records to the same corrupt end;
- (c) complaints to the Auditor General against Vedalankar in her capacity as Accounting Officer of LASA for multiple ongoing

contraventions of the Public Finance Management Act involving many millions of rands annually from 2010 to date; and for authorising and allowing massive unlawful fruitless and wasteful expenditure on indefensible and meritless, corruptly motivated litigation to obstruct access to specified records duly requested under PAIA, so as to suppress further evidence of pervasive, systemic corruption at LASA (see affidavit and its supporting documents detailing it: goo.gl/ydG4Pi, and special report on LASA's persistent non-compliance with PAIA since 2010 and repeated false annual reporting on its handling of PAIA requests to conceal its contemptuous disregard for its constitutional information transparency obligations from the National Assembly: goo.gl/6Dh35o); and,

- (d) complaints against Vedalankar to the Speaker of the National Assembly and to the chairperson of the Justice Portfolio Committee regarding her repeated false and deceptive oral and written reporting to the Committee, in criminal contravention of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, to conceal the unauthorised, off-the-record, illegal abortion of the appointments of recommended candidates to LASA's three remaining vacant Senior Litigator posts under cover of a false budgetary insufficiency excuse repeatedly advanced by her, including perjuringly on affidavit (later diametrically contradicted by NOE Nair in a report to LASA's Board, and then again in his oral evidence), to cover recruitment corruption in which Mlambo JP was centrally involved, and the unauthorised, off-the-record, unlawful, permanent freezing of the critical Senior Litigator posts – annually budgeted by LASA, annually voted by the National Assembly, and annually funded by the Justice Department to date – obstructing specialist legal professional service delivery in KwaZulu-Natal and the Eastern Cape since 2010, unlawfully deviating from LASA's approved Strategic Plan, and unlawfully contravening the Public Finance Management Act in multiple other respects.

‘Our office seeks to be the conscience of the state and ensure that it acts with integrity and justice at all times. We investigate public sector maladministration, fraud and corruption, report on it, and take appropriate action against it. ... [C]orruption is a form of maladministration that needs to be fought not just by those in the affected organisations themselves, but also by the media and by society in general. Through our work we’ve also helped highlight specific forms of public sector corruption that don’t necessarily involve bribery ... I would like to see South Africans recognising that corruption hurts – it eats away at the soul of the nation. I’d like us to get to a stage of realising that we all have a role to play in combating corruption: every time people act they should ask themselves: “Am I adding to the problem of corruption or am I helping solve it?” ... [T]he name and status of the people we investigate doesn’t matter. Acting without fear or favour means you can investigate anyone. ... We must retain respect for the rule of law ... There also needs to be better enforcement of codes of conduct. Increasingly, we are seeing emphasis placed on being found guilty in a court of law. That suggests that you can break codes of conduct until a court of law calls it crime. It’s unfair to say to people their defence against public sector corruption is the criminal justice system. People entrusted with public power should not claim privileges of criminals.’

Adv Thuli Madonsela, (then) Public Protector, interviewed by Transparency International in Berlin on winning its Integrity Award in October 2014

‘[Her] work embodies Transparency International’s ... belief that the corrupt should not be allowed to get away with their misdeeds.’

JC Weliamuna, Chair of Transparency International’s Integrity Awards Committee

‘Former public protector Thuli Madonsela has urged the public to support whistleblowers in the fight against ... corruption. Both Madonsela and former finance minister Pravin Gordhan were speaking at the Democracy Defenders Dialogue at the University of Witwatersrand in Johannesburg on Monday. ... Madonsela, who was part of a panel that discussed whistleblowers in the South African context, said for those who speak out against fraud and corruption, it is a “lonely journey”. ... “There are gaps in the whistleblower protection laws. For true protection of whistleblowers, we have to empower people to know what needs to be done. What I would like to see more is ordinary people writing to parliament and the president in terms of the access to information act,” Madonsela said. ... “We want our leaders to be accountable, and to be honest – that’s a true democracy.”

Gordhan emphasized the need for an active citizens’ movement against corruption ... “At the end of the day, we can be activists, leaders, catalysts for the revitalization of democracy, but it is the masses that make history... There’s space for all of us to become activists. If you look around the world, that’s when change really happens. It’s when citizens themselves take up these sorts of issues,” he said. He warned of certain impending dangers like ... creeping authoritarianism. How do we hold people accountable for that? The third danger is one where you can have laws in your books, but laws only exist to the extent they are enforced. It is the abuse of legitimate processes for illegitimate purposes,” Gordhan said.’

Huffingtonpost.co.za, 1 August 2017

FIRST COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, admitted to practice on 12 April 1983. I reside at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint brought under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.
3. I charge the respondent with suborning perjury to defeat the ends of justice, an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.
4. Although the gross misconduct to be described below was committed by the respondent in his capacity as LASA Board chairperson, and not as a judge, the Judicial Service Commission ('JSC') has jurisdiction to deal with this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges 'always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office ... in a manner that enhances public trust in, or respect for, the judiciary and the judicial system ... [to] avoid impropriety or the appearance of impropriety in all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

5. On 31 October 2012, I sued the respondent under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination at the trial of my claim against LASA in the Durban Labour Court. The nature of the claim and my reason for wishing to cross-examine the respondent will be detailed later in this affidavit.
6. Redacted for relevance to this complaint and annexed hereto marked 'A' is a material excerpt of the 'RESPONDENT'S ANSWERING AFFIDAVIT' opposing my application, deposed to by LASA's lead in-house attorney, Corporate Services Executive Thembile Mtati.
7. Paragraph 4 records that the respondent 'duly authorised' Mtati to make his answering affidavit on his behalf, and that before he did so he'd had 'consultations' with him.
8. The affidavit was saturated with objectively demonstrable perjury, to be treated in separate complaints.
9. Paragraph 51 makes the following allegation:

The most disturbing, reprehensible and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented the Applicant's conduct amounts to professional misconduct.
10. This allegation on oath was false in every particular.
11. In truth, I've no idea where the 'South Gauteng High Court' is, much less have I ever set foot in it, never having litigated there or gone there for any

other reason, as any CCTV records will bear out; and the claim that I 'left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court' is pure perjury.

12. The allegation that the respondent 'did not take kindly to the Applicant's conduct' is further perjury to corruptly amplify and lend credibility to the first.
13. Compounded by the concluding third charge in the paragraph that 'In the face of litigation where Legal Aid SA is legally represented the Applicant's conduct amounts to professional misconduct', these two lies under oath were a criminal concoction calculated to defeat the ends of justice by corruptly prejudicing the Labour Court against me with poisonously inflammatory lying defamation falsely attacking my character and professional integrity.
14. This is precisely the especially wicked crime for which US President Richard Nixon's equally corrupt Special Counsel Charles Colson was disbarred and jailed; see annexed reports marked 'B'.
15. One of my reasons for not pursuing my application for leave to subpoena the respondent after reading this chilling, depraved perjury was my apprehension that it would be too dangerous to bring him to court, because he was evidently capable of saying absolutely anything, no matter how perversely false, confident that the trial judge – until quite recently the respondent's judicial colleague and superior as head of the Labour Court – would take him at his word without question as a senior judge.
16. As to the respondent's specific charge quoted above, I sharply perceived that in a contest in court between the respondent and me as to who was telling the truth and who was telling lies about this, no judge would disbelieve this detailed charge levelled by the just-appointed head of the biggest division of

the High Court in the country, conveyed by his attorney on oath, against a bare denial proffered by a mere advocate.

17. Indeed, as paragraph 59.2 of the affidavit very correctly calculated with low criminal cunning: ‘there is a well-founded presumption in law in favour of the Respondent’ and that as ‘a senior Judge of the High Court in South Africa ... enjoined by the Constitution of this country ... to uphold it in all his dealings and in his actions towards others’, the respondent ‘will always act as Judges do’ – and not tell criminal lies, animated by fear and loathing as I was closing in (see below), to falsely discredit as an unprofessional lunatic an advocate threatening to call him to account in a law court like any other public servant summoned to the witness stand, to be sworn in and examined on oath under penalty of perjury before a judge experienced and skilled in telling truth from lies, about the illegal things he’d said and done.
18. Briefly stated here, the shocking background to the respondent’s false charge against me on oath will make sense of his otherwise inexplicable impeachable misconduct.
19. I’ll show that the respondent’s false charge is consistent with his past modus operandi in attempting to discredit me with false personal and professional misconduct accusations to distract from the gravity of my complaints about the corruption and lawlessness at LASA that I’d run into – pertinently brought to his attention again and again in finely detailed petitions, but to which he’d turned a blind eye.
20. In November 2009, I was interviewed by a duly constituted selection panel of LASA’s most senior lawyers in KwaZulu-Natal for its top legal professional position in the province, its Senior Litigator post at Pietermaritzburg, for which I’d applied and been shortlisted. (There’s a twin post at Durban.)

21. In August 2010, after long, strange, unexplained silence, and then evasion, hostility, obvious bad faith and prevarication in response to my repeated enquiries about the outcome of the interviews for the post, I requested access to the record of the selection panel's recommendation, among other documents, under the Promotion of Access to Information Act 2 of 2000 ('PAIA').
22. My request was illegally ignored – a deemed refusal under section 27 of PAIA and a violation of my fundamental right to information guaranteed by section 32(1)(a) of the Constitution.
23. So I appealed to the PAIA Unit of the South African Human Rights Commission ('SAHRC') to assist me under its power to do so vested by section 83(3)(c) of PAIA. Which it helpfully did, by obtaining LASA's agreement to respond to my PAIA request.
24. Immediately reneging on its undertaking given to the SAHRC, LASA CEO and information officer Vidhu Vedalankar now expressly refused my entire request in October 2010, on wholly spurious grounds, namely that (my footnotes interpolated): 'it was decided that ... your request goes beyond your individual circumstances and extends to information on other third parties¹ ... Accordingly your request for the detailed information² contained in your letter,³ other than the information and explanation provided above,⁴ is declined as it is not relevant to you exercising any right you may have in law.'⁵
 1. This incompetent justification is not among the 'Grounds for Refusal' of public body records enumerated in Chapter 4 of Part 2 of PAIA – certainly not section 34(1) protecting against 'the unreasonable disclosure of personal information about a third party' as defined by section 1 – and indeed it was ultimately abandoned.
 2. I did not request 'detailed information' from Vedalankar; I requested access to specified public documents in LASA's possession.

3. I did not write a 'letter' asking for 'detailed information'; I delivered a Form A request for records in compliance with the prescribed formalities.
 4. Vedalankar's 'information and explanation provided', unsupported by any record, was that LASA had received insufficient budget for 2010/11 from the Department to fill its vacant Senior Litigator posts, and that in July 2010 Vedalankar and National Operations Executive Brian Nair had decided to freeze them accordingly. As I later established via PAIA, no record whatsoever exists of any such decision, and these still vacant critical posts were and to date remain budgeted for by LASA and fully funded (disclosing major contraventions of sections 52 and 55 of the Public Finance Management Act 1 of 1999 in failing to 'keep full and proper records of the financial affairs of the public entity' in regard to (unauthorised and irregular) decisions involving many millions of rands, and the deliberate unauthorised failure at executive management level, for irregular and unlawful reasons, to fully and properly implement LASA's Strategic Plan 2009–12 concerning the recruitment of legal professional specialist personnel). I was given the further false 'information and explanation' that I'd been recommended 'together with other candidates'. The contrary truth of it, revealed by the recommendation report eventually surrendered, is stated below.
 5. Here the CEO and information officer of the country's biggest law firm headed by a judge president, and its most senior attorneys advising her, confused my fundamental unconditional right to public body information with my fundamental right to private body information, contingent on being 'required for the exercise or protection of any rights', per section 50(1)(a) of PAIA. C.f. sections 32(1)(a) and (b) of the Constitution, and Parts 2 and 3 of PAIA.
25. To access the record of the selection panel's recommendation for the post, which LASA's top officers were strangely concerned I shouldn't see and were therefore hiding from me, I appealed for the SAHRC's intervention again.
26. In January 2011, Vedalankar responded by providing me with a copy of the selection panel's recommendation report at last, but heavily redacted with a Koki pen to carefully black out the selection panel's 'SUMMARY OF CANDIDATES', besides of me.

27. The report confirmed I'd been recommended for the post and no one else – thus exposing and refuting Vedalankar's lie told me in her October letter, initially refusing me the report, in which she falsely alleged that I'd been recommended for the post 'together with other candidates', so as to obfuscate the unwelcome fact that I'd been the successful applicant for the post, following the interviews of all shortlisted candidates.
28. The very object of the selection process, closely regulated by LASA's Policies and Procedures on Recruitment ('Recruitment code'), was to 'identif[y] the most suitable candidate for appointment', per section 1.2.3.4.
29. LASA's High Court Unit Manager in Durban, Bongani Mngadi, was recommended for a different simultaneously advertised post in his office at Durban, for which he'd applied.
30. It's not material to canvass here the incompetence and unlawfulness, in light of LASA's peremptory Recruitment code and Approval Framework (internal regulations, prescribed by the Board, governing staff recruitment and appointment), of the selection panel's recommendation that I be interviewed again by a so-called 'second round' panel – the alleged 'brainchild' of non-executive director Mlambo JP, and presided over by him in committee with various equally unauthorised national office executives – rather than that I be appointed directly to the post, subject to Vedalankar's and National Operations Executive Brian Nair's joint approval, as required by the Approval Framework for such senior appointments.
31. Launched in July 2011, I based my claim to my appointment on unfair discrimination – mistakenly, I discovered nearly five years later, and after the dismissal of my claim in September 2014 – the true reason for the abortion of my appointment determinedly concealed from me all the while.

32. In April 2016, under a settlement agreement signed at court in February, recording LASA's total, unconditional capitulation to my several applications to compel its compliance with my further PAIA requests made in 2013–15, just as I was on the point of arguing for an order that it disgorge all requested documents, I finally forced out of LASA very reluctantly the selection panel's complete and uncensored recommendation report.
33. What this report revealed to me, years after the trial of my unsuccessful, wrongly founded labour claim, was that my rival for the post, whom I'd beaten out at the interviews, was the respondent's long-time brother in the Labour Court, of which he'd been Judge President at the time: Mzochitwayo Ngcamu AJ, as he used to be, for six-and-a-half years.
34. The recommendation report further revealed that Ngcamu had been eliminated by the selection panel for not meeting the qualifying criteria for a Senior Litigator post: he didn't have right of appearance in the High Court, which means he'd never litigated a case on his feet there.
35. He sure wasn't 'recommended together with [me]', as Vedalankar had unequivocally and falsely implied to me.
36. The recommendation report also exposed and refuted Human Resources Executive Amanda Clark's preceding lie to me, among others, in her very unpleasant don't call us, we'll call you email on 30 April 2010: 'At this stage it is not even clear which applicants will be considered in the second round'. In truth and in fact, it was perfectly clear: I was the only applicant recommended for the post for which I'd applied, been shortlisted and interviewed.
37. I finally understood what Vedalankar meant when illegally refusing my request for the recommendation report in October 2010 on the then most

puzzling and surprising basis that my ‘request extends to information on third parties’.

38. She was alluding to the critically relevant ‘information on third parties’ being concealed from me that my rival applicant for the post was the respondent’s long-time judicial colleague, noted, in as many words, by the selection panel in its recommendation report; and that he’d been eliminated by the panel from the running for appointment.
39. Which latter fact, in the lawless, ethically and procedurally corrupt recruitment regime at LASA under the respondent’s chairmanship wasn’t going to prevent this former Labour Court judge, as the respondent’s favoured candidate, being appointed instead me, the selected and recommended one – except that instead of just walking away as hoped, I boggled the plan by insistently pressing for the outcome of the interviews after five silent months, and then for my appointment after HRE Clark backhandedly confirmed I’d been recommended by insolently inviting me to ‘withdraw’ my application if I didn’t like ‘the pace we have decided’.
40. I have it from a former LASA Regional Operations Executive (also, like me, disparaged by LASA as a ‘vexatious litigant’, but who in April finally won his case against it) that the respondent irregularly and unlawfully fixed the appointment of a candidate for another Senior Litigator post whom this ROE and his selection panel had rejected, and that their duly recommended candidate was passed over.
41. The respondent’s unlawful central misconduct in recruitment corruption at LASA (even at the JSC itself), both procedural and ethical, will be the subject of multiple separate complaints.
42. As stated in my founding affidavit supporting my application for leave to subpoena the respondent, I wished to cross-examine him on:

- (a) his astonishingly derelict and untoward repeated dismissals of my persistent petitions to him and other members of the Board to exercise their fiduciary duty to ensure LASA management's compliance with the Constitution and the law in conducting its operations, and to see to Vedalankar's compliance with my PAIA requests for access to specified records, including and especially the recommendation report, which she'd illegally refused; and her finalisation of my appointment to the said post, after I'd investigated, found, and clearly shown to him that her budgetary insufficiency excuse for cancelling my recruitment to have been a lie; and,
- (b) the contents of his 'Confidential Report Re: Adv Anthony Brink', replete with lies (one later feebly retracted in the lying answering affidavit in question as 'an error', 'palpably an error' after I'd categorically refuted it as a lie), submitted to the Minister of Justice and Constitutional Development (as he was then called) in March 2011 and then a couple of months later in 'updated' form in June, to the chairperson of the Justice Portfolio Committee in the National Assembly.

To put down my complaints about Vedalankar's repeated illegal refusal to comply with my PAIA requests and manifestly false budgetary insufficiency story for not finalising my appointment, the respondent falsely alleged in his 'Confidential Report' (I learned about it and sourced it from the chairperson of the Portfolio Committee) that my three PAIA requests in 2010–11 had been duly responded to, and that the process to finalise my recruitment had been delayed by a logistical problem (a lie, later twice retracted on oath, as said) and then aborted for a due and proper financial reason (no record exists of any such decision; the extant records refute the lying excuse; and NOE Nair advanced totally different lying excuses in his 'Report to Board' in November 2011, after I'd exposed

and refuted the lying logistical and financial excuses in my original very detailed statement of claim in the Labour Court).

The respondent's deliberate misleading and successful deception of the Minister, and then the Portfolio Committee, in his covering letter and 'Confidential Report' – in the case of the Portfolio Committee crimes under sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 – will be addressed in separate complaints.

43. As said, the respondent's attempt to discredit me in the Labour Court by smearing me as a demented stalker was in keeping with previous similar false charges against me. (The following instances will be the subject of separate complaints.)
44. When in January 2011 I duly appealed to the respondent and to other Board members for the second time to intervene in Vedalankar's illegal total refusal of my August 2010 PAIA request and the irregular abortion of my appointment under cover of a bogus budgetary excuse, the respondent rebuked my second petition in a late-night email the same day with a similar false accusation: 'Your conduct is unbecoming to say the least and borders on harassment.' His email is annexed marked 'C'.
45. On 22 June 2011, in a letter to the chairperson of the Portfolio Committee, the respondent repeated this malicious calumny and false mischaracterisation of my due and proper approaches to him and the Board, the better to prejudice the Committee against me and pervert its enquiry into the constitutional violations by LASA's top officers of which I'd complained. The respondent's letter, forwarded to me by the chairperson of the Portfolio Committee, is annexed marked 'D'.

46. I should mention that in response to the respondent's earlier false professional misconduct charges I duly reported myself to the Pietermaritzburg Bar Committee for investigation, but chairperson Roberts SC declined jurisdiction to deal with the matter.
47. After the stunningly irregular, premature dismissal of my petition to the Judge President of the Labour Appeal Court for leave to appeal the dismissal of my labour claim – before all the papers were in; I'd yet to answer LASA's application for condonation for opposing me out of time – an inspection of the court file (DA21/14) in April 2016 in the course of my investigation of the gross irregularity turned up an anonymous, unsigned, undated, and unstamped 'Memorandum' inadvertently left in it, persisting with this characteristic high-toned, magisterial, aggressive ad hominem denigration to improperly influence and prejudice against me Judge President Basheer Waglay, the respondent's immediate successor as head of the Labour and Labour Appeal Courts, and his former deputy: My 'vulgar and insulting language is prevalent throughout [my] affidavits. Such conduct is unacceptable for a practising advocate ... [my] vulgarity has clouded [my] mind'.
48. The anonymous 'Memorandum' – also lying about the issues tried and about my case on petition – which found its way behind and past the court registrar and his date stamp and straight into the file, unsigned and unstamped, is annexed marked 'E'. A registry clerk's certification of an inventory of the file's contents, including this criminal 'Memorandum', is annexed marked 'F'. (As at August 2016, when I had the file inspected again, the 'Memorandum' was still there.)
49. Again, this further instance of defeating the ends of justice, this phenomenal corruption at LASA under the respondent's chairmanship, which has now seeped into the judiciary, will be addressed in a separate complaint.

50. In the situation, I request that the JSC investigate the respondent's subornation of perjury to defeat the ends of justice, described herein.

Signed at Mtunzini on 4 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 4 June 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY, ROBIN BRINK

Applicant

and

DUNSTAN MLAMBO JP

Respondent

In re:

ANTHONY BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

THEMBILE VUYO MTATI,

do hereby make oath and swear that,

m

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1. The facts deposed to herein are, unless the context indicates otherwise, within my personal knowledge, and are true and correct. Where I make submissions of a legal nature I do so on the advice of the legal representatives of the Honourable Mr Justice Mlambo (hereafter "the Respondent").
2. I am the Corporate Services Executive of the Legal Aid South Africa (hereinafter "Legal Aid SA") with offices at 29 De Beer Street, Braamfontein, Johannesburg.
3. I am the deponent to all the affidavits and signatory to all pleadings in all the proceedings instituted by the Applicant against the Legal Aid SA.
4. I have been duly authorised by the Respondent to depose to this affidavit. Where I make propositions of a legal nature I do so on the basis of the consultations I had with the Respondent and Legal Aid SA's legal advisors which advice and information I verily regard as correct. It is important that I provide a brief background in respect of this application and particularly the Applicant.

BACKGROUND TO THE MATTER

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

A

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

51. The most disturbing, reprehensible, unprofessional and brazen act of disrespect came recently when the Applicant left the KZN province and attended unannounced and without warning at the office of the Respondent in the South Gauteng High Court. The Respondent did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is legally represented the Applicant's conduct amounts to professional misconduct.

m 16

A

[REDACTED]

[REDACTED]

[REDACTED]

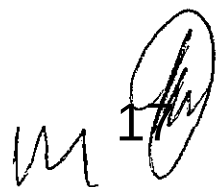
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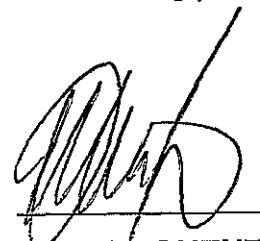
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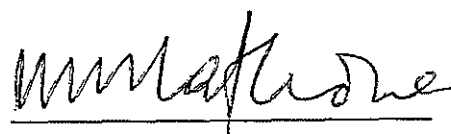
59.2 I submit that the Respondent as a senior Judge of the High Court in South Africa is enjoined by the Constitution of this Country, to uphold it in all his dealings and in his actions towards others. The law recognises that as a Judge, the Respondent will always act as Judges do. Accordingly, there is a well-founded presumption in law in favour of the Respondent.



WHEREFORE, it may please this Court to dismiss this application accordingly.


DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this 16 January 2013. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.



COMMISSIONER OF OATHS

Mabhoko Mathole Attorneys
Commissioner of Oaths
Ex Officio
Mansion House, 132 Market Street
Cell: 082 680 5982 Fax: 086 690 3648
Email: mabhoko@webmail.co.za

On June 3, 1974, Colson pleaded guilty to a criminal information that read in part:

On or about June 28, 1971, and for a period of time thereafter, in the District of Columbia and elsewhere, CHARLES W. COLSON, the DEFENDANT, unlawfully, willfully and knowingly **did** corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal trial of Daniel **Ellsberg** under indictment in the case of *United States v. Russo*, Criminal Case No. 9373, United States District Court, Central District of California, by devising and implementing a scheme to **defame** and destroy the public image and credibility of Daniel **Ellsberg** and those engaged in the legal defense of Daniel **Ellsberg**, with the intent to influence, obstruct, and impede the conduct and outcome of the criminal prosecution then being conducted in the United States District Court for the Central District of California. (Book VII, 918-23)

In the early 1970s, Nixon officials such as John Ehrlichman and Henry Kissinger **planted accusations in the U.S. media** that Daniel Ellsberg had secretly given the Pentagon Papers and other key documents to the Soviet Union; everyone now knows this was a lie, but at the time, American journalists repeated it constantly, helping to smear Ellsberg. That's why Ellsberg has constantly defended Snowden and Chelsea Manning from the start: because the same tactics were used to smear him.

This is the first of two articles on the former secret White House investigative unit known as the plumbers.

One was a fear—nourished in part, some sources said, by Henry A. Kissinger, then the President's national security adviser—that Daniel Ellsberg, who said he turned over the Pentagon papers to the press, might pass on to the Soviet Union secrets far more important than any information contained in the Pentagon study of the Vietnam war.

Specifically, the sources said, the White House feared that Dr. Ellsberg, a former Rand Corporation and Defense Department official, may have been a Soviet intelligence informer who, in the weeks after

publication of the Pentagon papers in June, 1971, was capable of turning over details of the most closely held nuclear targeting secrets of the United States, which were contained in a highly classified document known as the Single Integrated Operation Plans, or S.I.O.P.

The second major concern was that a highly placed Soviet agent of the K.G.B., the Soviet intelligence agency, operating as an American counterspy, would be compromised by continued inquiry by the special prosecutor and the Senate Watergate committee into the Ellsberg case. The agent informed his F.B.I. contacts that a set of the Pentagon papers had been delivered to the Soviet Embassy in Washington shortly after a Federal court had ordered The Times to stop print-

Continued on Page 76, Column 1

EHRlichman SCORED ON ELLSBERG CHARGE

WASHINGTON, Aug. 10 (UPI) An attorney for Dr. Daniel Ellsberg has chided the Senate Watergate committee for failing to challenge what he called "totally false and slanderous" testimony by the former White House aide, John D. Ehrlichman, suggesting that Dr. Ellsberg delivered copies of the Pentagon papers to the Soviet Embassy.

Anthony Brink

From: Mlambo Dunstan [DMLambo@justice.gov.za]
Sent: 24 January 2011 11:12 PM
To: arbrink@iafrica.com
Cc: vidhuv@legal-aid.co.za; BeeMariS@legal-aid.co.za
Subject: Legal Aid SA

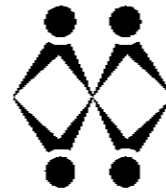
Mr Brink

I refer to your previous email communication to me and to the numerous emails you have sent to the Executive Management of Legal Aid SA. I further refer to the email you sent to me and to some Members of the Board of Directors of Legal Aid SA as well as some whose tenure as Members of the Board has come to an end. It has been brought to my attention that a friend of yours had, in the past week, also called some Board Members and then paid a visit to one of them during which your matter was brought up.

Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view. I further take this opportunity to advise you that the Board of Directors of Legal Aid SA is not the appropriate forum to raise your matter. Your approach to the Board is therefore misdirected. Your matter was handled at Executive Management level, being the level at which such matters are handled, and should you have any issues in that regard you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you. For this reason I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf.

I trust that you find this in order.

*D Mlambo
Chairperson- Legal Aid SA and
Judge President
Labour Courts
dmlambo@justice.gov.za
Tel +27113595735/6
Fax 0866447932*



Legal Aid
South Africa

C

National Office

29 De Beer Street

Braamfontein

2017

Tel: 011-877-2055

Fax: 011-877-2222

www.legal-aid.co.za

22 June 2011

Mr L Landers MP
Chairperson Justice Portfolio Committee
National Assembly
P O Box 15
Cape Town
8000

Dear Mr Landers

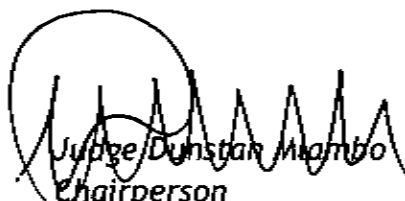
Adv A Brink

Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

"Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view. I further take this opportunity to advise you that the Board of Directors of Legal SA is not the appropriate forum to raise your matter. Your approach to the Board is therefore misdirected. Your matter was handled at Executive Management level, being the level at which such matters are handled, and should you have any issues in that regard you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you. For this reason I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf."

I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully


Judge Dunstan Mambona
Chairperson
Legal Aid South Africa

DA21/14

ANTHONY ROBIN BRINK

Petitioner

and

LEGAL AID SOUTH AFRICA

Respondent

MEMORANDUM

The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind so that his application does not say in what respect the Labour Court erred in rejecting his claim.

What is common cause is that the petitioner applied and was shortlisted for the position of senior litigator Pietermaritzburg. He was recommended for a second round interview but the position for which he applied for was frozen due to budgetary constraints. He was only made aware of that decision after numerous telephone calls and correspondence. There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested recording of the board meeting in terms of the Promotion of Access to Information Act 2 of 2000.

Notwithstanding the above dispute, the petitioner does not say in what respect the court *a quo* erred in dismissing his claim. All is said in his affidavit is his judgmental comments about the credibility of employees of the respondent.

C
F

CONTENTS OF CASE FILE DA21/14

- 1) Blank Petitions Control Sheet with notification of case number on 10 Dec 14 attached
- 2) Brown cover page 3/3/2 headed Held in Durban-in the Labour Court of SA, petition set down for 18 Feb 2015, judges Waglay, Davis and Sutherland, order petition refused. Attached fax sheet of 2 page decision sent 15-13 on 18 Feb 2015
- 3) Letter of 27 Feb 2015 from C.Phophi to A.Brink
- 4) Petition refusal order stamped 18 Feb 2015 , Juta Street, Phophi, LAC
- 5) Respondent's notice of objection to late hearsay affidavit signed by T.Mtati 11 Feb 2015
- 6) Service affidavit:objection to opposing affidavit dated 12 Feb 2015 signed A.Brink 2 Feb 2015
- 7) Affidavit in support of proof of service Rule 4(2)(b) by Akhona Lucas Nobetsu filed Juta Street 17 Feb 2015 confirming that on 13 Feb 2015 he served a condonation application and notice of objection on the petitioner
- 8) Undated, unsigned memorandum regarding petitioner's vulgar and insulting language, brief summary of the dispute with conclusion that the petitioner does not say in what respect the court a quo erred in dismissing his claim as his affidavit is only his judgemental comments about the credibility of employees of the respondent.
- 9) Respondent's notice of objection to the petitioner's affidavit filed in support of a notice of objection dated 2 Feb 2015, filed Juta Street 11 Feb 2015 signed by T.Mtati 11 Feb 2015
- 10) Objection to opposing affidavit filed Juta Street 4 Feb 2015 signed A.Brink at Eshowe 27 Jan 2015 sworn Eshowe 1 Feb 2015
- 11) Bound red cover Petition for leave to appeal original filed Juta Street 9 Dec 2015 signed A.Brink at Eshowe 7 Dec 2014 with attached refusal of application for leave to appeal by Cele J in chambers 27 Nov 2014 with Appearances- for the applicant:in person, for the respondent Mokeoena and Machaba, the Judgement by Cele J, application for leave to appeal signed Eshowe 3 Oct 2014 and Heads signed at Pietermaritzburg 16 Sep 2013.
- 12) Affidavit of service of answering affidavit to the supporting affidavit in the petition for leave to appeal filed Juta Street 23 Jan 2015 sworn by Sekgota, attaching email of 22 Jan 2015 to Ngcamu, copying Mehta, Vilakazi and Brink.
- 13) Notice of objection to respondent's opposing affidavit signed Brink at Eshowe 27 Jan 2015
- 14) Notice of intention to oppose petition for leave to appeal filed Liberty House 21 Jan 2015 dated at Durban January 2015 with attached affidavit filed Durban 21 Jan 2015 signed by Sekgota confirming he sent email to Brink on 20 Jan 2015 at 3-42pm followed by a telephone call, sworn and signed at Braamfontein on 21 Oct 2014.
- 15) Notice of filing of respondent's opposing affidavit at Juta Street on 23 Jan 2015 with 33 page affidavit signed and sworn by Mtati on 22 Jan 2015.

P.T.O.

16) Respondent's notice of motion : application for condonation filed Juba Street 5 Feb 2015 signed Pp Mtati Johannesburg 5 Feb 2015 attaching 8 page founding affidavit sworn by Mtati 4 Feb 2015, attaching email from Mtati to Machaba copying Sekgota on 15 Jan 2015 saying he had not received a copy of the petition and a confirmatory affidavit, application for condonation sworn by Sekgota at Johannesburg on 4 Feb 2015.

17) Affidavit of service of notice of intention to oppose the petition for leave to appeal, two copies, filed Durban 28 Jan 2015 sworn by Sekgota 21 October 2014 attaching email to Brink 20 Jan 2015

18) Notice of filing of respondent's opposing affidavit at Durban on 28 Jan 2015 sworn by Mtati 22 Jan 2015

19) Letter from A.Brink to James Kamanga, Durban Labour Court, re petition case number.

20) Service affidavit sworn by Brink at Eshowe on 10 Dec 2014

21) Notice of intention to oppose petition for leave to appeal filed Durban 21 Jan 2015 with affidavit of service by Sekgota sworn at Braamfontein on 21 October 2014.

Contents listed by C.F.M. Rawlins 2 April 2015

C.F.M. Rawlins



SECOND COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa (‘LASA’), hereinafter ‘the respondent’.
3. I charge the respondent with collusion in LASA CEO and information officer Vidhu Vedalankar’s violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, an act of ‘gross misconduct, as envisaged in section 177(1)(a) of the Constitution’, per section 14(4)(a) of the said Act.
4. Although the respondent’s gross misconduct, detailed and vouched below, was committed by him in his capacity as chairperson of LASA’s Board, and not as a judge, the Judicial Service Commission has jurisdiction to decide this complaint by virtue of Articles 5 and 6 of the Code of Judicial Conduct and its Notes, which require judges ‘always, and not only in the discharge of official duties, [to] act honourably and in a manner befitting judicial office’, ‘in a manner that enhances public trust in, or respect for, the judiciary and the judicial system’, to ‘avoid impropriety or the appearance of impropriety in

all the judge's activities', and 'at all times, also in relation to extra-judicial conduct, [to] comply with the law of the land.'

5. Crucially to this complaint, the respondent's judicial office is not just coincidental to his leadership of LASA, it's precisely a legal requirement. Section 4(1)(a) of the Legal Aid Act 22 of 1969, in operation at the material time, required that LASA's Board include a judge, impliedly and in practice to chair it; and section 8(1) of the succeeding and current Legal Aid South Africa Act 39 of 2014 now explicitly prescribes: 'The judge appointed in terms of section 6(1)(a) is the chairperson of the Board.'
6. This is to say, LASA's top officer must be a person who has taken the judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it'.
7. The Legislature evidently intended by this unique qualifying requirement for the head of a public entity in our country – that it be headed by no less than a judge – that LASA's most senior public officer can confidently be relied upon to 'uphold and protect' the country's hard-won constitutional rights in the democratic era after the apartheid one – by which former baleful epoch I'm referring, in the language of the Preamble to the Promotion of Access to Information Act 2 of 2000 ('PAIA'), to 'the system of government in South Africa before 27 April 1994, [which] amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.
8. The Legislature's further intention in having a judge head LASA is undoubtedly to ensure that under his watch its officers will observe the rule of law, act ethically, and respect the basic civil liberties guaranteed by the Constitution, as far as he can reasonably possibly achieve this, and that he'll act to remedy problems in this regard when brought to his attention.

9. All the more since LASA is a state-funded law firm, billing itself on its website as ‘the largest legal institution in Africa’, which former Deputy Justice Minister Andries Nel praised in Business Day on 12 January 2011, less than a fortnight after the atrocity described in this complaint (after which the cover-up escalated, ultimately into crime, to be described in separate complaints): ‘The world would be a better place if it were run by Legal Aid.’
10. Most importantly, it’s expected of the judge heading LASA that he will himself observe the rule of law, act ethically, and ‘uphold and protect the Constitution and the human rights entrenched in it’ as sworn to do, and not tolerate, much less connive at, the ‘secretive and unresponsive culture’ practised at LASA with the object of covering up ‘an abuse of power’ by him.
11. Also that he will be especially cognisant of section 195 in Chapter 10 of the Constitution, headed ‘Public Administration’ (my ellipses for relevance):

195 Basic values and principles governing public administration

- (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
 - (a) A high standard of professional ethics must be promoted and maintained.
 - ...
 - (f) Public administration must be accountable.
 - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- (2) The above principles apply to –
 - ...
 - (b) organs of state[.]

12. Indeed, at his interview by the Judicial Service Commission in May 2012 for his current post, the respondent alleged LASA's stellar compliance with the Constitution under his leadership as an additional commendation for his appointment: 'I want to believe that Legal Aid SA is a shining example of how things should have been done constitutionally'.
13. The very contrary, abysmal reality, thanks to the respondent's deliberate failure to 'uphold and protect the Constitution and the human rights entrenched in it', will be shown in this complaint and in further complaints to follow.
14. For concision, I'll refer immediately below to part of my First Complaint against the respondent lodged on 4 June 2017 (JSC/533/17), and I request that it be read as incorporated in this Second Complaint.
15. In paragraphs 20–24 of my First Complaint, I described Vedalankar's clearly illegal and unconstitutional total refusal of my request for access to LASA's public records, which I'd made under PAIA in August 2010, inter alia for the 'minute of ... the selection board's interview with Brink on 12 November 2009' and the 'notification of [National Operations Executive Brian] Nair ... of the senior legal professionals selected by the ... selection board for the Pietermaritzburg and Durban Senior Litigator posts after interviewing the shortlisted candidates', in other words the selection panel's recommendation report.
16. Claimed to support her refusal, Vedalankar, or the low person writing for her:
 - 16.1. outrageously dishonestly fabricated, and purported to quote, fake dicta from a court judgment on PAIA (I'll revert to this);
 - 16.2. invoked sections of PAIA against me having no bearing on the decision of requests for public body records, namely 'sections 62 to 70', which

are found in Chapter 4, 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS', in Part 3 of PAIA, 'ACCESS TO RECORDS OF PRIVATE BODIES';

16.3. and asserted:

the information officer of a public body must refuse access to information falling into the following categories, save in circumstances provided for in the Act:

- a) Mandatory privacy of a third party who is a natural person.
- b) Mandatory protection of certain confidential information of a third party. [...]

17. In most strangely and surprisingly citing these provisions regarding the 'privacy of a third party' and 'confidential information of a third party' to justify her refusal of my entire PAIA request, including for access to the recommendation report, the 'information' about a 'third party' that Vedalankar was anxiously suppressing as 'priva[te]' and 'confidential' (under PAIA it was neither), turned out to be the key information noted in the recommendation report that my rival for the post for which I'd been selected, and for which he'd been rejected (not having right of appearance in the High Court as an attorney, and therefore never having litigated there on his feet) was the respondent's long-time brother in the Labour Court, Ngcamu AJ, as he used to be for '±6 years'.

18. This was finally revealed to me in April 2016, when after a long and bitter struggle I eventually succeeded in disgorging from LASA the selection panel's full uncensored recommendation report, many years after I'd first requested it in August 2010, and it had been illegally refused; then several months later, under renewed pressure of the South African Human Rights Commission's PAIA Unit, supplied heavily redacted with a Koki pen to unlawfully conceal this potently relevant fact; and then finally – after

another illegal refusal and then protracted meritless opposition to my application to court to compel its production – supplied complete and uncensored at last, as I was on the point of moving for and being granted an order that it be surrendered.

19. In view of the respondent's and the Board's fiduciary duty to ensure compliance by LASA's management executives with PAIA and other statutes governing their operations, I petitioned the respondent on 30 November 2010 to entreat his intervention in and remediation of, inter alia, Vedalankar's illegal and unconstitutional refusal of my PAIA request for access to the selection panel's recommendation, among other many other specified records.
20. A material excerpt from my petition is annexed marked 'A'. In paragraphs 8–13, I underscored the respondent's and his Board's oversight obligations over LASA as a public entity, preliminary to showing in paragraphs 17–43 that Vedalankar's refusal to allow me access to LASA's public records that I'd duly requested was clearly and incontestably illegal and unconstitutional. And dishonest: in paragraph 23 of my petition, I quoted her fake citation from a court judgment on PAIA claimed falsely to justify her refusal; whereas the judge's actual dicta, which I accurately quoted, squarely supported my claim to access to the public body records I'd requested.
21. The Board Secretary emailed me a week later on 6 December 2010, to 'confirm that the Chairperson of the Board of Legal Aid SA, Judge Dunstan Mlambo, is in receipt of your letter dated 30 November 2010. Judge Mlambo is however presently out of the country and has asked me to advise you that he will respond to your letter as soon as he is able to do so.'
22. In breach of his said fiduciary obligation to LASA as chairperson of its Board, the respondent did not act to remedy my extraordinarily serious complaint that in breach of her obligations imposed by PAIA, Vedalankar had illegally refused me access to LASA's business records duly requested under the Act,

and had thus violated my constitutional right to information guaranteed by the Bill of Rights, a basic civil right entrenched in the democratic era to combat the apartheid-like 'secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

23. Instead, after his 'interaction with' Vedalankar about my petition to him, which commenced with my detailed complaint about her illegal, unconstitutional and dishonest total refusal to comply with my PAIA request, the respondent colluded with Vedalankar, the very subject of my complaint to him, by permitting her to forge a letter on her office computer rebuffing my petition and, 'with his knowledge and consent', to paste a scanned image of his signature below it to dissemble to me that he'd written it.
24. The words just quoted are LASA's. Under 'Facts that are common cause' in my agenda for the first pre-trial conference in my subsequent action against LASA in the Durban Labour Court (LC 529/11) for my instatement to the top post, I truly averred for LASA's admission to shorten the trial:

79. Mlambo did not consult the Board to discuss the applicant's extraordinarily serious complaints raised in his petition, but instead instructed Vedalankar to prepare a letter cursorily dismissing it. He was overseas at the time.

80. On 15 December 2010 Vedalankar obliged, pasting a scanned image of Mlambo's signature into the letter she'd drawn for him, and emailed him the PDF of the letter she'd created. On 30 December Mlambo emailed it in turn to the applicant.

25. A material excerpt of my pre-trial conference ^{agenda} pleading this is annexed marked 'B'.
^

26. LASA responded by admitting my paragraph 79, and denying then admitting my paragraph 80:

Ad 79. Agreed. Mlambo JP found, upon a perusal of the Applicant's letter and the explanation received from the CEO, nothing untoward that was done by the CEO and was correct in dismissing the Applicant's complaint.

Ad 80. Disagreed. The said letter was created as a direct result of Mlambo JP's interaction with the CEO and there is nothing untoward thereabout. The electronic signature by Mlambo JP could not have been used without his knowledge and consent.

27. A material excerpt of this pleading by LASA for the true information of the trial judge is annexed marked 'C'.
28. A copy of the letter in PDF which Mlambo JP emailed me is annexed marked 'D'.
29. The basis of my above-quoted averments, pleaded in my agenda for LASA's admission, was my staggering discovery in the PDF 'Author' properties of the respondent's letter that 'VidhuV' (Vidhu Vedalankar), the very subject of my complaint to the respondent, had written it on her own office computer. A screenshot reflecting this is annexed marked 'E'.
30. Such author information is automatically entered by the user's computer programme.
31. The letter is mistakenly dated 9 November, which is three weeks before the date and delivery of my petition. Its 'File', 'Title' and 'Created' information in its PDF properties, however, all show that it was created on 15 December 2010, which was Vedalankar's last day at work before LASA closed for its annual national one-month holiday.

32. In two sentences the letter dismissed my 57-page, 254-paragraph petition to the respondent, which had commenced with a closely detailed, unanswerable complaint about Vedalankar's illegal and unconstitutional refusal of my PAIA request, but which went completely ignored:

I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator post in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as alleged or at all.

33. The respondent knew full well that the financial insufficiency excuse given me by Vedalankar the month before for not proceeding with my appointment was a lie. In my petition, I presented the then already available clear evidence of this, and much more would later emerge. The respondent's dishonest pretence to me that all was above board in the back-room abortion of my appointment (for which NOE Nair later gave the Board two totally different false explanations, and then in court told another completely different story still) will be the subject of a separate complaint, as will the respondent's own false assertion of the bogus financial excuse, along with another lying excuse later feebly retracted on oath on his behalf as 'an error', 'palpably an error' after I'd exposed it as another flat-out lie, advanced to the Minister of Justice and Constitutional Development (as the Department was then called) and then to the Portfolio Committee of the National Assembly for the same Department.
34. In sum, in the words of Chief Justice Mogoeng Mogoeng delivering the Constitutional Court's unanimous judgment in *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11 ('the Nkandla case'), the respondent as Judge President of the country's biggest High Court and heading its biggest law firm 'failed to uphold, defend and respect the Constitution' when I pertinently called his attention to Vedalankar's

violation of my constitutional right to information by illegally and dishonestly refusing my duly made PAIA request for access to LASA's records, and implored his intervention in the exercise of his oversight authority to remedy it.

35. Obviously as one of South Africa's most senior judges, no defence that 'He might have been following wrong legal advice and therefore acting in good faith' (per the Nkandla judgment) is available to the respondent to raise against the charge that he disgracefully and culpably 'failed to uphold, defend and respect the Constitution'.
36. In other words, it is not open to the respondent to answer that he was too grossly ignorant a layman to appreciate the egregious wrong he was doing when conniving in Vedalankar's illegal, unconstitutional and dishonest obstruction of my access to LASA's records, so as to conceal from me the key fact that my rival for the top professional post for which I'd been recommended had been his long-time fellow judge in the Labour Court – entirely explaining why my recruitment had been strangely silently aborted, totally off the record. And that contrary to Vedalankar's lie to me that I'd been 'recommended together with other candidates', namely this judicial fellow, he'd actually been eliminated from the running for the post.
37. Any such 'wrong legal advice and therefore ... good faith' defence by the respondent, based on being too grossly ignorant to understand the gravity of his connivance in Vedalankar's illegal, unconstitutional and dishonest obstruction of my access to LASA's records, is further precluded by the provisions of LASA's Code of Ethics and Conduct ('Ethics Code').
38. Section 1.2 prescribes that 'Compliance with the code by all employees is mandatory', and that it 'applies equally to all ... Board Members'. Section 7.5 requires the respondent as a Board Member to 'maintain knowledge of and comply with all applicable laws' – such as PAIA, concerning which, section 13

requires: ‘A prompt, courteous and accurate response should be made to all reasonable requests for information’. Section 7.3 requires Board Members to act in such a manner as to ‘ensure that their conduct cannot be interpreted as being in any way in contravention of applicable laws’. And section 15.1.5 requires that they ‘act honestly and in good faith at all times and report any harmful activity they observe in the workplace’.

39. Compounding the respondent’s contraventions of these provisions, and his demonstrated contempt for the rights and principles stated in sections 32 and 195 of the Constitution, the respondent did not fail ‘to uphold, defend and respect the Constitution’ through passive dereliction and indolent neglect of his sworn obligation to do so. By conspiring with Vedalankar, about whose violation of my rights and multiple lies I’d complained in fine detail, to forge a letter dismissing my petition, and by then sending it to me from his own email address, after mulling on its untruthful contents for a further two weeks, he actively ‘failed to uphold, defend and respect the Constitution’ in contempt of his oath of office, in the manner of a corrupt judge conniving out of court behind the scenes with an obviously guilty criminal accused facing an extraordinarily serious charge; batting aside the complaint’s clearly substantiated and unanswerable case; and allowing the accused with whom he has long been a friendly colleague, and whom he well knows to be guilty, to write a brief judgment for him dismissing the charge, and then delivering it as if he’d written it, acquitting his colleague while falsely pretending to have given the matter his judicious consideration.
40. Concerning Vedalankar’s illegal refusal of my PAIA request on utterly spurious grounds, ostensibly supported by a fraudulent misquotation from a court judgment, all pertinently brought to the respondent’s attention in paragraphs 17–43 of my petition, the respondent couldn’t possibly have found in good faith that all was well; that Vedalankar had acted lawfully in

refusing me access to LASA's records as requested; and that my complaint about her violation of my fundamental right to information was unfounded. That is, in turning a deliberate blind eye to this, the respondent dismissed my petition in bad faith, which is to say dishonestly.

41. In flagrant breach of section 7.2 of the Ethics Code declaiming that LASA 'will not condone any violation of the law or unethical business dealing', the respondent further contravened the requirement that he 'act honestly and in good faith at all times', by dissembling to me that he saw nothing wrong in Vedalankar's:

- 41.1. manifestly illegal and unconstitutional refusal to comply with a PAIA request for access to records, in order to conceal from a recommended applicant for a top professional post in LASA, whose appointment has strangely silently stalled many months after his successful interview, that an unsuccessful applicant for the same post had been the respondent's long-time judicial colleague; and her,
- 41.2. dishonestly false attribution of manufactured dicta to a judge, by putting words in her mouth that she never spoke, when ostensibly quoting her judgment in a PAIA case, so as to fabricate a fake legal cover for this, at the same time citing perfectly irrelevant provisions of the Act claimed to justify her refusal.

And so 'condone[d]' Vedalankar's 'violation of the law' and 'unethical business dealing' with me.

42. The reason the respondent corruptly connived in Vedalankar's violation of my constitutional right to information, contravened LASA's Code of Ethics and Conduct, dishonoured his judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it', and didn't act to end the apartheid-like 'secretive and unresponsive culture' (per Preamble to

PAIA) at LASA that I'd unexpectedly run into – quite the contrary, he was astute to maintain this 'secretive and unresponsive culture' – came to light only last year when in April 2016 I finally succeeded in clawing out of LASA the selection panel's full, uncensored recommendation report, and discovered that the true reason my recruitment to LASA's Senior Litigator post at Pietermaritzburg had been silently aborted off the record was that in 'an abuse of power' (per Preamble to PAIA) the respondent had illegally hijacked the recruitment to get his former brother on the Labour Court bench, my rival for the post, appointed to it instead of me – irrespective of the fact that he'd been eliminated by the selection panel for not meeting the qualifying criteria. (He was quickly appointed to other LASA posts, whereas after I was selected for another post a year later, I was told the now familiar lie that LASA had decided not to fill the post. In truth, I wasn't wanted: I fortuitously sourced the Regional Operations Executive's emailed instruction to the Justice Centre Executive to 'redo the interviews' so as to find someone else.)

43. The respondent's 'abuse of power', which he sought to conceal from me by maintaining LASA's 'secretive and unresponsive culture' like that of apartheid institutions, would have succeeded but for the fact that I didn't walk away as hoped, and pressed insistently for the outcome of the Senior Litigator interviews, and then for my appointment; and then, even after my wrongly-founded unfair discrimination claim had been dismissed (my real problem was cronyism), I pursued through court the full uncensored recommendation report, among other documents (proving other recruitment corruption), and thereby finally uncovered the truth.
44. The respondent's direct involvement ethical and procedural recruitment corruption at LASA, including fixing the illegal appointment of another

rejected candidate to a different Senior Litigator post in place of the duly recommended one, will be the subject of separate complaints.

45. This Second Complaint details how to cover up recruitment corruption, of which he was at the centre, the respondent colluded in a fundamental rights violation: Vedalankar's illegal suppression of records to which I was constitutionally entitled. My next complaint will detail how, in the classic snowballing dynamic of an escalating cover-up, the respondent lied about this to the Minister of Justice and Constitutional Development. And my complaint after that, bearing out the adage after Watergate, 'the cover-up is always worse than the crime', will detail how the respondent finally lied to Parliament about it, a crime.

Signed at Mtunzini on 23 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 23 June 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

25 Baker Road
Prestbury
Pietermaritzburg 3201
30 November 2010

The Honourable Mr Justice Dunstan Mlambo
Judge President: Labour Court
Chairperson: Legal Aid South Africa

Labour Court
6th and 7th Floors, Arbour Square Building
Cnr. Juta & Melle Streets
Braamfontein
Johannesburg

And to:

The Board of Directors: Legal Aid South Africa

Mr M Makume, Mr J Maree, Ms N Mgadza, Prof P Kruger, Mr V Jarana,
Prof Y Vawda, Adv P du Rand, Ms E Gandhi, Mr M Moabi, Ms M Naidoo,
Judge E Molahlehi, Ms S Monaledi, Ms A Mosidi, Ms N Memka, Ms A Rhoda,
Dr D Konar, Ms T Mhlungu, Ms J Luthuli, Mr E Moolla, and Mr I Ramdas

Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

And to:

Ms Chantal Kisoona
Head: PAIA Unit
South African Human Rights Commission
29 Princess of Wales Terrace
Houghton
Johannesburg

Dear Judge Mlambo

Pietermaritzburg Senior Litigator post:

• Illegal political / racial discrimination – covered with false reasons advanced to justify it, and two African candidates selected and recommended for similar posts sacrificed to effect it; • failure by members of the Management Executive Committee to execute a key component of Legal Aid South Africa’s Strategic Plan, concealed from the Board of Directors and from the Parliamentary Portfolio Committee for Justice and Constitutional Development; • multiple contraventions of the Public Finance Management Act, including the presentation of false financial information in Legal Aid South Africa’s 2009/10 Annual Report; • and refusal to comply with a request for records in terms of the Promotion of Access to Information Act on bogus legal and factual grounds

1. When a year ago I told my partner, my sons, my brothers, and a couple of my closest friends that my interview for the Pietermaritzburg Senior Litigator post had gone extremely well and that I was certain I’d been selected for it (confirmed to me last month), I was met with unwelcome scepticism: ‘They’ll never appoint you, you’re too politically controversial.’ ‘They’re going through the motions formally, but behind the scenes they’ll just do whatever they want.’ One even suggested that ultimately I’d be disqualified for being white.
2. These disagreeably pessimistic predictions sprung from the fact that to many people whose opinions are informed by the newspapers I’m indeed a ‘politically sensitive person’, to cite the lingo of PW Botha’s State Security Council and its operatives, with the extreme prejudice such an appellation attracted. And indeed I’m indubitably a white person too.
3. I remember rebuking their cynicism vehemently: ‘No, you don’t understand. The process is transparent, it’s clean. Things have changed. We’re not living

under apartheid anymore, we have a constitutional democracy now.’ Words and sentiments along those lines.

4. By ‘clean’ I meant the recruitment process was being managed by honourable and honest executives of impeccable and unquestionable integrity who would never do anything illegal and who would never think of telling lies.
5. I really believed it and I insisted, even as the months passed by, but I could not convince them.
6. As things turned out, I was to be sorely disappointed in my absolute confidence and conviction that the recruitment process was being managed by honourable and honest executives of impeccable and unquestionable integrity who would never do anything illegal and who would never think of telling lies.
7. I found that in fact the recruitment process was not transparent and clean; that the executives managing it were not honourable and honest; and that they didn’t stint at acting illegally and telling lies to cover up the illegal things they’d done.
8. The ‘Introduction’ to ‘Corporate Governance Arrangements’ in Section 4 of LASA’s Annual Report 2009/10 states that ‘processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner and to adhere to good corporate governance practices’.
9. It assures us: ‘Processes are underpinned by the principles of openness, integrity and accountability.’
10. And it explains: ‘Corporate governance is concerned with structures and processes for decision making, accountability, control and behaviour. It starts at the Board of the organisation and this sets the tone for behaviour down to operational level at Justice Centres.’
11. Finally the ‘Business Conduct’ subsection records that ‘Legal Aid South Africa has an ethics programme which promotes ethical behaviour in the workplace. This is supported by a written business conduct policy dealing with ethics,

which is applicable throughout Legal Aid South Africa. The continued focus on the business conduct policy has raised awareness of the need for ethical behaviour across the organisation. Employees are required to maintain high ethical standards and to ensure that Legal Aid South Africa's business practices are conducted in a manner that is above reproach.'

12. And it's relevant to mention that section 50(1) (b) of the Public Finance Management Act 1 of 1999 ('PFMA') stipulates that 'The accounting authority for a public entity must act with fidelity, honesty and integrity and in the best interests of the public entity in managing the financial affairs of the public entity.'
13. Having regard to the Board of Directors' oversight responsibility to ensure that 'good corporate governance practices' based on 'principles of openness, integrity and accountability' are observed by the Management Executive Committee in 'decision making, accountability, control and behaviour', and the Board's concern about 'ethical behaviour in the workplace', that 'high ethical standards' be observed, and that 'business practices' should be 'above reproach' – which is why their 'processes and practices are reviewed on an ongoing basis' – I write to report gross, in fact illegal, breaches in this regard by certain individuals on the Management Executive Committee.
14. The basic history is set out in my letters to CEO Vidhu Vedalankar and to COO Jerry Makokoane at pages 1–17 and 21–39 of the Document Bundle appended hereto, read with NOE Brian Nair's and CEO Vedalankar's responses at pages 19 and 101–108. (I will henceforth refer to all LASA officers simply by their surnames.)
15. One might even conclude from the 'behaviour' described in these letters, compounded by the dishonest cover-up that followed it (to be detailed and exposed below) that far from respecting 'the rights enshrined in our constitution' (per LASA's 'Vision') and 'principles of openness, integrity and accountability' in 'decision making' (per LASA Annual Report 2010), the

executives in question have no respect for these rights and principles and that they actually despise them.

16. In my letters to Vedalankar and Makokoane mentioned above, I'd assumed political prejudice against me – something I'm accustomed to. (Bundle, page 11, paragraphs 5.1–14 and pages 93–99 (a letter to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa, including information intended for the unwritten 'Postscript' mentioned in paragraph 58 of my letter to Makokoane)). I've recently appreciated, however, though I doubt it, that the prejudice may simply be racial, albeit no less illegal, inasmuch as my selection and recommendation for the appointment in question might have been inconvenient for the targets set out in LASA's 'Employment Equity Plan for 2010-2015'.
17. Arising from the 'behaviour' in question, I filed an extensive request for records under the Promotion of Access to Information Act ('PAIA') with Vedalankar as LASA's information officer ex officio on 30 August. (Bundle, pages 49–69)
18. On 29 September, the day before the end of the month provided by the Act for compliance with my request, and not having received any response to it, not even an acknowledgement of receipt, I approached the South African Human Rights Commission ('SAHRC') with a plea for assistance.
19. Kindly taking the matter up for me, the director of the SAHRC's PAIA Unit Chantal Kisoona ably negotiated an undertaking from LDE Patrick Hundermark to deal with my records request. Although Vedalankar was out of time for compliance (there was a mix-up over the computation of the period prescribed), I didn't mind, I was just glad that my request would be given attention at last.
20. On 18 October I received a letter from Vedalankar rejecting my request. (Bundle, pages 101–108)

21. Although the letter bears Vedalankar's electronic signature (a scanned image of it is pasted above her name at the end, identical to the image at the end of her CEO report in the 2009/10 Annual Report) it's unimaginable to me that she actually wrote it, and indeed it seems doubtful that she even read it with any attention. I say this having regard to the letter's contents, which are irreconcilable with my understanding of her personal integrity, noted in my letter to her of 12 July. (Bundle, page 10, paragraph 1.1) The letter is replete with false statements, deceptive red herrings, deceptive non-disclosures, and a breathtakingly brazen false statement of the law in regard to the application of PAIA, advanced as a justification for not complying with her obligations under the Act and for refusing my request for records.
22. Vedalankar seems to have authorized the letter drawn in her name trusting that it was in order. I therefore hold her clear of culpability for its disgraceful contents and hope you will too. Although I accept that Vedalankar never actually wrote the letter, for reference sake I must continue referring to it and its contents as if she did. I apologise to her in advance for the hard criticism to follow: it's directed at the real author of the letter, and not at her as the nominal author only.
23. The letter begins with a fraud. Numbered paragraph 1 claims:

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, KwaZulu-Natal and Another (D38/08) [2008] ZALC 18*, is as follows:

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

24. (There is no paragraph ‘b’) and the phrase ‘is as follows’ is italicized in the original as above.)
25. The use of indented block paragraphs is a universal writing convention to distinguish quoted text from the writer’s own prose. One understands, therefore, that the indented block quote is an excerpt from the judgment. This impression is further emphasized by the use of distinguishing italics in the indented paragraph. Indeed, the indented, italicized block paragraph is preceded by the explicit claim that the ‘test to be applied ... as laid down by the court ... is as follows:’.
26. To read the National Teachers Union case is to discover that in truth no such ‘test to be applied’ was ‘laid down by the court’. The judge said nothing of the sort. He said precisely the opposite. The alleged ‘test to be applied’ is pure invention, with the lie compounded by dressing it in fake legal authority, even putting words in the judge’s mouth that he never spoke. From the CEO of Legal Aid South Africa. Magnificent!
27. In paragraph 32 of his judgment Pillay J pertinently noted to the contrary: ‘Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.’ (The judgment is online at <http://j.mp/dxh3sZ>. (All shortened internet URLs in this letter will henceforth be given simply as ‘j.mp [.....]’))
28. Having sucked this so-called ‘test to be applied’ out of her thumb, pretending that a ‘court ... laid [it] down’, Vedalankar proceeds to apply her false test to my records request. Paragraph 2 commences: ‘In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.’
29. Decorating her decision in bits of the Constitution and PAIA quoted at me at some length, in a manner possibly quite impressive-looking to legally unschooled persons, Vedalankar concludes by refusing my records request on

wholly unrelated grounds, namely ‘(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above’. (Bundle, page 102, paragraph 5)

30. Of course, this reason given has nothing to do with the fake ‘test’ or ‘principle’ that I’d only be entitled to the records requested if ‘the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure’. And as hard as one looks, nowhere in PAIA does one find entitlement to records of a public body excluded by reason of being ‘beyond [the requestor’s] personal circumstances’. It’s just made up out of thin air, once again.
31. The so-called ‘principle’ by which ‘we were guided’ bobs up at the very end of the letter in paragraph 8. My request for records is ‘declined’ for the further reason given that ‘it is not relevant to you exercising any right you may have in law’ – only it’s a ‘test’, a ‘principle’ that has no bearing on a request for records from a public body, as PAIA makes clear, and the court in the National Teachers Union case plainly stated.
32. And as the Supreme Court of Appeal underscored in *Mittalsteel SA Ltd v Hlatshwayo* [2006] SCA 94 (RSA): ‘The issue before us is ... whether the appellant at the relevant time and in creating the requested documents was a “public body” as that term is to be understood in PAIA. If it was then the respondent is entitled to the documents requested by it in terms of s 11 of PAIA. The section is headed “Right of access to records of public bodies”. Subsection 11(1) provides that a “requester *must* be given access to a record of a public body if” (emphasis added) [in the judgment] (a) the requester complies with all the procedural requirements of the Act and (b) access to the record is not refused in terms of any ground set out in the provisions of PAIA dealing with the records of public bodies. None of these provisions is applicable to the

respondent's request, and compliance with procedural requirements is not in issue.' (j.mp/bKUmcW)

33. Despite the obstacles I encountered due to (a) LASA's failure to publish a PAIA manual on its website (a stale version of the manual was stuck under a bright new cover and posted on the website some weeks after I'd raised this problem with the SAHRC), and (b) CE Mpho Mphasha's failure to respond to my emailed enquiry about the identities of LASA's information officer/deputy information officer, I duly complied 'with all the procedural requirements of the Act' (per Mittalsteel) and I was and remain accordingly entitled to the records I requested.
34. As to the first excuse manufactured for not complying with the Act – '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above' – a glance at the list of records that I seek will show I wasn't asking for 'information on third parties'. (Bundle, pages 59– 68). This is because I have no interest in any 'information on third parties' whatsoever.
35. What I require – and it's a relatively small part of my request – are records of communications with certain third parties or sworn confirmation, as PAIA requires, that such records don't exist, showing that contrary to what has been suggested to me such communications never took place.
36. To protect their privacy – if privacy really was the issue rather than a false pretext for refusing my request – records of communications to and from third parties have only to 'be edited by blanking out the name of any third party whose privacy would otherwise be infringed by disclosure', as Brand JA put it in *Unitas Hospital v Van Wyk* [2006] SCA 32 (RSA). (j.mp/cHDY5D)
37. The particular records of communications with third parties or lack of them will be probative in establishing that my constitutional rights have been violated. By a public legal body professing to serve the Constitution.

38. And since the ramifications of this are awesome to contemplate, it seems this is why Vedalankar should have strained to seize upon this most peculiar, manifestly untenable pretext for refusing my entire request for records, the great majority of which have nothing to do with third parties by any stretch of the imagination.
39. Since Vedalankar's provision of the records I requested could not conceivably 'involve the unreasonable disclosure of personal information about a third party', as Section 34 (1) of PAIA puts it, the provisos in Section 46 cited and discussed in paragraph 3 of Vedalankar's letter are perfectly irrelevant.
40. But even if it were relevant, Section 46 would anyway require my access to the records for the reasons that '(a) the disclosure of the record would reveal evidence of ... a substantial contravention, or failure to comply with, the law ... and (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question'.
41. The fundamental premise of my records request, supported by the evidence I present, is that the disclosure of the records would indeed reveal further documentary 'evidence of ... a substantial contravention of, or failure to comply with, the law'.
42. Here I'm referring to the Constitution and to the Acts I've cited prohibiting discrimination on unlawful grounds in the democratic era, including by reason of 'conscience and belief' and because, motivated by these, I 'campaign for ... a cause'. (Bundle, pages 2–4, paragraphs 6–15 and pages 34–36, paragraphs 56–65) And by reason of race, unless justified by the provisions of the Employment Equity Act 55 of 1998 and the reported cases elucidating its practical application. I'm referring also to Acts and regulations, mentioned below, governing the operation of public bodies.
43. As for 'the public interest' – proviso (b) of Section 46 – the public have a clear interest in the disclosure of the records in this case, because they have a fundamental interest in having the certain assurance that they will not be

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

APPLICANT'S PRE-TRIAL CONFERENCE AGENDA

The items for discussion at the pre-trial conference, enumerated in rule 6(4) of the Labour Court Rules, are raised by the applicant under their titles in the rule, quoted in boldface. The rule provides:

In a pre-trial conference, the parties must attempt to reach consensus on the following:

1.

(i) Any means by which the dispute may be settled;

1. Given that:

- even on the respondent's own version (unsupported by any record), the Pietermaritzburg Senior Litigator post was frozen with two others to mitigate the respondent's 'financial uncertainty' arising from the Department of Justice and Constitutional Development's delay in transferring its OSD funding allocation in 2010;
- the 'OSD funding' problem has now been 'resolved' (Response, paragraph 48.10);

78. On 30 November the applicant petitioned Board chairperson Mlambo and the rest of the Board to exercise their legal responsibility to intervene in (a) Vedalankar's unlawful refusal to comply with PAIA and her violation of the applicant's fundamental right to information under section 32 of the Constitution, 1996; and (b) her unlawful block on his appointment, having regard to the still limited indications then known to him that her budgetary justification for her admitted decision to abort his recruitment was untrue.

79. Mlambo did not consult the Board to discuss the applicant's extraordinarily serious complaints raised in his petition, but instead instructed Vedalankar to prepare a letter cursorily dismissing it. He was overseas at the time.

80. On 15 December 2010 Vedalankar obliged, pasting a scanned image of Mlambo's signature into the letter she'd drawn for him, and emailed him the PDF of the letter she'd created. On 30 December Mlambo emailed it in turn to the applicant.

81. The letter read: 'I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege or at all.'

82. Besides a couple of formal acknowledgements, no other Board member responded to the applicant's petition.

83. On 20 January 2011 Christopher Rawlins met Board member Ela Gandhi in Durban to discuss the applicant's complaints in his petition that Vedalankar had violated his fundamental rights to equality and equal employment opportunity and to information. During their meeting, Board member Yusuf Vawda telephoned her, following which Gandhi accused the applicant of blackmailing and defaming the respondent/the respondent's officers. (Bundle, pages 207–8)

84. Mlambo rejected the applicant's protest about this, repeated his claim to have found nothing untoward in Vedalankar's conduct as CEO and information officer, and accused the applicant of improper conduct in pursuing his complaints: 'I have on a previous occasion informed you that I could find nothing untoward in your treatment by Legal Aid SA. ... Your conduct is unbecoming to say the least and borders on harassment.'

85. Mlambo said he'd instructed the Board to ignore the applicant's further correspondence.



IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

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ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

RESPONDENT'S ANSWER TO APPLICANT'S PRE-TRIAL AGENDA

Introduction

1. The Respondent wishes to answer the Applicant's Pre-trial Agenda (the Agenda") in the manner provided hereinbelow.

- 65.2. There is nothing contradictory in the CEO's position and that which was presented to the board of the Respondent's directors.

66. Ad Paragraphs 76 – 77.

- 66.1 Agreed.

- 66.2 The funding was released to the Respondent after it had taken its decision to terminate the recruitment of Senior Litigator posts. This decision has never been revisited.

67. Ad Paragraph 78.

- 67.1. This is irrelevant to the present proceedings and is denied.

68. Ad Paragraph 79.

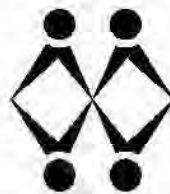
- 68.1. Agreed.

- 68.2. Mlambo JP found, upon a perusal of the Applicant's letter and the explanation received from the CEO, nothing untoward that was done by the CEO and was correct in dismissing the Applicant's complaint.

69. Ad Paragraph 80.

- 69.1. Disagreed.

- 69.2. The said letter was created as a direct result of Mlambo JP's interaction with the CEO and there is nothing untoward thereabout. The electronic signature by Mlambo JP could not have been used without his knowledge and consent.



Legal Aid
South Africa



BY E-MAIL

Tuesday, November 09, 2010

Mr A Brink
25 Baker Road
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PIETERMARITZBURG, 3201
E-mail: arbrink@iafrica.com

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222

www.legal-aid.co.za

Dear Mr Brink

PIETERMARITZBURG SENIOR LITIGATOR POST

Your letter dated 30 November 2010 refers.

I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege or at all.

Regards

Judge Dunstan Mlambo
Chairperson

1 / 1 100% Find

Private Book X16
Boumfontein 2017.
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

Tuesday, November 09, 2010

Mr A Brink
25 Baker Road
Prestbury
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E-mail: arbrink@lafrika.co.za

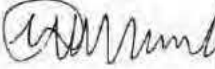
Dear Mr Brink

PIETERMARITZBURG

Your letter dated 30 Nov

I have reviewed the action
for the Senior Litigator per
arbitrariness towards you

Regards



Judge Dunstan Mlambo
Chairperson

Document Properties

Description Security Fonts Advanced

Description

File: Response Letter to Mr Brink 15Dec2010

Title: Microsoft Word - Response Letter to Mr Brink 15Dec2010

Author: Vidhuvi

Subject:

Keywords:

Created: 2010/12/15 01:02:54 PM

Modified: 2010/12/15 01:02:54 PM

Application: PScript5.dll Version 5.2.2

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File Size: 28,23 KB (28,905 Bytes)

Page Size: 8.26 x 11.69 in

Number of Pages: 1

Tagged PDF: No

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OK Cancel

THIRD COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.
3. Before I continue: The concluding paragraph of my Second Complaint anticipated that this, my Third Complaint, would detail the respondent's lies and false reporting to the Minister of Justice and Constitutional Development (as he was then called). On reconsideration, this will be the subject of my Sixth Complaint to follow; and the respondent's lies and false reporting to the Justice Portfolio Committee of the National Assembly – a crime – my Seventh. Before this, I've three more complaints to present against the respondent regarding his collusion with Vedalankar and his connivance at her violation of my fundamental right to information, the first of which is made here, the next two to follow.
4. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act (the Act'), in colluding, again, with LASA CEO and information officer Vidhu Vedalankar in her violation of my fundamental

right to public body information entrenched by section 32(1)(a) of the Constitution, given effect by the Promotion of Access to Information Act ('PAIA'), an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Act.

5. For concision, I'll refer to parts of my First and Second Complaint against the respondent, and I request that they be read as incorporated in this Third Complaint.
6. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Third Complaint.
7. On 24 January 2011, I petitioned the respondent for the second time, inter alia about Vedalankar's illegal 'denial of access to records' and 'defiance of the Promotion of Access to Information Act'. A copy of my second petition is annexed marked 'A'. Its paragraphs 27–31 and 47 are material to this complaint.
8. In my second petition to the respondent, I raised his failure in the letter he emailed me on 30 December 2010 to have dealt with 'my opening complaint' made in my first petition to him in November 2010 'that Vedalankar, as LASA information officer, has unlawfully refused my request for access to LASA's records under the Promotion of Access to Information Act' (delivered in August 2010).
9. The respondent's December letter is the subject of my Second Complaint, and is annexure 'D' to it. About which I asked him: 'Did you actually write the letter? According to its PDF properties file, Vedalankar did.'
10. I mentioned that 'I was hoping that as a senior judge you would appreciate the gravity of her refusal to comply with the Act and her disrespect for section 32(1)(a) of the Constitution behind it, and that you would instruct her to obey the law forthwith.'

11. And noted: ‘Since she’s already informed me that in her opinion I’m not entitled to access to any of LASA’s records – grossly misquoting a reported case against her, which she claimed to support her position – I’m expecting her to refuse my second records request as well.’
12. I informed the respondent that ‘In view of your and the Board’s indifference to Vedalankar’s defiance of the Promotion of Access to Information Act ... I’ve drawn draft application papers for an application to compel’, and that I’d ‘posted’ them online ‘for your perusal’ at the internet address I stated.
13. And I issued him with a very proper ultimatum:

If I haven’t heard from you by the end of this week, I’ll take it that your position against me remains unchanged, and I’ll petition the Minister, the Deputy Minister, and all members of the Portfolio Committee as the next levels of authority and accountability – all four of my successive appeals to the Management Executive Committee and the Board of Directors having been spurned.
14. My second petition was delivered to the respondent by email attachment early in the afternoon. To record this, moments before sending it, I entered above ‘Dear Judge Mlambo’, ‘Per email: 13h45’.
15. The respondent ruminated for several hours about what to say to me and how best to shore up the disintegrating cover-up of the true reason my appointment to the Pietermaritzburg Senior Litigator post had been aborted after I’d been selected and recommended for it.
16. Appreciating with alarm that my complaint to him was unanswerable (except that I was barking up the wrong tree in surmising unfair discrimination: it was his cronyism) and that the most serious trouble lay ahead, the respondent decided to try cowing me into abandoning my endeavour to vindicate my fundamental right to information that

Vedalankar had violated, in order to put me off discovering the true reason my recruitment had been aborted.

17. Late that night ('11:12 PM'), the respondent responded by writing me an email, in which he contemptuously rebuked my second petition with the false charge that in pleading for his and the Board's intervention in the gross unconstitutional illegality of which I was complaining at LASA, my:

behaviour is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.

18. The record of this email is annexure 'C' to my First Complaint.
19. As appears from its sender information, 'From: Mlambo Dunstan [DMLambo@justice.gov.za]', the respondent emailed me from his judge's email account, and not from his LASA account.
20. The Cc bar shows he copied it to Vedalankar, to let her know he'd told me to get lost.
21. Further shaking his stick at me to make me go away, the respondent made a point of adding his high judicial authority to his communication by signing it off:

I trust you find this in order.

D Mlambo

Chairperson- Legal Aid SA and

Judge President

Labour Courts

dmlambo@justice

Tel +27113595735/6

Fax 0866447932

22. The respondent's rude and threatening dismissal of my second petition wasn't 'in order' at all; quite the contrary, and he well knew it.
23. It's impossible that as a senior judge the respondent could have failed to understand and appreciate the unconstitutional illegality of Vedalankar's total refusal of my August 2010 PAIA request, on the manifestly false and irrelevant grounds advanced in her October 2010 letter, claimed to be supported by what turned out to be a fake quotation from a judgment on PAIA, affirming the public's constitutional right of access to records held by organs of state. All of which I precisely detailed to him in paragraphs 17–43 of my first petition to him in November 2010 (annexure 'A' to my Second Complaint).
24. Instead of duly intervening as chairperson of the Board and also a top judge by directing Vedalankar to desist from violating my fundamental right to information, and to duly hand over the records I'd requested under PAIA, including those listed in my second PAIA request in December 2010 (the list of which, already drawn, I'd appended to my first petition to him in November 2010), the respondent forwarded my second petition to her without issuing any such instruction.¹

1. I know this because Vedalankar mentioned my second petition to the respondent in her letter to me four days later on the 28th, in which she refused my entire second December 2010 PAIA request, just as I anticipated she'd do in my second petition, and again refused my entire first August 2010 PAIA request. Her letter is the subject of, and is annexed to, my Fourth Complaint, next.

I'm unable to provide the Judicial Service Commission with a copy of the respondent's email to Vedalankar covering my second petition that he forwarded to her, because LASA now absolutely refuses to answer any more of my duly made PAIA requests on the false and untruthful basis that they're all a frivolous and vexatious waste of its time.

To prevent me enforcing my core constitutional right to information by applying to court for mandatory relief under section 78 of PAIA (most recently in Pietermaritzburg High Court case 1118/16, which I launched in October 2016), LASA responded with an application later that month to have me banned as a vexatious litigant (Pmb HC case 12124/16).

Which corrupt suit to knock me down, in furtherance of the cover-up, I've answered comprehensively in an affidavit of nearly 300 pages and 1000 paragraphs supported by 80 annexures, setting out the rampant, pervasive, systemic top-level corruption at LASA that I've uncovered in my investigation of this to date. It's accessible online in my Dropbox at: <https://goo.gl/ydG4Pi>.

A comprehensive history of LASA's illegal and unconstitutional persistent refusal to comply with its constitutional information transparency obligations from 2010 to date is set out in a 'SPECIAL REPORT ON LEGAL SA: AN AGGRAVATED CASE OF REPEATED WILFUL NON COMPLIANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO ILLEGALLY OBSTRUCT ACCESS TO DULY REQUESTED RECORDS, AND REPEATED FALSE ANNUAL AND 'CONFIDENTIAL' REPORTING TO CONCEAL THIS FROM THE NATIONAL ASSEMBLY'. It's online at: <https://goo.gl/OwcxJe>.

25. The respondent intended that I should recoil fearfully on reading his aggressive charge, which he levelled against me as Judge President of the Labour Courts from his judge's email account in the middle of the night, and that I should abandon my pursuit of access to LASA's records to which I was constitutionally entitled, including the selection panel's recommendation of me for the Pietermaritzburg Senior Litigator post – the report of which recorded, I discovered only last year, that my rival for the post, Ngcamu AJ, as he used to be, had been the respondent's brother in the Labour Court for '±6 years'.
26. Annexed marked 'B' is a copy of the recommendation report¹ revealing this information, which I finally forced out of LASA in April 2016 by suing for it in the Eshowe Magistrate's Court.²

1. It's incorrectly dated; in fact the interviews were held on 12 November 2009. The report's erroneous understatement of my High Court experience is immaterial to set right here; likewise the unauthorised, gerrymandered, scaled up qualifying criteria not applied to other Senior Litigator posts; likewise its repeated mention of a legally incompetent 'next round of interviews' – to be dealt with in a separate complaint about the respondent's wholesale disregard for LASA's internal regulatory instruments; his corruption of Board approved and prescribed recruitment procedure; and his violation of the rule of law.
2. After opposing me all the way, at immense wasted cost in public revenue, probably in the millions, LASA ultimately capitulated in court on 14 February 2016, as I was on the point of moving for an order that the recommendation report and other requested documents be surrendered, and agreed to hand them over.

I duly requested all LASA's counsel's fee-notes for this futile litigation, with the stated intention of passing them on to the Auditor General for the personal recovery of the irregular and fruitless and wasteful expenditure involved, but they were illegally refused; and, as mentioned above, my application duly brought to the High Court at Pietermaritzburg in October 2016 for an order compelling their production was shortly afterwards answered with an application to have me stripped of my ordinary constitutional right to information and my constitutional right to approach the courts for relief when it's violated. Like a listed 'communist' under apartheid.

27. By:

- 27.1. dissembling that 'I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view';
- 27.2. falsely charging me with 'unbecoming ... behaviour' which 'borders on harassment', i.e. just about illegal conduct;
- 27.3. doing nothing to remedy Vedalankar's illegal and unconstitutional refusal in October 2010 of my request for access to LASA's records duly made under PAIA in August 2010; and,
- 27.4. not instructing Vedalankar to respond lawfully to my second PAIA request made in December 2010,

the respondent connived again at Vedalankar's violation of my fundamental right to information.

28. And in behaving this way, the respondent again:

28.1. breached multiple relevant provisions of LASA's Code of Ethics and Conduct, enumerated in paragraphs 38 and 41 of my Second Complaint; and,

28.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in contempt of his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

25 Baker Road
 Prestbury
 Pietermaritzburg 3201
 24 January 2011

Chairperson Judge Dunstan Mlambo and the Board of Directors
 Legal Aid South Africa
 29 De Beer Street
 Braamfontein
 Johannesburg

Per email: 13h45

Dear Judge Mlambo

BRINK/LASA
 FINAL APPEAL TO THE BOARD
 PIETERMARITZBURG SENIOR LITIGATOR POST

1. On Thursday last week, a concerned friend of mine, Christopher Rawlins, discussed our matter with Board Director Ela Gandhi at her home in Durban. A record of the meeting is annexed.
2. Chris, now 69, is South Africa's first conscientious objector, forced into political exile when he refused a call-up by the apartheid military in 1961 – finally coming home in 1994 immediately after the advent of democracy in our country.
3. And having paid a heavy personal price for his moral and political conscience, with some of his comrades killed for it, he's been especially outraged by LASA's illegal discrimination against me for exercising our newly won, constitutionally guaranteed rights of freedom of thought, opinion, research, expression, and participation in political discourse and public policy formulation.

4. Even if this means contradicting transnational pharmaceutical interests and their political/propaganda assets in the law, academia, media and political action groups.
5. Ms Gandhi is one of the Board members whose email address I'd been unable to find on the internet last year, and so had been unable to email her a copy of my letter to you and the Board of Directors of 30 November 2010.
6. My request to Board Secretary Bee-Mari Schoeman on 8 December 2010 to ensure that all Board Directors were apprised of my complaints of illegal discrimination and denial of access to LASA's records, and to place the matter on the agenda of the next board meeting, went unacknowledged. I therefore assumed, correctly, that Schoeman had disregarded my request and that Ms Gandhi was among the Directors deliberately kept in the dark.
7. Chris mentioned to me that Ms Gandhi lives near his house on the Durban Berea and volunteered to print and bind a hard-copy of my letter and Document Bundle annexed to it and deliver it to her.
8. He thought she would be concerned about LASA's unconstitutional, unlawful, and deceitful behaviour, given her promotion of her grandfather's absolute opposition to intolerance and discrimination and his absolute commitment to truth and justice.
9. With this in mind, I agreed; I also thought so.
10. Chris hand-delivered my letter and annexure to Ms Gandhi on 14 December 2010, and on 19 January 2011 phoned to follow up. He told me Ms Gandhi responded that she didn't see what I was concerned about because she'd been on the Board for four years with people she knew to be highly qualified, and there'd been unqualified audit reports for five years. Nonetheless, at his request, she agreed to meet him for a briefing about my case and invited him to her home for this.
11. At the meeting the following day, Ms Gandhi admitted having read my letter only 'quickly'; yet again she said she believed I had no cause for complaint.

12. During the meeting, Board member Yusuf Vawda telephoned her and spoke to her about my letter for some time.
13. Evidently her mind had been made up for her, and she'd been poisoned against me: Ms Gandhi concluded the meeting by slandering me as a libeller and extortionist. You can read what she said to Chris in his report of the meeting. I find it too perverse and disgusting to repeat.
14. It's obviously been decided to play dirty: instead of taking the trouble, for which they're paid, to apply their minds to evaluating and determining the merits of my complaints, and how to address and resolve them to avert remedial action in court, certain Board members and possibly executive managers have taken to assassinating my character and reputation by smearing me as an unconvicted criminal. Anything to avoid respecting the Constitution and the law of the land, when it comes to people they're politically prejudiced against.
15. This is the low mentality and viciously hostile animus I'm up against.
16. This is the quality and the level of the discussion currently taking place between certain Board members about my matter.
17. This is the shockingly irregular way in which my complaint is being dealt with at Board level: furtively; in cabals; behind the scenes; on the phone; off the record; dishonestly.
18. I'd be grateful if you'd direct the Board members and possibly management executives responsible for telling and spreading their foul lies about me to desist from doing so; and if you'd remind them that the proper place for a discussion of a matter as serious as mine is at a full Board meeting, on the record, with minutes taken recording the things they say. So that they can be reviewed by an independent judge if needs be.
19. Since she seems disinclined to do so, please also instruct Board Secretary Schoeman to place both this letter and my 30 November letter and its annexed Document Bundle on the agenda for discussion at the next Board meeting, and to prepare printed copies of both my letters and Document Bundle for the

Auditor General's staff, flagging for their attention the useless and wasted public expenditure caused by the abortion of my recruitment on illegal political grounds, and, as I discovered incidentally when investigating and exposing the false cover contrived for it, the presentation of false financial information in LASA's current annual report.

20. Like my first letter to her on 8 December 2010, Schoeman has not acknowledged my reminder to her on 10 January 2011 either. It seems plain, therefore, that she's been instructed to conceal the extraordinarily serious issues raised in my first letter and annexure from the Board as a whole, and to keep them off the agenda of the next Board meeting, thus concealing them from the Auditor General as well.
21. Who issued this illegal instruction to her, Schoeman will be compelled to reveal when she's cross-examined.
22. The Auditor General will be concerned to learn that my letter to CFO Rebecca Hlabatau on 1 September 2010, included in the Document Bundle, about the useless and wasteful expenditure issue went unacknowledged.
23. And that my letter to you and the Board of Directors about this and about the false financial information appearing in LASA's current annual report went unacknowledged by Audit and Risk Committee Chairperson Nonhlanhla Mgadza, whom I emailed on 30 November 2010.
24. And that no steps have been taken by the Board under its obligations as LASA's 'accounting authority' imposed by section 51(1)(b) of the Public Finance Management Act to 'take effective and appropriate steps to prevent ... fruitless and wasteful expenditure'. Such as readvertising and re-interviewing for a senior professional post for which an eminently suitable candidate has already been recruited – per Vedalankar's letter to me of 18 October 2010.
25. And that those members of LASA's Board whom I've been able to reach are apparently unbothered about the serious contraventions of the Public Finance Management Act that I've brought to their attention:

26. Besides yourself as Chairperson, of the nine Board Directors whose email addresses I found by searching the internet, only Adv du Rand, Dr Konar, and attorney Maree acknowledged receipt of my first letter to you and the Board – and then did nothing about it. My follow up letter on 10 January 2011 to du Rand, copied to Konar and Maree, was again formally acknowledged by du Rand, but again has otherwise been ignored.
27. Your perfunctory one-line response that you emailed me on 30 December 2010 – although dated 9 November (sic: 9 December?) 2010 – did not address my opening complaint that Vedalankar, as LASA information officer, has unlawfully refused my request for access to LASA's records under the Promotion of Access to Information Act.
28. I was hoping that as a senior judge you would appreciate the gravity of her refusal to comply with the Act and her disrespect for section 32(1)(a) of the Constitution behind it, and that you would instruct her to obey the law forthwith.
29. Did you actually write the letter? According to its PDF properties file, Vedalankar did – on 15 December 2010, while you were still away in the US. It's even signed off with 'Regards', just as she does – a strikingly unconventional and inappropriate style for formal business letters. Moreover, a complaint I never made was dismissed, and those I did make weren't addressed. All this suggests a legally unqualified person wrote your letter, and indeed Vedalankar has left her fingerprints on it.
30. In view of your and the Board's indifference to Vedalankar's defiance of the Promotion of Access to Information Act, just to start with, I've drawn draft papers for an application to compel in the South Gauteng High Court (Johannesburg); and I'm just waiting for her response to my supplementary request for records, which she undertook to give me by 29 January 2011, so as to include it in the papers.

31. Since she's already informed me that in her opinion I'm not entitled to access to any of LASA's records – grossly misquoting a reported case against her, which she claimed to support her position – I'm expecting her to refuse my second records request as well.
32. Given the malicious false interpretation of my repeated appeals for an amicable resolution of my illegal discrimination complaint, it seems futile, even dangerous, to repeat it.
33. Nonetheless I'm still faintly hoping that at least some Board members will have the presence of mind to appreciate their exposure in this looming scandal and will call for an urgent special meeting under section 5(2) of the Legal Aid Act to discuss and resolve my matter properly, on the record, before it spills into open court.
34. As you well know, the financial reasons given in Vedalankar's letter to me of 18 October 2010 for aborting my recruitment are lies.
35. (Who actually wrote her letter – she's mentioned in the third person as 'the CEO' – and who instructed the real author of the letter to tell these lies, will emerge in cross-examination.)
36. These lies are comprehensively interrogated and refuted in paragraphs 44ff of my first letter to you and the Board. And the records I've requested, or, more pertinently, Vedalankar's sworn confirmation they don't exist, will further reveal them for the lies they are.
37. As you also know, the Senior Litigator post for which I was selected and recommended has been budgeted for and funded as part of LASA's critical professional senior staff establishment since as far back as 2007/2008.
38. The issue of delayed OSD funding has never had anything to do with it – but in any event, this had already been resolved by the time Vedalankar wrote to me falsely claiming budgetary constraints as the reason for aborting my appointment.

39. In her oral report to the Portfolio Committee on 12 October 2010, Vedalankar mentioned that ‘the Minister’ told you he didn’t want any posts frozen. Yet in brazen defiance of his express wishes Vedalankar claims to have frozen my post.
40. Leaving the majority poor in KwaZulu-Natal, unlike all other provinces, without the services of a Senior Litigator for nearly four years now.
41. And again, this is in defiance of the express wishes of the Portfolio Committee’s predecessor, the Parliamentary Safety and Security Select Committee, conveyed to you and Vedalankar at your meeting on 30 May 2007, namely that LASA should appoint Senior Litigators.
42. Topping which, in ‘freezing’ my post Vedalankar didn’t even deign to comply with LASA’s Approval Framework – such is the lawless breakdown of proper corporate governance at LASA.
43. As indicated in the conclusion of my appeal to COO Jerry Makokoane on 1 September 2010, failing the Board’s prompt intervention and resolution of my illegal discrimination and unlawfully denied records complaints, I’ll shortly be reporting them and the disgraceful manner in which they’ve been dealt with at Board level to the Portfolio Committee, to the Minister of Justice and Constitutional Development, and to the Deputy Minister. (Before granting interdictory relief, the courts require one to show that all available non-litigious remedies have been exhausted.)
44. To repeat once again, the solution to the catastrophe LASA is facing is quite simple: the illegal political prejudice against me must be put aside, the patently false cover invented for it must be abandoned, and my appointment to the senior professional post for which I was duly selected and recommended by a delegated expert panel of my professional peers must be finalised in the ordinary course.
45. Even if this is unpalatable to those in LASA who’ve unlawfully opposed themselves to me for political reasons – solely on account of my thoroughly researched, published criticisms of the safety and utility of certain patented

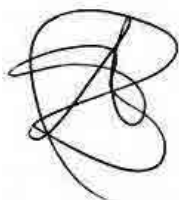
chemicals plied by enormously wealthy and powerful Western corporations on the African poor.

46. Unfortunately for those persons who've moved to oppose me politically, however, we have a progressive, enforceable Constitution these days; and as our own Navi Pillay, now United Nations High Commissioner for Human Rights has pointed out: 'More than pure aspirations, human rights are real rights that can be tested in courts of law.'
47. The draft papers in my preliminary PAIA application, testing my real right of access to LASA's records, are posted for your perusal at www.tig.org.za/LASA ; username: lasa ; password: LASA2010. The application is substantially ready for launching in February.
48. My main case to vindicate and enforce my other even more basic constitutionally guaranteed human rights, disrespected and trampled on by LASA, will follow once I have my records or Vedalankar's confirmation on oath that they don't exist.
49. Please let me have the Board's assurance that the Pietermaritzburg Senior post for which I was selected and recommended will not be readvertised until my pending claim for appointment to it has been resolved, either by settlement or by order of court. Without such assurance I'll be bound to act to protect my rights with an interim interdict application.
50. Would you ask Board Secretary Schoeman to forward this letter to all Board members so that they are all fully informed of the dangerously advanced state of play and the rapidly fading prospects of a sensible internal resolution? As mentioned above, she's ignored both of my requests to inform all members of the Board. I only have some Board members' email addresses, and the rest would presumably want to know about the rocks towards which LASA is currently headed, threatening to wreck its exemplary reputation as an impeccably well managed public body (Deputy Minister Andries Nel remarked in *Business*

Day on 12 January: ‘The world would be a better place if it were run by Legal Aid.’).

51. If I haven’t heard from you by the end of this week, I’ll take it that your position against me remains unchanged, and I’ll petition the Minister, the Deputy Minister, and all members of the Portfolio Committee as the next levels of authority and accountability – all four of my successive appeals to the Management Executive Committee and the Board of Directors having been spurned.
52. Please appreciate that whatever Vedalankar decides concerning my second records request, and even if she reverses her decision to refuse the first one, I will still be petitioning the Minister, the Deputy Minister, and the Portfolio Committee to intervene and remedy my main illegal discrimination complaint, unless the Board moves to resolve it immediately. I’ve been waiting over fourteen months now.
53. And if I get no joy from Parliament, I’ll claim my constitutional rights in court, with its patient and efficient machinery for separating truth from lies.
54. This case is shaping up to be a historical, landmark development in South African constitutional jurisprudence. It’s just dismal to think that LASA is set to be forever memorialized in the law reports for its shameful contempt of the basic civil liberties enshrined in our democratic Constitution.

Yours sincerely



ANTHONY BRINK

Advocate of the High Court of South Africa

033 344 2420

083 779 4174

Cc:

To: Board Directors du Rand, Gandhi, Jarana, Konar, Kruger, Maree, Memka, Mgadza, Mhlungu, Monaledi, Mosidi, Naidoo, and Vawda;

And to: Board Secretary Schoeman;

And to: Attorneys Kisoona and Bokaba:

PAIA Unit, South African Human Rights Commission

Record of Meeting

Ela Gandhi and Christopher Rawlins

20 January 2011

2 P.M.

Ms Gandhi's home

During my meeting with Ela Gandhi on Thursday she received a telephone call from fellow board director, Prof. Yusuf Vawda, immediately informing him that she was busy discussing your letter with me. After the call, I explained that I had telephoned Prof. Vawda the previous Friday 14th January when he told me that he knew nothing at all about your letter and expressed no interest in learning of its contents. I reminded Ela Gandhi that she too would have known nothing about your letter had I not taken the trouble to print, bind and hand deliver it and now follow up with a meeting to update her on the correspondence since your letter to the board of 30 November 2010.

I outlined the way in which I believed you had been illegally discriminated against by the CEO and board Chair who held very opposed views to yours on the AIDS issue. Ela Gandhi said she firmly believed in the beneficial qualities of the drugs known as ARVs although she had never read any of your books or studies of AZT and nevirapine.

When I referred to the fact that KZN had been deprived of senior litigators in contrast to all other high court areas, Ela Gandhi assured me that KZN did in fact have senior litigators in post. She knew this from her attendance at the last meeting in Oct/Nov 2010 of the Legal Services Committee at which the good performance of the senior litigators had been commented on, in particular the one at Durban. I responded that you had been informed in the CEO's letter of 18 October that the KZN posts had been frozen because of lack of funding.

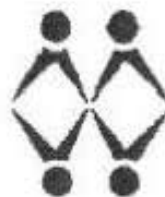
Ela Gandhi said there was no proof that you had been a victim of unlawful discrimination. She said many people are out of work and make unsuccessful job applications. She likened your application to that of Ashok Kaloo who had previously been rejected for the Pietermaritzburg senior litigator post after failing the second confirmatory interview in Johannesburg. I responded that the crucial distinction was that you had never been given the second confirmatory interview nor were you ever rejected on the basis of your skills, experience and personal qualities. You were informed after 9 months of waiting that the post had been frozen due to lack of sufficient funding.

I detailed the persistent steps you had taken to resolve the problem by written appeals to ever higher levels of authority within LASA, culminating in an appeal to the board Chair and the board in which you said that you would very much like to deflate the rapidly ballooning problem by way of a conciliatory meeting. Ela Gandhi said that this attempt to solve the problem by a conciliatory meeting amounted to attempted blackmail because you had made serious allegations of financial mismanagement in your letter of 30 November. Her belief was that you would offer to refrain from any

further exposure of the contraventions of various Acts as outlined in the heading page of your letter, in return for confirmation of your appointment which you claimed to have been unlawfully blocked. I responded that you had not offered nor would you ever contemplate such an agreement. The purpose of a conciliatory meeting would be to obtain justice as defined in our constitution without the necessity of the dispute becoming public through protracted legal action in the full glare of the media. The onus was on the board to meet to discuss how to respond to the contraventions of Acts and failure of corporate governance which had accompanied the cover up of your unlawful discrimination. Exercising its oversight function, the board is responsible and accountable to parliament and the public of South Africa and clearly would be neglecting its role if it did not address and rectify the breakdown in internal control and executive management that had allowed the problem to develop to such a serious stage. This would be necessary regardless of whether the dispute was resolved by a face to face meeting or by correspondence.

Ela Gandhi also said that the contraventions of Acts specified in your letter of 30 November were grounds for LASA to sue you for defamation. I responded that the truth of the statements made in your letter could be confirmed by reference to the records you had requested, but LASA had failed to comply with its legal obligations under PAIA. Referring specifically to the false totals contained in the table of executive management remuneration in the 2009/10 annual report, I left Ela Gandhi a copy of the annual report table, which she had not seen before although the false totals were detailed in your letter. She explained that the annual financial statements were thoroughly audited and examined by the specialist board members and asked me why you had not reported the false totals to the external auditors. I explained yet again the persistent efforts you had made to get your letter distributed to all board members but the board secretary had failed to even acknowledge your two letters requesting her to notify all board directors and canvass them on their support for a special meeting. The external auditors attend all meetings of the audit and risk committee together with the Chief Financial Officer and the internal audit executive and have unrestricted access to the Chair of the Committee and the Chair of the board. The external auditors would automatically be informed of any financial irregularities if the board secretary and board Chair had performed their job responsibilities as defined in the annual report.

Christopher Rawlins



Legal Aid
South Africa

B

TO	NOE
FROM	ROE (KZN)
DATE	06 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



Legal Aid
South Africa

B

C

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 articulated 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

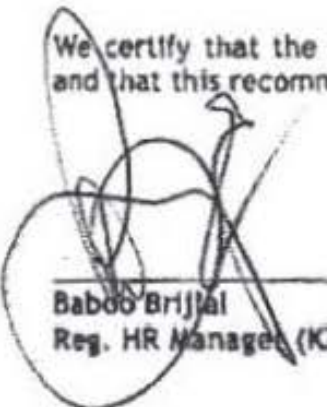
The panel recommends the following candidates for the next round of interviews:-

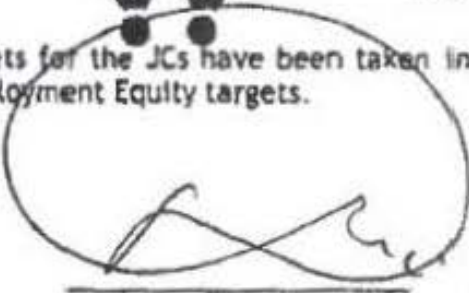
- Mr Anthony Brink · External Candidate
- Mr Bongani Mngadi · Internal Candidate



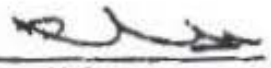
Legal Aid^B
South Africa

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

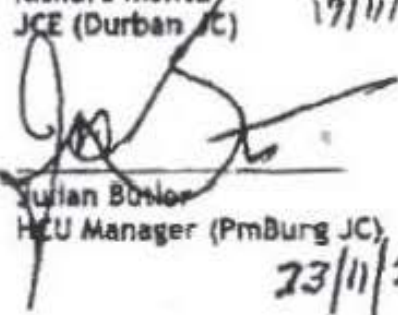

Baboo Brijlal
Reg. HR Manager (KZN Region)


Vis Nair
JCE (Pinetown)

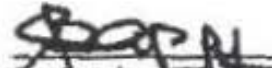
23/11/2009


Kishore Mehta
JCE (Durban JC)

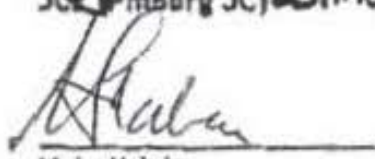
17/11/09


Julian Butler
HCU Manager (PmBurg JC)

23/11/2009


Vertus Appel
JCE (PmBurg JC)

23/11/09.


Vela Mdaka
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

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

FOURTH COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.
3. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act, in conniving, again, at LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, and given effect by the Promotion of Access to Information Act 2 of 2000 ('PAIA').
4. For concision, I'll refer to parts of my previous complaints against the respondent, and I request that they be read as incorporated in this Fourth Complaint.
5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Fourth Complaint.

6. On 28 January 2011 – four days after the respondent’s appalling late-night email on the 24th (the subject of my Third Complaint), in which he abusively dismissed my second petition to him and the Board earlier that day, and lied to me in claiming that he’d found, and still could find, nothing untoward about Vedalankar’s illegal ‘denial of access to records’ and ‘disrespect for section 32(1)(a) of the Constitution’, about which I’d complained to him in close detail in my first petition to him, and complained again in my second – Vedalankar:

6.1. totally refused my second PAIA request made on 15 December 2010, on the false basis that it merely ‘repeated’¹ my first;

1. In truth and in fact, I’d sought quite different records, testing her budgetary insufficiency story for aborting my recruitment to the Pietermaritzburg Senior Litigator post, which she’d fed me in her October 2010 letter illegally refusing my first PAIA request in August 2010, by means of which I was probing the circumstances in which my appointment had been blocked.

On the 3rd of that month, LASA National Operations Executive Brian Nair responded to my plea to CEO Vedalankar in July 2010 to see to the finalisation of my appointment, now eight silent months since my successful interview, by telling me that LASA had decided ‘due to various reasons’ that ‘we will not be proceeding with the filling of any of these posts’, LASA’s remaining vacant three Senior Litigator posts for which suitable candidates had been selected and recommended. (In April 2011, I forced Nair’s admission on oath under section 23 of PAIA that no record whatsoever of any such decision exists.)

6.2. revisited her refusal of my first PAIA request, and refused it again, for a new set of equally spurious and unlawful reasons;¹

1. The South African Human Rights Commission (‘SAHRC’) confirmed this a few months later in June 2011; LASA’s head office lawyers admitted it to the SAHRC in October 2011; and Vedalankar’s spurious and unlawful reasons were implicitly abandoned by the delivery over the following years of the initially

refused records and other similar records, which I determinedly pursued by repeatedly applying to court (6X) to compel their delivery.

The few records Vedalankar annexed to her January letter were 'To demonstrate' her several contentions, and not to respond to my request for access to the records I'd specified. But a couple of her records coincidentally partially satisfied some of my requests, including my request for a copy of the selection panel's report recommending me. Unjustifiably under any provision of PAIA, however, the report was illegally redacted with a black Koki pen to conceal from me the crucial, all-important information recorded in it, to which public body information I was entitled as of constitutional right, that my rival applicant for the post, which had strangely silently been frozen completely off the record after I'd been recommended for it, and he was unexpectedly rejected, had long been the respondent's fellow judge of the Labour Court.

The mutilation of the report before furnishing it to me, to conceal this vital information and to deny me my right to it (ultimately conceded five years later), was a criminal contravention of section 90(1) of PAIA: 'A person who with intent to deny a right of access in terms of this Act – (a) destroys, damages or alters a record; (b) conceals a record ... commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding two years.'

- 6.3. rejected and returned my bank cheque for the compulsory request fee prescribed by section 22 of PAIA, just to underscore her total rejection of, and absolute refusal to comply with, my August and December PAIA requests for access to LASA's records in my investigation of the true circumstances in which my recruitment had been silently aborted.
7. A copy of Vedalankar's letter to me of 28 January 2011 is annexed marked 'A'. The only document she put up with her letter that's relevant to this Fourth Complaint is the redacted and censored recommendation report, which I've annexed, marked 'B'. (Other documents she put up are relevant to and will be annexed to a different, separate, future complaint.) A copy of my unrepresented cheque for the compulsory request fee that

Vedalankar unlawfully rejected and returned by post, even the envelope I sent it in, is annexed marked 'C'.

8. The cc addressees of her email covering her January letter show that Vedalankar copied it to the respondent. A copy of this email is annexed marked 'D'.
9. As one of our country's top legal authorities, it would have been immediately apparent to the respondent that the new bunch of substitute reasons given me by Vedalankar for continuing to totally refuse my PAIA requests, even spitting back my mandatory request fee, were incompetent, unlawful and unconstitutional.
10. It follows that the respondent was full well aware that Vedalankar was continuing to illegally refuse me access to duly requested records and was thereby violating my fundamental right to information.
11. Vedalankar's said letter concluded:

The Legal Aid SA's Board of Directors; its Executives and all its staff country-wide are committed to complying with the laws and statutes of the country and most importantly the Constitution of the country and its values of accountability and transparency. In that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB. We have exhausted our explanations to you^[1] and trust that this final letter shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to.

1. Several months later, in November 2011, NOE Nair would give the Board totally different 'explanations', and in July/August 2013 yet another radically different 'explanation' to the Labour Court trying my claim for my instatement to the post.

12. It would have been as obvious to the respondent as it was to me that by wishing me this final good-bye, after violating my constitutional right to information that she pretended to respect, Vedalankar was trying:
 - 12.1. to force my acceptance of her budgetary insufficiency excuse for not approving¹ my appointment;
 - 12.2. prevent me testing it by requesting supporting records to vouch it, or, where they didn't exist (as I suspected, later confirmed), by requiring her to certify this on oath under section 23 of PAIA; and,
 1. Under LASA's Approval Framework, an internal regulation approved and prescribed by the respondent and his Board, Vedalankar and Nair have co-authority for approving selection panel recommendations for Senior Litigator appointments. And no one else. As a non-executive member of the Board, the respondent's illegal intrusion into LASA management's Senior Litigator selection and approval operations, in violation of the rule of law, will be the subject of a separate, future complaint.
 - 12.3. to discourage me from making any more requests under PAIA to examine LASA's records, in the exercise of my fundamental right to information, by telling me they'd be ignored, in further violation of this constitutional right.
13. On being copied her letter, the respondent deliberately failed to honour his judicial oath and his fiduciary duty to LASA to see to it that Vedalankar quit violating the Constitution, stop breaking the law, and cease violating my basic civil rights; and did nothing to call her to order about this.
14. By his deliberate silence and inaction the respondent tacitly approved Vedalankar's:
 - 14.1. clear violation of my fundamental right to information; and,

14.2. announcement of her intention to continue violating it should I attempt to exercise it again.

15. In this manner, the respondent again:

15.1. breached multiple relevant provisions of LASA's Code of Ethics and Conduct, as enumerated in paragraphs 38 and 41 of my Second Complaint; and,

15.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) and thus violated his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

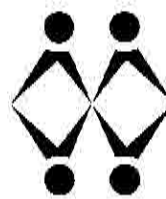
Signed before me at Mtunzini on 27 June 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:



By Email

28 January 2011

Adv A Brink

25 Baker Road

Prestbury

Pietermaritzburg, 3201

Email: arbrink@iafrica.com

29 De Beer Street

Braamfontein

Johannesburg 2017

Private Box X76

Braamfontein 2017

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Dear Adv. Anthony Brink,

**REQUEST FOR INFORMATION IN TERMS OF PROMOTION OF ACCESS
TO INFORMATION ACT 2 OF 2000**

1. I acknowledge your letter of 15 December 2010 in which you request access to information in Legal Aid SA's possession in terms of the Promotion of Access to Information Act, Act 2 of 2000 ("PAIA"). I have also considered your recent letters dated 30 November 2010 sent to the Chairperson of the Board of Legal Aid SA, Judge President Dunstan Mlambo ("Mlambo JP") and to the Board of Directors ("Board") dated 24 January 2011.
2. Legal Aid SA promotes and complies with the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession. This recognition should set the tone for the answer that follows herein below.

3. In your letter to Mlambo JP, you made serious and malicious accusations which can in effect be separated into two groups. Firstly, you accuse Mr Brian Nair ("Nair"), the Legal Aid SA's National Operations Executive ("NOE"), and me of unlawfully misrepresenting information (mainly financial management issues) to Parliament's Portfolio Committee on Justice and Constitutional Development and of concocting unlawful excuses and reasons, all with malicious intent to freezing a post of Senior Litigator, Pietermaritzburg ("PMB") for which you were singly selected and recommended for appointment subject to your final interview with Mlambo JP.
4. Secondly, you accuse Mr Nair and I or even the Legal Aid SA of singling you out for differential treatment which is, according to you, unlawful and unconstitutional, because of your race and of your conscience and belief. As a result of the foregoing conclusions, you grounded your application for access to information on section 46 of PAIA in seeking access to information from the Legal Aid SA. It is common cause that section 46 provides that:

"Despite other provisions of this Chapter, the information officer of a public body must grant a request for access to record of the body contemplated in section 34 (1)... if –

*The disclosure of the record would reveal evidence of –
a substantial contravention of, failure to comply with, the
law; or*

...

*the public interest in the disclosure of the record clearly
outweighs the harm contemplated in the provision in
question."*

5. At the outset, I wish to record my strongest rejection of your accusations which you levelled against me as the Chief Executive Officer of Legal Aid SA; members of the Executives (both individually and collectively) including but not limited to Mr Nair; Ms Amanda Clark ("Ms Clark") and the Board members including its chairperson, Mlambo JP; and its secretary Ms B Schoeman. Your views are unfounded; wrong and outright defamatory. My and my organisations' rights are strictly reserved to deal therewith at a later stage and/or an appropriate forum.
6. As I will show herein below, the premise you have chosen in seeking access to information you seek herein is baseless. This wrong assumption, which I will disprove herein below, led you to reject my answers to your request for access to our records. You continued with these malicious accusations to the Parliamentary Portfolio Committee on Justice and Constitutional Development; to the Ministry of Justice and Constitutional Development; to the Board; and to other institutions of your choice.
7. As I will demonstrate to you herein below, your assumptions in taking this route are far from the truth and are misinformed. I must however advise you, that the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible as indicated herein below.
8. Despite the above accusations and assumptions, which I completely reject, I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.

9. I provide you with the following documents to dispel the incorrect assumptions with which you ground your right to access information from the Legal Aid SA. In doing so, I wish to advise that the documents provided to you are provided on the basis that they are and should ***remain private and confidential***. You are therefore requested not to distribute them any further.

<u>NATURE OF DOCUMENT</u>		<u>AIM OF THE DOCUMENT</u>
V1.	The Legal Aid SA Approval Framework as approved by the Board on 23 May 2009	To demonstrate to you that the COO and CEO in consultation with other national Executives incl. NOE, HRE, ROEs, JCEs and the Board took part in deciding on various cost-cutting mechanisms including freezing of posts. The Board agreed with the Executives. See the extract herein below. The freezing of posts is contemplated in clause 8.1.2 thereof without same being Strategic Planning as you contend. This clause should be read together with Note 31 which clarifies that the NOE is the responsible executive for positions related to functions reporting to him and that the concurrence of the COO is not required for these posts. The COO has a similar authority for posts related to functions reporting to him.

V2.	The Legal Aid SA policy on inter alia, Recruitment of new employees, approved by the Board on 29 November 2008	To demonstrate (i) that in selecting employees, Legal Aid SA is guided by the Constitution Act of 1996 and relevant legislation; and (ii) Legal Aid SA Executives are not precluded from formulating processes for recruitment.
V3.	Letter of 18 March 2010 by CEO to DG DoJ & CD	To demonstrate that the Legal Aid SA has always had financial difficulties as a result of failure by DoJ to advance funding in terms of OSD 2 nd phase as promised; and the consequences of such failure on Legal Aid SA mandate.
V4.	Letter of 13 April 2010 by CEO to DG DoJ & CD	To demonstrate that there was a need for further funding as a result of the failure to deliver on the promised funding; and the effect that such failure will have on service delivery.
V5.	Email from Brian Nair (NOE) dated 15 July 2010 to Executives	To demonstrate the need to budget for the shortfall; to show that not only the Senior Litigators' posts were identified for possible freezing; and to show other costs-cutting mechanisms resorted to stay in budget.
V6.	Email from Jerry Makokoane (COO) and attached Memo to Executives; ROEs and JCEs of Legal Aid SA	To demonstrate that; a process of cost-cutting processes were proceeding even after you received your regret letter; that even Cabinet required Legal Aid SA to engage in cost-cutting processes; an impending

	date 30 Sept 2010	shortfall in Legal Aid SA's budget; and the types of cost cutting measures proposed by cabinet. See the 1 st option proposed.
V7.	An edited/ blacked out recommendation of the 1 st round Panel recommending inter alia you "For Next Round Interviews" dated 6 November 2009	To demonstrate that the process for Senior Litigator was two-pronged; that there were 2 candidates recommended for next round of interviews; that you were not selected and recommended for appointment subject to Mlambo JP's satisfaction as you claim but subject to a second round interview process for which the interview panel included Mlambo JP and other National Office Executives; and that the 2 nd round was never approved by NOE thus was never proceeded with.
V8.	Extract of audio recording of my presentation to Portfolio Committee on Justice on 12 October 2010 (after your regret letter)	To demonstrate that even in Parliament, I mentioned challenges that may face Legal Aid SA should OSD funding not be fixed; that if funding does not come through "we would have to freeze posts" and further that "because that entails a change in baseline because if we don't have that we are still doing to go back to that problem"; that there is a further budget cut in 2012.

V9.	Confidential letter of regret dated 23 August 2010 sent to you by KZN ROE Mr Vela Mdaka.	To demonstrate that you were informed that the Legal Aid SA will not be proceeding with the filling of the posts of Senior Litigator's KZN's Durban and PMB.
V10.	Extract of Legal Aid SA's Board minutes of 31 July 2010 where a resolution on cost-cutting proposal were approved by the board.	To demonstrate that the issue of cost-cutting measures served on the Board of Directors for its resolution thereon and that it has approved these cost-cutting measures.
V11.	The Advertisement for the position of Senior Litigator, KZN (Durban and PMB)	To demonstrate that processes outlined in the Policy on Recruitment were followed by the relevant regional office in seeking to recruit candidates for the above posts.
V12.	Chain email dated 14; 22; and 30 April 2010 from Clark to you and other regional and national managers dealing, in general, with the Senior Litigators' post.	To demonstrate that you were informed that process was still on and you were asked to liaise with KZN regional execs in re the relevant post.

10. I trust that the above information addresses the complaint you have against the Legal Aid SA regarding the Senior Litigator posts. From your reading of the request for information specified in your **Annexure**

To Form A: Section D: Records Required (as per your letter dated 26 August 2010 and repeated in your letter dated 15 December 2010) ,
I am able to advise as follows:

AS TO PART 'A' THEREOF (AND PART B WHERE NECESSARY)

11. As to your requests 1 and 2: I wish to refer you to the Legal Aid SA's Policy Document read with the Approval Framework.
12. As regard your request number 3 and 4: Mr Nair relied on the Approval Framework especially at 8.2.2(c) where, you will note, he has to approve the appointment of senior staff. However, he was not the person in charge of or managing the process of recruiting a Senior Litigator. This process is managed by the relevant Regional Human Resources Manager if it is a regional post; and a HRE if it is a senior national appointment. Mr Nair is the line executive/manager responsible for the appointment of Senior Litigators.
13. Seeing that the posts of Senior Litigator's post was a senior post, second round interviews were to proceed to the national level with national executives and was to be coordinated and managed by the HRE. The relevant regional HR officer was responsible, at all times, together with the KZN ROE Mr Mdaka who managed and compiled the recommendation of the panel after the first round of interviews as attached in the above table.
14. I reject your allegations in your request number 5 and 6: I dispute your argumentative conclusion premised, of course on misguided facts and

false information. Since these allegations are unfounded no such document exists.

15. As to request 7: I refer you to the Approval Framework annexed hereto.
16. As to requests 8 and 9 : I refuse to grant you access to this information on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks.
17. As to request 10: No time limit was set to finalise the recruitment process.
18. As to requests 3 and 4 (both in Part A and B of the request document): there are no such communications that I am aware of. I am willing to provide you with an email from Ms Clark dated 30 April 2010 which you already have in your possession and which you have referred to in your letter to Mlambo JP on or about 30 November 2010. This was blind copied to the ROE of KZN Mr Mdaka and Brijal.
19. For your requests 11; 12; 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs-cutting measures, read with the Legal Aid SA's Approval Framework.
20. As for your request 15: The disparity on the advertised salary between Mthatha and Durban/Pietermaritzburg Senior Litigator position, is as a result of cost of living expense which was effected on 23 October 2009. You would have noted that the difference between the two advertisements is a period of over nine months.

21. As for your request 16: I am not aware of any of the Executives discussing you and/or your candidacy for the above-mentioned post save the edited and blacked out recommendation for the next round of interviews. This is attached hereto as part of the bundle in the table above.
22. As to the regional panel members' individual assessment notes; scores; deliberations; submissions and assessment reports on you, I, having considered your request, refuse to grant you access thereto as these documents and information relating thereto were compiled from the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for vacant posts in the Legal Aid SA. I am entitled to refuse to grant you this information in terms of section 44(1) and (2) of PAIA.
23. I have decided, notwithstanding the above position, and after I have exercised my discretion, to grant you access to an edited/blacked out version of the final recommendation of the panel to show you what its decision was.

AS TO PART B "OTHER RECORDS"

24. As for your requests 1; 2; 28; 29; 30; 31; and 32: Except for annexures "V7" and "V9" (attached), I have exercised my discretion against granting you access thereto. I refuse to grant you access thereto in terms of section 44(1) and (2) of PAIA. My reason therefore is that this information was generated and compiled as a result of the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for the vacant posts in the Legal Aid SA.

25. As to requests 3; and 4: Please refer to above.
26. As for requests 5; 6; 7; 8; 9; and 10: I am able to inform you that there is no recorded explanation for what you refer to as 'the delay'. I reject that there were any delays in dealing with any post. As far as I can tell, there were no time frames within which these recruitment drives were to be conducted and completed. I however wish to state that the Legal Aid SA was, at the same time as it conducted the recruitment drives referred to herein above and as you would have noted from the above documents, in a parallel process of securing funding. It had in conducting these recruitment processes parallel with fund raising drive, acted under the impression that the DoJ &CD would honour its promise to extend OSD funding to it. Accordingly and naturally, the drive to secure funding took priority as you would have noted from the correspondence above that all those Executives that were engaged in the recruitment of the Senior Litigator posts were also engaged in costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget. Ms Clark's mail to you was to be and must be understood in this light.
27. Because Ms Clark would not have been involved in the Senior Litigator's recruitment process as the second round of interviews was not proceeded with (see her email of 14; 22 and 30 April 2010 which you already have in your possession), Baboo Brijal would have been provided with the same updates as included herein above regarding the costs-cutting mechanisms. Obviously by November 2010, after the Memorandum from the COO, it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012. Brijal was to update you should anything change regarding the continuation or otherwise of the recruitment drive not anything more.

28. As for requests 11; and 12: Ms Clark, as a HRE, was involved with the cost-cutting processes and was not at liberty to inform you of the reasons why the posts were not being finalised. All she did and said to you is informed by the costs-cutting measures that appear in the above documents. She was privy thereto and she too, just like all of us, had to wait and see if the Department of Justice and Constitutional Development would allocate us budget to proceed with finalising the recruitment processes. It is on this basis that you should understand Ms Clark's communications to you regarding this process.
29. As to requests 13, 14 and 15: The decision to create or abolish a post is derived from the Approval Framework which is annexed herewith. All communication relating thereto is also attached. If for any reason, the e-mail or any form of communication is not attached, it would have been verbal, the authority of which derives from the aforementioned Approval Framework.
30. As to your requests 16; 19; 20; 21; 22; 23; 24; 26; and 27: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.
31. I further refuse to grant you access on the same information and documents on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks). I also refuse to provide access to this record as it relates to research or information gathering by third parties on behalf of Legal Aid SA as contemplated in section 43(1) and (2). It seems apparent to me that you already have document(s) that you seek in this regard.

32. As for your requests 17 and 18: There is no such discussion other than the documents provided to you.
33. As for your request 25: As this information would relate to the internal deliberations; opinions and views intended for Legal Aid SA to take certain decisions as contemplated in section 44(1) and (2), I have exercised my discretion against granting you access thereto. I therefore refuse to grant you access to this information or document.
34. As for your requests 33; and 34: Your attention is referred to the costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc. This was part of the Executive's mandate around that time. See especially the email and memo from COO to all Executives; ROEs; JCEs and 'All Staff' herein above wherein Cabinet also propagated the same mechanisms as Legal Aid SA.
35. As for request 35: To the best of knowledge there are no other electronic records relating to you.

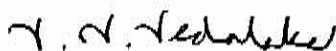
IN CONCLUSION

36. As you will note from the perusal of these documents, your request in terms of overriding provisions of section 46 of PAIA were in lieu of your misguided accusations against me; Nair; Mlambo JP; Clark and now the Board that either one or more of us were engaged in substantial contravention of the law. This I have rejected, out of hand, and I put you to the proof thereof.

37. In light of the above information given to you, it must further be apparent that your allegations of discrimination against you as an individual are baseless and misguided. Save for the documents and information delivered to you, I refuse to grant you access to the documents I have referred to.
38. Mlambo JP had an occasion to peruse and consider your long letter of 30 November 2010 wherein you seem relentless in your complaint and accusations against me; Nair and the Legal Aid SA and has essentially, after reviewing our processes regarding the cost-cutting measures including but not limited to the Senior Litigator posts, found no evidence to substantiate your claims. Of course you do not believe him and you ridicule his findings in your subsequent correspondence and your threatened court actions. I have, on my part, also tried, notwithstanding this answer from Mlambo JP, to answer your requests and avail certain documents to you, the contents of which, I wish to repeat, are private and confidential.
39. As indicated hereinabove, I have also had an occasion of reading your recent letter dated 24 January 2011 to Mlambo JP. I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints which you have rejected.
40. You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

41. In conclusion, I note your threats of court actions cross examining me; officials of Legal Aid SA; now the Board members; and their secretary. Your threats of *mandamus* against the Legal Aid SA; of using independent judges; of probing our executives' affidavits; of your draft notice of motion and an accompanying founding affidavit, are unnecessary. Please refrain from your disparaging attacks on people's dignity on baseless assumptions.
42. Be advised that the Legal Aid SA will defend itself against any of the threats that you have made against its officials and Board members.
43. The Legal Aid SA's Board of Directors; its Executives and all of its staff country-wide are committed to complying with the laws and statutes of the country most importantly the Constitution of the country and its values of accountability and transparency. It is in that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB.
44. We have exhausted our explanations to you and trust that this final letter to you shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to. Your cheque will be returned to you with the original of this letter.

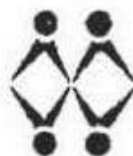
Yours faithfully,



Vidhu Vedalankar

CEO: Legal Aid South Africa

V7

B^C

Legal Aid
South Africa

TO	NDE
FROM	ROE (KZN)
DATE	06 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 Mdeka	-	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 B PERCENTAGE
Mr Mzochishwayo Ngcamu							
Mr Anthony Brink							
Mr Johannes van Wyk							
Mr Bongani Ngodi							

Notes:-

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

4. SUMMARY OF CANDIDATES

~~Mr Mzochishwayo Ngcamu~~
~~Mr Anthony Brink~~
~~Mr Johannes van Wyk~~
~~Mr Bongani Ngodi~~

[Handwritten signatures and initials]

C
B



Legal Aid
South Africa

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]

[Handwritten signatures and initials]

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 Pieterburg 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:-

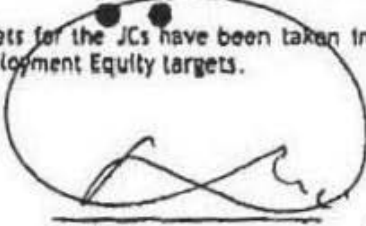
- Mr Anthony Brink - External Candidate
- Mr Bongani Mngadi - Internal Candidate

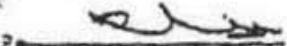


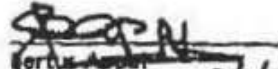
Legal Aid
South Africa

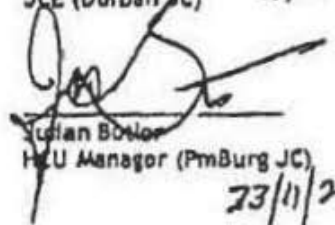
We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

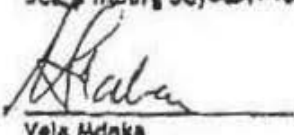

Baboo Briljal
Reg. HR Manager (KZN Region)


Vis Nair
JCE (Pinetown) 23/11/2009


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


Portia Apper
JCE (Pmburg JC) 23/11/09


Julian Boller
HCU Manager (Pmburg JC) 23/11/2009


Vela Adaka
ROE (KZN Region)

NEXT ROUND INTERVIEW APPROVAL

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR ROE			

PAIA request fee rejected

Cheque returned unrepresented – together with the registered envelope enclosing it, and the labelled envelope inside it.

PNB
Public National Bank
South African Financial Services Provider
Pretoria
10001

201-709

Date
Datum 15 Dec 2010

LONG STREET

Pay
Betaal Legal Aid South Africa

the sum of
die bedrag van Thirty Five Rand R 35-00

or Bearer
of the order

Registered Bank Reg. No. 1929/001225/06.

A R BRINK

4791 2017091 509304505101 03

Ref: Request Fee: Adv Brink
PAIA request.

EO HQ120240EP02 DP0740521P02

For Personal Attention

Ms Vidhu Vedalankar
 CEO and Information Officer
 Legal Aid South Africa
 Private Bag X76
 Braamfontein 2017





From: Vidhu Vedalankar [<mailto:VidhuV@legal-aid.co.za>]
Sent: 28 January 2011 02:25 PM
To: Anthony Brink
Cc: Justice Dunstan Mlambo; ckisoon@sahrc.org.za
Subject: PAIA: Brink - supplementary request for records

Dear Mr Brink

Please see attached a response to your letter.

Regards

Vidhu Vedalankar
CEO



www.legal-aid.co.za

FIFTH COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.
3. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Judicial Service Commission Act, in conniving, again, at LASA CEO and information officer Vidhu Vedalankar's violation of my fundamental right to public body information entrenched by section 32(1)(a) of the Constitution, and given effect by the Promotion of Access to Information Act 2 of 2000 ('PAIA').
4. For concision, I'll refer to parts of my previous complaints against the respondent, and I request that they be read as incorporated in this Fifth Complaint.
5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Fifth Complaint.
6. Unintimidated and undeterred by the respondent's:

- 6.1.1. shockingly improper and dishonest rebuff of my second petition to him (the subject of my Third Complaint), corruptly contrived to chill my endeavour to vindicate my fundamental right to information that Vedalankar had violated – clearly and incontestably demonstrated in my first petition to him in November 2010 (annexure ‘A’ to my Second Complaint);
- 6.1.2. extraordinarily ‘untoward’ (his word) studied indifference to this serious unconstitutional illegality by an organ of state in the democratic era that I was repeatedly protesting to him; and,
- 6.1.3. conscious and deliberate inaction on seeing that Vedalankar had illegally totally refused my first August 2010 PAIA request again on 28 January 2011 on manifestly spurious new grounds, and had illegally totally refused my second December 2010 PAIA request on the obviously false basis that it merely ‘repeated’ my first,

I petitioned the respondent and the LASA Board a third time on 25 February 2011, again seeking his intervention and remediation of Vedalankar’s illegal obstruction of my access to LASA’s public records – now copying in:

- LASA’s Executive Authority, the Minister of Justice and Constitutional Development (as he was then called);
 - the Minister’s Special Advisor;
 - the Deputy Minister; and,
 - the chairperson of the Portfolio Committee for Justice and Constitutional Development of the National Assembly (‘Portfolio Committee’), with oversight responsibility over state organs like LASA, imposed by section 55(2) of the Constitution.
7. My approach to these several high authorities fulfilled my ultimatum that I duly gave the respondent in my second petition (annexure ‘A’ to my Third

Complaint), namely I would escalate my complaint about Vedalankar's illegal and unconstitutional refusal to comply with my PAIA requests to them should he fail to belatedly perform his fiduciary obligation to LASA to see to it that Vedalankar comply with the Constitution and the law by allowing me access to LASA's public records as I'd requested.

8. A copy of my third petition to the respondent and other Board members, which I copied to these high authorities, is annexed marked 'A'.
9. My third petition:
 - 9.1. mentioned my first petition to the respondent in November 2010 (which the respondent had batted away in collusion with Vedalankar in the manner described and vouched in my Second Complaint);
 - 9.2. reminded the respondent that:

My [second] petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament;¹

1. Just as I predicted, it was; and the Portfolio Committee taxed Vedalankar about it on 9 October 2012. She evaded its repeated concerned questions by telling lies and falsely repudiating the SAHRC's report: 'Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this.' (Per the Parliamentary Monitoring Group's minute.) The SAHRC's annual report on public body compliance with PAIA under section 84 wasn't 'untrue'. I wasn't 'in court' when I made my PAIA requests in August and December 2010 and March 2011, and only sued in July 2011. And there was no pending case 'about

this' in which 'there was going to be an official judgment'. My entitlement to the records wasn't in issue in any court.

- 9.3. informed the respondent that to falsely justify continuing to totally refuse my first PAIA request in August 2010, Vedalankar had replaced her unlawful reasons given me in October 2010 with another set of equally obviously unlawful ones in her January 2011 letter (which he already knew, because Vedalankar had copied her January 2011 letter to him); and,
- 9.4. repeated my intention, stated in my second petition, to apply to court for an order compelling Vedalankar's production of the records she was withholding from me, for which I'd prepared draft papers.¹

1. In his 24 January 2011 email, the respondent had sarcastically responded, in tinny legal argot calculated to impress and put me off, dishonestly insinuating, contrary to his full appreciation otherwise, that my complaint about Vedalankar's repeated and persistent illegal and unconstitutional refusal to allow me access to LASA's records had no merit and would fail in court: 'you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you.'

In the event, I opted to pursue the records under the Labour Court's discovery rules instead. Faced with LASA's determined obstruction and resistance, my struggle to access its records continued: I was constrained to apply to compel discovery, after my entire list of requested documents listed in my agenda for the first pre-trial conference was totally refused. On the very correct advice of LASA's senior counsel, now Constitutional Court judge, Mbuyiseli Madlanga, openly expressed at the conference, this absolute refusal was then reversed, and all the listed records I sought were promised me. Contemptuously disregarding its minuted undertaking given on its senior counsel's advice, and being all the time determined to withhold the requested records from me and conceal them from the trial court, LASA then failed to make full and proper discovery as agreed, requiring me to apply to compel, as said. And then, in my endless difficulty getting documents from LASA that I needed for trial, I had to request

not one but two further pre-trial conferences under judicial supervision at court to extract most but still not all of the requested records.

As then LASA Board member Ela Ghandi appositely remarked in a different context in *The Mercury* on 23 November 2011: 'It's only when people have something they are not proud of that they try to hide things.'

10. Predicted by the respondent's emailed announcement to me on 24 January 2011 that he'd be ignoring any further entreaties by me about, inter alia, his CEO and information officer's persistent, repeated violation of my fundamental right to public body information, and my pleas that he act to remedy it – 'I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf' – the respondent indeed ignored my third petition about this, as he said he would; did not respond to it; and thereby again:

10.1. breached multiple relevant provisions of LASA's Code of Ethics and Conduct, as enumerated in paragraphs 38 and 41 of my Second Complaint; and,

10.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in contempt of his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

Signed at Mtunzini on 27 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 27 June 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

25 Baker Road
Prestbury
Pietermaritzburg
25 February 2011

Dear Board Directors

LASA BOARD MEETING, SATURDAY 26 FEBRUARY 2011

Your meeting on Saturday presents an opportunity to address, resolve, and defuse what threatens to be the most damaging crisis in LASA's history. And so easily.

In November last year, I addressed a 59-page petition to Judge Mlambo and the Board of Directors, appealing for the Board's intervention in CEO Vidhu Vedalankar's illegal abortion of my recruitment as Senior Litigator, Pietermaritzburg, for political reasons, following my selection and recommendation for appointment by a professional selection panel in November 2009.

My petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament.

I also raised LASA's contravention of the Public Finance Management Act – (a) in incurring fruitless and wasteful expenditure in Vedalankar's illegal abortion of my appointment and the wasted cost of readvertising the post, despite having already found a suitable candidate; and (b) in publishing false financial information in LASA's current annual report (Management Executive Committee members' personal incomes are massively understated in total).

My requests to Board Secretary Schoeman to forward my letter to all Board members and to put it on the agenda of the next Board meeting was not carried out; and indeed

appear to have been countermanded, thus concealing from the Auditor General, represented at all Board Audit Sub-Committee meetings, these serious financial irregularities threatening to blot the unqualified audits that LASA has enjoyed for many years.

In her letter to me of 28 January 2011, in which Vedalankar implicitly abandoned her earlier wholly spurious reasons for not complying with PAIA and affording me access to the records I requested, replacing her clueless reasons with other equally fatuous ones, Vedalankar repeated her allegation that for financial reasons she'd 'frozen' the post for which I was selected and recommended; and she put up some records claimed to support this.

In truth, as all (besides recent) Board members are well aware, the single cost-cutting measure agreed by the Management Executive Committee on 16 July 2010 in its Report to the Board, and approved by the Board on the 31st, was the reduction of some junior criminal defence practitioner posts serving the district and regional courts.

The couple of remaining vacant critical Senior Litigator posts were never identified, never proposed, never agreed, and never approved for abolition as a cost-saving measure. On the contrary, the Report to the Board specifically distinguished vacant critical posts from the rest and prioritized them for recruitment.

This is incontrovertibly shown by (a) the Board meeting minutes; (b) the Management Executive Committee's Report to the Board; (c) NOE Nair's recommendations for cost-saving; and (d) Vedalankar's letter to the Director General on 16 April contemplating the abolition of some junior criminal defence practitioner posts, which was ultimately proposed, agreed and approved. All on the record, obviously.

Vedalankar's claims to me to have 'frozen' my post in July, and to have 'frozen' it for budgetary reasons, are lies. And being lies, they are naturally not supported by any records. Contrariwise, her lies are directly contradicted by the very records that she provided me for her own purposes (and not to comply with my PAIA requests) last month in January.

In my petition to the Board in November, I reported how in covering up her gravely illegal abortion of my appointment in late 2009/early 2010 and in contriving a bogus financial justification for it, Vedalankar also unlawfully aborted the appointments of two African lawyers duly selected and recommended for appointment to the Durban and Mthatha Senior Litigator posts, in April/May and July respectively – contemptuous of their rights, their legitimate expectations of being appointed, as well.

And all this in a grossly unlawful, furtive abuse of power; all completely off the record; with no regard for the peremptory requirements of the Approval Framework governing such operational decisions; contravening the Board's strategic policy to equip all seats of the High Court with Senior Litigators; disrespecting the express wishes of Parliament expressed in May 2007 in this regard; disrespecting the Minister's express wishes communicated to Judge Mlambo sometime in the first half of 2010; without informing the Board in the 16 July Report; and without informing the Portfolio Committee on 12 October.

The rapidly developing crisis LASA currently faces on account of Vedalankar's grossly illegal conduct, and the blind eye Judge Mlambo has turned to it in his brief, dismissive responses to my detailed petitions, is as follows:

Unless the extraordinary serious matters raised in my correspondence to the Board in November and again in January are addressed and resolved at Saturday's meeting of the Board, LASA's public reputation for exemplary probity in corporate governance and

financial management stands to be wrecked in a gargantuan public scandal when my complaints reach open court.

Here I refer to my preliminary application to the South Gauteng High Court (Johannesburg) for which I've drawn draft papers for an order compelling Vedalankar to comply with PAIA by producing the records I've lawfully requested, or where they don't exist by confirming this on oath. Moreover I refer to my claim for appointment to the post for which I was selected and recommended, but which Vedalankar illegally aborted for political reasons, behind the scenes and completely off the record, and which she later tried covering up with a patently untruthful budgetary justification, contradicted by the very records she produced in January. Callously sacrificing two African lawyers on the way.

In his email to me on 24 January, Judge Mlambo told me he'd requested all Board members 'to ignore all communications from' me, notwithstanding the Board's statutory responsibilities to oversee and ensure the proper management of LASA by the Management Executive Committee and its compliance with the laws of the country that I'd highlighted.

Having regard to the extraordinarily serious nature of the matters I've raised – *so easily fixed* – I would suggest that you rather 'ignore' judge Mlambo's grossly improper request to 'ignore' my petitions pointing up the breakdown of proper corporate governance and Vedalankar's evident contempt for the Constitution and the law of our country and the fundamental constitutional rights of its people.

In the situation, I respectfully call on you as a Director to exercise your responsibility to LASA, to Parliament, and to the people of South Africa, and to move for the discussion by the Board of the grave matters I've brought to your attention so that they can be openly ventilated, debated, and resolved. Before this shambles spills into the open to the

considerable embarrassment of the Minister and Deputy Minister of Justice and Constitutional Development.

All relevant documents in this matter are accessible online at a private secure archive: www.tig.org.za/LASA; username: lasa; password: LASA2010.

Thank you for your attention.

Yours sincerely



ADV ANTHONY BRINK

CC:

The Minister of Justice and Constitutional Development, the Honourable Mr Jeffrey Radebe MP

The Deputy Minister of Justice and Constitutional Development, the Honourable Mr Andries Nel MP

Special Advisor to the Minister of Justice and Constitutional Development, Dr Jabulani Mzaliya

The Chairperson, Parliamentary Portfolio Committee on Justice and Constitutional Development, the Honourable Mr Lewellyn Landers MP

SIXTH COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.
3. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act, in lying to the Minister of Justice and Constitutional Development (as he was then named; hereafter 'the Minister') in a 'confidential' report, submitted under a covering letter quoting a dishonest and disparaging email he'd sent me, to pervert the Minister's enquiry into my complaint repeated in my third petition to the respondent and his Board, which I'd copied to the Minister, that LASA CEO and information officer Vidhu Vedalankar had persistently and repeatedly illegally refused to comply with my requests made in August and December 2010 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') for access to specified LASA records, and that she'd thereby violated my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution.

4. For concision, I'll refer to parts of my previous Complaints against the respondent, and I request that they be read as incorporated in this Sixth Complaint. So as to avoid interrupting the central narrative, I'll provide explanatory notes and traverse some collateral matters in an Endnote.
5. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to decide this Sixth Complaint.
6. As said in my Fifth Complaint, I petitioned the respondent and the Board for the third time on 25 February 2011 about information officer Vedalankar's repeated, persistent illegal total refusal to comply with my PAIA requests of August and December 2010. And, as anticipated by my ultimatum to the respondent in my second petition that should he fail to act on this grave unconstitutional illegality I'd petition the Minister and Parliament next, I copied my third petition to LASA's Executive Authority, the Minister; to his Special Advisor; to the Deputy Minister; and to the chairperson of the Justice Portfolio Committee of the National Assembly, charged with oversight over LASA by section 55(2) of the Constitution.
7. In contradistinction to the respondent, who ignored it as he said he would, the Minister and the chairperson of the Portfolio Committee immediately recognised the enormity and the gravity of my fundamental rights violation complaints repeated in my third petition, and initiated separate, independent enquiries into them.
8. Certainly, the chairperson of the Portfolio Committee did so, because I have a copy of his demand that the respondent report to him; but in the case of the Minister, I'm surmising he also demanded a report from the fact that the respondent made a report to him. Other possible reasons the respondent reported to the Minister are canvassed in my Endnote, Part One.

9. I'm unable to furnish the Judicial Service Commission with a copy of the Minister's demand, presuming he made it, for the reason stated in my Endnote, Part Five.
10. At all events, the respondent reported to the Minister on 9 March 2011. A copy of his 'Report to the Honourable Minister of Justice and Constitutional Development Re: Adv Anthony Brink' ('the report'), which he signed on that date, is annexed marked 'A'.
11. The report was ghost-written by LASA National Operations Executive Brian Nair. I treat this further in my Endnote, Part Two.
12. I'm similarly unable to furnish the Judicial Service Commission with a copy of the letter the respondent wrote the Minister covering his report, for the reason stated in my Endnote, Parts Three and Five.
13. Whereas the report contains no 'Confidential' information of any description, let alone as any law defines it, the header of every page strangely urged on the Minister this furtive classification for the concealment of the information it contained from anyone else. Like from me.
14. The respondent didn't copy his report to me, and it was only by chance that I learned of its existence from the chairperson of the Portfolio Committee some months later, in June 2011. How LASA then unlawfully withheld and concealed the report from me for years, despite my repeatedly made requests for it during pre-trial document discovery process in the Labour Court, and how I eventually fortuitously found it and obtained a copy, is recounted in my Endnote, Part Four.
15. Concerning my complaint in my third petition made yet again about Vedalankar's outrageous repeated illegal total refusals of my PAIA requests, and her persistent violation of my fundamental civil right to information held

by the state in the democratic era, the report stated unctuously and dishonestly:

He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. ... Notwithstanding the insulting and malicious tone of most of Adv Brink's correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. ... As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

16. The respondent's report to the Minister was self-evidently calculated to pervert his enquiry by misleading him and inducing him to believe incorrectly that:

- 16.1. my three complaints to the respondent in November 2010 and January and February 2011 about Vedalankar's illegal refusals of my PAIA requests were baseless;

- 16.2. she'd duly complied with my PAIA requests and had refused me nothing;
- 16.3. a few outstanding records that she'd agreed to provide me were still being gathered for delivery;
- 16.4. she'd duly furnished me with all the documents I needed to see for myself that the financial explanation she'd given for the abortion of my appointment was true;
- 16.5. I was mentally perturbed for not accepting her budgetary insufficiency explanation for the abortion of my appointment, and for complaining that the documents that she'd put up, and others I'd sourced, did not support and actually contradicted her claim that LASA's three remaining vacant critical Senior Litigator posts had been frozen indefinitely for want of sufficient budget from the Department to fill them;
- 16.6. I'd asked for and was wasting her time in seeking access to irrelevant documents that had no bearing on the abortion of my appointment;
- 16.7. my 'requests for further information' (in fact the same illegally refused information) that I was 'currently pursuing ... with the Human Rights Commission' were an equal waste of time;
- 16.8. my 'threatened litigation' to compel her compliance with my PAIA requests was meritless and bound to fail;
- 16.9. my correspondence with LASA's executive management and Board was 'insulting and malicious' and my 'conduct ... invasive' – which is to say, in repeatedly entreating the respondent and the Board to see to Vedalankar's compliance with my PAIA requests, and thereby respect my fundamental right to information held by the state guaranteed by

section 32(1)(a) in the Bill of Rights of the Constitution, I'd grievously misconducted myself and was continuing to do so; and,

16.10. in my communications with LASA's officers, as I was pursuing entirely misconceived claims and complaints, I was raving like a demented person.

17. All the respondent's claims and clear implications to the Minister in his report about my complaint, repeated again in my third petition, that Vedalankar had illegally and unconstitutionally refused to comply with my PAIA requests, were lies.
18. The respondent knew full well they were lies, because he'd received, had read, had well understood, and had very deliberately spurned my three petitions to him inter alia about Vedalankar's persistent, repeated illegal refusals of my PAIA requests and her ongoing violation of my fundamental right to information.
19. My first petition (annexure 'A' to my Second Complaint) had closely and precisely detailed the unlawfulness and dishonesty of her first refusal in October 2010. My second petition repeated my complaint about this. And my third petition (a) reiterated my complaint; (b) added another about Vedalankar's rejection of my second PAIA request in December 2010 on the false basis that it was a mere repetition of my first request in August; and (c) complained of her ongoing repeated illegal and unconstitutional refusal of my August request for a fresh bunch of plainly spurious, unlawful reasons.
20. That is, the respondent signed and submitted the report to the Minister well knowing – because I'd spelt it out to him in fine detail, which as a top, former appellate judge he well understood – that Vedalankar's repeated absolute refusal to open LASA's books to me was incontestably illegal and unconstitutional.

21. Besides the respondent's lies and false implications to dishonestly discredit and put down my complaint about Vedalankar's persistent illegal total refusal of my PAIA requests made in August and December 2010, the respondent's report contained a multitude of other lies, chiefly concerning (a) the strange, silent, long, unexplained delay in my appointment to the Pietermaritzburg Senior Litigator post for which I'd been selected and recommended, and then (b) when I pressed Vedalankar to finalise it eight months after my successful interview, the wholly off-the-record, unauthorised, illegal abortion of my recruitment to the post (still vacant, still funded to this day). My Eighth Complaint to follow will again expose and refute the respondent's lies in this regard. (After exposing and refuting these lies in my unusually detailed original statement of claim in the Labour Court in July 2011, the respondent's first lie to the Minister was recanted and retracted as a mere mistake in an affidavit made on his behalf, and his second lie was dropped and replaced with other totally different lies told in a 'Report to Board'.)
22. With the corrupt intention of prejudicing the Minister against me and my complaint, the better to pervert his enquiry into Vedalankar's persistent illegal and unconstitutional total refusals of my requests for access to LASA's public records, about which I'd repeatedly complained to him in my three petitions, the respondent defamed me in a letter covering his report by putting up or quoting his false and insulting late-night email sent me on 24 January 2010 (annexure 'C' to my First Complaint).
23. The 'attached email' mentioned in the last sentence of the penultimate paragraph of the report is undoubtedly this outrageous email, because the same sentence appears in the subsequent report to the Justice Portfolio Committee (to be annexed to and the subject of my Seventh Complaint to follow); and in his covering letter to the Committee (which I have) it pleased

the respondent to quote his dishonest and insulting email to me to the same corrupt end. (As said, I can't provide a copy for the reason stated in my Endnote, Part Five.)

24. Since the lies told in the respondent's report and covering letter were subscribed by a senior judge, the Minister naturally believed them to be true; concluded that my PAIA complaints were devoid of merit and that I was a personal and professional reprobate as the respondent alleged, even a bit of a nutcase not worth responding to; and closed the matter – as is evident from the fact that I got no reply from him.
25. The respondent thus succeeded in corruptly misleading the Minister, and thereby perverting his enquiry inter alia into my complaint – reiterated in my third petition to the respondent on 25 February 2011, copied to the Minister – that LASA CEO and information officer Vidhu Vedalankar had repeatedly and persistently illegally refused my duly made requests for access to LASA records and was thereby violating my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in the Constitution.
26. By deceiving LASA's Executive Authority in this manner, the respondent again:
 - 26.1. breached multiple relevant provisions of LASA's Code of Ethics and Conduct, as enumerated in paragraphs 38 and 41 of my Second Complaint; and,
 - 26.2. 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) and thus violated his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'.

ENDNOTE

Part One

1. It may be that on seeing from the cc list at the foot of my third petition that I'd copied it to the Minister, the respondent decided to report to him defensively and pre-emptively, before being required to do so.
2. It's also possible that my third petition emailed on 25 February 2011 was discussed by the Board at its meeting held the following day, Saturday the 26th, and that it was resolved to report to the Minister about it.
3. (LASA's annual report for 2010/11 shows that a Board meeting was held in February 2011; and since such meetings are invariably held on the last Saturday of the month, it was almost certainly on the 26th.)
4. I don't know and therefore can't inform the Commission whether my third petition to the Board was discussed at its February 2011 meeting, because LASA is determinedly withholding the minute of it. After it was initially refused and then repeatedly promised over the years, then repeatedly not delivered, and despite my having twice sued for it, I've been unable to extract it from LASA. Part Five below explains why.

Part Two

1. Proving this, a screenshot of the PDF 'Author' properties of the report, recording 'Briann', is annexed marked 'B'.
2. At the trial of my labour claim, Nair initially falsely disputed that he wrote it, and I was persistently but unsuccessfully cross-examined on the issue. Finally appreciating that he was cornered by his electronic fingerprints left behind on the document – like a robber leaving his ID on the floor on his way out the bank – he admitted it in his evidence.
3. My stunning and frankly quite disorientating discovery of Nair's authorship of the report just days before the trial – as well as my approximately simultaneous discovery, from his distinctive, idiosyncratic broken syntactical tics (which at trial he admitted), that he'd ghost-written Vedalankar's October 2010 letter (which at trial he denied) refusing my August records request and feeding me the phony budgetary insufficiency excuse – led me to change my mind and conclude, wrongly it turned out, that Nair was principally responsible for the illegal abortion of my appointment; and I therefore decided to exclude the respondent from involvement in it at the presentation of my case.

4. I told the trial judge so at the outset before evidence, and he was evidently relieved by this major shift in the direction of my litigation, away from the respondent – cautioning me in his chambers to stick to it, shortly after I'd begun testifying, when I said I still had a lot more evidence to lead than just the essential facts noted in my Timeline: 'Don't make the mistake of throwing your net so far out that you catch more than you can bring in.' His meaning in the context was unmistakable: *Keep the respondent out of it, or your case before me is doomed.*
5. In his evidence, however, Nair claimed to have had very little to do with the abortion of my recruitment. Considered against his pathetically weak showing in the witness stand as I cross-examined him – after which the judge found he'd been 'not generous with the truth' on 'a number' of occasions – this particular exculpatory claim of his rang true to me, because it had become clear to me that he didn't have the clout on his own, as I'd wrongly believed, to interfere in the implementation of LASA's Strategic Plan 2009–12, inter alia to employ Senior Litigators; and in my petition for leave to appeal I again indicted the respondent's central involvement in the illegal abortion of my recruitment and the cover-up that followed, criminally escalated all the way to the National Assembly.
6. My reassessment was confirmed correct in April 2016 when I discovered the respondent's long professional relationship with my rival applicant for the post as a brother Labour Court judge. It's certain now that Nair was a patsy in the matter and a tool used by the respondent in the cover-up, both of the illegal abortion of my appointment and of the illegal refusal of my PAIA requests probing it.

Part Three

1. The respondent's covering letter to the Minister was among the requested records that LASA finally agreed at court in February 2016 to give me, but it reneged on its undertaking to do so, and answered my application to compel its compliance with its total surrender treaty in the manner described in Part Five below.

Part Four

1. In my agenda for the pre-trial conference held in October 2011 after the close of pleadings in my labour case, I requested a copy of the report, obviously needing it to present in evidence at the trial, and thereafter persistently sought it three more times: in my application to compel discovery (converted at my request into a pre-trial conference at court under judicial supervision); in my agenda for this pre-trial conference at court; and in my agenda for the second pre-trial conference at court (which I had to request when LASA reneged on its discovery undertakings minuted at the first one).

2. That is, LASA determinedly withheld the report from me for about two years for different, shifting reasons – until June 2013 when, at the second conference at court just weeks from trial, at which I was desperately trying to crow-bar records out of LASA that I needed for trial, I chanced to discover it among some other Microsoft Word documents in a folder on LASA's lead in-house attorney Thembile Mtati's laptop computer as we were searching together for a different document that I needed. No longer able to lie that he didn't have it, now that I'd seen it, Mtati agreed to email it to me, which he did, in PDF, a couple of days later.

Part Five

1. In the Eshowe Magistrates Court on 14 February 2016, LASA totally capitulated to my several applications to court, set down together, for orders compelling its compliance with my PAIA requests made in the period 2013–15, including for documents I'd tried but failed to disgorge via round after round of document discovery process in the Labour Court, and agreed at last to hand over all requested records that it had until then persistently illegally refused me just as I was on the point of moving for an order that they be surrendered.
2. Among these documents were the Minister's demand for a report and the respondent's covering letter for his report: items B38 and B39 on my Consolidated List of Requested Records.
3. Under section 23 of PAIA, Mtati alleged on oath concerning the Minister's demand: 'No such record exists. ... it cannot be located.' The statements on oath contradict each other, because the second implies the record does indeed exist but has been lost.
4. Concerning the respondent's covering letter to the Minister, Mtati swore: 'No such record exists. The officials specified were consulted and they have no recollection of the existence of the record.' The lie to this is given by the penultimate sentence in the report about 'the attached email'.
5. Concerning 'The minutes of all Board meetings held in the period October 2009 to February 2011', my item H15 Mtati swore: 'No such record could be found', i.e. the records exist but are lost.
6. Mtati's perjury is exposed by the facts that (a) despite this claim, he gave me other Board minutes, besides the February 2011 one which he continued illegally withholding; and (b) LASA cannot possibly just lose the minutes of its Board meetings: Its annual report for 2010/11 states that they're filed with the secretariat in hard copy and stored electronically on the U drive.

7. When in May 2016 Mtati disregarded my plea that he deliver the documents he'd undertaken at court to deliver but had failed to, and to furnish a fully and properly compliant section 23 affidavit in regard to documents not furnished, and I applied:

- (a) to the same Magistrate's Court in July 2016 under the default clause of the settlement agreement to compel LASA's full and proper compliance with it; and,
- (b) to the High Court at Pietermaritzburg in October 2016 to compel LASA's compliance with two other PAIA requests duly made in 2016, both illegally totally refused, the one explicitly contemplated in the settlement agreement, the other for all legal cost vouchers reflecting the colossal waste of public money spent on illegally refusing my PAIA requests in 2013–15 and then unjustifiably opposing my applications to compel them all the way to argument,

LASA responded, in a display of supreme contempt for its constitutional information transparency obligations, by applying to the High Court at Pietermaritzburg to have me stripped of my basic civil rights (i) to information and (ii) to enforce this right in a court of law, by having me banned as a vexatious litigant. The matter has been set down for 27 October 2017.

Signed at Mtunzini on 2 July 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 2 July 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:



REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individual and organisations, including to the Chairperson and Board of Directors of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA.

3. Allegations of multiple contraventions of the PFMA

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10, relating to executives remuneration, contains incorrect column totals for basic salaries, total bonuses and incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010...".

The executive's remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts on

this matter of his alleged non appointment. We are however comfortable that we would be able to show to a court of law that our decisions taken on this matter made good business sense and was in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Brink re contravention of the PFMA and provides the necessary reassurance that in fact the PFMA has not been contravened.

Judge D Mlambo

Chairperson

Legal Aid SA

9 March 2011

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REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. **Background**

On 12 July 2010 Advocate Anthony Brink wrote the delays in the finalisation of the recruitment of the Pietermaritzburg Justice Centre. Adv Brink was interviewed by our regional selection panel. He was interviewed to the second stage of the interview process, but this nationally constituted panel did not have the authority to recommend him for the position.

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SEVENTH COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.
3. I charge the respondent with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act, in lying to the Portfolio Committee of the National Assembly on Justice and Constitutional Development (as it was then called; hereinafter 'the Committee') in a 'confidential' report, under a covering letter quoting a dishonest and disparaging email he'd sent me, to pervert the Committee's enquiry into my complaint repeated in my third petition to the respondent, which I'd copied to the Committee, that LASA CEO and information officer Vidhu Vedalankar had persistently and repeatedly illegally refused to comply with my requests in August and December 2010 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') for access to specified LASA records, and that she'd thereby violated my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution.

4. By perverting the Committee's enquiry with his lies, the respondent:
 - 4.1. obstructed and successfully defeated the National Assembly's policing duty imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state', and thereby prevented it from holding LASA's most senior public officers to account for their repeated and persistent fundamental right violations – an extraordinarily serious matter after apartheid; and,
 - 4.2. criminally contravened section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, which provides:

A person who –

...

(d) with intent to deceive a House or committee, produces to the House or committee any false, untrue, fabricated or falsified document; or

(e) ... wilfully furnishes a House or committee with information ... which is false or misleading,

commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.

5. For concision, I'll refer to parts of my previous complaints against the respondent, and to their annexures, and I request that they be read as incorporated in this Seventh Complaint.
6. Paragraphs 4–13 of my Second Complaint establish the Judicial Service Commission's jurisdiction to deal with this Seventh Complaint.
7. Section 56(d) of the Constitution provides that 'The National Assembly or any of its committees may ... receive, petitions, representations or

submissions from any interested persons' – such as my third petition to the respondent and the Board on 25 February 2011, copied to the Committee, protesting Vedalankar's repeated illegal total refusals of my PAIA requests and pleading for their intervention and remediation. (I detail this in paragraphs 6–9 of my Fifth Complaint, to which my third petition is annexure 'A'.)

8. Section 56(b) of the Constitution provides that 'The National Assembly or any of its committees may ... require any person to report to it' – and duly acting under this constitutional power, after reading my third petition to the respondent, which I copied to the chairperson of the Committee, the latter wrote to the respondent on 23 March 2011 to 'ask you, your Board and the [Legal Aid] Board's¹ CEO for a formal response to these allegations please' concerning the latter's 'refusal to comply with the Promotion of Access to Information Act amongst other things.' A copy of the Committee chairperson's demand for a report about this from the respondent is annexed marked 'A'.

1. The 'Legal Aid Board' to which the Committee chairperson referred, and explicitly named as such in the inside address of his letter, was LASA's previous name.

9. As just mentioned, the Committee specifically required 'a formal response to these allegations' from the respondent, from the Board, and from Vedalankar. Disobeying his clear instruction to obtain it, however, the respondent didn't seek the Board's response to my fundamental rights violation complaints protested in my three petitions; and the likely reason he didn't do so is that he didn't want the Board discussing the grave illegality and constitutional rights violations in which he was personally and directly complicit.
10. The respondent responded the Committee chairperson by letter on 22 June 2011:

Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me: [The respondent here quoted his untruthful and abusive email to me of 24 January 2011, annexure 'C' to my First Complaint.] I trust that the attached report and this letter clarify the matter concerning Mr Brink.

11. A copy of the respondent's covering letter is annexed marked 'B'; and a copy of his 'updated' report is annexed marked 'C'.
12. By quoting to the Committee his lie told me in his January 2011 email that he still saw nothing remiss in Vedalankar's illegal and unconstitutional refusals of my PAIA requests made in August and December 2010, notwithstanding my detailed complaints about this in my repeated petitions to him, the respondent thereby repeated this lie to the Committee, and thus lied to it with the dishonest object of discrediting my entirely proper, duly made complaint to him in my third petition about Vedalankar's ongoing violation of my fundamental right to information.
13. And by quoting to the Committee his false charges against me of personal and professional misconduct, the respondent defamed me with the dishonest object of misleading the Committee by discrediting me personally.
14. The respondent's corrupt intention in repeating his said lie and in defaming me to the Committee was to prejudice it against me and my complaint, the better to pervert its enquiry inter alia into Vedalankar's repeated illegal and unconstitutional refusals of my duly made requests for sight of LASA's public records, about which I'd repeatedly protested to the respondent and sought his intervention to remedy it.

15. By the time the respondent wrote and reported to the Committee in June 2011, three months after his report to the Minister in March 2011:

15.1. I'd made a third PAIA request on 9 March 2011, testing Vedalankar's stories told me in her 28 January 2011 letter, in which she'd again refused my first PAIA request made in August 2010; and,

15.2. a month later on 8 April 2011, deputy information officer Brian Nair had responded to my third PAIA request, and at the same time had revisited my August and December 2010 PAIA requests, which on 3 March 2011 I'd narrowed and reduced to focus on testing the specific budgetary excuse for cancelling my appointment that Vedalankar had cooked up and fed me in her October 2010 letter and reheated in her January 2011 one.

1. Nair persisted in unlawfully refusing most of my record requests on factually and legally spurious grounds (the South African Human Rights Commission ('SAHRC') later agreed, and LASA itself conceded; see below), but at last he furnished an affidavit under section 23 of PAIA, certifying that certain requested records didn't exist – records that would have existed had I been told the truth. Crucially, he confirmed that no record whatsoever existed to support Vedalankar's brazen, ridiculous lie to me in October 2010, repeated in January 2011 and contradicted by the very records she put up 'to demonstrate' this, that 'in July 2010' she and Nair had 'immediately' frozen LASA's remaining three vacant critical Senior Litigator posts, after suitable candidates had been selected and recommended for them, for lack, 'due to the recession', of sufficient budget provided by the Department to fill them. Refuting Vedalankar's blatant lie to me, LASA's Senior Litigator salary budget applications for five years from 2010/11 to 2015/16, which I requested from the Department in 2015 (after LASA had, as usual, illegally refused me access to such information requested for one financial year) prove the posts have always been and remain fully budgeted. Also, by 2010 the global 'recession' of 2008 was long over.

16. The respondent's 'updated' report to the Committee repeated the lies he told the Minister about the handling of my PAIA requests, and told him two more new lies about this.
17. The original lies told to the Minister to put down my complaints about Vedalankar's persistent illegal refusals of my PAIA requests, which the respondent repeated to the Committee, are quoted in paragraph 14 of my Sixth Complaint, and are glossed in its paragraph 15.
18. Concerning PAIA, the report to the Committee contained the fresh allegation (among other lies unrelated to PAIA): 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act.'
19. In truth and in fact, and contrary to this glib, smooth-sounding criminal lie told to misinform and mislead the Committee, and to conceal from it the fact that Vedalankar and Nair had persistently and repeatedly illegally refused to comply with my duly made PAIA requests in violation of my fundamental right to information:
 - 19.1. my main PAIA request, my first one in August 2010, had been ignored in the 30 calendar days allowed by section 25 of the Act to respond to it – a deemed refusal under section 27; then expressly refused in October 2010 for unlawful reasons, three weeks outside 'the timeframe stipulated in the Act'; then refused again three months later in January 2011 for different unlawful reasons; and then refused again in April 2011 three months after that for more unlawful reasons;
 - 19.2. my second PAIA request in December 2010 had been timeously responded to in January 2011, but also unlawfully refused in toto, on the false basis that it was a mere repetition of my first August request; and,

- 19.3. my third PAIA request in March 2011 was similarly responded to in April 2011 within the prescribed timeframe, but was unlawfully substantially refused (as the SAHRC confirmed and LASA conceded, both quoted below doing so).
20. Again, like his false report to the Minister, the respondent's 'updated' report to the Committee contained no indication that LASA was persistently and repeatedly illegally denying me access to LASA's business records that I'd duly requested.
21. Quite the opposite, to falsely and deceptively imply to the Committee that my PAIA requests had been duly complied with, the respondent's report to it made the meretricious new statement, true on its face but false in substance: 'We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.'
22. To the contrary, four days later on 26 June 2011, the SAHRC disconfirmed LASA's 'compliance with PAIA', as the respondent had falsely alleged to the Committee. Responding to my 'Second Memorandum' that I'd submitted, showing the factual and legal vacancy of Nair's reasons for withholding records I'd duly requested, the SAHRC concurred: 'A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer is made in your memorandum.'
23. The SAHRC, together with ODAC (the Open Democracy Advice Centre, a PAIA watchdog NGO), then stepped in to try remedying the crisis (the persistent, repeated violation of the Constitution by LASA's top two management executives Vedalankar and Nair) and on 6 October 2011 held a special remedial class for the clueless 'key personnel' in LASA's national office, during which extra lesson they admitted that 'they had previously been misapplying the provisions of PAIA in certain instances' – i.e. to my requests, the only ones refused – and had 'identified [this] misinterpretation

and misapplication ... as of high risk to LASA ... [They] reacted to the reporting of LASA as non-compliant to Parliament with concern'. A copy of the SAHRC's workshop report recording this is annexed marked 'D'.

24. Whereas at the trial of my labour claim in mid-2013 Nair finally admitted he'd ghost-written the report to the Minister, as proved by the 'Author' properties of the document given me in PDF (discussed and shown in paragraphs 1 and 2 of Part Two of the Endnote to my Sixth Complaint), he denied having 'updated' it for the Committee by adding any further information to it, and said could 'only assume the Judge personally wrote that' – although later he wasn't sure: he couldn't say 'If the Judge wrote it himself', implying it could have been Vedalankar to whom he'd passed the original report he'd drawn for the respondent to sign and give the Minister. Material excerpts from the trial record in this regard are annexed marked 'E'.
25. As with his report to the Minister, the respondent's 'updated' report to the Committee was clearly calculated to pervert its enquiry, by misleading it and inducing it to believe incorrectly that:
 - 25.1. my three complaints to the respondent in November and December 2010 and in February 2011 about Vedalankar's illegal refusals of my PAIA requests were baseless;
 - 25.2. Vedalankar and Nair had duly complied with my PAIA requests and had refused me nothing;
 - 25.3. a few outstanding records that they'd agreed to provide me were still being gathered for delivery;
 - 25.4. they'd duly responded to all my PAIA requests timeously under the Act;

- 25.5. they'd duly furnished me with all the documents I needed to see for myself that the financial insufficiency explanation Vedalankar had given me for the abortion of my appointment was true;
- 25.6. I was mentally perturbed (a) for not accepting Vedalankar's budgetary explanation for the abortion of my appointment (which in an affidavit confirming Nair's section 23 affidavit in April 2011 she falsely confirmed as true under penalty of perjury, as did Nair, who later went on to tell several other completely different stories, also under oath), and (b) for complaining that the documents that she'd put up, and others I'd sourced, did not support and quite obviously contradicted her claim that LASA's three remaining vacant critical Senior Litigator posts had been frozen indefinitely for want of sufficient budget to fill them;
- 25.7. I'd asked for and was wasting Vedalankar's and Nair's time in seeking access to irrelevant documents that had no bearing on the abortion of my appointment;
- 25.8. my 'requests for further information' (in fact the same illegally denied information) that I was 'currently pursuing ... with the Human Rights Commission' were an equal waste of time;
- 25.9. my 'threatened litigation' to compel the production of the records I'd requested was meritless and bound to fail;
- 25.10. my correspondence with LASA's executive management and Board was 'insulting and malicious' and my 'conduct ... invasive' – which is to say, in repeatedly entreating the respondent and the Board to see to Vedalankar's compliance with my PAIA requests, and thereby respect my fundamental right to information held by the state guaranteed by

section 32(1)(a) in the Bill of Rights of the Constitution, I'd grievously misconducted myself and was continuing to do so; and,

25.11. in my communications with LASA's officers, as I was pursuing entirely misconceived claims and complaints, I was raving like a demented person.

26. All the respondent's claims and clear implications to the Committee in his report about my complaint, repeated again in my third petition, that Vedalankar had illegally and unconstitutionally refused to comply with my PAIA requests, were lies.
27. The respondent well knew it, because, as said in paragraphs 17–19 of my Sixth Complaint, he'd received, had read, had well understood, and had very deliberately spurned my three petitions to him about Vedalankar's obviously illegal and unconstitutional refusals of my PAIA requests and her ongoing violation of my fundamental right to information.
28. And as said in my Second Complaint, the respondent cannot reasonably and credibly answer as a senior judge that he was so ignorant of a pivotal, core fundamental civil right entrenched in our democracy by the Constitution – essential, the courts have repeatedly emphasized, for the enforcement and protection of other rights – that my repeated petitions to him, especially my first one, finely detailing Vedalankar's illegal refusal to allow me access to LASA records that I wanted to examine, went right over his head, because he couldn't and didn't understand what I was complaining about.
29. The fact is, the respondent understood perfectly that I was being illegally denied duly requested records in violation of my fundamental constitutional right to information. And he was quite happy about this, because what he wanted was that I should just push off, and stop:

- 29.1. requesting documentary information about why my appointment to LASA's top legal professional post in Kwazulu-Natal had been cancelled off the record;
 - 29.2. testing with PAIA the already obviously false say-so information Vedalankar had given me about it in her letters refusing me access to the records I'd requested; and,
 - 29.3. investigating with PAIA the true reason my recruitment had been aborted.
30. Nor can the respondent reasonably and credibly contend that in repeating to the Committee the several lies he told the Minister, plus two more new ones told the Committee, all to the effect that my PAIA requests had been lawfully handled and acceded to, he was deferring to and relying on the professional legal advice of a junior advocate; which is to say, in the language of the Nkandla judgment, 'He might have been following wrong legal advice and therefore acting in good faith'.
31. Paragraph 75.2 of the respondent's answering affidavit in my application for leave to subpoena him for cross-examination at the trial of my labour claim on the reason he dismissed my petitions and lied to the Minister and Portfolio Committee, made on his behalf by LASA's lead in-house attorney Corporate Services Executive Thembile Mtati, following 'consultations' with him, records that counsel in private practice was briefed to opine on how my PAIA requests should be answered, 'to be safe', and that 'Counsel advised that limited access to information be given to the Applicant.' A material excerpt of this affidavit is annexed marked 'F'. (Its title and signature pages are part of annexure 'A' to my First Complaint.)
32. Nair's responses to my PAIA requests in April 2011 show that this young good-news lawyer's advice to LASA was that besides providing me with a

long overdue section 23 affidavit certifying non-existent records, I should be given nothing else; because for various plainly spurious reasons Nair persisted in illegally refusing my requests.

33. As said, the SAHRC confirmed this illegality soon afterwards in June 2011; and in October 2011, LASA admitted it: The SAHRC's report of the PAIA workshop (annexure 'D') records that LASA's abysmally ignorant head office 'personnel from the Legal Department' repeatedly conceded their 'lack of application based knowledge' and 'challenges complying with PAIA ... Most participants had no prior knowledge of PAIA' and 'were a little overwhelmed by the requirements of the legislation', which 'led to inconsistent application in the organisation'. So they 'were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA' – namely Vedalankar's and Nair's illegal refusals of my PAIA requests, since only mine were refused. (How the special remedial lesson was completely lost on LASA's top attorneys; how they reneged on their undertaking to review the illegal refusals of my PAIA requests; and how my subsequent PAIA requests continued being illegally refused is described in my Endnote.)
34. It bears mentioning that unlike the respondent, Satchwell J in the Gauteng Division of the High Court, under his leadership as head of that court, but following a very different, correctly dissenting line on PAIA, has sharply deplored the deliberate employment of inexperienced and incompetent junior lawyers by public bodies to obstruct access to their public records duly requested for the purpose of exposing evidence of their corruption. A news report of this is annexed marked 'G'.
35. The respondent thus 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) yet again.

36. Since the lies told in the report and covering letter were subscribed by a senior judge, the chairperson of the Committee naturally believed them to be true; concluded that my PAIA complaints were devoid of merit and that I was a personal and professional reprobate as the respondent alleged; and fairly wrote back to me on 29 June 2011: 'In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed.' A copy of his letter is annexed marked 'H'.
37. The respondent thus succeeded in corruptly misleading the Committee, and thereby perverting its enquiry inter alia into my complaint – reiterated in my third petition to him on 25 February 2011, copied to the Committee – that LASA CEO and information officer Vidhu Vedalankar had repeatedly and persistently illegally refused to comply with my duly made requests for access to LASA's records, and was thereby violating my fundamental right to public body information entrenched by section 32(1)(a) of the Bill of Rights in the Constitution.
38. Plainly the reason the chairperson of the Committee decided to close his enquiry is that it was unimaginable to him that 'the facts set out in Justice Mlambo's response' – namely his covering letter and report – were actually lies told to mislead him, so as to pervert the Committee's enquiry and defeat its oversight function over LASA under section 55(2) of the Constitution, in:
- 38.1. breach of multiple relevant provisions of LASA's Code of Ethics and Conduct, as enumerated in paragraphs 38 and 41 of my Second Complaint;
- 38.2. manifold criminal contraventions of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, cited in paragraph 4.2 above; and,

38.3. violation of the respondent's judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it' in that he deliberately 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment) in twice colluding in, twice conniving at, and then twice covering up Vedalankar's illegal and unconstitutional refusals of my PAIA requests with the object of: (a) obstructing my access to records testing the lying budgetary insufficiency story she'd eventually told me, under rising pressure to account, eleven months after my successful interview for the Pietermaritzburg Senior Litigator post, as the reason my recruitment had been aborted; and, (b) concealing the true reason for it, the respondent's wish that his former long-time judicial colleague in the Labour Court be appointed to the post for which I'd been recommended instead of me.

ENDNOTE

The SAHRC's tutorial for LASA's head office lawyers on how PAIA works entirely failed, and their undertaking to the SAHRC was promptly dishonoured: Not only were the illegal refusals of my requests not reviewed as promised, LASA continued illegally refusing virtually all my further PAIA requests made after the trial of my labour claim in mid-2013, inter alia testing the veracity of some surprising, unexpected, brand-new stories Nair told in his evidence, one of them radically contradicting and changing the previous story Vedalankar had told me twice in her letters of October 2010 and January 2011, and then confirmed on affidavit in April 2011, just as he did, namely that she and he had frozen LASA's three remaining vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha 'immediately ... in July 2010' for want of sufficient budget from the Department to fill them 'due to the recession'.

Flatly contradicting the story he'd sworn to in April 2011, Nair testified at trial in mid-2013 that the Mthatha post was not frozen for financial reasons or at all. His new story in court was that despite his repeated appeals to Vedalankar, she'd refused to approve the abolition of the redundant Kimberley post and the creation of the sorely needed Mthatha post – *after* the new Mthatha post had been created, advertised, interviewed for, and a suitable candidate selected and recommended for it. An obvious new lie, told on oath.

One of junior counsel's fee-notes, his fourth in the matter of my PAIA requests, reflects a charge of R159 600 for spending, he claimed, eight days in the period 11–31 March 2011 'researching the law' and writing his advice, based on his new learning about PAIA, of which he'd previously had zero, into a 'memo'.

After Corporate Legal Manager Solly Sekgota 'Recommended for payment' this magnificent charge for advising LASA to continue illegally refusing me access to the records I'd duly requested, rather than just handing them over as the Constitution and PAIA required, and junior counsel was paid his fabulous fee, LASA strangely presented me with this bill for reimbursement. A copy is annexed marked 'J'.

Under PAIA I duly requested copies of all this junior counsel's other fee-notes reflecting his charges – likely millions of rands – for his services to LASA, from early 2011 on, in recommending that my PAIA requests be illegally refused and that my several applications to court to compel LASA's delivery of duly requested records be opposed with many lever-arch files full of worthless papers he drew and ultimately abandoned at the point of argument in court after reading my pre-trial conference agenda taking them to pieces.

When I stated my intention to pass these invoices on to the Auditor General for the personal recovery of this massive public revenue squandered on violating my constitutional rights – 'irregular and fruitless and wasteful expenditure' prohibited by section 38(1)(1)(c)(ii) of the Public Finance Management Act 1 of 1999 – LASA's head office executives anxiously changed their mind about showing me any more of them; refused to hand them over; is now hiding them from me and the Auditor General:

Vedalankar authorised Mtati to answer my application brought in the Pietermaritzburg High Court in October 2016 to compel their production (case 1118/16) – and to answer my application brought in the Magistrate's Court in July 2016 to compel LASA's full and proper compliance with its obligations under its settlement agreement in February 2016 to hand over all requested records or duly certify any that don't exist – with an application of its own three weeks later (case 12124/16), at further enormous wasted cost (at least 'R350 000', it was said in the Magistrate's Court) to have me banned as a vexatious litigant.

Such is the fantastic corruption of this organisation, descending to the standard last resort the world over in a major cover-up: seeking a court order to neutralise its investigator or whistleblower.

The respondent is well aware of this latest corrupt gambit to block my access to the records I've duly requested, including records LASA formally agreed in writing to give me, because all major litigation by and against LASA is reported to the Board.

Not having queried it, and not having called it out for the outrageous abuse of court process that it is, the respondent is evidently happy with executive management's move to block me in this way.

Investigative journalist Andrew Jennings, who exposed the massive corruption at the top of FIFA, explains why: 'I'm a document hound. If I've got your documents, I know all about you. ... You just find some disgraceful, disgustingly corrupt people and you work on it! ... Our job is to investigate, acquire evidence.' A material excerpt of a Washington Post article quoting him is annexed marked 'K'.

Signed at Mtunzini on 2 July 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 2 July 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:



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LUWELLYN LANDERS MP
National Assembly
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Ref.: Brink(1)

Judge D. Mlambo
Chairperson: Legal Aid Board of S.A.
P/Bag X76
BRAAMFONTEIN 2017

23 March 2011

Dear Judge Mlambo

ADVOCATE ANTHONY BRINK

Attached for your attention please find copies of correspondence relating to a complaint comprising allegations made against the Legal Aid Board and it's CEO, Ms. Vidhu Vedalanker, with specific reference to his recruitment as Senior Litigator in Pietermaritzburg and refusal to comply with the provisions of the Promotion of Access to Information Act, amongst other things.

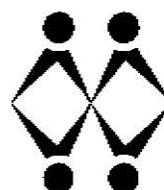
Having received Advocate Brink's letter you will understand that I must ask you, your Board and the Board's CEO for a formal response to these allegations, please.

Thank you.

Yours faithfully

LUWELLYN LANDERS MP

Chairperson:
Justice Portfolio Committee,
National Assembly



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South Africa

C

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22 June 2011

Mr L Landers MP
Chairperson Justice Portfolio Committee
National Assembly
P O Box 15
Cape Town
8000

Dear Mr Landers

Adv A Brink

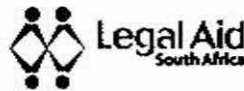
Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

"Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view. I further take this opportunity to advise you that the Board of Directors of Legal SA is not the appropriate forum to raise your matter. Your approach to the Board is therefore misdirected. Your matter was handled at Executive Management level, being the level at which such matters are handled, and should you have any issues in that regard you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you. For this reason I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf."

I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully


Judge Dunstan Mambona
Chairperson
Legal Aid South Africa



REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Re: Adv Anthony Brink

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individuals and organisations, including to the Chairperson and other Directors of the Board of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including

the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.

Adv A Brink subsequently referred a dispute against Legal Aid SA in the CCMA on 20 April 2011. He alleged unfair discrimination on the basis of political conscience, belief and activism on the issue of HIV Aids and to a lesser extent race. He further contended that he held the belief that this alleged unfair discrimination resulted in him not being appointed to the position of Senior Litigator at Legal Aid SA – a position for which he applied and was interviewed. The relief he sought was monetary in the amount of R55 000 per month from January 2011 (he avers to have become aware of the alleged discrimination at this point) to the date of the conciliation which totalled R220 000. The dispute could not be resolved as Legal Aid SA submitted that it believed that it had not directly or indirectly discriminated unfairly against Mr Brink on the basis averred by him or on any other basis. A certificate of non-resolution was thus issued by the CCMA on 20 April 2011 which paved the way for Mr Brink to refer the dispute for adjudication to the Labour Court, a route he has to date not pursued.

3. Allegations of multiple contraventions of the PFMA

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10, relating to executives remuneration, contains incorrect column totals for basic salaries, bonuses, incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010...".

The executives' remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per

executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Mr Brink re contravention of the PFMA and provides the necessary reassurance that no contravention occurred in this regard.



Judge D. Marnoo
Chairperson

Legal Aid SA

9 March 2011

Updated with sections in blue font

22 June 2011

Workshop Report: PAIA

Date of Event: 06.10.2011

Venue: Braampark, Forum III, Braamfontien

Body Trained: Legal Aid South Africa

Contact Person: Ricardo

Number of Participants: 20

Materials Distributed: Handbooks, PAIA legislation and Frontline Training Manual and ODAC information packs

INTRODUCTION

The Commission and the Open Democracy Advice Centre (ODAC) co-hosted training for personnel of Legal Aid South Africa (LASA). The Rationale for the training rested on the critical services provided by the board to vulnerable groups in society and to ensure that personnel of the board had an awareness of the legislation to increase their resource base, the quality of service and advice provided to their stakeholders. It has also been deemed important on the basis of the Commission's monitoring of LASA institutional compliance with PAIA and the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants with recognised rights.

A number of personnel were identified for training, including personnel ranging from the head of the legal department, internal audit, national operations, call centre as well as corporate services.

LASA has experienced an increased number of requests over the past financial year. The status and contestation with some of these requests prompted the need for training to its key personnel.

LASA falls under the type "B" category of public bodies in terms of PAIA. LASA has this year complied with mandatory compliance obligations satisfactorily and has compiled its section 14 manual. It has also submitted its section 32 report in terms of PAIA for the first time this year.

In delivering the presentation the Commission made use of a power point presentation as well as case studies and interactive engagement with participants. These presentations were supported with the distribution of frontline training manuals, PAIA legislation and PAIA handbooks as a resource to the delegates for onward use.

Most participants had no prior knowledge of PAIA, although these personnel had been with their respective organization for a period in excess of three years. In this regard it should also be noted that LASA has ad hoc PAIA functionaries in their legal department. Participants agreed during discussions that this was not ideal since PAIA application was time consuming and compliance required dedicated personnel. The lack of application based knowledge; general awareness and organisational design were identified as key reasons why LASA would have challenges complying with PAIA. Other formal compliance obligations were noted in terms of DIO delegations, Section 15 automatic records lists and the provision of DIO information to the DG of GCIS in terms of section 16.

The frontline training manual was welcomed as a tool for ongoing awareness raising of frontline officials. Similarly the recommendations for induction processes of new on-boarding personnel were welcomed as a means of ensuring continued awareness of PAIA for all personnel.

Interpretation and application of definition sections of PAIA were discussed with participants through actual case examples.

All participants were appreciative of this discussion due to their own experiences in particular instances and due to the fact that they had previously been misapplying the provisions of PAIA. In certain instances, this has led to inconsistent application in the organisation. The misinterpretation and misapplication was identified as being high risk to LASA on the basis of the sensitive information and reports it generates for its clients.

The presentation provided a detailed contextual background of the legislation, emphasizing the need to break the culture of secrecy which shrouds the public service in general. Commencing

with the status of PAIA as a fundamental right, its status was reiterated and emphasized at different points of the training.

Once the primacy of the legislation was addressed, key provisions and definitions were provided and these were contextualized in hypothetical cases for application. These included defining what constituted a record, type of public body, personal requests and types of fees. Key rules of PAIA application were also shared in the course of the presentation to ensure that the PAIA principles were easily identifiable and made easy to apply.

The result of the training session apart from increased awareness of personnel included an increased appreciation by participants that a review of the organizational response to PAIA was necessary to improve compliance and efficacy.

PRESENTATION AND DISCUSSION

The Commission's needs assessment revealed a number of areas of critical need for training. Key amongst these was the following:

- PAIA objectives and its connection to records management and delivery
- Overall mechanics of the request procedure
- Responses to requests and technical application of process
- Centralizing of certain obligations e.g. the collection and auditing of request fees
- Scope of the legislation
- Exemption provisions particularly with regard to investigative reports
- Status of preliminary findings
- Transfer provisions and
- Confidentiality of reports

The session provided an in depth view of the global move toward the adoption of access to information laws in the context of accountability, the responsibility of public bodies as repositories of information, transparency and public participation to align to this move. The latter was stressed as a fundamental cornerstone of sound democracies. Through discussion of

hypothetical examples participants were able to contextualize the objectives of the legislation in their professional and personal lives. These applications were brought to bear largely on examples involving the sharing of information with employees of LASA.

Further contextualisation occurred through the location of PAIA within the bill of rights and the need for organisations to be constitutionally compliant. The primacy of the legislation and constitutional status was also discussed with participants, together with a basic information cycle to reinforce the obligation to comply with the legislation and incorporate it in the range of rights for which legal aid is offered. In this regard participants expressed difficulties in having to provide information within the stipulated timelines since most requests required information which included third party information and requests for reports of other public bodies. Similarly the addition of PAIA functions to the legal department was also identified as a challenge.

The discussion also provided the opportunity to consider the risks in litigation for unjustified refusals of information, negative imaging and drop in confidence associated with law suits of this nature.

The presentation was phased into three brief interactive sessions, each ending with a discussion session, where implementers raised issues for further clarity within the context of particular cases they had been engaging with. Most were of the view that the need for consistent records management policies and PAIA protocols were necessary, together with the need to have dedicated DIOs.

A number of other interesting challenges were noted with regard to timeframes and duties of DIO's. Key amongst these challenges was the ability to interpret and apply PAIA with confidence based on thorough knowledge. Organisational design to facilitate PAIA delivery was also raised and discussed. Participants indicated that personnel through-out the department could not identify with confidence the identity of their DIO's, nor could they agree on the identity of the IO.

The need to change levels of awareness internally was accepted and these issues were flagged on an agenda for the core PAIA personnel to respond to. Emphasis was also placed on the role of staff to be trained and briefed on PAIA more intensively since these personnel will be the

interface between high volumes of requesters and LASA. The frontline training manual was provided to the participants to assist further in this regard.

The training session was concluded with a review of current legislation before Parliament and its impact on records being held and processed by the institutions.

The following two key forms of compliance were stressed:

i. S32 PAIA Report

The mandatory obligation for all government organizations to compile a report in terms of section 32 of PAIA was discussed. LASA compliance history was flagged with participants and most responded to the reporting of LASA as non compliant to Parliament with concern.

ii. S14 PAIA Manual

The objectives and purpose of the section 14 manual was discussed. It was explained that it was mandatory for LASA to create a S14 PAIA manual. LASA had complied with this requirement but it was stressed that it should be maintained in at least three of the official languages and that it should be constantly updated to increase its relevance and accessibility. It was stressed that the development of a S14 manual is easy but was dependant on proper records management and therefore LASA had to ensure that their records management system was fully functional.

OTHER TRAINING MECHANISMS

The PAIA DVD was used as a tool to place PAIA in context for delegates. Most participants were a little overwhelmed by the requirements of the legislation and welcomed the contextualization and illustration of the purposes and objectives of PAIA through the two case examples in the DVD. They were able to identify the provisions in the formal context to identify and relate to access decisions impacting on practical delivery.

Hypothetical Case Study

2 case studies were presented to participants for group work after the presentations. These case studies extended the process of information assimilation and application. Most participants demonstrated through guidance and facilitation a grasp of the key concepts and basic response needs to the issues raised in the hypotheticals.

RECOMMENDATIONS

A critical feature of the training was that the participants comprised various departments of LASA. Although no dedicated DIO exists within the Department with an exclusive focus on PAIA, personnel from the Legal Department were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA and to create guidelines within the organization to ensure misapplication does not recur. The initial training intervention by the Commission and ODAC has yielded some gains as non traditional PAIA personnel were included to increase organisation wide awareness. The diversity of participants was therefore an excellent point of commencement and will contribute to internal promotion of PAIA across departments within LASA. It was strongly recommended by consensus of the participants that a PAIA protocol be developed and implemented.

The session has also created a heightened awareness by personnel of the need for ongoing training and engagement with the Commission to reach optimal implementation if it is to be a point of reference to other public bodies. Similarly, LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation which will allow internal interventions like training and the provision of increased accessibility of information to be addressed.

Emerging from the session is the urgent and critical need for the sector to create a structure to facilitate integrated responses to PAIA. Such a structure could at minimum consist of representatives from the legal and records management structures in each department to ensure that the processes within each department are PAIA aligned and to further enhance the process of implementation and compliance. Widespread training at regional offices was also

flagged as a need by participants. This recommendation is one which both ODAC and the Commission regard as critical for organisational wide awareness of PAIA at LASA and for fulfilment of the PAIA mandate.

that paragraph? --- My Lord, when I did the draft I would have sent it to the CEO for her to discuss further with our Chairperson. So I cannot say for sure who actually (indistinct) it, but it was certainly not me. There are also other changes.

Are there? --- Yes, if you look at background under paragraph, under background, the second paragraph, second sentence. In my initial draft I had:

"Whilst the initial reason of this panel (indistinct) sitting was caused by delays..." (intervenes)

10 COURT: You said the second, under paragraph 1, the second paragraph? --- Second paragraph, second sentence.

Oh, second paragraph, second sentence, the reason for freezing? --- No, we are dealing with background. Second paragraph, second sentence starts with:

"Whilst."

Yes. Yes. ---

"Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting in time suitable for all members of the panel, other pressing financial..."

20 If you look at that part that I read, in the version that was signed by Judge:

"Whilst the initial reason for the panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel [and then this is in addition] of which the Chairperson of the Board of Directors is one."

I can only assume the Judge personally wrote that. And...

(intervenes)

Just a minute. Yes.

MR DU TOIT: Right, whatever the position (indistinct) wrote it, it was, this document was amended after you did it, right? --- Yes.

Now, we know that you had been accused of lying more than one, on more than one occasion, but in this document a number of alleged lies were identified by the applicant. And I would like just to direct your attention to them. The first is the one which is in that very
10 paragraph that you have just dealt with. And it says:

"Other pressing financial constraints facing Legal Aid resulted in (indistinct)."

And you have testified both about the financial constraints and also about the delay between the end of November and February? --- Correct.

Yes. So what is your answer if it is suggested that this is a lie? --- It is preposterous.

Thank you. Now, the second one is at the bottom of the page:

"As I recall, as a result of the various options to make up the
20 shortfall I find (indistinct) freezing of posts were considered various documents which clearly demonstrate the financial uncertainty that we have experienced at times, as well as, the contingency measures that we were (indistinct) to cater for this including the freezing of many positions were shared with Advocate Brink in response to his request for information in

Okay. I had by this stage commenced proceedings in the CCMA, right, in March/April, Mr Nahir? --- [No audible reply].

Because you talk about:

"He subsequently referred a dispute to the CCMA on 20 April."

--- May I bring it to your attention that in my evidence yesterday... (intervenes)

Ja. --- This paragraph was specifically not in my original letter, so I am not the one who (indistinct).

That is very interesting. Now let me ask you, are you
10 suggesting that Judge Mlambo is the author of this information in this particular paragraph? --- I have not read the paragraph in... (intervenes)

Have a look, have a look. --- Okay, I have read it.

Okay. Let me reframe it, My Lord. As I understand it from what you said previously, this must have been inserted by either Judge Mlambo or Vedalankar? --- It is not either or, it could be anyone else the Judge wanted the information from. I am not in the position... (intervenes)

Okay. --- To indicate who wrote it.

20 Okay. --- If the Judge wrote it himself.

Okay. --- Or the CEO or anyone else.

Fair enough. But the allegation to Parliament is that mine is a money claim, mine is a money claim:

"The relief is sought is monetary..."

And there is a figure here:

I admit the contents of this paragraph.

73. AD PARAGRAPH 25.

73.1 I deny the correctness of the contents of this paragraph.

73.2 I have set out the background facts leading to the abortion of the recruitment of the Applicant's application. I will not answer to the Applicant's speculation regarding the reasons why his application was aborted.

74. AD PARAGRAPH 26.

74.1 I have stated that none of these institutions that the Applicant has referred this matter to have seen it necessary to contact the Respondent or LASA for any response.

74.2 Accordingly, I have no knowledge of the facts set out herein.

75. AD PARAGRAPHS 27 – 29.

75.1 I deny the correctness of the contents of these paragraphs.

75.2 I submit that the CEO considered the Applicant's requests for access to information in terms of PAIA and felt justified to refuse him access thereto. Thereafter and to be safe, the same request was given to counsel for his opinion. Counsel advised that limited access to information be granted to the Applicant.


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Judge tells City Power: You f****d up!

May 23 2015 at 09:15am
By Thabiso Thakali

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Johannesburg - A Joburg High Court judge has launched a scathing attack on the City of Joburg and its power utility City Power, calling them “idiots” and accusing them of “f****ing up” over their reluctance to reveal information about a R800-million solar geyser deal.

In a Promotion of Access to Information case brought by Numsa, the metal workers union, against City Power, Judge Kathy Satchwell accused the utility’s officials of “covering up fraud and corruption” over its refusal to hand over documents relating to the contract on solar geyser heaters.

Judge Satchwell was unimpressed with City Power’s failure to respond to Numsa’s requests for information since 2013. She said that City Power had replaced the Road Accident Fund “in so far as incompetence and fraud is concerned”.

Lawyers representing City Power argued that the judge was “biased” after she had ordered that legal costs be paid by the utility’s officials responsible for the litigation out of their own pockets, and not the ratepayers’. The lawyers argued that Satchwell had used “profanities” in her chambers against the utility’s attorneys by calling them “idiots” and remarking that someone had “f****ed up”.

“Some person” within City Power, she remarked, was “lazy, covering up, hiding things, and idiots and the like” and the “knowledge of such things comes to one like a dagger in the night”.

“The learned judge stated that the City... only uses young incompetent black attorneys or little grey old white men sucking up to the black people in the city,” read the application by City Power’s lawyers.

City Power said that the judge had suggested that these attorneys were used in order to cover up fraud and corruption. “The learned judge stated that the city believes that it is a tail wagging the dog and that ‘I should decide whether or not I am going to allow this’.”

The utility’s lawyers said this was an indication of bias because the judge had not heard the merits of the case.

The utterances were apparently made in April in Judge Satchwell’s chambers when she granted an order of costs to Numsa.

At the heart of the matter is Numsa’s request for information on an R800-million contract for the supply and installation of solar geysers in 2012.

Numsa had sought the court’s intervention after its requests for information in August 2014 had been ignored.

The union previously alleged that the contract was awarded to companies that imported the geysers from



Joburg High Court Judge Kathy Satchwell. Photo: Sharon Seretlo

China while the same were made in the East Rand. According to the recusal application by City Power, Judge Satchwell also stated that, by not disclosing the documents sought by Numsa, "You are being tarred by the tar of President (Jacob) Zuma. Go think about this".

But on Friday Satchwell was unapologetic as she refused the application to recuse herself. She told the defence lawyers she was only prepared to amend patent errors in her judgement. The City Power attorney, she remarked, had tried to set her up but "I don't care".

City Power has people "who don't know how to do their job. That sounds like incompetence – so my 'bias' remains".

Satchwell added that profanities she was accused of using "would worry my mother but not my father".

She said that her order for costs to be paid by officials of City Power was meant to "look to see if anybody has placed City Power in the dwang".

"City Power might have been badly done by its staff," she said. "Look to see if there should be any employees held responsible." She dismissed the application for her recusal but the order for City Power to pay the legal costs remained.

Judge Satchwell instructed the attorneys to write to Sicelo Xulu, City Power's managing director, to put his house in order. She said that City Power's refusal to disclose information was made without reading the relevant provisions of the Promotion of Access to Information Act.

Judge Satchwell said City Power's information officer had refused Numsa's request in 2013 and 2014 unprocedurally and without full information before him. The utility had been "contemptuous" to the court, she said. Judge Satchwell said Numsa may appeal the refusal through internal processes before turning to the court for assistance.

In 2001, Satchwell, a lesbian, won the right for her partner to enjoy the same benefits as those previously reserved for spouses of married heterosexual judges, a right confirmed by the Constitutional Court the following year.

Saturday Star

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LUWELLYN LANDERS MP
National Assembly

e-mail:

llanders@parliament.gov.za

29 June 2011

Ref.: Brink (29-06-11)

Adv. Anthony Brink
25 Baker Road
Prestbury
PIETERMARITZBURG

Dear Advocate Brink

Your e-mail dated Tuesday, 28 June 2011 refers.

On receipt of your original letter I submitted a letter to the Chairperson: Legal Aid South Africa (LASA), Judge D. Mlambo dated 23 March 2011 (please see Annexure **A**).

On 22 June 2011 I received a written response from Judge Mlambo, Chairperson: LASA, a copy of which I have attached (please see Annexure **B**) which serves as a formal response to your complaint.

It is important to note that whilst I have sought to comply with your request for intervention in this matter, normally neither I nor the Justice Portfolio Committee becomes involved in the day-to-day operational matters of LASA, or any other entity of the Justice family.

If I have been tardy in not responding to you sooner, do forgive me. In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed. Thank you.

Yours faithfully

LUWELLYN LANDERS MP

Chairperson: Justice & Constitutional Development
Portfolio Committee

10 years in the business of satisfying legal practice

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

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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**

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Morning Mix

How a curmudgeonly old reporter exposed the FIFA scandal that toppled Sepp Blatter

By **Michael E. Miller** June 3 at 5:03 AM

The biggest news story of the year was breaking, but the journalist responsible was fast asleep.

It was just after dawn on May 27 when Andrew Jennings's phone began ringing. Swiss police had just launched a startling raid on a luxury hotel in Zurich, arresting seven top FIFA officials and charging them and others with running a \$150 million racket. The world was stunned.

The waking world, that is. If Jennings had bothered to climb out of bed, he wouldn't have been surprised at the news. After all, he was the man who set the investigation in motion, with a book in 2006, [“FOUL! The Secret World of FIFA: Bribes, Vote Rigging and Ticket Scandals,”](#) followed by an exposé aired on the BBC's “Panorama” program that same year, and then another book in 2014, called [“Omerta: Sepp Blatter's FIFA Organised Crime Family.”](#)

“My phone started ringing at six in the morning,” Jennings said Tuesday from his farm in the hilly north of England. “I turned it off actually to get some more sleep, because whatever is happening at six in the morning is still going to be there at lunch time, isn't it?”

If you can't tell already, Jennings is an advocate of slow, methodical journalism. For half a century, the 71-year-old investigative reporter has been digging into complex, time-consuming stories about organized crime. In the 1980s, it was bad cops, the Thai heroin trade and the Italian mob. In the '90s, he turned to sports, exposing corruption with the International Olympic Committee.

For the past 15 years, Jennings has focused on the Federation Internationale de Football Association (FIFA), international soccer's governing body. As other journalists were ball watching — reporting scorelines or writing player profiles — Jennings was digging into the dirty deals underpinning the world's most popular game.

“Credit in this saga should go to the dogged obsession of a single reporter, Andrew Jennings,” the Guardian's [Simon Jenkins wrote last week](#), citing in particular Jennings's BBC “Panorama” film called [“The Beautiful Bung: Corruption and the World Cup.”](#)

Now, after decades of threats, suspicions about tapped phones and intermittent paychecks, Jennings is being vindicated with every twist and turn in the FIFA scandal.

[\[Interpol issues 'red notices' for 6 people tied to the scandal: Who they are and what that means\]](#)

During a phone interview Tuesday morning with The Washington Post, he called FIFA President Sepp Blatter “a dead man walking.” Two hours later, Blatter announced he was stepping down, just days after being reelected.

“I know that they are criminal scum, and I’ve known it for years,” he said. “And that is a thoughtful summation. That is not an insult. That is not throwing about wild words.”

“These scum have stolen the people’s sport. They’ve stolen it, the cynical thieving bastards,” he said. “So, yes, it’s nice to see the fear on their faces.”

A ‘document hound’

The best way for Americans to imagine Andrew Jennings is to roll Bob Woodward and Carl Bernstein together, then add a touch of a Scottish burr and plenty of flannel. Jennings was born in Scotland but moved to London as a child. His grandfather played for a prominent London soccer team, Clapton Orient (now called Leyton Orient), but Jennings had little interest in the sport. He did, however, have a nose for journalism.

After finishing school, Jennings joined the Sunday Times in London, where he got a taste of investigative journalism. He went to work for the BBC, but when the network wouldn’t air his documentary on corruption within Scotland Yard, he quit and joined a rival program called “World in Action.” He turned his police investigation into his first book, [“Scotland Yard’s Cocaine Connection,”](#) and a documentary.

“I’m a document hound. If I’ve got your documents, I know all about you,” he said. “This journalism business is easy, you know. You just find some disgraceful, disgustingly corrupt people and you work on it! You have to. That’s what we do. The rest of the media gets far too cozy with them. It’s wrong. Your mother told you what was wrong. You know what’s wrong. Our job is to investigate, acquire evidence.”

That is, essentially, Jennings’s mantra: Take time, dig up dirt and don’t trust those in power. He applied the same logic to international drug smuggling rings and Italian mafiosi.

Then sports. After the Scotland Yard exposé, a colleague at “World In Action” named Paul Greengrass — who later became a Hollywood filmmaker, directing several Jason Bourne films as well as the recent blockbuster [“Captain Phillips”](#) — suggested investigating the IOC.

EIGHTH COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.
2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.
3. Paragraphs 4–13 of my Second Complaint establish the jurisdiction of the Judicial Service Commission ('JSC') to deal with this complaint.
4. Since this complaint is referenced to masses of documents vouching documented objective facts that I'm not expecting the respondent to contest, most of which are in LASA's possession and certainly all material ones, I'll put them up in a separate, indexed and paginated document bundle to follow, rather than annexing them. All numbers in superscript (¹) signify supporting documents in the bundle, and occasionally hyperlinks to voluminous, incidental documents privately accessible in my Dropbox online.
5. For concision, I'll refer to parts of my previous complaints against the respondent, and their annexures, and I request that they be read as incorporated in this Eighth Complaint.

6. Some preliminary notes:

- 6.1. This complaint, concerning the respondent's impeachable, grossly dishonest misconduct several years ago, has been a long time coming. I notified the JSC of my intention to make it on 7 November 2012¹ (acknowledged on the 14th²), only to be held up by LASA's protracted refusal to hand over a copy of the respondent's report to the Minister of Justice and Constitutional Development (as he was then called, now: 'and Correctional Services'; hereinafter 'the Minister'), on which part of this complaint is based. I eventually found it in June 2013 in the purely fortuitous circumstances described in Part Four of the Endnote to my Sixth Complaint. My November 2012 letter to the JSC describes the considerable difficulty I'd encountered obtaining it, which continued for several months after my letter, through two further pre-trial conferences under judicial supervision that I had to request in my interminable trouble getting documents out of LASA that I needed for trial in my labour case mentioned below.
- 6.2. This complaint formed part of a very long draft single complaint I began two years ago, comprising many counts, subsequently divided. After the conclusion of the extraordinarily time and energy intensive labour litigation, my time and energy were again diverted by no less than six separate court applications I had to bring to compel LASA's compliance with requests for access to its records I'd duly made under the Promotion of Access to Information Act 2 of 2000 ('PAIA') – the first five opposed all the way to court with several lever arch files full of meritless, filibustering answering papers, ultimately abandoned – as well as an application, in a return to court under the default clause, to compel LASA's compliance with its settlement agreement at court to hand over all the records it had been withholding or duly certify those

that don't exist. Which it had failed to do, spurning my repeated pleas for full and proper compliance with it. The sixth application was an application to the High Court to compel LASA's surrender of a further set of documents it refused, after explicitly agreeing in the settlement agreement to respond to a final PAIA request in the matter specified. It's opposed but unanswered.

- 6.3. Instead of delivering the documents it had agreed to hand over, LASA responded to my applications to compel with an application, authorised by CEO and information officer Vidhu Vedalankar, to strip me of my constitutional rights to information and to access to the courts entrenched by sections 32 and 34 of the Bill of Rights by having me declared a vexatious litigant. My time and energy were then further hugely consumed by drawing an answering affidavit comprising 270 pages, 961 paragraphs, and 80 supporting annexures, detailing, inter alia, the pervasive, systemic top-level corruption I've uncovered at LASA to date. My sixth application to compel LASA's compliance with PAIA and LASA's application to shut me up and shut me down have been set down for argument together in October 2017.
- 6.4. LASA's absolute contempt for its constitutional information transparency obligations since 2010 to date, in covering up the capital transgressions described herein – like US President Richard Nixon clinging to his Oval Office tapes recording his cover-up of the Watergate burglary – are detailed in a comprehensive draft report I prepared for the South African Human Rights Commission ('SAHRC')³, a further substantial drain on my time. Its chairperson informs me that the some of these problems will be raised with the National Assembly in the SAHRC's next annual report under section 84 of PAIA on public body compliance with the Act⁴.

- 6.5. I've also been slowed by a shattering bereavement: she died believing the corruption I'm up against is invincible, that my pursuit of justice is futile and hopeless; and despaired that all was lost for me and for us. Understandably, having regard to the central involvement of the respondent, a senior judge, in it, and to the perversion of my petition for leave to appeal the dismissal of my labour case, mentioned below, in the staggering manner described and vouched in my First Complaint against Waglay JP, filed evenly herewith.
- 6.6. I'm alive to section 15(2)(c) of the Act, which requires that 'A complaint must be dismissed if it ... is solely related to the merits of a judgment or order'. This complaint isn't. My claim in the Labour Court to my appointment to LASA's top professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg ('the post'; there's a twin at Durban), for which I was unanimously recommended by a selection panel of LASA's top lawyers in the region in November 2009, was dismissed in September 2014. Correctly in the result (if not in the ratio decidendi – many fundamental reversible errors), because I'd founded it on covert unfair political discrimination as the most likely reason I wasn't appointed, not knowing the true reason for it at the time, the facts in this regard having been sedulously concealed from me. In April 2016, I forced these to the fore through application to court, and discovered that the real reason was cronyism. I discuss this below.
- 6.7. This complaint then isn't about the judgment, its rights and its wrongs. It concerns the respondent's gravely dishonest misconduct as chairperson of LASA, riding on the authority of his judicial office to commit it, years before the trial, especially vis-à-vis the Minister and the Portfolio Committee for his Department in the National Assembly ('the Portfolio Committee') with constitutional oversight over LASA.

- 6.8. It's trite that a legal judgment (in America, an 'opinion') is finally dispositive of a dispute taken to law. But judgments don't establish objective facts for general purposes, and a judgment (the finding and ruling of a judge, based on his view of the evidence before him, e.g. that a man is a murderer, thus settling the lis between the state and the accused) cannot refute an objectively established fact (e.g. DNA evidence proving he isn't) presented in another forum. This is to say, a lie on which a claim or a defence is based, proved to the judge's satisfaction by perjury, doesn't become a concrete fact in the world because the trial judge was fooled. Nonetheless, the judgment given in my labour case certainly ended the dispute over my claim to my appointment as between LASA and me. Unless and until it's set aside one day.
- 6.9. The respondent wasn't party to my dispute with LASA, however, and indeed, for the reasons based on the just emerged new facts stated in paragraph 11 of my Sixth Complaint and its endnotes, I mistakenly held him clear at the trial of my labour claim (having indicted him in my papers), with the result that his gross misconduct complained of here wasn't on trial.
- 6.10. Finally, I recently discovered that five months after I commenced drawing my complaint against the respondent on 3 July 2015⁵, LASA hit to knock me down first, by moving to have me struck off with a complaint to the Society of Advocates of KwaZulu-Natal ('the Society') on 23 November 2015⁶, primarily that I'd slandered the respondent in my papers before the trial – not during it – and then again after it in my petition for leave to appeal.
- 6.11. After jumping the gun⁷, the Society agreed to hear my response to LASA's complaint about this⁸ (the only part of the complaint that

interested it)⁹. The matter's pending. My complete answer to LASA's complaint comprises my affirmed complaints against the respondent made to the JSC. I've copied the Society my first seven, and will copy this one and the rest to follow.

- 6.12. LASA also moved to get me sacked as an acting magistrate by copying its complaint to the Society on to the Magistrates Commission, and in this it succeeded. A week later my contract wasn't renewed. (For some reason I was told: 'DM [the Deputy Minister] wants to give new people exposure¹⁰.' But only in my particular case, I later found out.)
- 6.13. I only learned about the complaint to the Society seventeen months after it was made, in early May 2017, on seeing it mentioned in LASA's replying affidavit¹¹ in its above-mentioned application to prevent me accessing its records and prevent me suing to compel the production of those illegally refused. The Society hadn't told me about it.
- 6.14. I only learned a month later that LASA had copied its complaint to the Magistrates Commission (explaining why I was fired at the end of 2015), when on 1 June 2017 I was told the Deputy Minister had declined on account of it to appoint me to relieve for another magistrate for a couple of months¹². The Magistrate's Commission hadn't told me either.
- 6.15. I mention this barrage of strikes against me for two reasons: first, to anticipate any suggestion by the respondent, in his characteristic ad hominem modus operandi described in my First Complaint, that I'm a discreditable person whose complaints should therefore be disregarded; and secondly, to show the extreme lengths to which the leadership of this extraordinarily corrupt public entity has gone in its aggressive-defensive campaign to annihilate me, so as to halt my further investigation of its corruption and to report it all to the relevant

authorities – as I’ve repeatedly announced in my PAIA application papers I intend doing, armed with all the documents I’ve duly requested, many of which remain illegally withheld.

This concludes the introduction.

7. I charge the respondent with multiple counts of ‘gross misconduct, as envisaged in section 177(1)(a) of the Constitution’, per section 14(4)(a) of the Act, in conducting a major criminal cover-up of his illegal abuse of power, escalated to Parliament:
 - 7.1. first, in repeatedly lying to me, in response to my repeated petitions for his intervention, that he found nothing remiss in the unauthorised, unapproved, off-the-record, illegal abortion of my recruitment to the post:
 - 7.1.1. under cover of a false and untruthful budgetary insufficiency excuse that LASA CEO Vedalankar had given me in October 2010, which she repeated in January 2011 and copied to him, and which he knew was untrue and was unsupported and contradicted by LASA’s own records, also copied to him;
 - 7.1.2. in multiple major illegal contraventions of the Public Finance Management Act 1 of 1999 (‘PFMA’), of which he was full well aware, to be enumerated herein; and,
 - 7.1.3. against the expressly stated wishes both of the Deputy Minister and of the Portfolio Committee;

and then,

7.2. in repeatedly lying in 'confidential' reports which he signed and submitted to the Minister, and then a few months later to the Portfolio Committee, by:

- 7.2.1. giving them a newly invented false delay excuse contrived to explain away LASA's failure to proceed with my appointment following my successful interview for the post (which delay excuse, known by the respondent to be a lie, he recanted and retracted in an affidavit made on his instructions and on his behalf a few months later, as a mere mistake, after I'd exposed and refuted it as a lie);
- 7.2.2. repeating to them the old false financial insufficiency excuse that Vedalankar had given me for cancelling my appointment (which cancellation excuse, known by the respondent to be a lie, was tacitly abandoned a few months later, after I'd exposed and refuted it as a lie, and replaced with totally different lying excuses given the Board, at which the respondent connived);
- 7.2.3. telling them the lie that records given me supported the cancellation excuse (whereas in truth and fact, as is apparent on their face, the said records didn't support it, and contradicted and refuted it; and the respondent knew this full well because Vedalankar had copied him these records, and he'd been centrally privy to the matters they covered); and,
- 7.2.4. telling the Portfolio Committee two additional lies to deceive and mislead it about the legal relief I was seeking and LASA's financial exposure in the matter, following his (the respondent's) and the Board's failure to see to my due appointment.

8. Before this, (a) at a meeting with the Deputy Minister on 29 May 2010 (the minute of the Board meeting records the latter's presence¹³, and the respondent mentioned it in his 2010/11 chairperson's report¹⁴); (b) at a meeting with the Portfolio Committee on 14 July 2010¹⁵; and afterwards (c) in his chairperson's report for 2012/13¹⁶, the respondent was silent about and thereby concealed from these high authorities the illegal, unauthorised, unapproved, off-the-record, corruptly motivated abortion of the KwaZulu-Natal and then Mthatha Senior Litigator recruitments.
9. The reason the respondent lied to me, to the Minister, and to the Portfolio Committee was to cover the true reason he'd silently aborted my recruitment, namely that he wished to see his long-time former brother in the Labour Court, Mzochitwayo Ngcamu, appointed to the post for which I'd been selected and recommended, instead of me. The selection panel's full uncensored recommendation report – annexure 'B' to my Third Complaint, which I finally disgorged from LASA in April 2016 after it capitulated at court two months earlier to my application it had opposed to compel the surrender of the record to me – revealed that Ngcamu had been an acting judge of the Labour Court for about six years. The respondent had been Judge President of that court at the time¹⁷.
10. Obviously I don't have a record to put up of the respondent's communication(s) with Vedalankar, National Operations Executive Brian Nair, and/or the KwaZulu-Natal Regional Operations Executive Vela Mdaka that he wanted his former judicial colleague in and not me, but on a preponderance of probabilities the surrounding factual countryside in the matter detailed below, and the respondent's extraordinary misconduct in the cover-up described in this and in my preceding complaints, makes the inference irresistible on any reasonable conspectus.

11. The JSC's finding about the respondent's motive (to give his erstwhile brother on the bench a leg-up) – a matter of inference – is not decisive of this complaint, however, because it chiefly concerns the objectively demonstrable, dishonestly false contents of his 'confidential' reports to the Minister and to the Portfolio Committee in March and June 2010 about why my recruitment was aborted, and not his ulterior motive for this. That is, my complaint to the JSC is that the respondent lied, not why he did.
12. Separate, future complaints will detail the respondent's history of illegal, unauthorised intrusion into and interference in LASA's Senior Litigator recruitment operations, as a *non-executive* Board member, in flagrant, lawless contravention of LASA's internal regulations precisely governing these processes – including, inter alia, his re-interviewing, rejecting, and preventing the appointment of duly recommended candidates; and, in at least one case to my knowledge, fixing the appointment of a rejected Senior Litigator candidate in place of the recommended one. (More such cases may be disclosed by the Senior Litigator reports I've duly requested under PAIA, but which LASA is illegally withholding.) In these separate, future complaints, I'll be detailing the respondent's involvement in other procedural and ethical recruitment and promotion corruption at LASA, and even at the JSC itself.
13. My first petition to the respondent and the Board on 30 November 2010¹⁸ records that I'd annexed to it my preceding letter in July 2010 to Vedalankar¹⁹, in which I'd entreated her to see to the finalisation of my appointment.
14. I hadn't yet seen LASA's Policies and Procedures on Recruitment and its Approval Framework; and as my letter reflects, I still incorrectly understood that my appointment was subject to the respondent's approval. In fact, under the Approval Framework it was subject to Vedalankar's and Nair's

co-approval and no one else's. This will be dealt with in a separate, future complaint.

15. My first petition shows that after making my opening complaint about Vedalankar's illegal and unconstitutional refusal to comply with my first request for access to LASA's records under PAIA, I presented the evidence then known to me (and I later found a whole lot more) refuting the budgetary insufficiency excuse she'd given me in her October 2010 letter²⁰ for the cancellation of my appointment, also – at different times, I later discovered – the cancellation of the promotion of an internal candidate Bongani Mngadi to the Durban post, and the cancellation of the transfer of Mahikeng Senior Litigator Nzame Skibi to the newly created Mthatha post, nearer to his home.
16. The audacious, seemingly strong and convincing cover-story that three Senior Litigator posts had been frozen for lack of funding provided to fill them would later chop and change radically.
17. How the respondent colluded with Vedalankar in dismissing my plea for his and the Board's intervention in seeing to my appointment to the Pietermaritzburg post, after I'd shown in my first petition that the budgetary insufficiency story she'd told me was an obvious lie, is described in my Second Complaint. To reiterate, the respondent's lying response was:

I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator post in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as alleged or at all.
18. My second and third petitions to the respondent in December 2010 and February 2011 show that I repeated my complaint to him about the abortion of my appointment under a plainly false financial justification and repeated my plea that my appointment be finalised.

19. How the respondent again colluded with Vedalankar in dismissing my second petition for his and the Board's intervention in seeing to my appointment is the subject of my Third Complaint. To reiterate, the nut of his lying response was:

I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.

20. How the respondent ignored my third petition, including my appeal for his and the Board's intervention in and resolution of what he well appreciated to be the illegal, falsely justified abortion of my appointment, is the subject of my Fourth Complaint.
21. As said in paragraph 6 of my Fifth Complaint, after the respondent outrageously rebuked my extraordinarily serious fundamental rights violation complaints repeated in my second petition to him in December 2010 – in so doing, disgracefully abusing his judicial office to try intimidating and chilling me into silence and the abandonment of my rights – I petitioned the Minister and the Portfolio Committee by copying them in on my third petition to the respondent and the Board in February 2011, in which I again pleaded for their intervention to mediate a conciliatory resolution of my complaint about the very obviously irregular, falsely justified, illegal abortion of my appointment.
22. As said in paragraphs 7 and 8 of my Seventh Complaint, the Constitution provides that any interested person may petition a committee of the National Assembly, and that such committee may require any person to report to it.
23. Appositely to this matter, the Constitutional Court unanimously affirmed last month (22 June 2017) in *United Democratic Movement v Speaker of the*

National Assembly and Others (CCT89/17) [2017] ZACC 21 ('the secret ballot judgment') that such accountability mechanisms in the Constitution are:

designed to ensure that the trappings or prestige of high office do not defocus or derail the repositories of the people's power from their core mandate or errand. For this reason, public office-bearers, in all arms of the State, must regularly explain how they have lived up to the promises that inhere in the offices they occupy. And the objective is to arrest or address under-performance and abuse of public power and resources.

24. As said in paragraphs 7–9 of my Sixth Complaint, the Minister apparently required the respondent to answer my complaints in my third petition and to report to him about them, because in March 2011 the respondent did so. The respondent's report to the Minister is annexure 'A' to my Sixth Complaint.
25. As said in paragraph 8 of my Seventh Complaint, the chairperson of the Portfolio Committee certainly required the respondent to answer my complaints in my third petition and to report to him about them, and the respondent did so in June 2011 by furnishing him with an 'updated' version of his report to the Minister. The respondent's report to the Portfolio Committee is annexure 'A' to my Seventh Complaint.
26. Since the respondent's central lying cover-story ('the explanation') for my non-appointment given to the Minister and to the Portfolio Committee in his successive reports is identical, I'll refer to both reports to them as 'the report'. The 'updated' report to the Portfolio Committee contains two extra lies, which I'll expose and refute separately at the end.
27. In both cases, in reporting to the Minister and to the Portfolio Committee, the respondent quoted his abusive, lying January 2011 email sent to me from his judge's email account (annexure 'C' to my First Complaint). In so doing,

the respondent repeated to them the lies he'd told me that he'd seen and still saw nothing remiss in the silent off-the-record abortion of my appointment eventually justified with a plainly untruthful financial insufficiency excuse, cooked up eleven months after my successful interview as I was pressing for my appointment, now with a PAIA request. The respondent was well aware that the financial cover-story I'd been told was a lie; and showing him I knew, I presented the then available evidence that it was a lie in my first petition.

28. The respondent lied to the Minister and the Portfolio Committee in this way (quoting his email to me) with the dishonest object of discrediting my entirely proper, duly made true complaint repeated yet again in my third petition about the illegal abortion of my appointment.
29. And by quoting to the Minister and to the Portfolio Committee his false charges against me of personal and professional misconduct, sent from his judge's email account, the respondent abused his judicial power to defame me before the Minister and the Portfolio Committee with the corrupt object of falsely discrediting me personally and professionally, to prejudice them against me, the better to rubbish my true complaint that my appointment had been illegally aborted under cover of a lying financial excuse, and to pervert their independent enquiries into this – in the case of the Portfolio Committee's enquiry, instituted under section 56(b) of the Constitution in the performance of its oversight obligation imposed by section 55(2) 'to arrest or address under-performance and abuse of public power and resources' (per the secret ballot judgment).
30. As said in paragraph 9 of my Seventh Complaint, the respondent didn't consult the Board about my complaints, and convey the Board's response to them, as the chairperson of the Portfolio Committee had required of him. Instead, he bypassed the Board and engaged with Vedalankar alone, who

asked Nair to ghost-write a report for the respondent to sign and submit to the Minister, purporting to answer my complaints. Which he did: paragraph 11 of my Sixth Complaint and its endnote deals with the computer evidence of this and with Nair's eventual, reluctant, forced admission in court that he was its author.

31. Quoted below is the oily mélange of perfect truth, outright lies, half-truths, and claims true on their face but false in the context, which cunningly baked together comprise the smooth and convincing explanation Nair forged and the respondent uttered to the Minister and to the Portfolio Committee, in full knowledge that it was false, to dishonestly explain away and cover up the silent, off-the-record, unauthorised, illegal abortion of my appointment. I've italicised an extra phrase that the respondent or Vedalankar or someone else added to the explanation in the 'updated' report – if Nair is to be believed: paragraph 24 of my Seventh Complaint deals with his denial that he added it and the other new content of the 'updated' report, to be dealt with at the end.
32. The respondent's lying explanation to the Minister and to the Portfolio Committee to pervert their separate, independent enquiries into my complaint that my recruitment had been irregularly and unlawfully aborted under cover of an eventually manufactured false financial justification, went like this:

On 24 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted selection panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision. ...

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he believes there is a conspiracy against him. Legal Aid SA, under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. ...

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried

to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time.
(minor grammatical errors in the original)

33. In the following paragraphs, I'll show that not only was the explanation false, but the respondent knew it to be false. That is, in knowingly giving the Minister and the Portfolio Committee this false explanation for LASA not appointing me to the post, the respondent deliberately lied to them to pervert and put down their enquiries about it.
34. For clarity I'll quote the lying explanation in italics before dismantling it.
35. *'On 24 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre.'* This was eight very strangely silent months after my interview, with no word about its upshot, aside from Human Resources Executive Amanda Clark's shockingly rude, manifestly dishonest repulsion of my entirely reasonable enquiries on 30 April 2010, after the first five silent months had passed – even as she inadvertently divulged that I'd been recommended:

The process is where it is. It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw. ... Applying for a job is done at the applicant's own risk. Being called to an interview is not a guarantee of being appointed to the

position. ... I think you should allow us to complete the process at the pace we have decided. ... At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round. ... If we require further information or follow-up from yourself, our organisation will contact you.

36. This is quoted in my letter to Vedalankar in July 2010²¹, in which I deconstructed it.
37. *'He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted selection panel.'* This is formally correct: I was indeed selected for the Pietermaritzburg Senior Litigator post for which I'd applied.
38. Before this honest concession to the Minister and to the Portfolio Committee, both Clark and Vedalankar had lied to me to obfuscate and conceal the hard, unwelcome fact that I was selected, and not Ngcamu, the respondent's former fellow judge of the Labour Court:
 - 38.1. Clark's lie to me in her email to me of 30 April 2010, among others – 'At this stage it is not even clear which applicants will be considered in the second round' – were my first clear indication that LASA was dealing with me in bad faith; that the recruitment was corrupt; and that LASA wanted me to quit pursuing the post and push off.
 - 38.2. Vedalankar told me a similar lie in of her letter to me in October 2010, now expressly refusing, after tacitly refusing by ignoring, my request under PAIA in August 2010 to see the selection panel's recommendation report. I'd been 'recommended together with other candidates'²², she told me, while refusing me sight of the recommendation report flatly refuting this lie of hers. The recommendation report that she later gave me in January 2011, albeit

heavily censored with a Koki pen, confirmed that I was indeed recommended for the post I'd applied for and no one else; and obviously so, because the whole point of the selection process in November 2009 was to choose the best candidates from among those shortlisted and interviewed for possible appointment to each of the simultaneously advertised Pietermaritzburg and Durban posts.

- 38.3. An internal candidate, Bongani Mngadi, was selected and recommended for the Durban post. (The recommendation report isn't specific about this, but LASA admitted in my labour case that I was selected and recommended for Pietermaritzburg, and by implication Mngadi for Durban. And the interviews were on 12 November 2009, and not the earlier wrong date on the record. The recommendation report also understated my High Court experience.)
- 38.4. The full uncensored recommendation report which I finally forced out of LASA in April 2016 by suing for it – after my repeated request for it had been illegally refused again, and my claim to it was determinedly opposed all the way to court, only to be conceded at the point of argument – showed that the other two candidates Ngcamu and Van Wyk were eliminated from the running for the posts, because they didn't meet the qualifying criteria. In Ngcamu's case this was because he lacked right of appearance in the High Court, even though he'd acted as a judge for many years, which means he'd never litigated a case on his feet there. So I was certainly not 'recommended together with other candidates', as Vedalankar had lied to me. Nor was it 'not even clear which applicants will be considered in the second round' interview, as Clark had lied to me before that. Nor – her other lie – was it unclear 'if indeed we will proceed with a second interview'. In truth and in fact it was perfectly clear: they weren't going to proceed,

and in the following months didn't, because I'd been rejected as soon as my name came up as the recommended candidate, rather than the candidate favoured by the respondent, his former long-time judicial colleague, Ngcamu. Indeed, the respondent or his attorney writing for him let the truth slip out in his answering affidavit opposing my application for leave to subpoena him: my 'recruitment ... was aborted immediately after the first round of interviews'²³. Exactly.

39. It's not material to this complaint to talk to the so-called 'regional selection panel', 'nationally constituted interview panel', and 'second stage of the interview process' mentioned in the report. The respondent's corruption of Senior Litigator recruitment procedure and illegal interference in the selection and approval process, in cavalier disregard for LASA's internal regulations precisely governing it, i.e. in violation of the rule of law, will be addressed in a separate, future complaint. Point is, I was selected and recommended for the post I'd applied for, and my rivals were eliminated from the race, even as Clark and Vedalankar both lied about it, crudely trying to conceal this from me to put me off pursuing my appointment.
40. *'This nationally constituted selection panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts.'* This is the rotten core of the false explanation that the respondent gave the Minister and the Portfolio Committee for not proceeding with my appointment. It comprises two parts, a delay excuse and a cancellation excuse, which I'll refute separately and show to be lies in turn.

41. Concerning the first lie in the explanation, the delay excuse: *‘Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson is one’*:

41.1. When in my original, unusually extensive Statement of Claim in the Labour Court I exposed and refuted this delay excuse as a lie, by showing no attempts had been made to coordinate a meeting time; no one on the panel had been contacted to ascertain their availability²⁴, LASA quietly avoided pleading to this in its Response²⁵ (i.e. its plea, in the special argot of Labour Court practice).

41.2. When in my application for leave to subpoena the respondent for cross-examination at the trial of my labour claim I again raised, exposed and refuted this lie²⁶ that he’d told the Minister and the Portfolio Committee, LASA’s lead in-house attorney, Corporate Services Executive Thembile Mtati – ‘authorised’ by the respondent and after ‘consultations’ with him – recanted and retracted the lying delay excuse as ‘an error’²⁷, ‘palpably an error’²⁸. Nair, who ghost-wrote the report, and originated the lie, only to be caught in it, made a confirmatory affidavit²⁹. (I wasn’t given the latter until after the trial, or obviously I’d have cross-examined Nair on it.)

41.3. After the respondent’s discredited lying delay excuse was retracted by him via his attorney on affidavit, it didn’t feature in any of LASA’s pleadings or interlocutory affidavits. In its Response to my amended, this time brief, Statement of Claim, LASA didn’t plead any such excuse for not proceeding to hold my so-called second round interview. And the reason it didn’t is that I’d twice already exposed and refuted the delay excuse as a lie to the Minister and Portfolio Committee, and it had been withdrawn under oath with yet another lying excuse, that

it was just a mistake. (Like blaming a flat tyre for coming to court late, when actually you were double-booked; and when caught by the judge in the lie, trying to slither out of it by calling the blatant lie told the judge a mistake, clearly a mistake.)

- 41.4. In his evidence at the trial of my labour claim, Nair tried retracting the sworn retraction he'd himself confirmed on oath as yet another mistake – only to contradict the retracted, now revived delay excuse by claiming that everyone on the so-called second interview panel was too busy to interview me³⁰.
- 41.5. His new story in court contradicted the respondent's delay excuse because it precisely confirmed that no steps had been taken to convene the so-called second interview panel, so no 'delays' had arisen from any falsely alleged difficulty 'coordinating a meeting time suitable for all members of the panel of which the Chairperson is one'; no moves were made to convene the panel at all, and no one on it was asked for available dates, including the respondent. This is even though both Nair and the respondent were present at the 28 November 2009 Board meeting, according to its minute³¹, two days after Nair received the KwaZulu-Natal Senior Litigator recommendations on the 26th³², for which he'd specially telephoned³³, as well as all CVs of the interviewed candidates, including those of the rejected candidates³⁴, including Ngcamu's.
- 41.6. It bears mentioning that the post was originally advertised in October 2007³⁵ and an internal candidate was duly selected for it, but (acting ultra vires and illegally) the respondent rejected him³⁶. The post was then twice re-advertised in 2009, in June³⁷ and September³⁸. Filling LASA's three remaining Senior Litigator posts, duly categorised by LASA in its pleadings in my labour case as 'critical'³⁹, was a priority in

the implementation of LASA's Strategic Plan 2009–12, as is evident from (a) Vedalankar's repeated mention of the employment of Senior Litigators in her CEO report for 2012/13 on the completion of that Strategic Plan⁴⁰, and (b) the fact that when the Mthatha post was created in March 2010⁴¹, and reflected as a vacant new second Senior Litigator post in the Eastern Cape in LASA's recruitment statistics⁴², the LSTC gave recruitment to it 'Immediate' priority, and instructed the Regional Operations Executive to 'immediately commence recruitment'⁴³, and it was advertised the following month⁴⁴, with interviews held and a selection made the month after that⁴⁵.

41.7. The finalisation of my appointment to the Pietermaritzburg and Durban posts was indeed silently stopped, but not for the lying reason the respondent gave the Minister and the Portfolio Committee: it was in the expectation that I would conclude from the silence that I'd been unsuccessful and walk away. Indeed, at the trial of my claim for my instatement in mid-2013, I was asked the spectacularly backfiring question in cross-examination: Why hadn't I concluded from the long silence that I'd been unsuccessful and walked away?⁴⁶ That was the initial strategy to get me out the way: silence. And when that failed, the next strategy was to stonewall me, as demonstrated by Clark's second email in April 2010, quoted in paragraph 35 above, reeking with malice and bad faith.

41.8. As for Mngadi, selected and recommended for the Durban post, he was emailed 'in April/May' 2010 to tell him that the Senior Litigator recruitment had been cancelled, no reason given, leading him to conclude the reason to be 'internal restructuring' – so he told me on the telephone, and I shortly afterwards conveyed to the respondent in my first petition to him in November 2010⁴⁷.

41.9. The story that Mngadi was told by email ‘in April/May’ 2010 – that the Senior Litigator recruitment had been (duly) cancelled – is contradicted by the fact that the Mthatha Senior Litigator recruitment was in full swing in the period 24 March 2010, when the post was created⁴⁸, through April, when it was advertised⁴⁹, to 24 May 2010, when Skibi was recommended for the post⁵⁰.

41.10. Unlike Mngadi, I was told nothing. I was kept in the dark. In his answering affidavit opposing my application for leave to subpoena the respondent (Nair confirming), Mtati lamely explained this different treatment⁵¹ – why Mngadi was told the recruitment had been cancelled, whereas I was left twisting in the wind by Clark’s lying unclear-this, unclear-that, don’t-call-us-we’ll-call-you final email:

For Mr Mngadi, his appointment as a Senior Litigator was going to result as an internal promotion instead of a new employment hence it was not much of a problem to inform him well in time of Legal Aid South Africa’s decision to freeze the recruitment process.

Only, as said, ‘Legal Aid South Africa’ never took a ‘decision to freeze the recruitment process’ – as is plain from the glaring fact, discussed immediately below, that no record of such ‘decision’ exists.

42. As to the respondent’s second lie in his explanation, the cancellation excuse – *‘other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts’* – LASA’s records show that in truth and in fact no such ‘decision’ was ever ‘made’ by ‘Legal Aid SA’ for this or for any other reason.

43. Nair repeatedly confirmed on oath in April 2011 under section 23 of PAIA⁵², that no record whatsoever exists of any ‘decision being made [by ‘Legal Aid SA’] not to proceed with the filling of vacant senior litigator posts’:

no written record exists of the decision taken in July 2010 by the NOE in consultation with the CEO and HRE to freeze the senior litigator post ... no written record of this decision exists ... no other written record of this decision exists [sic: the ‘other’ records mentioned were irrelevant] ... I confirm that no such written records exist ... I confirm that no written records of this decision exist ... I confirm that the consultation with the HRE on this matter was done verbally ... I confirm that no written record of this decision exists.

44. And he confirmed it again in his evidence at the trial of my labour claim in mid-2013⁵³.
45. Not only is there no record to vouch this false claim, that LASA decided not to fill its vacant Senior Litigator posts, the extant records contradict it. I’ll show this below.
46. Indeed such a decision was taken, but by the respondent, for a different grossly improper reason, illegally, off the record.
47. Unlike Louis XIV, absolute monarch in seventeenth century France (‘I am the state’), Board chairperson Mlambo JP is not ‘Legal Aid SA’. Consistent with his documented history of illegal interference in Senior Litigator recruitment at LASA, to be described and vouched in separate, future complaints, the ‘decision’ was the respondent’s, not LASA’s. And he took it for a different, grossly improper, illegal reason, as said, having nothing to do with any so-called ‘pressing financial constraints’ – itself a deceptively misleading misdescription of no more than some brief uncertainty.

48. As I'll show in a separate, future complaint, the respondent had previously illegally aborted several other Senior Litigator recruitments because he didn't like the candidates duly selected and recommended by duly constituted selection panels. (Under LASA's internal regulations governing selection and appointment procedure, the respondent had no lawful business vetting recommended candidates.)
49. And as I'll show in separate, future complaints, the respondent has a history of job fixing, including for unqualified, even disqualified persons whom he likes personally. I'll show in light of this that the most probable reason the respondent cancelled my recruitment – seeing as the delay and cancellation excuses he gave the Minister and the Portfolio Committee were both lies – is that he wanted Ngcamu, his former brother in the Labour Court, appointed to the post for which I was selected and recommended, instead of me; and that when my repeated appeals for my appointment made plain that I wasn't just going away as planned, the respondent called off all further Senior Litigator appointments to create an impressive, seemingly nice strong cover-story for not seeing to my appointment as I'd repeatedly implored him.
50. I pause to mention here the potentially cogent fact that, unlike the rest of us, Ngcamu wasn't told the recruitment was off.
51. Notwithstanding that both Mngadi and I had been told earlier – Mngadi 'in April/May' 2010 (his words to me) and I by letter from Nair on 19 August 2010⁵⁴ – Nair thought he'd fake a patina of propriety by telling us again with a formal Dear John.
52. On 23 August 2010 the Regional Operations Executive sent me⁵⁵, Mngadi⁵⁶ and Van Wyk⁵⁷ identical letters (ghost-written by Nair: his same language re-appears in the report) claiming:

Legal Aid South Africa will not be proceeding with the filling of this post [sic: there were two, but he had the problematic Pietermaritzburg one in mind]. We apologise for the delay in informing candidates of the outcome of the interview process [sic: I was never informed; to the contrary, Clark had lied to me to fudge 'the outcome of the interview process', which had gone my way]. I would like to take this opportunity to wish you well for the future and thank you for your interest in the Legal Aid South Africa. Yours sincerely [as he lied in his natural habit].

53. The respondent's former judicial colleague Ngcamu wasn't similarly told this. Nor was he invited to have a nice life somewhere else: he was shortly afterwards employed by LASA in other posts, first at Empangeni⁵⁸, then at Durban⁵⁹.
54. That is, the respondent's favoured candidate earmarked for the post, for which it unfortunately happened that I was selected, wasn't told the Senior Litigator recruitment had been cancelled. Like the rest of us were.
55. I succeeded in finally forcing this hot fact to the surface through round after round of determinedly resisted but even more determined pursued document discovery procedure in the Labour Court.
56. Nor was Skibi, recommended for transfer to Mthatha, sent any such letter claiming the Mthatha recruitment had been cancelled, even though LASA falsely pleaded he was⁶⁰. I demanded it during pre-trial discovery, but LASA couldn't produce it⁶¹.
57. Which means Skibi was told off the record that his transfer had been cancelled. Nor is there any record of the cancellation of the Mthatha Senior Litigator recruitment in any of the Eastern Cape Regional Management committee meetings in 2010. Had it been duly motivated, decided, and effected, there'd be a record of it. There isn't, so it wasn't.

58. Another potentially cogent fact: The original qualifying criterion set for all Senior Litigator posts in 2007 was inter alia ‘at least five (5) years’ high court experience’⁶². When the Pietermaritzburg and Durban posts were re-advertised in 2009, the qualifying criterion was doubled to ‘10 years ... high court experience’⁶³. This increased qualifying criterion wasn’t applied to the Kimberley post also re-advertised in 2009, in May⁶⁴, nor to the Mthatha post subsequently advertised in April 2010⁶⁵.
59. I demanded it during discovery in my labour case⁶⁶, but LASA couldn’t produce any record showing that this uniquely high qualifying criterion imposed only on the re-advertised Pietermaritzburg and Durban posts was ever duly authorised by any competent authority⁶⁷.
60. This unauthorised, gerrymandered qualification for the KwaZulu-Natal Senior Litigator posts appears to have been tailored to suit Ngcamu as an attorney with many years of practice, topped with about six years on the Labour Court bench. Except that he’d never physically litigated a case in the High Court, and didn’t have right of appearance there, and for this reason was disqualified.
61. There was no delay in the Mthatha recruitment. After the Pietermaritzburg and Durban Senior Litigator recruitments had been cancelled, with Mngadi told so ‘in April/May’ 2010, but not me, the Mthatha recruitment rapidly proceeded. Created in March 2010, the post was advertised in April, and Skibi was interviewed and selected for it in May. So this part of the explanation to the Minister and Portfolio Committee was absolutely false.
62. Just as the respondent isn’t ‘Legal Aid SA’, nor is Vedalankar and/or Nair; and just as an unauthorised, unlawful decision the respondent has taken off the record isn’t taken by ‘Legal Aid SA’, an unauthorised, unlawful decision they’ve (allegedly) taken off the record isn’t taken by ‘Legal Aid SA’ either: In her October 2010 letter⁶⁸, Vedalankar told me the lie, as I was ratcheting up

the pressure on her to finalise my appointment, first with my letter to her in July and then with my searching PAIA request to her in August (repeatedly illegally refused): ‘In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.’

63. As the respondent knew perfectly well, LASA's Approval Framework doesn't give Vedalankar and Nair the power as a duo, on their own, on their own initiative, without first consulting the Board, to change LASA's Business Plan, based on its Strategic Plan.
64. He knew it because in July 2010 he and his Board were asked to approve the temporary freezing of recruitment to some non-critical lower criminal court public defender posts until the OSD funding issue was sorted out⁶⁹ in the minds of executive management, thereby temporarily deviating from the Business Plan; and he and the Board agreed⁷⁰.
65. That is, the respondent knew Vedalankar's story given me in October 2010, that she and Nair had cancelled the Senior Litigator recruitments and indefinitely and in the event permanently frozen the posts was a lie:
 - 65.1. Under the Approval Framework, which delegates decision making power⁷¹, and under the Legal Aid Guide, which inter alia defines the functions of the Legal Services Technical Committee⁷² (the 'LSTC', LASA's operational engine-room), all duly motivated decisions to create, abolish, and freeze recruitment to Senior Litigator posts are taken by the LSTC, chaired by Nair. A practical example is the LSTC's decision in March 2010 to abolish the vacant Kimberley post, where it was reportedly 'redundant'⁷³; to create a new one at Mthatha, where it was reportedly needed for several compelling reasons⁷⁴; to transfer the budget from the old post to the new; and to recruit for and fill the new post immediately – all this recorded⁷⁵.

- 65.2. In the matter of Senior Litigator posts, Vedalankar's and Nair's power under the Approval Framework (per section 8.2.2(b)) is to jointly approve or reject a candidate for such a post recommended by a selection panel⁷⁶. The Approval Framework doesn't give them the power to freeze such posts on their own and thereby deviate from the Business Plan based on the Strategic Plan. But they never approved or rejected me. Instead they contrived or participated in presenting an elaborate lying cover-story for the abortion of my appointment, affecting two other LASA lawyers and massively negatively impacting on specialist legal professional service delivery in KwaZulu-Natal and the Eastern Cape. Which lying cover-story fed to me in October 2010 and again in January 2011, the respondent knowingly repeated to the Minister in March 2011 and to the Portfolio Committee in June 2011.
66. Both Vedalankar's October 2010 and January 2011 letters to me specifically claimed that the 'Durban, Pietermaritzburg and Mthatha' posts were 'frozen', so these were the 'vacant senior litigator posts' to which the respondent was referring in his March/June 2011 report, about which he claimed 'a decision [had been] made not to proceed with the filling of' the posts.
67. The respondent was certainly referring to these three vacant Senior Litigator posts because, as said, Vedalankar named them both in her October 2010⁷⁷ and January 2011⁷⁸ letters to me, the last of which she copied to him⁷⁹.
68. But contradicting Vedalankar in her letters to me, and contradicting the respondent in his reports to the Minister and to the Portfolio Committee, Nair changed their story about the Mthatha post in court in mid-2013; said the cancellation of that recruitment had nothing to do with any financial consideration (true); and said that it was because Vedalankar had refused to approve the LSTC's resolution to transfer the Kimberley Senior Litigator salary budget to Mthatha, despite his repeated pleas to her to do so (false)⁸⁰.

69. The lie to Nair's new story under oath in court, contradicting the respondent's and Vedalankar's earlier lies, is given by the facts that (a) Nair had himself confirmed Vedalankar's different version to me in his PAIA section 23 affidavit in April 2011⁸¹, as she did in a confirmatory affidavit⁸²; (b) there's no record of such refusal⁸³; (c) the post must have been and obviously was created before it was advertised, which is why it was duly entered as vacant in LASA's monthly recruitment statistics⁸⁴; (d) there'd never been any need for the post at Kimberley⁸⁵, whereas the Eastern Cape reportedly badly needed another⁸⁶, and Vedalankar wouldn't have stymied necessary service delivery so irrationally; and (e) as late as 29 July 2010 when she passed my July letter to Nair to deal with, she stated⁸⁷:

I don't know what is happening with these senior litigator appointment [sic] but we need to finalise the process and advise the persons interviewed of the outcome. Please will you look into this and discuss with Mandi [Clark] and then discuss with me.

70. This proves conclusively that as far as CEO Vedalankar was concerned, cancelling Senior Litigator appointments for whatever reason was never on the table. And that her story to me in October 2010 was a later fabrication backdated to July.

71. Among the endless, radically contradictory lies, gushing like burst sewer in all different directions, told about why the remaining three critical Senior Litigator posts hadn't been filled with the candidates selected and recommended for them, the respondent claimed through his attorney in his answering affidavit opposing my subpoena application that LASA had 'later decided ['after the interview of the Applicant [Brink] in KZN had taken place'] not to also proceed with this transfer [of Skibi to Mthatha] as it had become important to divert the funds budgeted to a different purpose⁸⁸.'

72. Tested during discovery in my labour case, I found, as expected, that no record exists⁸⁹ of any such discussion and decision by the LSTC or any other management authority ‘to divert the funds budgeted to a different purpose.’ No record exists to vouch the respondent’s lying allegation through his attorney made under oath that the Mthatha Senior Litigator budget (which had just been transferred from the Kimberley Justice Centre after the LSTC meeting on 24 March 2010) was ‘divert[ed] ... to a different purpose’, and a more ‘important’ one. To the contrary, LASA had already confirmed at the first pre-trial conference in October 2011 in my labour case that there’s been ‘no re-allocation of budget’ for the allegedly frozen Senior Litigator posts to any ‘other cost centres’⁹⁰.

73. Duly requested under PAIA, both records are being illegally withheld from me; but I’m certain there’s no mention of cancelling the Senior Litigator recruitments in the minutes of the Board Executive meeting on or about 23 July 2010 and the LSTC meeting on or about 29 July 2010, because the minute of the 31 July 2010 Board meeting says nothing about it. It records the Board’s approval of executive management’s proposal to freeze some lower criminal court posts, and its approval of the increase in civil practitioner posts from 36 to 60 – quite at odds with the lie the respondent told the Minister and the Portfolio Committee that ‘pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of [three] vacant senior litigator posts’.

74. As a senior judge and as the chairperson of a major public entity for about a decade by that time, the respondent well appreciated that it was inconceivable that Vedalankar and Nair could have duly (a) aborted three substantially complete recruitments to three critical vacant posts at the apex of its legal professional staff establishment and have (b) permanently frozen the posts without any record of this whatsoever. The respondent well

appreciated this because on its own terms it was grossly irregular and illegal on several scores.

75. The respondent knew that executive management had proposed 'Increasing Senior Litigation capacity' in its November 2006 Report to Board to remedy LASA's lack of 'professional staff that are senior enough to take on ... cases of a highly complex nature ... It is proposed that we build up such capacity at each province linked to a high court unit. Such senior litigators would be able to undertake more complex work as well as support and mentor our other High Court staff'⁹¹. The respondent knew it because he and the Board approved the creation of nine of these new specialist posts at their meeting on 24 November 2006⁹², and the posts were advertised the following year⁹³.
76. The respondent was full well aware that the National Assembly specifically wanted Senior Litigators employed to allay reported public perceptions of inadequate legal professional expertise at LASA, because it raised this with him directly and repeatedly:
 - 76.1. On 30 May 2007, at its meeting with the respondent and Vedalankar, the then Select Committee on Safety and Security enquired 'if the LAB [Legal Aid Board, now Legal Aid South Africa] employed senior litigators', in view of a 'complaint' about 'service delivery to the effect that LAB lawyers were inexperienced,' and 'the issue of lawyers being seen as apprentice lawyers'. The respondent acknowledged: 'The LAB was aware of constant criticism that they employed inexperienced lawyers to do the work'⁹⁴.
 - 76.2. Again at LASA's presentation to the Portfolio Committee on 5 August 2009, 'Mr Sibanyoni asked if the [Legal Aid] Board was working on improving public perceptions about itself.' The respondent conceded that the respondent bore 'a legacy' of 'bad public perceptions'⁹⁵.

77. The respondent was full well aware that ramping up specialist legal professional delivery capacity was a key component of LASA's Strategic Plan 2009–12 to meet the Portfolio Committee's concerns.
78. In her CEO report for 2012/13, Vedalankar twice reported the employment of Senior Litigators as an especially noteworthy part of the implementation of the Strategic Plan⁹⁶; and the main body of the annual report mentioned this a third time⁹⁷.
79. She didn't in her report claim that a lack of funds caused her and Nair to 'immediately' (her word to me in October 2010) cancel three appointments to such posts for which suitable candidates had been selected and recommended, 'after the Board meeting'⁹⁸ on 31 July 2010⁹⁹ (as LASA pleaded incredibly in my labour case); that recruitment to one third (3/9) of these critical top ranking legal specialist posts had been permanently frozen, off the record; and that millions of rands are being applied for in LASA's annual budgets to pay three Senior Litigator salaries¹⁰⁰ – funds voted by the National Assembly, and transferred by the Department year after year (even up to now) for salaries to equip KwaZulu-Natal and the Eastern Cape with two Senior Litigators each. Which millions of rands are deliberately and unlawfully not being spent on their budgeted purpose, year after year. To date.
80. Nor in his covering chairperson's report for the year (2012/13) did the respondent reveal any of this, of which he had full knowledge, to the Minister and to the Portfolio Committee. And the reason he didn't do so is because no such decision was duly taken: it was irregular, it was illegal, there was no record of it accordingly; and the respondent and Vedalankar both knew it and were concealing it.
81. With the scandalous practical result that (a) the country's second largest province by population, KwaZulu-Natal, has been irregularly and unlawfully

denied the services of a Senior Litigator, where the need for such was appreciated by LASA to be so great that two posts at Pietermaritzburg and Durban were created from the outset¹⁰¹; and (b) the geographically vast Eastern Cape remains under-serviced, with the single Senior Litigator at Port Elizabeth hugely overstretched, servicing four High Courts across the province¹⁰² – thus massively negatively impacting on LASA's service delivery in the two provinces. Since to the respondent, jobs for pals is more important than critical service delivery.

82. By their deliberate silence about this in their 2012/13 chairperson's and CEO's reports, the respondent and Vedalankar deceived and misled both LASA's executive authority and its oversight authority into believing that these budgeted and funded critical specialist legal professional posts had been filled.

83. That the posts have deliberately not been filled – improperly, illegally, no record of any such decision – has never been stated in any other annual report. To the contrary, LASA's Business Plan 2011/12 told the blatant lie: 'No longstanding vacancies'¹⁰³.

84. Two further reasons why in their chairperson's and CEO's reports for 2012/13 the respondent and Vedalankar concealed the off-the-record, unauthorised, and illegal cancellation of the three Senior Litigator appointments, and the off-the-record, unauthorised, and illegal permanent freezing of the posts, was that they knew the Deputy Minister and the Portfolio Committee had expressly opposed the freezing of posts, especially critical posts:

84.1. In its report on Budget Vote 23, dated 4 May 2010¹⁰⁴, the Portfolio Committee raised the fact that it:

has several times previously expressed its concern about the negative consequences that vacancies can have for the delivery of justice services. Also, the committee believes that although the use of savings from vacant posts to fund other projects (such as the implementation of the OSD) may be understandable, the practice is potentially risky as it may discourage the filling of posts. ... The Committee recommends that all critical posts be filled as soon as possible, especially given the fact that the Department has the budget for the posts. It intends to continue to monitor progress closely.

- 84.2. Later in the same month, on 29 May 2010, at the LASA Board meeting he attended (per the minute¹⁰⁵) the Deputy Minister pertinently told the respondent he didn't want any posts frozen, and assured him that LASA's OSD phase 1 funding for legal professional staff salary increases was going to be included in the mid-term national budget later in the year (as indeed it was). This is recorded in the July 2010 Report to Board¹⁰⁶ to be discussed below. Vedalankar also reported the Deputy Minister's explicitly stated aversion to the freezing of any posts to the Portfolio Committee on 11 October 2010¹⁰⁷:

The [Deputy] Minister has been involved in that which relates to the OSD phase 1 and 2 funding. And our chairperson met with the Minister and he undertook to assist to resolve this issue through the ... mid-term adjustment budget ... [W]e indicated that if that didn't come through it meant we would have to freeze posts ... but the Minister didn't want that and said that we needed to continue with the business.

85. Again in its 'Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development on the performance of

the Department of Justice and Constitutional Development for the 2009/10 financial year, dated 26 October 2010'¹⁰⁸, 'The Committee recommends that – OSD funding is included in baseline to prevent LASA from having to freeze posts.'

86. The respondent also knew full well that section 1 of the Approval Framework required Board approval for any deviation from the Strategic Plan; and that the Board had to be consulted before any deviation from the Business Plan based on it¹⁰⁹. (An instance of such approval, duly sought and duly granted, will be mentioned below.) But the Board's approval wasn't sought, much less was it granted, for the respondent's ill-motivated, off-the-record, unauthorised and illegal decision to cancel my appointment, and, to create a cover for it, the cancellation of Mngadi's promotion and Skibi's transfer; and then the off-the-record, unauthorised and illegal permanent freezing of recruitment to the Pietermaritzburg, Durban and Mthatha posts in illegal deviation from the Strategic Plan.
87. Addressing the Portfolio Committee on 13 April 2010 on LASA's Strategic Plan and budget, the respondent stated¹¹⁰:

We've flagged inconsistent application of OSD, the occupational specific dispensation, which continues to perpetuate non alignment of salaries within the justice sector. We've looked at unequal resourcing of legal aid relative to other agencies, which impacts on our performance. In this regard I think in my previous appearances in this committee I've said that if one looks at our contribution to the South African criminal justice sector our funding is not reflected in terms thereof, so that's why we've flagged it as an issue, and an issue that I've also flagged is the attraction and retention of err err err lawyers with the necessary experience and specialist skills. So Chair, in a nutshell those are all the risks that we looked at.

88. Having just blocked my appointment and with it Mngadi's promotion, it's not surprising that the respondent should have balked at mentioning 'as an issue ... the attraction and retention of err err err lawyers with the necessary experience and specialist skills.'
89. The respondent naturally didn't tell the Portfolio Committee that a successful Senior Litigator recruitment process in KwaZulu-Natal had attracted two 'lawyers with the necessary experience and specialist skills' and that they'd been recommended for the province's two long-vacant posts by a selection panel accordingly, but that he'd aborted their appointments off the record just because he wanted his former Labour Court colleague appointed instead of me.
90. Nor did he tell the Portfolio Committee that 'inconsistent application of OSD' (LASA wasn't yet receiving funding for the implementation of OSD phase 2) or the Department's failure to include OSD phase 1 funding in LASA's baseline budget (discussed below, it was paid separately, later during the year, like the year before) meant LASA couldn't fill its remaining three critical vacant Senior Litigator posts – because this wasn't true. Besides this story being unsupported and contradicted by the records, it was also contradicted by the facts on the ground:
91. Whereas the KwaZulu-Natal Senior Litigator appointments had been aborted, the Mthatha recruitment proceeded apace, and interviews for the post were held and a selection made on 24 May 2010, several weeks after the respondent's presentation to the Portfolio Committee in April 2010 quoted above. There was never any question of not implementing the Strategic Plan by not employing Senior Litigators for lack of funding; and all nine posts have always been, and continue to be, budgeted by LASA¹¹¹, approved by the National Assembly, and funded by the Department, year after year.

92. As a senior judge and long-time chairperson of LASA, the respondent well knew that besides being a lie, the explanation he gave the Minister and the Portfolio Committee for the abortion of my appointment was illegal on its own terms, because the alleged ‘decision ... made’ off the record ‘not to proceed with the filling of vacant senior litigator posts’ at Pietermaritzburg, Durban and Mthatha illegally contravened the PFMA in multiple respects:

92.1. Section 52 requires LASA to present the Department with ‘a corporate plan ... covering the financial affairs of the public entity ... for the following three years’. The Strategic Plan 2009–12 duly complied with this requirement, and LASA was required to implement it. In the case of Senior Litigator recruitment, it illegally didn’t.

92.2. Section 53(4) requires ‘that expenditure of that public entity is in accordance with the approved budget’. Applying to the Department for funds to pay the salaries of three Senior Litigators at Pietermaritzburg, Durban and Mthatha (year after year; it’s been many now) and not using such funds ‘in accordance with the approved budget’ is illegal.

92.3. Section 55 requires LASA to ‘keep full and proper records of the financial affairs of the public entity’; and any alleged ‘decision ... made not to proceed with the filling of vacant senior litigator posts’, with financial implications running into many millions of rands, had to be in writing. There’s no record whatsoever of any such decision, falsely alleged by the respondent to the Minister and to the Portfolio Committee in his report.

93. As mentioned above, a few months after my original closely detailed Statement of Claim in July 2011 exposed and categorically refuted the respondent’s lying delay and cancellation excuses given to the Minister and the Portfolio Committee, Nair dropped the two lying, discredited excuses like

a hot plate, and fabricated two completely different stories for his Report to Board in November 2011¹¹². (It was leaked to me by a sympathetic high-level insider from a private email account to avoid detection and reprisal.)

94. Since the respondent was complicit in Nair's deception of the Board with this lying Report to Board in the manner I'll show below, I'll deal with and expose and refute Nair's brand new lies to the Board, at which the respondent connived, in some detail. His new substitute lies, to replace those I'd refuted, were these:

Six Senior Litigators were filled [sic] during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.

95. In truth and in fact, there were no 'recruitment challenges': Skibi, recommended for Mthatha, was already an experienced Senior Litigator at Mahikeng; Mngadi, recommended for Durban, was a highly academically and practically qualified High Court Unit Manager at that office, as the recommendation report noted (and the respondent later appointed him as an acting judge of his Gauteng Division accordingly); and there was no serious question about my qualifications, even as, at the trial of my labour claim, Nair feebly pretended, under oath, that I was under-qualified; then, when that flopped, that I was over-qualified. The implicit lie in Nair's new story was that the recruitments had failed. In truth and in fact they'd been successful, with three suitable candidates selected.
96. Tested with PAIA, I established that no record exists to vouch that LASA had ever doubted 'that our objectives determined for this position is being achieved by the current incumbents'. Or that LASA's top lawyers were underperforming. This was smooth-talking invention by the habitual liar

practically running the continent's biggest law firm. Since graduated with a law degree and admitted to practise as an advocate.

97. To lard his second lie to the Board that the value and performance of LASA's incumbent Senior Litigators was in doubt, Nair added the following extremely impressive and convincing information. It had 'been agreed' he said:

that a national quality review panel will be established that will include a few senior legal executives, as well as someone external to the organization, possibly a retired Judge, who would conduct ... [q]uality reviews of senior litigators ... The review panel will be established during the third quarter of this financial year [i.e. by the end of December 2011]. All senior litigators will be reviewed by this panel before the end of this financial year [i.e. before 31 March 2012].

98. A year later, after the second pre-trial conference in my labour case held in January 2013, I forced LASA's admission that no such 'national quality review panel' had been 'established', contrary to Nair's completely false undertaking to the Board – the whole thing being a new lying cover-story, unsupported by any records at all, for the irregular, unlawful abortion of my recruitment, Mngadi's promotion, and Skibi's transfer, originally attributed to insufficient operating budget to fill the posts. When I sought supporting records to vouch Nair's 'national quality review panel' story during discovery in my labour case, Mtati swore in LASA's first discovery affidavit on 11 March 2013¹¹³, contemptuous of his oath to tell the truth: 'The panel has not been constituted and terms of reference are still under consideration.'
99. In truth and in fact, as appears from Nair's November 2011 Report to Board, the 'terms of reference' of the alleged 'panel', falsely and dishonestly alleged by Mtati under oath to be 'still under consideration', had already been invented and comprehensively stated there.

100. Cross-examining Nair at trial, I tested Mtati's slippery 'terms of reference are still under consideration' story told me, reckless of his oath, in LASA's crooked lawyer's cant, for not having 'established' the 'review panel ... during the third quarter of this financial year', i.e. by the end of December 2011, as ostensibly genuinely undertaken to the Board; and why 'All senior litigators' hadn't been 'reviewed by this panel before the end of this financial year' i.e. before 31 March 2012, as promised.
101. Lying freely under oath to slip out the noose, Nair improvised the claim that he'd 'allocated the responsibility' to 'the Chief Legal Executive, the then Legal Development Executive' Patrick Hundermark, to draft 'the terms of reference' of a 'review panel' to conduct 'performance reviews or quality reviews' for 'Senior Litigators'; and that Hundermark had 'hosted' a 'number of meetings' in this 'on-going process still being attended to', 'to properly develop terms of reference, to identify possible people to contribute to the panel, and to consult'¹¹⁴.
102. After judgment, I tested this evidence – these easy lies Nair told the judge under oath, knowing I couldn't catch him in court – with a PAIA request for Nair's alleged instruction to Hundermark; the minutes of the meetings Hundermark had allegedly held for this alleged purpose; and all and any records vouching that Hundermark had acted to develop the terms of reference, identify people for the panel, and consult about it. And I found, quite predictably, that there are no records for any of this; which confirms that Nair contemptuously lied to the judge under oath in making all this up, to try escaping the trap he and Mtati had talked themselves into.
103. The real reason nothing was ever done to convene any such 'national quality review panel [to] conduct ... [q]uality reviews of senior litigators' and why LASA's incumbent Senior Litigators have not been specially and exceptionally evaluated in this manner, is that in truth and in fact (a) no

need for this existed, and no performance audit had found their professional acumen wanting; (b) Nair never had any genuine intention of establishing any such panel; and (c) he was scrambling to concoct new cover-stories for his failure to approve and finalise my appointment, after I'd refuted the lying delay and lying budgetary explanations in my original Statement of Claim in July 2011.

104. And that's why no record whatsoever exists to show that the LSTC or any other competent authority at LASA ever thought any of LASA's Senior Litigators to be useless and to need weeding out with an urgent professional performance audit by 'a few senior legal executives, as well as someone external to the organization, possibly a retired Judge'.
105. Nair lied to the Board in pretending this, and then, unable to retreat, lied to court about it, under oath, embellishing his lies when cornered by them. Only to be caught out with PAIA.
106. The respondent chaired the November 2011 Board meeting at which Nair lied to it by presenting the brand-new, substitute false reasons he'd made up for not proceeding with the Senior Litigator appointments, after I'd totally demolished the respondent's delay and cancellation excuses a few months earlier in my original Statement of Claim in July 2011. By not challenging Nair's new lies, the respondent was complicit in the deception of the Board with this new elaborate cover-story for why LASA's remaining three vacant Senior Litigator posts weren't being filled in accordance with the Strategic Plan and budget. Instead the Board minute records that Nair's Report to Board was quietly 'Noted'¹¹⁵.
107. The respondent was well aware that there was no question about the professional competence of the three recommended Senior Litigator candidates, Mngadi, Skibi and me, and that Nair had lied about this in now pretending that 'recruitment challenges' prevented our appointments.

108. And the respondent knew equally well that Nair's new story about LASA's six Senior Litigators urgently needing to be professionally audited by inter alia 'a retired Judge, who would conduct ... [q]uality reviews of senior litigators' was a lie, because he'd personally interviewed them and vetted them before their appointments.
109. Nair's new lies in his November 2011 Report to Board about why the Senior Litigator posts hadn't been filled weren't alleged in any communication with me, with the Minister, with the Portfolio Committee, or in any pleading or interlocutory affidavit in my labour case.
110. Two further objective facts show the respondent lied to the Minister and the Portfolio Committee in telling them in March and June 2011 that a 'decision' by LASA had 'been made not to proceed with the filling of vacant senior litigator posts' due to 'pressing financial constraints', and 'financial uncertainty'. And they show equally that Nair lied to the Board in November 2011 in telling it completely differently, with the respondent's tacit approval, that it had been decided not to fill the posts because LASA had been unable to find suitable candidates and had since decided that it needed to be sure that its incumbent six Senior Litigators were professionally up to scratch and that LASA was getting its money's worth from them:
- 110.1. In January 2012, LASA advertised a 'Vacancy' for an 'Administration Officer – Civil' for the 'Pietermaritzburg Justice Centre', inter alia to 'Maintain a register of documents sent to the Senior Litigator and Impact Litigation department'. Which only goes to show that no decision had been taken by LASA as an organisation to indefinitely/permanently freeze the post I'd been selected and recommended for, for any reason: Vedalankar's, the respondent's or Nair's.
- 110.2. In February 2012, LASA advertised to recruit an advocate to fill its Impact Litigator post at its national office in Braamfontein, to

provide substantially similar professional services to those provided by a Senior Litigator, and on the same LP10 'Senior Professional staff' salary scale. This further shows that no decision was duly taken to halt the 'filling of vacant' top-level equivalent specialist legal professional staff posts due to 'financial uncertainty', 'pressing financial constraints' – or any other reason, like Nair's new ones given the Board in November 2011, winked at by the respondent.

111. Even as lower criminal court public defender recruitment was reduced after the July 2010 Board meeting for a couple of months, other recruitment proceeded normally, and in the second quarter July–September 2010, it increased by 1.7% from 1173 to 1193. But the Senior Litigator appointments remained on permanent ice.

112. Locked into its budgetary insufficiency version repeatedly given me, LASA stuck to its 'fiscal pressures ... due to the recession' lie in its original Response in October 2011 to my claim in the Labour Court to my appointment, and continued sticking to it in its Response in April 2013 to my amended Statement of Claim. Neither of LASA's pleas alleged to the judge, as Nair had alleged to the Board, that 'recruitment challenges' and uncertainty over its six Senior Litigators' professional ability were the two reasons the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments had been aborted.

113. But diametrically contradicting the respondent's lies to the Minister and to the Portfolio Committee about why my appointment hadn't been proceeded with (the financial excuse) and diametrically contradicting LASA's pleaded case (the same financial excuse), Nair claimed in his evidence that the Pietermaritzburg post remains frozen for the totally different new reasons that he'd alleged to the Board: Q: 'And the reason for that is to be found in the report to the Board that you wrote?' --- 'Correct¹¹⁶.'

114. At the same time, Nair also alleged the financial insufficiency excuse, but radically changed it concerning Mthatha – contradicting Vedalankar's repeated claims to me in her October 2010 and January 2011 letters that the three posts, at 'Durban, Pietermaritzburg and Mthatha', had been frozen for want of budget to fill them. About which she insisted in her January letter¹¹⁷:

the explanation furnished by me to you on 18 October 2010 remains valid ... I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator positions on any other ground than the budget constraints which you have rejected.

115. As said, contradicting Vedalankar, Nair testified that 'budget constraints' had nothing to do with the abortion of the Mthatha recruitment; it was because, he said, Vedalankar had disapproved the LSTC's resolution to transfer the budget from Kimberley to Mthatha, despite his repeated pleas to her to approve it. His new perjury is exposed by the several facts enumerated above.

116. '*Adv Brink was subsequently informed of this decision*' ('not to proceed with the filling of vacant senior litigator posts'). As said, LASA took no such duly made 'decision', and there's accordingly no record of it. The 'decision' was only alleged to me on 3 August 2010, by Nair¹¹⁸, to whom Vedalankar had passed my July letter to her, to deal with¹¹⁹.

117. That is, I was sold this story eight silent months after my interview (backhandedly confirmed to have been successful by Clark in April 2010), and only when I pressed Vedalankar to finalise my appointment. The 'decision' was only alleged to me after my July letter showed (a) I hadn't disappeared as hoped; (b) the silence and then stonewalling strategies had failed; (c) I was pressing for my appointment; and (d) I now needed putting off with some lies.

118. *'The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11.'* First, the 'senior litigator posts' were not frozen for this 'reason' and there's no record that they were, either for this 'reason' or for any other. And second, the only 'uncertain' thing was *when* in the year 'funding ... to finance our OSD phase 1 implementation' would be provided, not *if*.
119. LASA's OSD phase 1 allocation for the previous year, 2009/10, had been paid during the year¹²⁰, separately from the main baseline budget transfer; and although such OSD funding for 2010/11 hadn't been included by the Department in LASA's baseline budget as expected¹²¹, the Deputy Minister assured the respondent at the Board meeting on 29 May 2010 that it would be included in the national mid-term budget later in the year¹²². So there was no real prospect of an 'unbalanced budget for 2010/11', and the respondent knew this perfectly well, because he had the Deputy Minister's assurance.
120. *'As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered.'* This is absolutely true on its face, but quite false in the context, because the records detailing the 'various options' show that the freezing of Senior Litigator posts was never an 'option'.
121. When on 14 July 2010 the Deputy Director General of the Department said, very correctly (I'm quoting the Report to Board of 16 July 2010), 'DoJ has indicated that they do not have funds to cover the R53.8 million OSD shortfall'¹²³, LASA's management executives – dismally lacking the basic financial understanding that the Treasury provides funds for the national mid-term budget and not the Department – decided to twist the Deputy Minister's arm.

122. Disregarding the Deputy Minister's assurance that funds for OSD would be provided 'through the mid-year budget adjustments in September/October 2010', i.e. included in the national mid-term budget, and disobeying his express wish that service delivery be maintained, Nair and his executive management colleagues proposed *temporarily* freezing some posts *at the bottom of LASA's legal professional establishment*¹²⁴. Which the respondent and the Board approved¹²⁵. At the trial of my labour case, Nair admitted this was just to spur payment¹²⁶.

123. In his email to his management colleagues the next day, 15 July 2010, Nair suggested¹²⁷ a:

first cut of 56 practitioner [public defender] posts at JCs [Justice Centres]. ... In terms of this cut, I have ensured that DC [District Court] will not be lower than 80% coverage whilst RCs [Regional Courts] will not be lower than 90% coverage. If we need to find more savings from practitioner posts, then we will need to agree lower coverage for District and Regional courts.

124. By cut Nair meant freeze; it was common cause in my labour case that no posts were cut¹²⁸.

125. Now it's true that Nair considered freezing other posts, not only lower criminal court public defender posts. But the other kinds of posts he considered freezing were even lower ranking 'paralegal and admin positions'¹²⁹. Certainly not critical specialist Senior Litigator posts at the apogee of LASA's legal professional staff establishment.

126. The following day, 16 July 2010, executive management conveyed Nair's proposal in their Report to Board, and what it shows is that the only two 'options ... considered ... to make up for the shortfall in our funding' arising from the outstanding OSD phase 1 allocation was (a) 'the freezing' of

recruitment to some public defender posts serving the District and Regional Court – *temporarily*, until the matter had been resolved; and (b) ‘Savings from the 2010/11 financial year be used to fund the shortfall’¹³⁰.

127. LASA’s records (discussed below) show that the abortion of three substantially complete critical Senior Litigator recruitments and the permanent off-the-record freezing of the three posts was never an ‘option’. Exactly the opposite: the Report to Board highlighted ‘the need to prioritise critical positions’¹³¹.

128. And the respondent knew this full well, because he chaired the Board meeting on 31 July 2010 at which the ‘options to make up for the shortfall in our funding’ were proposed and approved¹³², and the ‘options’ had nothing to do with aborting substantially complete Senior Litigator recruitments and permanently freezing Senior Litigator posts.

129. *‘Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.’* In truth and in fact, my PAIA requests of August and December 2010 for access to specified documents were refused – my August request for the third time, the first refusal in September having been mute, the second in October express. Illegally refusing my request yet again, Vedalankar even rejected and returned my request fee. I did not get a ‘response ... in terms of PAIA ... to [my] request for information’, which was for specified documents, and not for her stories. I’d heard enough stories already from Clark and Nair.

130. More to the point of this complaint, the ‘various documents’ Vedalankar gave me in January 2011 (to make her fake case, while concealing a pivotal record mentioned below, and not to respond to my PAIA request for the

specified records I'd requested) show that the only 'contingency measures that we were contemplating to cater for' the outstanding OSD funding were (a) the *temporary* 'freezing of many positions' serving the lower criminal courts and (b) the use of unspent budget savings. And not the *permanent* freezing of three top-deck critical Senior Litigator posts.

131. Vedalankar's sleazy claims in her letter, copied to the respondent¹³³, about 'the cost-cutting measures including but not limited to the Senior Litigator posts'¹³⁴, and Nair's email (about freezing some lower criminal court public defender posts¹³⁵) given me 'to show that not only the Senior Litigators' posts were identified for possible freezing'¹³⁶, were repeated instances of the same nauseating chicanery that former Public Protector Thuli Madonsela later encountered in her investigation of another corrupt public entity, PRASA. Presenting her report 'Derailed' on national radio, she mentioned that documents it had put up and claimed to show one thing showed another. Just as in my case – the respondent knowing the truth of it and going along with it, because Vedalankar had copied him in.

132. These 'various documents' included Vedalankar's letters to the Director General in March¹³⁷ and April 2010¹³⁸ about the fact that LASA's OSD phase 1 allocation hadn't been included in its baseline budget as expected. Her second letter mentioned maybe having to freeze some lower criminal court posts on account of this¹³⁹.

133. But on the same day she wrote, 13 April 2010, the respondent presented LASA's Strategic Plan 2009–12 and budget to the Portfolio Committee; and there was no talk by him of freezing any posts, let alone LASA's top legal professional Senior Litigator posts.

134. Indeed, back on the ground, the Mthatha Senior Litigator recruitment was close to completion with the interviews and selection weeks away on 24 May 2010. Other recruitment and new post creation boomed at a magnificent rate

(all these figures drawn from LASA's various reports were common cause at the trial of my labour case¹⁴⁰):

135. LASA's First Quarter Report for April to June 2010 shows that 82 new budgeted posts were created during this period. To fill these and previously established posts, 82 more staff were employed, including 17 principal attorneys and professional assistants, 11 supervisory staff/managers, and 49 candidate attorneys. In this first quarter April to June 2010, LASA increased its total number of budgeted establishment posts by a massive 3.3% (2513 to 2595) – almost the same as the 3.9% increase (2419 to 2513) for the whole of 2009/10.
136. Appreciating the destructive implications of this tremendous activity for LASA's pleaded defence that it had been too financially pinched to hire me, in that its own statistics showed that the OSD issue never impeded its implementation of its Strategic Plan – not until August 2010, and then for only two months with a temporary brake applied to lower criminal court public defender recruitment – Nair dully lied under oath to try talking it away: the 'position never changed in 2010/11; it remained constant. There were no new positions during the year that we created¹⁴¹.' In the teeth of LASA's own reports to the very contrary.
137. Following a nil nett increase (more resignations than recruitments) in the third quarter September to December 2009 (1136 to 1129) and a 1.6% increase in the fourth quarter January to March 2010 (1129 to 1147), legal staff recruitment spiked in the first quarter April to June 2010 at 2.3% (1147 to 1173). Total staff recruitment increased by 3.5% (2352 to 2434). This sharp rise of 3.5% in total staff recruitment in the first quarter April to June 2010 alone was greater than the increase of 3.1% (2281 to 2352) for the whole of 2009/10.

138. In sum, in the first quarter April to June 2010, despite LASA's 'financial uncertainty' that arose on 10 March 2010 (per Vedalankar's March letter to the Director General¹⁴²) about when its OSD phase 1 allocation would be paid, new post creation and new staff recruitment accelerated at a massively increased rate. But the KwaZulu-Natal Senior Litigator appointments were blocked. Even as the Mthatha recruitment proceeded.
139. Other 'various documents' Vedalankar gave me in January 2011, copied to the respondent, were, all generated in July 2010: Nair's email to his management colleagues, proposing the freezing of recruitment to some lower criminal court public defender posts¹⁴³; executive management's Report to Board conveying this¹⁴⁴; and the Board's approval¹⁴⁵.
140. Vedalankar also gave me a memorandum internally circulated in September 2010, inviting belt-tightening proposals, as the government wished across all departments¹⁴⁶, that had nothing to do with the case (even as she pretended otherwise¹⁴⁷), and, as shown below, had zero effect on recruitment, which contrariwise rocketed in the next quarter.
141. What Vedalankar deceitfully withheld from me – with the respondent's tacit approval, since her dishonest letter was copied to him – was the Department's OSD payment voucher on 15 December 2010¹⁴⁸. (I had to force this out of LASA during pre-trial discovery in my labour case.)
142. Vedalankar not only silently concealed this crucially relevant document from me, showing that LASA had received all its OSD funding six weeks earlier, she positively lied in pretending that LASA was still too skint to employ me: 'Obviously by November 2010 ... it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012.'

143. As said, copied in on Vedalankar's January 2011 letter to me, the respondent went along with this low attempt to defraud me into abandoning my claim to the post for which I'd been recommended, by trying to induce me think LASA lacked the funds to hire me.
144. Quite the contrary, after the December 2010 OSD payment, LASA was so flush that it reported a surplus of R31.7 million for the year¹⁴⁹. And contrary to Vedalankar's false claim to me, copied to the respondent, that 'a shortfall was expected up to 2012', LASA enjoyed a surplus in 2012/13 of R29.9 million¹⁵⁰.
145. LASA's records show that with the inclusion of its OSD funding in the national mid-term budget in October 2010¹⁵¹, mentioned by Vedalankar to the Portfolio Committee on 11 October 2010,¹⁵² recruitment at LASA then soared, and peaked for the year at an increase of 2.5% (up from 1193 to 1223)¹⁵³.
146. The brake on public defender recruitment was lifted and the posts all filled; and on 9 July 2011, Vedalankar informed the Access to Justice Conference accordingly¹⁵⁴: 'We have increased access to clients through 100% coverage of all criminal courts in the country.'
147. But LASA's three remaining vacant critical Senior Litigator posts remained permanently frozen, off the record. To this day.
148. *'Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he believes there is a conspiracy against him.'* The real reason I was 'unconvinced that our reasons for freezing this post is honest' is that LASA's records didn't support and actually contradicted 'our reasons for freezing this post', as Vedalankar had alleged to me in her October 2010 letter¹⁵⁵ and repeated in her January 2011¹⁵⁶ one. (And then perjurally confirmed on affidavit in April 2011¹⁵⁷.)

149. That is, the financial insufficiency ‘reasons’ alleged to me for not appointing me were clearly not ‘honest’, as even a child could see. Likewise the totally different contradictory fairy stories Nair told the Board about ‘recruitment challenges’ and needing to be assured that the six appointed Senior Litigators were doing their jobs and knew how to do them. Also unsupported by any records.
150. This impelled me to conclude there was an occult reason for not appointing me, and I was right about that; only, I was wrong about what it was: it wasn’t my personal political unpopularity, but rather Ngcamu’s favour with the respondent. Nothing else explained it.
151. *‘Legal Aid SA, under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views.’* I accept this without reservation today, and I’ve done so since April 2016 on discovering the real reason my recruitment had been aborted – apparent from my rival applicant’s long-time relationship with the respondent as a fellow judge of the Labour Court, a recorded fact assiduously concealed from me since September 2010, when my request for the recommendation report was first silently refused, and then expressly refused repeatedly thereafter, and I finally had to sue for it, only to be opposed all the way to court, before LASA’s total surrender at the point of argument.
152. In dismissing my claim, which I’d wrongly based on unfair discrimination, the trial judge had no difficulty in finding that I’m acutely politically unpopular among the fervent believers¹⁵⁸ (LASA is among them¹⁵⁹) for writing several deeply researched books about, and campaigning energetically here and internationally against, the current propaganda consensus about the so-called HIV-AIDS epidemic among Africans (almost exclusively, we’re told) and its alleged wonder cures from overseas, sold in all the newspapers. In all its immensely harmful and wasteful folly.

153. *‘Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is clear that Adv Brink believes otherwise.’* The respondent’s representation of LASA as the aggrieved party, not me, was disingenuous. I’d been dishonestly cheated out of my appointment to LASA’s top legal professional post in the province; and after quickly seeing through the lies eventually told me about it, I said so forthrightly in my petitions to the respondent and the Board, complaining also about Vedalankar’s strange determination to hide LASA’s records from me and her violation of my constitutional right to information in doing so. I wasn’t ‘insulting and malicious’. The record shows it was the other way round. The respondent’s charge was a lie, told on me to falsely discredit my extraordinarily serious true complaints.

154. The ‘provision of relevant documentary evidence’ in January 2011 with which Vedalankar had tried ‘to convince’ me, convinced me completely that her cover-story for the abortion of my appointment was a lie. I presented the evidence I already had of this in my first petition to the respondent in November 2010¹⁶⁰; and the further ‘documentary evidence’ Vedalankar provided me in January 2011 clinched it. I found much more later on – like the December 2010 OSD payment voucher, which even on LASA’s phoney defence version that the OSD payment delay prevented my appointment, totally blew away its financial excuse for not concluding it.

155. The respondent’s long professional relationship with my rival for the post had deliberately been concealed from me, and the respondent knew it because Vedalankar copied him in on her January 2011 letter to me and its annexures, including the heavily redacted recommendation report. Deliberately kept ignorant of this potentially relevant information, I concluded

covert unfair political discrimination as the most likely reason my appointment had been aborted. On the available evidence, I couldn't think of anything else.

156. *'Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time.'* The 'decisions we took on this matter' are a matter of record; and what the records show is that contrary to Vedalankar's lying cover-story to me in October 2010¹⁶¹ –

Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.

– essentially repeated by the respondent to the Minister and to the Portfolio Committee, no such decision was duly taken at LASA: there's no record of it, and the 'relevant documentary evidence' contradicts the false allegation that it was.

157. By means of these greasy claims in the report, the respondent dissembled to the Minister and to the Portfolio Committee that all was above board, the better to cover up a major, lawless abuse of power by him, involving, inter alia, multiple contraventions of the PFMA, including an unauthorised and unlawful deviation from LASA's Strategic Plan 2009–12, disrupting

specialist legal professional delivery planned and approved for KwaZulu-Natal and the Eastern Cape.

158. It never 'made good business sense' to abort, off the record, three substantially complete Senior Litigator recruitments and to permanently freeze recruitment, also off the record, to the three critical vacant fully funded posts, LASA's most senior specialist legal professional posts. Nor was this 'in the best interests of our organisation at the time.' These slimy lies told to help the others go down vividly illustrate Oscar Wilde's observation over a century ago:

As one knows the poet by his fine music, so one can recognize the liar by his rich rhythmic utterance, and in neither case will the casual inspiration of the moment suffice. Here, as elsewhere, practice must precede perfection.

159. Besides the respondent's lies told to both the Minister and to the Portfolio Committee, which I've quoted, exposed and refuted above in light of LASA's own records and confirmed lack of them, the 'updated' report given the chairperson of the Portfolio Committee contained the following additional lies about my dispute with LASA, which I'd referred to the CCMA in April 2011 as my first stop before the Labour Court:

The relief he sought was monetary in the amount of R55 000 per month from January 2011 (he avers to have become aware of the alleged discrimination at this point) to the date of the conciliation which totalled R220 000.

160. The respondent was well aware from my letter to Vedalankar and from my three petitions to him and the Board that my principal claim had always been to my appointment to the plumb post for which I'd been duly selected

and recommended, and had won fair and square by beating out my rivals for it at the interviews. By lying to the Portfolio Committee about the nature of my claim – ‘The relief he sought was monetary’ – the respondent misled it about my basic dispute with LASA and disparaged me as a money-grubber.

161. The respondent also lied to the Portfolio Committee about LASA's exposure in damages for lost income, which, as in all such cases, was reckoned from the time I'd have been appointed but for the illegal abortion of my recruitment – namely 1 January 2010, the date I said I could start when the selection panel asked me how soon I'd be available. The respondent falsely claimed my damages ran from January 2011, thereby cutting a whole year's salary from the sum of my damages at that stage, and massively understating LASA's exposure in damages at a mere 'R220 000'.

162. The 'date of the conciliation' in April 2011 was irrelevant to the calculation: what mattered was the date of the future Labour Court judgment: and mentioning the date of the failed conciliation deceptively distracted from the fact that my damages were mounting by the month. Which made the respondent's statement of them to the Portfolio Committee in June, even by his own bad calculation, already two months stale, already too low by two months' worth.

163. Ultimately I eventually lost the case – having been misled about my correct cause of action, and going barking up the wrong tree in protesting unfair discrimination in my claim to my appointment, when actually it was cronyism, thanks to Vedalankar's illegal concealment, unjustified by PAIA, of the compelling evidence of this with a Koki pen in January 2011, after first telling me in October 2010 that I wasn't allowed to see the recommendation report at all, for the legally spurious but factually spot-on reason that my request for it 'extends to information on other third parties'¹⁶², namely

Ngcamu's long professional relationship with the respondent as a fellow judge of the Labour Court.

164. As said, this critically relevant information was only divulged at legal gunpoint in April 2016, five years later, when it was too late, and the trick in hiding it, with the respondent's complicity, had achieved its purpose in causing me to wrongly aim my case and lose it accordingly.
165. On 8 April 2011, after the respondent's report to the Minister in March and before his report to the Portfolio Committee in June, one of LASA's liars felt the guilty need to explain to the SAHRC the cancellation of my appointment in its PAIA section 32 annual report (quite superfluously to the information reporting requirements of the section). And in doing so changed the respondent's story completely, now alleging: a 'decision to freeze the [Pietermaritzburg Senior Litigator] post [was taken] due to change in business-needs budget¹⁶³.'
166. In truth and in fact, contrary to this new lie contradicting the respondent's explanation to the Minister and later to the Portfolio Committee, the 'business-needs budget' has never been changed in relation to the Pietermaritzburg Senior Litigator post, and it remains a budgeted and funded vacant post¹⁶⁴.
167. On another occasion, an undated telephone note taken by an officer in the SAHRC's PAIA Unit records that some liar at LASA told yet another different lie, contradicting the respondent's explanation again, in claiming the selection panel had 'rejected' me and that my 'impression' that I'd 'somehow ... gotten' that I'd been recommended was incorrect¹⁶⁵. In truth and in fact, as the recommendation report unequivocally shows, I was selected for the post.

168. These blatant lies to the SAHRC contradicting the respondent's different lies in his report to the Minister and to the Portfolio Committee, all of which many different contradictory lies Nair contradicted in his Report to Board in November 2011 with more different lies, and again with yet more different new lies in court at the trial of my labour claim in mid-2013, brightly illustrated Sir Walter Scott's observation: 'Oh! what a tangled web we weave When first we practice to deceive!' And continually contradict ourselves by telling endless totally different lies, confident of perfect impunity in the culture of routine mendacity and perjury in LASA's top governing echelons.

169. In his corrupt project to mislead the Minister and Portfolio Committee the respondent succeeded, because both the Minister and the chairperson of Portfolio Committee were impressed, persuaded and defrauded by the respondent's lies. The Minister didn't come back to me, and the chairperson of the Portfolio Committee wrote to tell me: 'In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed. Thank you.'

170. Jonathan Swift explained the principle three centuries ago:

Besides, as the vilest Writer has his Readers, so the greatest Liar has his Believers; and it often happens, that if a Lie be believ'd only for an Hour, it has done its Work, and there is no farther occasion for it.

Falsehood flies, and the Truth comes limping after it; so that when Men come to be undeceiv'd, it is too late; the Jest is over, and the Tale has had its Effect.

171. Since it would have been hopeless trying to undeceive the Minister and the chairperson of the Portfolio Committee by disabusing them of Justice Mlambo's Falsehood passed off as the Truth, I accepted that it was too late: the Lie had done its Work on these Men, the Jest was over, and the Tale had had its effect; more especially since the chairperson of the Portfolio

Committee had with quite understandable emphasis told me very finally: 'I now regard this matter as closed. Thank you.' The Truth coming limping after the Lie wouldn't have been of any interest to them.

172. Supremely confident that as a senior judge he'd be taken at his word and that his lies would be believed without question, the respondent abused 'the trappings [and] prestige of [his] high office' (per the secret ballot judgment) to sell a false cover-story to the Minister and to the Portfolio Committee about why my appointment hadn't been proceeded with.

173. In intentionally perverting with his lies the Minister's and the Portfolio Committee's separate, independent enquiries into my complaint, which I'd copied to them, that my appointment to LASA's Senior Litigator post at Pietermaritzburg had been illegally aborted under a bogus financial justification, the respondent:

173.1. breached multiple relevant provisions of LASA's Code of Ethics and Conduct, as enumerated in paragraphs 38 and 41 of my Second Complaint; and,

173.2. 'act[ed] in a manner unbecoming a judge', as the Preamble to the Code of Judicial Conduct puts it, by failing to comply with his obligation imposed by Article 5 of the said Code 'To act honourably': '(1) A judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.' And not, in the language of section 14(4)(e) of the Judicial Service Commission Act, act in a manner 'that is incompatible with or unbecoming the holding of judicial office'.

174. And in intentionally perverting with his lies the Portfolio Committee's enquiry into the true reason I wasn't appointed, the respondent further:

174.1. obstructed and successfully defeated the National Assembly's obligation imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state', and thereby prevented the Portfolio Committee:

174.1.1. learning the truth about why my appointment had been aborted, and holding to account those at LASA responsible for it, made common cause with it, and lied about it in the cover-up – the respondent, Vedalankar, Nair, Clark and Mtati (in the last four cases under oath) – and those who, when informed and petitioned about it, scandalously and reprehensibly looked the other way, being more loyal to the power structure and to their own perceived interests than the organisation's, perhaps being afraid to cross the respondent and taking him to task as Board chairperson and as a senior judge – COO Jerry Makokoane¹⁶⁶, CFO Rebecca Hlabatau¹⁶⁷, CLE Patrick Hundermark¹⁶⁸, and the Department's representative on the Board Adv Pieter du Rand¹⁶⁹, and other Board members serving at the time, including law professor Yousuf Vawda¹⁷⁰;

174.1.2. remedying the illegal obstruction of specialist legal professional service delivery in KwaZulu-Natal and the Eastern Cape, on account of the illegal cancellation of my appointment, Mngadi's promotion and Skibi's transfer, for grossly improper reasons;

174.1.3. ending LASA's ongoing illegal contravention of the PFMA, which, after the respondent's perversion of the Portfolio Committee's enquiry in 2011, continued for many years, and continues to date, with LASA applying annually to the

Department to fund three big-ticket Senior Litigator salaries and receiving funding for them, while keeping the posts permanently frozen off the record, without authority and without approval; and not spending the salary funding on the posts as budgeted and approved;

- 174.1.4. 'ensur[ing]' that the recruitment corruption of which I'd complained did not continue to 'defocus or derail' LASA's 'core mandate or errand' to deliver legal services to the poor, including legal specialist services to them (per the secret ballot judgment);
- 174.1.5. achieving its constitutional 'objective ... to arrest or address under-performance and abuse of public power and resources' (ibid); and,
- 174.1.6. finding out that LASA's top 'public office-bearers', including and especially the respondent, have shamefully failed to 'live up to the promises that inhere in the offices they occupy' by illegally disrupting specialist legal professional service delivery for corrupt reasons and dishonestly falsely 'explain[ing]' (ibid) the circumstances in which my appointment, Mngadi's promotion and Skibi's transfer were aborted, after we were selected and recommended for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts respectively; and,

- 174.2. thus 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment), and violated his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'; and,

174.3. criminally contravened section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, which provides:

A person who –

...

(d) with intent to deceive a House or committee, produces to the House or committee any false, untrue, fabricated or falsified document; or

(e) ... wilfully furnishes a House or committee with information ... which is false or misleading,

commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.

Signed at Mtunzini on 14 July 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 14 July 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

Complaints 1-8 against Mlambo JP

Proof of post to the Judicial Service Commission on 23 June (complaints 1–5),
3 July (complaints 6 & 7) and 14 July 2017 (complaint 8)

(Complaint 1 was emailed in PDF on 4 June, and acknowledged on 6 June, and
the original followed by post along with complaints 2–5)

REGISTERED LETTER GEREGISTREERDE BRIEF (with an insurance option/met 'n versekeringsopsie)		Post Office	
Full tracking and tracing/Volledige volg en spoor		Postage paid R <u>32.90</u> C Service fee/Diensgeld R C Insurance/Versekering R C Total/Totaal R C	
Addressed to/Geadresseer aan <u>Lynette Blos</u> <u>P/Bay +10</u> <u>MARSHALTON</u> <u>2107</u> Postcode		Insured value of contents Versekerde waarde van inhoud R C	
The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2000.00 is available and applies to domestic registered letters only. Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding sal nie betaal word vir 'n brief wat sonder voorbehoud ontvang word nie. Vergoeding is beperk tot R100.00. Geen vergoeding is sonder dokumentêre bewys betaalbaar nie. Opsionele versekering tot R2000.00 is beskikbaar en is slegs op binnelandse geregistreerde briewe van toepassing.		Enquiries/Navrae Toll-free number Tolvry nommer 0800 111 502 RC 127 799 220 ZA CUSTOMER COPY 301028R Plate Volg-en-Spoor-klëntafskrif	
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Date stamp of delivery 	REGISTERED LETTER GEREGISTREERDE BRIEF (with an insurance option/met 'n verskeringsopsie)		No _____ Post Office	Date stamp of delivery
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REPUBLIC OF SOUTH AFRICA**

188 14th Road, Noordwyk Midrand, 1685. Private Bag X10, Marshalltown 2107, Tel: (010) 493 2500 (switchboard)

JUDICIAL CONDUCT COMMITTEE

Enq: Lynette Bios
Tel: (010) 493 2500 (switchboard)
Fax: 086 640 9601

Mr. A Brink
25 Balcomb Avenue
Zini River Estate
Mtunzini

Per email: anthonybrink.sa@gmail.com

Our Ref: JSC/533/17

Dear Mr. Brink

**RE: COMPLAINT AGAINST JUDGE PRESIDENT MLAMBO OF THE GAUTENG
DIVISION OF THE HIGH COURT**

The Judicial Service Commission (JSC) hereby acknowledges receipt of your complaint.

Your complaint will be forwarded to the Judicial Conduct Committee for consideration.

The Secretariat will notify you of the outcome of your complaint in due course.

Yours sincerely,

L BIOS

Secretariat for the Judicial Service Commission

Date: 06/06/17