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FIRST COMPLAINT AGAINST WAGLAY 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 Basheer Waglay JP, head of the Labour and Labour Appeal Court ('LAC'), hereinafter 'the respondent'.

3. The respondent was appointed Judge President of the LAC in February 2013. Before this, he'd been Deputy Judge President of the court under Dunstan Mlambo JP – the latter appointed to the LAC in November 1997, and since 2002 chairperson of Legal Aid South Africa ('LASA').

4. I charge the respondent with failure to maintain 'Judicial Independence', as required of him by Article 4 of the Code of Judicial Conduct ('the Code'), and with contravening his judicial oath to 'administer justice to all persons alike without … favour or prejudice, in accordance with the Constitution and the law', thereby committing an act of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the said Act.

5. Article 4 of the Code prescribes (my ellipses for relevance):

   A judge must –
   (a) uphold the independence and integrity of the judiciary … ;

(b) maintain an independence of mind in the performance of judicial duties;

(c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; …

6. My complaint arises from the perversion of my petition to the respondent for leave to appeal against a Labour Court judgment in LASA's favour, by dint of an anonymous, undated, unsigned, unstamped 'Memorandum' ('the memorandum') drawn and passed to him by an apparently well-connected, top-level LASA officer, especially motivated to torpedo my petition, in which he aggressively denigrated me and lied about the issues before the trial court, the evidence at trial and my case on petition, with the object of defeating the ends of justice by prejudicing the respondent against me and against my case for leave to appeal to ensure it failed.

7. With which prejudice, having been improperly influenced by the memorandum, and in contravention of Article 4 of the Code, the respondent summarily dismissed my petition in the grossly irregular circumstances described and vouched below.

8. Annexed hereto are:

8.1. a copy of the memorandum, marked 'A';

8.2. an inventory of the petition file (DA21/14) in the Labour Appeal Court registry at Durban, dated 2 April 2015 and stamped on the same day by a registry clerk, recording the presence of the memorandum in the file, marked 'B'; and,

8.3. a copy of my petition, marked 'C.;

9. On 10 December 2014, in strict compliance with rule 4(1)–(5) of the Labour Appeal Court Rules ('LAC rules'), I filed my petition for leave to appeal against the dismissal of my action brought against LASA in the Durban Labour Court, in which I'd claimed an order instating me to its top professional position in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg, for which I'd been unanimously recommended by a duly constituted selection panel in November 2009.

10. I'd based my claim on unfair political discrimination, which on a careful conspectus of the information then known to me seemed the most probable reason my recruitment had been aborted, considering the shambles of internally contradictory, objectively contradicted, risibly false, radically different excuses that LASA's officers had advanced for not proceeding with my appointment (canvassed in my petition). (In December 2015, several months after my petition was dismissed, I obtained LASA's budget applications to the Department of Justice and Correctional Services for Senior Litigator salaries for the five years 2010/11 to 2014/15, which further categorically exposed and refuted LASA's main lying budgetary insufficiency excuse for not finalizing my appointment – which lie, repeated in the memorandum, both the trial judge and the respondent accepted. I accessed these financial records via a request made to the said Department under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), after LASA had illegally refused a similar request in May 2015, contemptuously violating my fundamental right to information in its ongoing cover-up of the real reason for the off-the-record abortion of my recruitment.)

11. The Labour Court had dismissed my claim on 18 September 2014 – correctly, it turned out, albeit for very wrong reasons. A year-and-a-half later I discovered that the reason my appointment had been blocked had nothing to

do with my acute political unpopularity (accepted by the trial judge and canvassed at length in his judgment) and everything to do with jobs for pals. The selection panel's complete, uncensored recommendation report, which I finally succeeded in clawing out of LASA at legal gunpoint in April 2016, after a long and bitter struggle for it over many years, revealed that my rival for the post, also shortlisted and interviewed for it, had been LASA Board chairperson Mlambo JP's judicial colleague for '±6 years' in the Labour Court, Mzochitwayo Ngcamu AJ (as he used to be).

12. It bears mentioning here, for reasons later to become apparent, that the potently relevant fact of Mlambo JP's long professional relationship with my competitor for the post had been determinedly and illegally concealed from me without any justification contemplated and allowed by Chapter 4, 'Grounds for Refusal of Access to Records', in Part 2 of PAIA, under which Act I'd requested the minute of the selection panel's recommendation in August 2010. My request for it was ignored and thereby mutely illegally refused in September 2010. It was expressly illegally refused in October 2010. In January 2011, under further pressure from the PAIA Unit of the South African Human Rights Commission I was given a copy of the selection panel's recommendation report, but heavily redacted, with this hotly relevant information carefully blacked out with a Koki pen to conceal it, unjustifiably under PAIA and therefore unlawfully. (I had no idea at that stage what was being hidden from me.) In February 2015, my renewed PAIA request in November 2014, after the dismissal of my labour claim, for the complete, uncensored recommendation report was obstructed with an incompetent and illegal charge for fees for background reading. In May 2015, the document was illegally refused again on the factually and legally idle basis that my request for it 'relates to' and was 'ancillary' to my past labour litigation and

was 'malicious and seeks to divert the resources of Legal Aid South Africa'. In December 2015, my application to court in November 2015 to compel the surrender of the record, among others, was opposed without good grounds, followed by a lengthy, meritless, filibustering answering affidavit full of spurious defences. Finally on 11 February 2016, LASA capitulated in court just before the commencement of argument, abandoned all its manifestly vacant defences, and at last agreed to surrender the complete unmutilated recommendation report document, five-and-a-half years after I'd first tried exercising my fundamental right to it, and had experienced this basic civil right to information persistently spat upon (with Mlambo JP's connivance; separate complaints to follow) as LASA determinedly hid from me the key information recorded in the document that my rival Ngcamu had been LASA Board chairperson Mlambo JP's judicial colleague for '±6 years' before he applied for the post.

13. LAC rule 4(6) permitted LASA to 'deliver an answering affidavit within 10 days of delivery of a copy of the petition.' In breach of this rule, it delivered its answering affidavit out of time on 22 January 2015. An excerpt of the first and last pages of this affidavit vouching this is annexed marked 'D'.

14. Generally indulgent about time limits in my litigation against LASA, I took exception on this occasion, for several reasons immaterial to detail here, to LASA's insouciant breach of the LAC rules and failure to file in time, and by notice delivered on 27 January 2015 objected to its late delivery of its answering affidavit. A copy is annexed marked 'E'.

15. LASA responded by bringing an application for condonation as contemplated by LAC rule 12(1): 'The Court may, for sufficient cause shown, excuse the parties from compliance with any of these rules.' LASA's notice of application, without its supporting affidavit, is annexed marked 'F'.

16. On being served with LASA's condonation application on 13 February 2015, I immediately set to the task of answering it, and in particular showing with reference to the cold print of contradicting records refuting them that LASA's two excuses advanced to the respondent for the late filing of its answering affidavit were no 'sufficient cause' for it, because they were both perjured.

17. Five days later on 18 February 2015, while still drafting my answering affidavit and before I'd completed and delivered it, I received an order of court by telefax notifying the dismissal of my petition. A copy is annexed marked 'G'.

18. According to the face of the order, the three judges of appeal who'd 'read the petition and considered the matter', and unanimously resolved to dismiss it, were Waglay JP and Davis and Sutherland JJA.

19. Since:

    19.1. my petition had been irregularly determined prematurely:

        19.1.1. before I'd been able to answer LASA's application for condonation and prove its excuses were lies (in keeping with the culture of casual mendacity in its governing ranks);

        19.1.2. before LASA's case for condonation had been tried; and therefore,

        19.1.3. before LASA's opposing affidavit was properly before court for consideration;

    19.2. I'd ascertained from a search of the law reports that, unlike in my special case, the respondent ordinarily took condonation applications seriously, and closely analysed and determined them with exemplary

care, as illustrated by his finely detailed judgment in Eberspächer v NUM (JA21/2007) [2008] ZALAC 11; [2009] 1 BLLR 44 (LAC); (2009) 30 ILJ 880 (LAC) (19 September 2008) (online at https://goo.gl/hgr7xc); and,

19.3. my petition identified a multitude of reversible, fundamental, critical procedural and evidential errors made by the trial judge at trial and in his judgment given more than a year later – all of which were eminently fit for argument on appeal on any objective, thoughtful and fair assessment,

I suspected foul play in the disposal of my petition; doubted that it had been properly read by the respondent, and read at all by the other appeal judges named in the order; and resolved to investigate.

20. I was an acting magistrate in Eshowe at the time, so I requested my retired accountant friend Christopher Rawlins in Durban to go over to court to examine the petition file and report its contents to me. Which on 1 April 2015 he did.

21. That same evening, Rawlins telephoned me to report that he'd:

21.1. found no record in the court file to show that Davis and Sutherland JJA had considered and decided my petition; in fact he found no signature on any document by any of the judges named in the order;

21.2. discovered the memorandum in the petition file, and had requested a registry clerk make him a photocopy; and had,

21.3. made an inventory of the contents of the petition file.

22. As I requested of him, Rawlins then scanned and emailed me the memorandum and his handwritten inventory.

23. Stunned by his discoveries, and particularly by the criminal depravity of the memorandum, I asked Rawlins to type his inventory and return to court to have the registrar check the contents of the petition file against it, item by item, and certify that it was true and complete. Rawlins did this the next day, and then scanned and emailed me his typed inventory, which a registry clerk had certified, after verifying it, by applying the court stamp.

24. I don't anticipate any dispute about the existence of the memorandum in the court file, because at my request Rawlins went back to court in August 2016 to examine the file again, and found the memorandum still there – only, now it had been moved to the top of the documents in the file.

25. Which shows that between Rawlins' inspections of the file in April 2015, and after I'd mentioned the existence of this criminal evidence in other litigation against LASA, somebody had drawn the file from the registry, gone through it in search of the memorandum, picked it out, looked it over, and then replaced it, but at the top of the pile, out of its original order in the file in which Rawlins had found it in April 2015.

26. Rawlins' affidavit confirming all this will be put up with this complaint.

27. To read the memorandum, magisterially condemning me and my petition, is to understand why the respondent concluded I was a personal and professional reprobate whose petition was fit only for the rubbish bin, and why he summarily dismissed it accordingly:

    27.1. It begins with a horrifying barrage of lying defamatory smears, to the effect that I'm a contemptible, base, stupid, irrationally stubborn and

deranged person who's unfit to be an advocate, so as to wreck my credibility and distract from the merits of my petition before the respondent read it.

27.2. It lies about 'What [was] common cause' at trial, namely that 'the position for which his [sic: he] applied for [sic] was frozen due to budgetary constraints', when in truth and in fact, this was LASA's defence version which at all times had been centrally in dispute. After which misrepresentation, the memorandum ambiguously concedes, in as many words, that what had just been falsely asserted as 'common cause' was centrally in issue: 'there is a dispute about the veracity of the decision to stop the process of appointment'. Indeed so, especially as LASA had repeatedly admitted before and at trial that no record whatsoever exists to show any such decision was ever duly taken – with its major adverse repercussions for specialist legal professional service delivery by LASA (a special repeatedly stated concern of the National Assembly), and its financial implications counted in millions of rands.

27.3. And it repeatedly lies that my petition:

27.3.1. 'does not say in what respect the labour Court erred' and 'does not say in what respect the court *a quo* erred in dismissing his claim', in other words disclosed no grounds for an appeal, whereas in truth and in fact, as is clear to any objective and judicious reader giving it an honest reading, it enumerated a host of clear, strong grounds; and,

27.3.2. contained no more than unfounded 'judgemental comments about the credibility of [LASA's] employees', whereas in truth

and in fact, as is clear to any objective and judicious reader giving it an honest reading, my petition precisely showed – with reference to LASA's pleadings, interlocutory affidavits and records; to the trial record; and to categorical documentary proof of brazen perjury on two collateral points, elicited from LASA via PAIA after trial – that the evidence of LASA's single witness, National Operations Executive Brian Nair, on whose oral evidence the judge relied, to the exclusion of the documentary record contradicting it, was perjured on all material scores.

28. Since the memorandum is not only anonymous, undated and unsigned, but also unstamped, it evidently didn't cross the registrar's front desk before being placed in the file like any other court process.

29. Unless the registrar or one of his clerks was complicit in the corruption, perhaps knowing the author of the memorandum, and agreed to do him the favour by irregularly slipping the memorandum into the court file without stamping it, the fact that the memorandum is unstamped means that someone at LASA with the motive, the power, the influence and the connections bypassed the registrar and his clerks and delivered the memorandum directly to the respondent. Who then, fortunately for me, forgot to remove it.

30. I request that the Judicial Service Commission investigate who authored the memorandum and gave it to the respondent with the criminal intention of interfering in his decision of my petition, by poisoning him against me and my case and thereby defeating the ends of justice. The respondent will undoubtedly be able to identify him.

31. In its enquiry the Commission may find relevant the fact that of all the multifarious LASA records to which I sought access under PAIA in my persistent and thorough investigation of the true reason my recruitment had been aborted (revealed only after the trial), the only record mentioned obliquely in the memorandum is the minute of LASA's Board meeting of 31 August 2010, chaired by Mlambo JP: 'There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested [the] recording of the board meeting.'

32. LASA's own records, annexed and marked up for clarity, expose and refute the outright lie told the respondent in the memorandum that 'the position [I'd] applied for was frozen due to budgetary constraints' and the lying insinuation that the Board had taken a 'decision to stop the process of [my] appointment' to the critical, top-deck Senior Litigator post for this reason.

33. The minute of the Board meeting in question shows very differently, namely that the Board approved (annexure 'H') LASA executive management's proposal to temporarily freeze recruitment only to some entry-level, lower criminal court public defender posts until the Department had paid over LASA's outstanding OSD Phase 1 allocation for legal staff salary increases (annexure 'J') – a stunt, LASA's witness Nair credibly explained at trial, contrived to spur the Department into paying, which it did, in short order: the additional funds were provided for in the National Medium Term Budget in October 2010 (annexure 'K') and paid in December 2010 (annexure 'L').

34. The fact that the respondent confidently acted and relied on the memorandum to summarily dismiss my petition before all the papers were in shows that he knew and trusted its author.

35. It's inconceivable that the respondent delegated a junior law clerk to read and decide my petition for him, and that the memorandum merely records the junior law clerk's advice to him to dismiss it, because apart from being extraordinarily dishonest and hostile to me, which a junior law clerk would have had no motive to be, it's an impeachable contravention of Article 9(c)(ii) of the Code to 'shift the responsibility to … decide a matter to another judge', let alone to a junior law clerk. And LAC rule 4(7) entitled me to the evaluation and decision of my petition by three senior, experienced judges of appeal: 'A petition must be considered by three judges of the court designated by the Judge President.' And not by a junior law clerk.

36. A second fact the Commission may find relevant in its enquiry as to the author of the criminal memorandum that perverted my petition is the high-toned attack it makes, yet again, in Mlambo JP's familiar routine, on my personal and professional integrity: '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 [etc]'.

37. The language of my petition doesn't support this low charge, and indeed there are two clear indications that the respondent didn't agree with it:

    37.1.1. Section 162(2) of the Labour Relations Act 66 of 1995 provides (my ellipses for relevance):

    > When deciding whether or not to order the payment of costs, the Labour Court may take into account –
    > (a) …
    > (b) the conduct of the parties –
    > (i) in proceeding with … the matter before the Court; and

(ii) during the proceedings before the Court.

But in dismissing my petition, and evidently finding no fault with my conduct in the way I worded it, the respondent made no order as to costs against me.

37.1.2. Article 16 of the Code imposes a peremptory obligation on a judge 'with clear and reliable evidence of serious professional conduct … on the part of a legal practitioner [to] inform the relevant professional body … of such misconduct' (my ellipses). Note 10 to the Code's Preamble provides that the failure of a judge to report such misconduct itself constitutes 'misconduct which will lead to disciplinary action'. But the respondent evidently found no misconduct by me in the manner in which I framed my petition, because he didn't report me to my 'relevant professional body' for any.

38. The trial judge found no fault with my interlocutory affidavits either. I pertinently asked him during the argument of my labour case whether he was minded to criticise my conduct and prosecution of my claim in any way, seeing as LASA had consistently claimed it damnable and sought punitive costs against me, in order that I might defend myself. He waved me away, and made no such finding in his judgment. Which shows he saw nothing remiss about the language of my affidavits, or pleadings, much less that it amounted to misconduct warranting a report to my 'relevant professional body'. And which means that, like the respondent, he also found my affidavits entirely proper – contrary to the lie told by the author of the memorandum that my 'vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate.'

39. In my First Complaint against Mlambo JP, I document several previous instances of his similar, baseless, low-kicking, ad hominem attacks on my personal and professional integrity.

40. Judges call such a consistent pattern of distinct, characteristic conduct 'similar fact evidence' to establish the identity of criminal perpetrators.

Signed at Mtunzini on 15 June 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 15 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:

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A

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 his 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.

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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 telehone 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 Juta 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

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

PETITION FOR LEAVE TO APPEAL AND TO LEAD NEW EVIDENCE ON APPEAL

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider this petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre
332 Anton Lembede Street
Durban
(Mr Ngcamu)

The petitioner, Anthony Robin Brink, applies for an order granting him leave (i) to appeal to the Labour Appeal Court against the dismissal of his unfair discrimination claim with costs by Cele J in the Durban Labour Court on 18 September 2014, his application for leave to appeal and to present further new evidence on appeal having been refused on 27 November 2014, and (ii) to present further new evidence on appeal.

The petitioner's supporting affidavit under rule 4(1) of the Labour Appeal Court Rules is annexed hereto.

Signed at Eshowe on 7 December 2013

ANTHONY ROBIN BRINK
APPLICANT
1 Boast Street, Eshowe, KwaZulu-Natal
Telefax: 086 672 0776

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

In re: Case D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

SUPPORTING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male, 55, an advocate of the High Court of South Africa of three decades standing, currently resident at 1 Boast Street, Eshowe, KwaZulu-Natal, where I'm based as an acting magistrate on short-term renewable contracts pending the correct decision of this most important case; and I am your petitioner. This affidavit sets out my case for your leave to appeal, and present further new evidence on appeal, in the form prescribed by LAC rule 4(1). To comply with the stricture imposed by rule 4(3), I've limited it to just 50 paragraphs, so it can't be and isn't exhaustive. For concision, I'll refer to the respondent as 'LASA'; to my main heads of argument as 'my heads'; to the judgment in the case as 'the judgment'; to my application for leave to appeal as 'my application'; and to the judgment refusing it as 'the refusal'. These documents will be bundled with this petition. My considered specific approach in preparing this affidavit has been dictated by the wider public dimensions of the case to be mentioned.

2. As I'll show, this is an extraordinarily serious matter with colossal implications extending way beyond my personal interest in its just resolution. It concerns the personal and professional integrity of a sitting judge president, formerly of this court, and that of the most senior management executives of a major public entity. I speak of the perversion of separate Ministerial and Parliamentary enquiries by dint of multiple, objectively demonstrable lies, and different lies told variously to me, to the LASA Board, to the SAHRC, and to court (different lies told in the pleadings and interlocutory affidavits, and

then at trial), and of the gross breakdown of proper corporate governance and the rule of law at LASA, all of which the trial judge looked past in his seemingly clear and definitive, but in fact deplorably inattentive, glib, crude, and perfunctory judgment, riddled with the most basic legal and factual misdirections, omissions and non-sequiturs, and characterised by his failures over and over again to consider the radical contradictions and the ludicrously improbable, manifestly untruthful, and objectively contradicted evidence of LASA's single witness at trial, National Operations Executive Brian Nair.

3. I'll advert later in this affidavit to the capital misconduct and massive and pervasive corruption to which I allude here, as well as to the judge's own gravely prejudicial misconduct in the case that thwarted a full and proper ventilation of the issues that I looked to him and trusted him to try.

4. In his refusal the judge didn't treat the clear-cut new evidence surfaced after trial showing unequivocally that Nair had lied to him on oath in two respects.[1] To the judge, Nair's categorically proven repeated mendacity in court made no difference to his assessment of the credibility of his evidence. Your lordships can hardly agree.

5. The judge elliptically conceded[2] his fundamental legal misdirection, identified in my application,[3] that in deciding the case he'd misallocated the final onus of proof, which he'd placed on me[4] instead of on LASA. He then sought to avoid the fatal ramifications of this radical error by two means:

6. First by stating that the Employment Equity Amendment Act, which reversed the onus of proof in unfair discrimination claims by legislation, was only proclaimed in August 2014, after the trial and argument of the case, and didn't have retrospective effect – failing to note that the amendment merely codified the international jurisprudence on the point, supported by the International Labour Organisation and therefore prescriptive and binding on him.[5] That is, the onus was reversed and lay on LASA, even before the amendment of the Employment Equity Act. I treated this crucial, foundational aspect

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[1] Application for leave to lead further evidence (Part One of the application). I'm confident that several pending PAIA requests that I filed after the case, testing novel, surprising claims Nair made at trial – unanticipated by the correspondence, reports, pleadings and interlocutory affidavits, and at odds with them – will yield further cold print evidence of Nair's prolific perjuries at trial, and of his successful fraud on the judge. I'll seek leave to lead this new evidence on appeal, once it's to hand.

[2] Refusal, paragraph 5.

[3] Application, paragraphs 191–211.

[4] Judgment, paragraphs 65 and 67.

[5] EEA, section 3, law and case bundle, pages 16–17.

extensively in my application, quoting the authorities chapter and verse.[6] The judge's response was to silently look away.

7. And second by asserting that even if I was right about the incidence of onus, irrespective of where it lay his decision wouldn't have been any different – notwithstanding that LASA relied entirely on the mere say-so of its single witness Nair, unsupported by any records, and indeed contradicted by them, a witness the judge acknowledged I'd shown to have been 'not generous with the truth'[7] on numerous scores.[8] Instead of considering the implications of this for Nair's credibility as a witness, he took him at his word,[9] mechanically reciting his evidence as gospel, without any endeavour to assay its veracity. It seems to have been inconceivable to the judge that such a high public officer could be a practised, confident, spontaneously inventive, unctuous, bare-faced, abject liar.

8. In his refusal, the judge failed utterly to address and deal with the rest of my attack on his judgment in my application, in which I demonstrated all his basic errors, too many to recite here, including the huge prejudice he caused me by refusing to allow me to cross-examine LASA's officers I'd subpoenaed for the purpose,[10] thus depriving me of some major artillery I'd lined up; and he swept the whole thing – all 59 pages and 323 paragraphs – off the table in a single dismissive paragraph.[11]

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[6] Application, paragraphs 204–11.

[7] Judgment, paragraph 67. I'm currently preparing perjury charges for the criminal prosecution of Nair and other officers for their numerous lies told under oath in this matter to date, and collecting further evidence for this purpose using PAIA. Predictably, nearly all my first three PAIA requests filed after trial were illegally refused on legally spurious grounds, and three applications I've brought to compel are currently pending. I'm awaiting responses to four subsequently filed further requests. I've just discovered from the SAHRC that LASA has once again failed to report its refusals in its 2013/14 report as required by section 32 of the Act, and has concealed its reliance on entirely irrelevant and incompetent sections of it. Despite having been previously censured by the SARHC and taken to task by the Portfolio Committee for this (record, page 472, lines 4–25 to page 477, lines 1–7), it's now the third time that LASA has falsely and deceptively reported to the SAHRC for the misinformation of the National Assembly in turn, to conceal its illegal refusal of my PAIA requests to suppress documentary evidence of corruption in executive management.

[8] Ibid.

[9] Judgment, paragraph 69, last sentence for instance. (By the way, contrary to the judge's misdirected and irrelevant finding here, it was not my case that Nair knew of my background other than from my CV, and later my letter to Vedalankar in July 2010 detailing it further – the first he pretended not to have read until more than a year after receiving it (record, page 416, lines 19–25 to page 417 lines 1–2), and the second he pretended to have stopped reading at precisely the point it began dilating on my political background (record, page 460, lines 3–25 to page 461, lines 1–5); but this latter lie is exposed by his different story to the Minister and to Parliament in the reports to them that he wrote for Mlambo JP to sign and submit to them, which he later repeated even more precisely on affidavit: heads, paragraphs 153–7.)

[10] Application, paragraphs 317–322.

[11] Refusal, paragraph 5.

9. My contentions on the law of costs in unsuccessful constitutional litigation brought to vindicate a fundamental right likewise went completely ignored. That matter alone is eminently fit for appeal, particularly because the judge gave no reasons for condemning me in costs.[12] Which is to say to penury for the rest of my life.

10. Notwithstanding the mountain of papers[13] and the duration of the trial,[14] the case was really quite simple to anyone paying attention.[15] Pared to the bone, here it is:

11. In November 2009 I was interviewed for LASA's top professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg (there's a twin post at Durban) – repeatedly advertised, and twice in the year that I applied for it. Five strangely silent and glaringly unprofessional months later, I telephoned LASA's national Human Resources Executive Amanda Clark to ask the result. (Nair was out of head office the day I phoned.) She replied she knew nothing about me or the recruitment, helpfully undertook to expedite it, and cheerfully encouraged me to contact the provincial HR manager for updates. I did, but on later finding him no wiser, I reverted to Clark. (Nair was now back.) This time she avoided and didn't return my repeated calls made over several days, with messages left for her. So at last I emailed her, pleading for information about the upshot of the interviews one way or the other, as I needed to settle my plans. She answered stunningly rudely[16] and with studied disingenuity and opacity, and in as many words told me to get lost and not to contact LASA again. Her insolent proposal that I withdraw my application for the post back-handedly confirmed to me that I'd been selected for it, but announced

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[12] In view of his criticism of Morris and Fourie in their case against LASA he'd recently decided (law and case bundle, pages 94–7), in which he'd deprived them of part of their damages, I pertinently enquired of the judge during oral argument whether there was anything about my conduct in the litigation that he thought remiss, so that I might address it and defend myself before he made any possible adverse finding about it. There was nothing. In awarding costs against me, seemingly in line with the general rule that costs ordinarily follow the result, the judge parroted the language of the costs order made in the Germishuys case (Case 10 in LASA's List of Authorities, and cited in footnote 15 of the judgment) – a very different case from mine, in which some disgruntled white woman thinking herself better than a black candidate selected for a post complained of unfair race discrimination without any evidence of it at all. In contradistinction, the judge extensively enumerated (his paragraphs 30–41) all the objective indiciae pointing to unfair discrimination in my case – in the absence of a convincing non-discriminatory reason proved by LASA for aborting my appointment. He accepted I'd made out a prima facie case for such a finding, which is why he dismissed LASA's application for absolution after my evidence. See further, record: page 480, lines 1–25 to page 482, lines 1–22 (Nair clearly dissembling in reply).

[13] Heads, paragraph 6: all the papers in the case are described and catalogued here.

[14] Nine days, 23 July to 2 August 2013.

[15] See paragraph 47 below.

[16] The redacted excerpts quoted in the judgment don't fully convey her snarling tone. The full email is included in my trial document bundle, at page 256.

that I wasn't wanted – especially in light of the exceedingly unpleasant tone of her email, a total reversal of her initial open, impeccably professional, friendly one. Plainly, something seriously improper was afoot.

12. After three further strangely silent months I wrote to CEO Vedalankar, pressing for the finalization of my appointment. Nair answered on her behalf, baldly alleging that it had been decided not to fill LASA's Senior Litigator posts. Now naturally, had LASA duly taken this decision – not to fill one third, 3/9, of LASA's most senior specialist professional positions – there'd have been a record of this, for as Cachalia JA has pithily observed:

> 'Surely there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [officials in the Presidency] are people of standing and they will never mislead, just like [then US Secretary of State] Colin Powell never misled the Security Council [over Iraq's alleged possession of "Weapons of Mass Destruction"]?' – 'State grilled over "secret" Zimbabwe report', *Mail & Guardian*, 26 November 2010.

13. So I tested Nair's claim with a comprehensive request for records under PAIA. It was refused in toto, under cover of a fake misquotation from a reported judgment claimed to justify this, and another bogus ground, later abandoned. And here we reach the point:

14. In her letter illegally refusing my request, Vedalankar justified the cancellation of my recruitment on the basis that:

> '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. ... Therefore the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.'

15. Advanced to me nearly a year after my interview, as I was closing in with PAIA, this was LASA's forced justification for aborting my appointment: budgetary insufficiency, affecting not just mine, but two other equivalent posts.

16. It was an audaciously grand, impressively detailed and ostensibly convincing story. And uttered by none other than the CEO, who would disbelieve it? Again I tested it with another searching PAIA request. Again it was illegally refused; Vedalankar even rejected

my prescribed request fee. But annexed to her letter refusing my second request, she put up some documents claimed 'to demonstrate' her story, and intended to put me off for keeps. Only, they didn't. They flatly contradicted it. This is what they revealed:

17. In January 2010 the Department of Justice and Constitutional Development (as it was then called) had confirmed to LASA that funding for phase 1 of the OSD scheme for professional staff salary increases would be included in its baseline budget for 2010/11. The Treasury confirmed it too. But on 10 March LASA learned that it hadn't been. So Vedalankar wrote to the Department a week later, raising LASA's concern about this and noting that since it had already commenced implementing OSD phase 1, LASA would be running an unbalanced budget without this funding: R23.8 million in the red – prohibited by the PFMA. She sent a reminder the following month, warning that unless the money was paid, LASA would have to reduce court coverage, causing backlogs and delays.

18. Vedalankar was referring to LASA's public defender posts serving the lower criminal courts at the bottom of LASA's professional staff establishment – not any other higher professional posts and certainly not Senior Litigator posts at the very top of it – and she and other management executives, Nair included, were explicit about this later on. (She meant reduce in the sense of not fill all the budgeted lower court posts; it's common cause no posts were ever cut.)

19. To interpose: LASA's annual and performance reports to Parliament which I independently sourced and analysed showed that its concern about when its OSD phase 1 funding for the year would be paid made zero difference to its recruitment of legal and other staff. Quite the contrary, this spiked in the April to June 2010 first quarter,[17] and masses of new posts were created.[18] And the reason this boom in new staff recruitment and new post creation occurred in the implementation of the Strategic Plan was because, contrary to Nair's lie in court about it[19] – he later reversed himself[20] and then again[21] (the judge didn't notice) – there was never any question that LASA's OSD phase 1 funding would be paid; the only question was *when* – because it had been paid in the previous financial year, also separately from the main budget transfer, and

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[17] Record, page 423, lines 3 – 25 to page 425, lines 1–9. Nair waffles uselessly trying to evade the sharp point.

[18] Record, page 370, lines 17–18 and page 371, lines 6–8. Lying stupidly in the teeth of LASA's own statistics, confirmed and admitted by LASA before trial, which showed that in the first quarter alone almost as many new posts were created as in the whole of the previous year, Nair repeatedly denied that LASA's staff establishment had increased during the year, and claimed it hadn't changed.

[19] Record, page 344, lines 14–16.

[20] Record, page 420, lines 23–5 to page 421, lines1–3.

[21] Record, page 464, lines 17–20.

AR JB

afterwards. And the Minister had assured LASA that it would be provided for in the mid-term national budget later in the year, as indeed it was. That is, the money was on its way, and no doubt about it.

20. The OSD uncertainty arising on 10 March 2010 made zero difference to Senior Litigator recruitment specifically: I later found out that two weeks later, while my appointment lay in the deep-freeze, Nair and his Legal Services Technical Committee (LASA's operational engine-room)[22] resolved to recruit a Senior Litigator for Mthatha, and ordered that the budget for it be transferred from Kimberly and that the new post be advertised immediately. As it was:[23] the post was advertised in April, and a recommendation was made in late May – six months after my recommendation the year before and nothing done to finalise my appointment.

21. As the records Vedalankar supplied me show, by July 2010 the OSD phase 1 money wasn't yet in, so Nair suggested to her, the COO, CFO and HRE that recruitment to 56 lower criminal court public defender posts be frozen, more of them if necessary and some even lighter paralegal and administration posts if still necessary after that to meet the shortfall. Not any senior posts. They agreed, and proposed to the Board via the COO[24] that public defender coverage of the lower criminal courts be temporarily limited, in other words that recruitment to some of these vacant posts be frozen – but not any other posts, and certainly not any critical ones. Quite the opposite: they specifically proposed to the Board that as a cost-saving measure the filling of critical posts be prioritized.[25]

22. To interpose again: Contrary to the judge's flat wrong finding that I hadn't shown Senior Litigator posts were critical,[26] this was common cause on the pleadings.[27] Nonetheless, in view of Nair's unbelievably foolish dissimulation at trial – he was a pathetic liar[28] – contradicted by the documentary record and by LASA's pleaded case, that LASA's entry-level lower criminal court public defender posts were critical, and not its top

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[22] Record, page 334, lines 5–16.
[23] Record, page 456, lines 4–6.
[24] Record, page 383, line 19.
[25] Record, page 375, lines 1–4.
[26] Judgment, paragraph 74. C.f: record, page 481
[27] Pleadings bundle, original response, page 170, paragraph 48.9 and pre-trial conference bundle, answer to agenda, page 57, paragraph 43.1, and page 58, paragraph 52.1. (The respondent then contradicts itself in the same pleading: page 63, paragraph 79.1.)
[28] The judge, formerly a criminal court magistrate, didn't remark generally on Nair's repeated immaterial and redundant loquacity as a device to avoid answering my questions, and his constant evasiveness throughout my cross-examination of him.

AQ JA

professional echelon specialist Senior Litigator posts,[29] I showed at trial[30] and called the judge's attention in my heads to all the manifold evidence that Senior Litigator posts are indeed critical, and that the bottom-rung lower criminal court posts can't possibly be and aren't.[31] The judge evidently didn't read that far.

23. At its meeting at the end of July 2010, the Board approved national executive management's proposal to temporarily freeze recruitment to some lower criminal court practitioner posts until the end of the year, and to make up the balance of the deficit at that time (arising from the delayed transfer of LASA's OSD phase 1 funding) from unspent savings. I later discovered that recruitment to other posts continued normally in the second quarter July to September 2010; and that the effect of the approved freeze was to dampen the overall increase in staff recruitment, as compared with the preceding and succeeding operating quarters.

24. All this is fully and comprehensively documented in the records Vedalankar supplied me in January 2011. And what they unequivocally show is that she lied to me in October 2010 about the reason my appointment was aborted. That is, to camouflage the true reason, she'd fed me a false cover-story, as very smooth and convincing as it sounded. But as I probed and tested it relentlessly, it came undone in light of the extant documentary record and the non-existence of records that would have existed had the budgetary story given me been true. The lies then multiplied chaotically in all directions in the classic dynamic of a disintegrating cover-up.[32]

25. At trial I mentioned my conclusions from the evidence I'd just found of this[33] that Nair had ghost-written Vedalankar's letters,[34] and Board chairperson Mlambo JP's subsequent false reports to the Minister and to Parliament to pervert their enquiries into my

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[29] Record, page 373, lines 21–5 to page 374, line 1; page 375, lines 10–11; and page 480, lines 19–24.

[30] Record, page 481, lines 2–22.

[31] Heads, paragraphs 229 and 160. A pending PAIA request I've filed for a list of all LASA's critical posts, both filled and vacant, the sum of which (there are only about two hundred or so) LASA reports annually to the Minister and to Parliament, will further clinch the issue and expose yet another of Nair's obvious lies on oath at trial, which the judge accepted and believed.

[32] Heads, paragraphs 142 and paragraphs 205–6; and record, page 502, lines 11–24. After trial, Nair's confirmatory affidavit surfaced, in which he'd confirmed the lie told by Corporate Services Executive Thembile Mtati on his instructions: application, paragraph 227; and record, page 393, lines 18–25 to 394, lines 1–22.

[33] Heads, paragraphs 233–4.

[34] After trial, I noticed the evidence that junior counsel drafted Vedalankar's second letter, having been briefed to deal with my PAIA requests (per Mtati on affidavit, confirmed by Nair). I've PAIA'd his fee-notes and expect they'll confirm it. But there's little doubt on the evidence that Nair ghostwrote Vedalankar's first letter, and lied to the judge in denying it, just as he eventually admitted (initially disputed) ghostwriting Mlambo JP's reports to the Minister and to Parliament.

AA ID

complaints, and that for this reason I held them both clear. But in his evidence, Nair denied any hand in Vedalankar's letters to me;[35] and although in evidence he ultimately admitted[36] writing Mlambo JP's reports, he could 'only assume the Judge personally wrote that'[37] (having first insinuated it might have been Vedalankar[38] and then again)[39] i.e. that Mlambo JP had amplified the report for the Minister before sending it to Parliament, with its further lies added about LASA's compliance with my three PAIA requests, and the nature and scale of my claim I'd just referred to the CCMA for conciliation.[40] (It's quite clear that Nair lied to the judge about this, and that he, not Mlambo JP, amplified the report with these additional lies.)[41] This is to say, after I'd told the judge that I held them clear (more about this below), Nair went on to directly implicate Vedalankar and Mlambo JP in lying to me, to the Minister and to Parliament.

26. True to the Minister's assurance, the OSD money was indeed included in the mid-term budget in October 2010, as Vedalankar informed the Portfolio Committee on the 12th – but not me, from whom she concealed this hotly material fact in her letter to me six days later, the better to maintain her pretence that LASA was still too skint to hire me.

27. Recruitment to the limited number of temporarily frozen lower criminal court posts then resumed in the third quarter October to December 2010, and all 100% of the posts were filled; and the increase in new staff recruitment generally then peaked for the year. But my appointment remained permanently frozen off the record, as well as the two other vacant Senior Litigator posts at Durban and Mthatha – although the irregular circumstances in which the appointments to these posts were aborted, also off the record, were quite different.[42]

28. LASA received its OSD money on 15 December 2010. In her second letter to me in January 2011, illegally refusing my second PAIA request testing her financial alibi for the abortion of my appointment, not only did Vedalankar conceal this payment from me, she positively lied to me, again and again, that LASA was still in a financial jam.[43] In fact, with

[35] Record, page 442, lines 5–25 to page 445, lines 1–24.

[36] Cross-examining me, LASA's counsel persistently disputed Nair's authorship of the false reports signed and submitted by Mlambo JP. I don't yet have the complete record to refer to herein, only a photocopy of Nair's evidence made for me as a favour by the registrar. I've now applied for a copy of it under PAIA.

[37] Record, page 355, line 1.

[38] Record, page 354, lines 1–3.

[39] Record page 482, lines 18 – 25 to page 483, lines 1–21.

[40] Heads, paragraph 234.

[41] Heads, paragraph 235.

[42] Heads, paragraphs 178–9 and 188–204.

[43] Heads, paragraph 29.

AR JD

the payment of its OSD allocation, LASA enjoyed a very substantial budgetary surplus that year.[44] (And Vedalankar, Nair and other national management executives took home magnificent, unprecedented bonuses.)

29. In March 2011, responding to my third PAIA application, Vedalankar, Nair and Clark all confirmed the lying budgetary excuse on affidavit. That is, LASA's CEO, NOE and HRE all swore the lie was true.

30. Even though it was already obviously false, the financial alibi was inadequate to cover and explain Nair's inaction in finalising my appointment in the initial three-and-a-half month period between the date he received my recommendation on 26 November 2009 and when the OSD uncertainty arose on 10 March 2010. So to patch the gap he concocted another story – later twice retracted by him on affidavit[45] as an obvious error, and consequently nowhere pleaded or alleged in any interlocutory affidavit,[46] then revived by him in court on the basis that his sworn retraction had been a mistake,[47] then contradicted with a different story he told the judge.[48] Who didn't think to note any of this dismal shambles in his judgment.

31. Repeatedly pleading for the Board's intervention in Vedalankar's persistent illegal refusal to comply with my PAIA requests, and the then already clear indications that my appointment had been aborted irregularly, I copied my third petition to the Board in February 2011 to the Minister and to Parliament. Both the Minister and the chairperson of the Portfolio Committee demanded explanations from chairperson Mlambo JP. He referred the matter to Vedalankar, who passed it to Nair. In his reports written for Mlambo JP to sign and submit to pervert the ministerial and parliamentary enquiries I'd initiated, Nair now claimed that what initially held up the alleged next step in my recruitment – a so-called second round interview – was difficulty encountered in coordinating a date suitable for all members of this panel to meet. Another smooth and ostensibly convincing story. After I exposed and refuted it as an outright lie in my original statement of claim, Nair retracted it on oath as 'an error ... palpably an error' that

[44] Heads, paragraph 30.

[45] By way of a confirmatory affidavit supporting Mtati's affidavit claiming this on his instructions.

[46] LASA's several interlocutory affidavits all essayed into the merits of the main case.

[47] Record, page 477, lines 23–5 to page 478, lines 1–6.

[48] Record, page 339, lines 18–25 to page 341 lines 1–25.

Mlambo JP had made.[49] Except that Nair himself was the author of this brazen lie to the Minister and to Parliament; it was not Mlambo JP's 'error'.[50]

32. But Mlambo JP knew full well that this new story was false, because as a member of this so-called second round interview panel he'd never been contacted for a date. At trial Nair claimed, quite absurdly, that he never opened the recommendation and CV email attachments that he'd specially telephoned for, not until more than a year later, when he did so out of simple curiosity. (The judge found this perfectly credible, even though Nair had told a different story on affidavit before trial, which destructive contradiction I pressed in my heads.[51] The judge didn't note this, and accepted and believed[52] Nair's childishly obvious, self-contradicted new lie told in court, which had featured nowhere in any correspondence, report, pleading or affidavit before trial, all justifying LASA's failure to proceed with my appointment. This was one of the fundamental failures of the judgment.)

33. Fact is, Nair took no steps to set up the so-called second round interview. So, contrary to his lie told to the Minister and Parliament in Mlambo JP's name about this, there was no difficulty fixing a date for it because no attempt was ever made to do so. As said, when I telephoned Clark, also a member of the so-called second round interview panel, in April 2010, five months after my successful interview, she still knew nothing of me and my recommendation or of the KZN Senior Litigator recruitment process. Which means, like Mlambo JP, Nair hadn't approached her for a date either. So Mlambo JP knew full well that the report, which Nair had written for him to sign and to give the Minister and the chairperson of the Portfolio Committee to put down my complaints and pervert their independent enquiries contained a flagrant lie about why no steps were taken to finalise my recruitment in the first few months before the OSD uncertainty arose several months after my selection.

34. Mlambo JP also knew full well that the budgetary justification Vedalankar had fed me to cover the true reason my appointment had been aborted, which Nair repeated in the reports he drew for him, was another lie, because he'd chaired the meeting of the Board in July 2010 at which it approved executive management's proposal to trim costs by temporarily freezing recruitment to some lower criminal court posts only. Not abort three substantially concluded Senior Litigator recruitments and permanently freeze the

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[49] See footnote 37, and the footnote below for particulars.

[50] Heads, paragraphs 143–4.

[51] Heads, paragraphs 153–7.

[52] Judgment, paragraphs 67 and 70–2.

AR 10

budgeted, funded posts. Mlambo JP knew full well that the Approval Framework required Board approval for any change to the Business Plan, which is why Board approval had been sought to temporarily freeze recruitment to some lower criminal court posts. He knew full well that no lawful decision had been taken to permanently freeze three Senior Litigator posts for budgetary reasons, because the Board he chaired would have had to approve this. It's common cause on the pleadings that it never did, and that the Board has never even been informed that LASA's three remaining vacant Senior Litigator posts, for whose budgeted salaries LASA applies to the Department and is granted funding every year, have been frozen by Vedalankar and Nair for alleged financial reasons. It's common cause that there's no record of this major alleged decision by executive management whatsoever.[53] Deceptively silent about it, Vedalankar repeatedly falsely reported LASA's Strategic Plan 2009/12 to have been implemented and completed as regards the employment of Senior Litigators in her CEO report for 2011/12 to the Minister and the National Assembly.[54]

35. My discovery on the eve of trial of the evidence that Nair had ghost-written Vedalankar's October 2010 letter to me and Mlambo JP's reports to the Minister and to Parliament[55] felt like a condemned man's reprieve: having to implicate Mlambo JP in my evidence at trial was a mortifying prospect.[56] My discoveries about Nair's authorship led me to inform the judge on the first day that I held them clear, and that I held Nair solely responsible for the lies these documents contained.[57]

36. In his chambers on the second day, when I told the judge I still had a lot more evidence to lead, having already blown the fake budgetary pretext to pieces on the facts set out in my Timeline, he warned me: 'I don't want to tell you how to run your case, but don't make the mistake of throwing your net so far out that you catch more than you can bring in.' These were his exact words, spoken off the record, but contemporaneously recorded that evening in emailed reports of the court day to my family and friends. I understood the judge was giving me an indication, as we lawyers say, and a severe indication at that, namely to limit the spray of my case, and keep it fixed on Nair alone, as I'd indicated I intended doing at commencement, and not present any further evidence implicating the big fish; for if I dared make the dangerous mistake of doing so, this would be too much, and it would doom my prospects of succeeding in his court with my claim. It seemed clear

[53] Record, page 427, lines 6–14; page 433, lines 2–9; and page 433, lines 2–25 to page 434, lines 1–2.

[54] Heads, paragraph 84.

[55] Application, paragraph 229; heads, paragraphs 223–4.

[56] See paragraph 48.

[57] Application, paragraph 230.

AR JA

to me that the judge wanted the evidence contained. He did not want me to lead more evidence pointing beyond the smaller fry. But as said, Nair himself went on to directly implicate his bosses. He dropped them right in the middle of it.

37. Besides the false claim that LASA didn't have the budget to employ me, Vedalankar, Nair and LASA's Corporate Services Executive and lead in-house attorney Mtati (on instructions) told a colourful variety of other different stories about why my appointment wasn't proceeded with.[58] Among these:

38. After I'd discredited the budgetary pretext fed me for not appointing me, and then the initial delay pretext fed the Minister and Parliament for not immediately proceeding with my appointment, Nair cooked up and fed the Board two brand-new, totally different stories to justify his failure to finalise my appointment at Pietermaritzburg, an internal candidate's promotion at Durban, and another internal candidate's transfer to Mthatha, namely 'recruitment challenges' encountered in filling the posts, and alleged uncertainty that the six incumbent Senior Litigators were up to professional scratch.[59] Both lies.[60] Waffling feebly,[61] Nair was unable to support his first new story[62] and radically changed his second,[63] before which it was repeatedly exposed as a lie by LASA's records.[64]

39. The judge didn't see any significance in all the chopping and changing stories advanced for not finalizing my appointment, to which I called his attention in my heads, for he didn't note them in his judgment. The Labour Appeal Court is sure to.

40. Unlike the judge who didn't note this either, the LAC is likewise certain to point up the destructive implications for LASA's pleaded defence of Nair's abandonment of a major leg of the story initially fed me; confirmed in his, Vedalankar's, and Clark's PAIA affidavits; and repeated in the pleadings and interlocutory affidavits in the case, namely that for budgetary reasons the Mthatha Senior Litigator post was frozen simultaneously with the

[58] Heads, paragraphs 142, 205 and 206; and record, page 502, lines 11–24. But in his confirmatory affidavit surfaced after trial, Nair had confirmed the lie.

[59] Record, page 359, lines 17–25.

[60] Heads, paragraphs 213–15 and 224–5.

[61] Record, page 360, lines 1–15.

[62] Record, page 398, lines 11–25 to page 399, lines 1–22. And there's never been any suggestion anywhere at any time that the internal candidate selected for promotion to the Durban post wasn't qualified and a good fit for it. As for my qualifications for the post (not a pleaded issue for trial), Nair first dishonestly pretended I'm under-qualified, then dishonestly pretended I'm over-qualified: heads, paragraphs 99–101 and 221; record, page 360, lines 16–25 to 361, lines 1–22. The judge didn't note this.

[63] Record, page 435, lines 9–19. Changing it to pretending that he and the ROEs were concerned that 'we are achieving out purpose with that position' – but being untrue, naturally 'No ... record of this'.

[64] Record, page

Pietermaritzburg one.[65] In court Nair told a completely different story, namely that despite his repeated attempts to persuade her, Vedalankar refused to approve the creation of the post at Mthatha,[66] where it was reportedly sorely needed,[67] after the entire LSTC had unanimously resolved to create it and to transfer the budget from Kimberly, where there was reportedly no need for it,[68] and after the new Mthatha post had been advertised, interviewed for, and a candidate selected for it. It was a risible new lie, sharply contradicting LASA's pleaded and sworn version before trial, unsupported by any record,[69] not alleged in any affidavit or pleading,[70] and contradicted by LASA's recruitment/vacancy statistics for June 2010.[71] But Nair's new lie in evidence made no impression on the judge; as said, he didn't mention it.

41. The LAC is also certain to treat an important aspect of the case, entirely disregarded by the judge[72] (notwithstanding his fine grasp of the specifics of public service appointment procedure displayed in his Baxter judgment),[73] namely Nair's incompetent and illegal so-called second round interview scheme for Senior Litigator candidates – unauthorised by the Board's Recruitment code and inconsistent with its Approval Framework.[74] Unlike the judge, the LAC is certain to remark on the disgraceful breakdown of lawful recruitment procedure at LASA, in blatant disregard of the Board's said regulatory instruments which precisely govern this, and on Mlambo JP's participation in a grossly irregular, prejudicial, and unlawful recruitment practice.[75]

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[65] Heads, paragraphs 188–193.

[66] Record, page 365, lines 10–25 to page 366, lines 1–9.

[67] Record, page 401, lines 7–12.

[68] Record, page 363, lines 8–25 to page 364, lines 1–9 and page 402, lines 3–9.

[69] Record, page 436, lines 8–19 and page 490, lines 6–24.

[70] Record, page 490, line 25 to page 491, lines 1–8.

[71] Record, page 399, lines 9–21.

[72] Judgment, paragraphs 73–4.

[73] Law and case bundle, pages 94–7.

[74] Heads, paragraphs 90–8.

[75] The LAC is also likely to remark on the shocking irregularity of Mlambo JP allowing Vedalankar, the very subject of my complaint to him and the Board about her illegal refusal to comply with my first PAIA request and the indications that her budgetary pretext was false, to fake a letter from him on her own computer while he was abroad, dismissing my 59-page petition in a single sentence, with an scanned image of his signature pasted below it (with his consent, LASA pleaded). Looking the other way as I protested and showed my fundamental rights were being violated. Then, when I petitioned the Board again, insultingly showing me the road and telling the rest of the Board to ignore my further communications. Then defaming me to the chairperson of the Portfolio Committee, in his letter covering his lying report, when I petitioned the Board for the third time, now copying the Minister and Parliament.

42. His lies proliferating in court as he was trying to shore up his collapsing story about why he never signed his approval (or disapproval) of my recommendation by the selection panel as the Approval Framework required of him, and as provided at the foot of the document (with its legal nonsense, at his instance, about a further interview), Nair claimed in court that he didn't have to – a lie repeatedly and squarely contradicted by LASA's pleadings and interlocutory affidavits.[76] The judge didn't note this; again the LAC is sure to.

43. Unlike the judge who accepted and believed it, the LAC is also sure to find stupidly ridiculous and manifestly false Nair's evidence, building on his just-mentioned lie, but again explicitly contradicted by LASA's pleadings and interlocutory affidavits,[77] that all candidates interviewed by the selection panel were eligible for interviews by his so-called second round interview panel, including those rejected and eliminated by the selection panel, and that a candidate rejected by the selection panel could properly have been appointed instead of me[78] – stultifying the whole purpose of the selection process by the selection panel comprised of LASA's most senior lawyers in the region: to identify the most suitable candidate for appointment, as the Recruitment code puts it.[79]

44. The LAC is certain to find Nair's evidence to have been obviously untruthful just about whenever he opened his mouth. On a proper allocation of the final burden of persuasion to LASA, therefore, the LAC is certain to find that LASA failed to justify its abortion of my appointment to the Pietermaritzburg Senior Litigator post for which I'd been unanimously recommended. It failed to do so, because its various explanations given were obviously untrue. So what?

45. Pioneered by the U.S. Supreme Court, there's a finely developed body of international labour jurisprudence, supported by the ILO, and therefore binding on our labour tribunals, regarding what inference may properly be drawn where it's been shown that an employer has lied (or its explanation is not worthy of credence) about its reason given for not hiring a job applicant belonging to a constitutionally protected class (racial, political, etc). Copying and pasting from my heads, the judge very ably set this law out in his

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[76] Record, page 502, line 25 to page 503, lines 1–25; heads, paragraphs 146–7.

[77] Heads, paragraph 148.

[78] My manuscript note of Nair's evidence on which I relied for the above-mentioned paragraph of my heads was off; Nair alleged that all candidates were eligible for his so-called second round interviews, not that all would necessarily be interviewed again: record, page 349, lines 7–15 and 21–3; page 350, lines 10–11; page 407, lines 13–17; page 408, line 25 to page 409, lines 1–25 to page 410, lines 1–2 and 10–12; and page 450, lines 7–10.

[79] Heads, paragraphs 90–8.

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judgment.[80] Doing the same, he also accurately set out the facts I presented placing me in such a class.[81] He didn't demur at my evidence that in applying for the post I'd been vulnerable to unfair political discrimination.

46. But instead of applying the law that he'd enunciated, and proceeding to draw the due inference indicated by the evidence – the known facts and the exposed and obvious lies – the judge dismissed my claim to have been unfairly discriminated against on political grounds as 'mere speculation'.[82] As if I'd not set up a plausible, prima facie case for it – all I was required to do under international and local unfair discrimination law – answered with one lie after another. Yet during oral argument, the judge took my point and taxed LASA's counsel with it: that an employer's mental prejudice against a job applicant is rarely announced, precisely because it's unconstitutional and therefore gravely illegal, and must therefore invariably be inferred from a conspectus of all the available evidence, weighed with the probabilities.[83] Besides the pivotal evidence I presented that the various justifications advanced for not appointing me were false and pretextual, the judge entirely failed to consider all the other evidence indicating unfair discrimination reviewed in my heads.[84]

47. To conclude: In bringing my claim against LASA I was aware I was breaking three basic rules: never sue a corporation, never represent yourself, and never sue from principle. But I thought the principle extremely important in our post-apartheid order – that a job applicant should not be prejudiced by his political activism, driven by his moral and social conscience, no matter how opprobrious his cause is generally perceived to be – and that my case was so clear that any attentive judge would grasp it. I did not expect the judge to

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[80] Judgment, paragraph 66.

[81] Judgment, paragraphs 30–41.

[82] Refusal, paragraph 5.

[83] I should disclose that documents that came to hand after the trial, considered with others I already had, point at possible corruption in the selection process; in that although I'd been formally, unanimously 'identified' in the recommendation as 'the most suitable candidate for appointment', as the Recruitment code puts it, it may have been intended to appoint a rejected candidate instead: a former Labour Court judge. And this is why my appointment was quietly iced, until I walked away, making way for his appointment in my place. (Recruitment corruption at LASA is commonplace: the previous recruitment for the same post had also been irregularly aborted off the record after the due selection of a suitable candidate by the selection panel; and I've uncovered corruption in other recruitments I've looked at, including the Mthatha Senior Litigator one, a sham for the books.) I'm investigating this possibility with a pending PAIA request, but I'm not optimistic that the records it will elicit will be decisive. So I'm not charging that the selection process was corrupt, and that my appointment wasn't proceeded with for the reason that the said rejected candidate had been favoured for appointment behind the scenes instead of me, because the evidence I have suggesting this is currently too light. If this changes, the LAC will certainly be told.

[84] Heads, paragraphs 246–7.

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be nodding off during the afternoon sessions,[85] and finally claiming perversely, but revealingly as to his negative animus, that I ought rather to have taken LASA's abortion of my appointment 'on review'.[86] As if I shouldn't have come bothering him to deliver the justice I craved, and had laboured bitterly year after year before trial to achieve, in the face of every obstacle corruptly placed in my way,[87] viciously defamed all the while, contemptuously redoubled when I complained of it.[88] In a matter of such enormous importance, and with so much on the line extending far beyond my personal interest in the case, and with so much fact to traverse and complex argument to present, including relevant, applicable international labour jurisprudence mentioned in my opening address, I did not expect the judge to prescribe that our heads shouldn't exceed a manifestly insufficient 'fifteen to twenty pages',[89] suggesting that he'd already made up his mind to toss my case. I did not expect that five months after I filed my replying argument,[90] the judge hadn't even troubled himself to read our heads,[91] and was hearing our oral

[85] I have an audio recording of the trial on DVD, capturing my repeated unnatural pauses as I waited, horrified, for the judge to reopen his eyes and come to. He was literally half-asleep at times. I dared not risk offending him by asking him to take a coffee break to wake up.

[86] Judgment, paragraph 74. I had no cause of action for any review, and duly referred my complaint to the CCMA and then the Labour Court in compliance with the procedural prescripts of the EEA.

[87] Heads, paragraph 256.

[88] Heads, paragraphs 260–5; record, page 485, lines 4–23. Reckless of their professional obligations as officers of court, LASA's counsel themselves put the boot in, wantonly lying to the judge in their answering heads that my precisely accurate CV was 'grossly inflated', which is to say I'm a liar guilty of CV fraud. (Mokoena SC, who argued the case in court, came into the matter after all heads had been filed, and did not draw the answering heads; and he's consequently innocent of this final defamation of me by LASA's counsel, calculated to defeat the ends of justice by prejudicing the judge against me with more lies to make me appear dishonest and therefore an unreliable witness.)

[89] At the end of the trial, the judge asked for heads of argument comprising four sections, 'background, evidence, analysis and conclusion', i.e. in the form of a draft judgment, so he could 'copy and paste from them', 'to expedite judgment production': a fine idea. But he stipulated not more than 15–20 pages: a hopelessly inadequate, improper and prejudicial limitation imposed on me after such a long and important trial with so much oral and documentary evidence and local and international unfair discrimination jurisprudence to canvass and discuss. Unpicking and refuting LASA's many outright lies and tricky half-truths and cataloguing all the contradictions was an immense job, as will be apparent from a look at my heads. After drawing them, as finely detailed as necessary, comprehensively and meticulously referenced to the documentary record, pleadings, affidavits, to the evidence (my notes), and to my law and case bundle, I prepared an unreferenced summary of 20-pages as directed; but I emphasized both in its head-note and at the oral argument that it was no substitute for my heads. From his several mistakes in the judgment identified in my application in regard to several simple facts dealt with in my heads, it seems the judge didn't read them through.

[90] On or about 6 December 2013 (date of signature).

[91] In his chambers before oral argument on 28 May 2014, the judge said jocosely: 'I think you can assume I'm literate and will read your heads.' The oral argument was set down for three days, 28–30 May, but on the basis just quoted the judge asked us to merely outline our main points; and in the result the oral argument wasn't

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argument without having prepared for it[92] ten months after the evidence, and relying only on his fading and defective memory of it[93] presented in the course of a nine-day trial concluded the best part of a year earlier. In giving judgment, I did not expect the judge to misstate my case, omitting critical facts and including irrelevant matter, [94] and portray as maladroit and whimsical my precisely considered tactical and strategic decisions taken,[95] wrongly forced by him on the record[96] and improperly pressed by him off it.[97] I did not expect the judge to sugar Nair's lies for his judgment, by stretching and exaggerating them to help them go down.[98] And that besides getting the final onus wrong, he should also have placed on me an impossible, pivotal, evidential onus I very obviously didn't bear and couldn't possibly have discharged.[99] And finally after the trial trucking with LASA without my knowledge in unfavourably disposing of my plea for his directive that it hand over the extra copy of the trial record transcript it had printed for me.[100]

48. As said in the beginning, the stakes in this case are massive, and the implications vast. Professional and personal networks and loyalties being what they are in the real world, I appreciated from the outset that I was up against very long odds, and that notwithstanding his oath of office it would be no easy thing for a judge to impeach the conduct of his own (then) court president, and now president of the biggest, most

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long. I repeatedly emphasized during argument that my case was made in my heads, drawn in the form of a draft judgment, as he'd unambiguously implied after the trial he'd wanted. And that my barest sketch of it in oral argument was no substitute. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment. Its paragraph 46 sets out a wrong, crude mishmash instead.

[92] At the end of the trial, the judge asked us to file written argument, saying that once it was in, he would want to ask us questions. I understood him to mean he'd read our heads, and question us on them. This didn't happen at all.

[93] As evidenced by the judge's many basic factual mistakes, identified in my application.

[94] Judgment, paragraph 46. Besides proof of pretext, the further evidence I relied to generate the inference that I was unfairly discriminated against, canvassed in paragraphs 246 –7 of my heads, wasn't recited in the judgment; its paragraph 46 sets out a wrong, crude mishmash instead.

[95] Judgment, paragraphs 29 and 68.

[96] His refusal to allow me to cross-examine Vedalankar, Clark and Board member du Rand, stated during the debate of LASA's failed applications on the first day to quash my subpoenas of them. On why I ultimately elected not to call Vedalankar, Clark and du Rand, and settled for affidavits by the latter two in lieu of their oral evidence, see heads, paragraphs 103–4.

[97] His veiled warning in chambers not to go after the big fish (paragraph 36 above).

[98] Application, paragraphs 269–72 and 262–7.

[99] Application, paragraphs 273–82; judgment, paragraph 67.

[100] Per Mtati's wrongly dated letter in October 2014, received on the 13th: 'Cele J, through his office, suggested that the Respondent accommodate the Applicant by providing him with the electronic copy of the record which the Respondent did.'

important high court in the country, and thereby trigger a gargantuan scandal. But the truth must out, and justice needs doing fearlessly.

49. The Judicial Services Commission's response to my complaint about Mlambo JP's perversion of Ministerial and Parliamentary enquiries into my complaints was that it was no concern of theirs, on the technical basis that it didn't involve judicial misconduct per se. My complaints to the Public Service Commission were passed on to the Public Protector, but in view of the then approaching trial my file was closed; and with the dismissal of my claim, there's small chance of it being reopened. These official doors having closed on me for setting matters to rights, your lordships' correct decision of this petition is tremendously important for the ventilation of the truth, and for law and justice in our country. An unattended[101] splinter, so easily removed,[102] has led to widespread gangrene at the top of a major public entity, generally perceived to be the jewel in the crown of the Justice cluster, and a model of good governance. The matter has reached a pivotal moment.

50. Having regard to the profusion of contradictory lies that have spewed out of LASA, including to the highest authorities, in the cover-up following the illegal abortion of my appointment, to get away with and escape accountability for it – successfully so far, like Nixon nearly did after Watergate – your lordships can expect absolutely any lie from LASA in its answering papers, any subterfuge to persuade you to shut down further enquiry into this matter by refusing this petition. Since in-house attorney Mtati acting on instructions[103] can offer you no more than hearsay about the case,[104] and hasn't stinted at committing the most grotesque, poisonous perjury on affidavit on Nair's instructions to prejudice me in the court's eyes before trial;[105] and since the judge found Nair to have

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[101] I petitioned the Board five times in all, plus individual members, plus the Board secretary, all to no avail.
[102] I repeatedly pleaded for a timely, conciliatory resolution before the thing escalated unnecessarily.
[103] Record, page 390, lines 16–21; heads, paragraph 135. When conversing amicably at court before the delivery of judgment, I urged Mtati to seek a personal exit strategy in view of the several false interlocutory affidavits he'd made on Nair's instructions, replete with lies, he shrugged: 'I'm only an agent.'
[104] Record, page 390, lines 6–11. Mtati was appointed Corporate Services Executive in LASA's national office as from 1 July 2010. It's common cause he wasn't party to any decision-making about the abortion of my appointment, and has no direct knowledge of it.
[105] Heads, paragraph 268. Mtati: '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 [Mlambo JP] at the South Gauteng High Court. [He] did not take kindly to the Applicant's conduct. In the face of litigation where the Legal Aid SA is represented this amounts to professional misconduct.' This lying defamation of me was the pure invention of a deeply cunning criminal mind, contrived to poison the court against me, in a bid to defeat the ends of justice (see further: application, paragraph 312). Which foul lie Nair supported with a confirmatory affidavit, surfaced after trial, only to meekly retreat from it

been untruthful under oath on any number of scores,[106] I respectfully entreat your lordships to require CEO Vedalankar, and not the former discreditable and unreliable persons, to depose to any answering affidavit under LAC rule 4(6) in regard to why I should be denied leave to argue my case before three senior, experienced, and attentive judges of appeal. At the centre of the case is the truth or otherwise of the budgetary insufficiency justification[107] for the abortion of my appointment to LASA's most senior professional position in KwaZulu-Natal, and it was Vedalankar who twice advanced it to me in her letters.[108] The prospect of being jailed for perjury may chill any inclination she might have to repeat under oath to your lordships the lies she told me. Like a helicopter, the unwelcome truth must eventually land, somewhere; and if you'll allow it, the proper place for it will be the Labour Appeal Court.

Dated at Eshowe on 7 December 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 7 December 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name: Jabulani Danisa

Address: Eshowe SAPS

Capacity: Policeman / LT /0613427-1

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in court when I disputed it, pointing out that I'd never seen or met Mlambo JP, had never set foot in the South Gauteng High Court, and didn't even know where it was: record, page 485, lines 20–25 to page 486, lines 1–17.

[106] Judgment, paragraph 67.

[107] Heads, paragraph 5.

[108] In her letters of 18 October 2010 and 28 January 2011 (trial document bundle, pages 101–7 and 210–58). Vedalankar is also well placed to deal with Nair's new story in evidence blaming her for aborting the Mthatha Senior Litigator recruitment, diametrically contradicting the reason she gave me in her letters and later confirmed on affidavit. She can also deal with Nair's denial in court that he was responsible for authoring her letters to me (writing or instructing), and his claim that he had no hand in them, despite all indications to the contrary. And that she or Mlambo JP, not him (Nair), added the further new lies inserted into the report to the Minister before it was submitted in 'updated' form to the chairperson of the Portfolio Committee some months later. The look of it is that Nair used Vedalankar in his cover-up. The time's arrived for a division, and the isolation of the rogue(s).

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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

Case Number DA21/14

In the matter between:-

ANTHONY ROBIN BRINK Petitioner

and

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S ANSWERING AFFIDAVIT TO THE APPLICANT'S PETITION

I, the undersigned,

THEMBILE VUYO MTATI

do hereby make oath and state that:-

1. 1.1 I am an adult male person employed a Corporate Services Executive in the employ of the Respondent with my principal address at 29 De Beer Street, Braamfontein, Johannesburg.

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102.3. The Respondent also disapproves of the condescending manner and blackmail which characterizes this application and the Judges of this court.

CONCLUSION

103. I submit that the Petitioner has failed to demonstrate the material aspect upon which this honourable court could upset the decision of the court *a quo*.

104. Accordingly, the Respondent prays that the above court dismiss this Petition with costs.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit that was signed and sworn to, before me, at Johannesburg on this the 22nd January 2015. 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

ZANELE CHAUKE
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403-2765

EG

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

ON PETITION

Case no: DA21/14

In re case no: D529/11

In the matter between

ANTHONY ROBIN BRINK — Petitioner

and

LEGAL AID SOUTH AFRICA — Respondent

NOTICE OF OBJECTION TO RESPONDENT'S OPPOSING AFFIDAVIT

To: Judge President Basheer Waglay, Labour and Labour Appeal Courts of South Africa, and to the judges designated to consider the petition.

And to: Legal Aid South Africa
c/o Durban Justice Centre
332 Anton Lembede Street
Durban
(Mr Ngcamu)

The petitioner, Anthony Robin Brink, hereby notes his objection to the respondent's opposing affidavit on the grounds that:

- it is out of time and non-compliant with Labour Appeal Court rule 4(6);
- comprises hearsay on all material points, unconfirmed and uncorroborated by the respondent's National Operations Executive and Chief Executive Officer directly involved in and having personal knowledge of the case;
- repeatedly contradicts the respondent's own case at trial, and in its pleadings, interlocutory affidavits, reports and correspondence;
- contains novel false claims not made at trial and in the respondent's pleadings, interlocutory affidavits, reports and correspondence;

- conflates unrelated and irrelevant facts and issues in a new manner at odds with the respondent's case at trial;
- is dishonest, misleading, and shot through with demonstrable perjury;
- employs red herrings to distract from the documented, objective facts inconsistent with and destructive of the defence version, which hard facts summarised in the petition the respondent entirely avoids answering;
- falsely disputes the trial court's finding that the respondent's single witness was shown to be repeatedly mendacious in his evidence; and further falsely disputes the petitioner's exact quotation of the judge's language in making this finding; and,
- repeatedly resorts to meretricious displays of high-toned indignation, baseless attacks on the petitioner's personal and professional integrity, obloquy, and derision to prejudice the court against the petitioner and to distract from the merits of his case and the gravity of his contentions, particularly apropos the misconduct, on the record, of the respondent's Board chairperson Mlambo JP in the matter,

– all intended to pervert the just decision of the petition on an appraisal of the objectively established facts, and all precisely identified in the petitioner's supporting affidavit to follow.

Signed at Eshowe on 27 January 2015

ANTHONY ROBIN BRINK
PETITIONER
1 Boast Street, Eshowe, KwaZulu-Natal
Telefax: 086 672 0776

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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

L.A.C CASE NO: DA21/2014

LABOUR COURT CASE NO: D529/11

In the matter between:

ANTHONY ROBIN BRINK Petitioner

and

LEGAL AID SOUTH AFRICA Respondent

RESPONDENT'S NOTICE OF MOTION:

APPLICATION FOR CONDONATION

(I.T.O RULE 12 OF THE RULES OF THE LABOUR APPEAL COURT)

BE PLEASED TO TAKE NOTICE THAT the Respondent will, either at the hearing of the Petitioner's petition, or on a date to be determined by the Registrar of this honourable Court, make an application for an order in the following terms:

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1. that the late filing of an Answering affidavit by the Respondent be and is hereby condoned;

2. that the period of ten (10) days provided for in rule 4 (6) of the Rules of this honourable Court be and is hereby extended to a date after the filing of the Respondent' answering affidavit;

3. that any party who opposes this application be and is hereby ordered to pay the costs of this application; and

4. further and/or alternative relief.

KINDLY ENROLL THE MATTER ACCORDINGLY

DATED AT JOHANNESBURG ON THIS THE 5th...DAY OF FEBRUARY 2015

LEGAL AID OF SOUTH AFRICA

Respondent's Attorneys

29 De Beer Street

Braamfontein

Johannesburg

Per Mr T. Mtati

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TO: **THE REGISTRAR OF THE LABOUR APPEAL COURT**
JOHANNESBURG

AND TO: **Mr A R BRINK**

Petitioner

The Flat,

1 Boast Street

Eshowe

Kwazulu Natal

Received o.b.o Petitioner

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Time and Date

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LABOUR APPEAL COURT OF SOUTH AFRICA
DURBAN

Case no.: DA21/14

Honourable Justices Waglay JP; Davis and Sutherland JJA

ORDERED on 18 February 2015

In the matter between

ANTHONY ROBIN BRINK PETITIONER

and

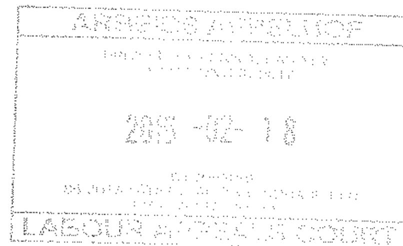
LEGAL AID SOUTH AFRICA RESPONDENT

ORDER

Having read the petition and considered the matter, the Court made the following order in this matter:

The petition for leave to appeal is refused with no order as to costs.

Reasons for refusing the petition:

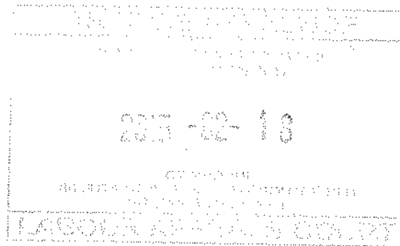


1. This court does not give reasons for its order refusing a petition for leave to appeal. This is in line with international practice and does not offend any constitutional principle.

2. The refusal of a petition for leave to appeal signifies that this court is of the view that the intended appeal has no reasonable prospects of success and that there is no compelling reason why it should be heard. This court therefore, in general terms, concurs in the reasoning of the judgment of the Labour Court.

3. Where a costs order is made against the petitioner, it is made to signify that the petition is devoid of any merit whatsoever.

BY THE COURT



REGISTRAR

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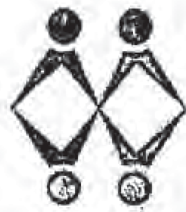
	ACTIONS/DECISIONS	Responsible Person	Due date
1. 1.1 1.2	**WELCOME AND APOLOGIES** The Chairperson declared the meeting open and welcomed all present. The following apologies were noted • Ms S Monaledi • Mr V Jarana		
2.	**REGISTER OF INTERESTS** The Register of Interests was circulated and duly noted by all members present.		
3. 3.1 3.2	**MINUTES** **Minutes of the previous meeting** The minutes of the previous meeting held on 29 May 2010 were adopted. **Matters Arising Schedule** The Matters Arising Schedule was noted.		
4. 4.1	**MATTERS FOR APPROVAL** **ALL COMMITTEES** **Draft Annual Report 2009/10 including Annual Financial Statements** The Board approved the Draft Annual Report 2009/10 subject to the following amendments: • p16 that the designation of the person be placed next to their names in the same format as the name; • That the qualification (**CA(SA)**) be added to Ms Luthuli's credentials; • p78 under Mr Ramdas' name; 'City of Johannesburg; • P 76 that Judge Mlambo and Mr Makume's details be updated to reflect their new positions; The Board commended management on a comprehensive Annual Report that made good reading.	BS	31.08.10
4.2	**MTEF 2011/14 CONSOLIDATED** The Board approved the recommendations as contained in clause 8 of the document: *8.1 The Board approve the MTEF for the period ending 2011/12-2013/14.*	CFO	30.09.10
	8.2 The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure I.	CEO	01.11.10



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ANNEXURE I

REPORT TO BOARD

16 July 2010

Impact of OSD funding shortfall on budget 2010/11

1. Background

1.1. The 2010/11 budget includes the outstanding OSD funding of R53.8million. This amount constitutes:

OSD Phase	Amount	Status
OSD Phase 1	R23.8 million	Implemented
OSD Phase 2	R30million	Not yet implemented
OSD Phase 2 back payment	R42million	Not yet implemented

1.2. On the 14 July 2010 Legal Aid SA COO met with both DoJ DDG, Mr Vuso Shabalala , as well as Adv Pieter du Rand, Legal Aid SA board member in order to clarify the position of DoJ regarding the outstanding OSD funding of R53.8 million for the 2010/11 budget period, as well as its effect to the MTEF baseline.

1.3. DoJ has indicated that they do not have funds to cover for the R53.8 million OSD shortfall. The Executive Authority has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.

2. 2010/11 Budget period

2.1. In the event DoJ is unable to secure funds to cover the OSD Phase 1 shortfall, Legal Aid SA will have a deficit of R23.8 million in the 2010/11 Budget. Salaries for 2010/11 are budgeted at 97% with recruitment currently being at about 94%.

2.2. In order to mitigate the probable deficit, the following measures are proposed:

a) Court coverage is currently approximately 90% at Distric Courts and 100% at Regional Courts. For the remaining of the 2010/11 budget period, District Courts will be progressively reduced to no lower than 80% coverage whilst Regional Courts will be progressively reduced to no lower than 90% coverage. About R16 million will be saved from this measure, though its effect will be a reduction in the number of days that we are able to cover District Courts and Regional Courts. This has a direct negative impact on service delivery. Any further reduction on filled legal practitioner positions will result in a further percentage reduction in court coverage

b) The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions;

c) Any savings derived during the financial year be reserved to cover part of the anticipated OSD shortfall.

2.3. In the event DoJ is unable to secure the OSD Phase 2 funding, the result will be that,

a) a potential labour unrest within Legal Aid SA will increase;

b) Legal Aid SA legal practitioners will be paid less than their counterparts in DoJ (who have already implemented OSD Phase 2), and those in NPA (in the event NPA finalise payments of OSD Phase 2).

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3. MTEF 2011/12 onwards

Should DoJ not secure OSD funding in full, Legal Aid SA will have to revise its MTEF 2011/12 onwards. With the current macro increase on budget allocation received from National Treasury, Legal Aid SA salaries will continue to impact negatively on the Operational and Capital budget unless posts are either frozen or abolished. This will have a significant negative impact on service delivery and good progress Legal Aid SA has already achieved in providing legal representation to many indigent persons in the country.

4. Recommendation

To provide for the anticipated OSD shortfall funding of R23.8 million, it is recommended that:

I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;

II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90% coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16million to cover the shortfall.

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Medium Term Budget Policy Statement

2010

Speech

Pravin Gordhan

Minister of Finance

27 October 2010

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I am pleased to be able to table a comprehensive *Adjusted Estimates of National Expenditure* to accompany the *Adjustments Appropriation Bill* and – for the first time – a *Division of Revenue Amendment Bill,* for the consideration of the House. I cannot deal with all the adjustments in detail, but let me highlight the main points.

In total, the adjusted expenditure level is R2.5 billion lower than the February budget estimate, which included an unallocated contingency reserve of R6 billion. Contributing to this decrease is a lower provision for state debt costs due to the current strength of the rand and the decrease in interest rates, and savings declared by departments amounting to almost R2 billion.

The main additional allocations in the Adjustments Appropriation are as follows:

1. R1.8 billion in roll-overs arising from commitments related to unspent balances in 2009/10;
2. R6.2 billion to cover higher remuneration costs;
3. R396 million for various self-funding department-specific activities;
4. R2.2 billion in unforeseeable and unavoidable expenditure adjustments recommended by the Treasury Committee this year, including
    a) R769 million to cover property rates due to municipalities on behalf of provinces, funded through the *devolution of property rate funds grant,*
    b) R320 million for occupation-specific dispensation salary adjustments in the Department of Justice and Constitutional Development, the National Prosecuting Authority and Legal Aid South Africa,

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JUSTICE & CONST DEV
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PAYMENT STUB
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DATE: 14/12/2010
NAT: DEPT
TIME: 18:47:25

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PAYMENT MADE BY : NAT: DEPT JUSTICE & CONST DEV
(BASD28) DISBURSEMENT NO : 000325484
OFFICE : NAT: DEPT JUSTICE & CONST DEV
PAYMENT DATE : 15/12/2010
CONTACT PERSON : HELP DESK
PAYMENT METHOD : CREDIT TRANSFER
CONTACT TEL NO : 0860 800 904 OR 012 309 9001

PAYEE NAME : LEGAL AID BOARD
BANK NAME : FIRSTRAND BANK LIMITED
PAYMENT ADDRESS : PRIVATE BAG X76
BANK BRANCH : BRAAMFONTEIN 054
BRAAMFONTEIN
BRANCH NUMBER : 251905

ACCOUNT TYPE : CURRENT ACCOUNT

ACCOUNT NO : 62224831471
2017
DISBURSEMENT STATUS : PAID

MICR NUMBER : 0

SUPPLIER CONTACT DETAILS : LEGAL AID BOARD TELEPHONE
NUMBER:

SOURCE DOC TYPE / PAYMENT NUMBER	SOURCE DOCUMENT NUMBER / PAYMENT DESCRIPTION	PURCHASE ORDER NUMBER	AMOUNT
SUNDRY 00541218	LAB/DECEMBER 2010 LEGAL AID BOARD	NOT APPLIC	R 89453000.00

TOTAL : R 89453000.00

**** END OF REPORT

DBBS07BS ****

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CONFIRMATORY AFFIDAVIT

IN RE: FIRST COMPLAINT AGAINST WAGLAY JP

UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Christopher Frank Milman Rawlins, make oath and say:

1. I am a retired accountant residing at 23 Norfolk Road, Berea, Durban.

2. I have read Anthony Brink's First Complaint against Waglay JP, signed and attested on 15 June 2017, and scanned and emailed to me on the same day, and I confirm that the allegations he makes regarding my knowledge of and involvement in the matters to which he has deposed are all true.

3. Annexure 'A' to the Complaint is indeed the anonymous, unsigned, undated and unstamped 'memorandum' that I found in the DA21/14 petition case file at the Durban Labour and Labour Appeal Court on 1 April 2015, which a registry clerk photocopied for me; and annexure 'B' is indeed the inventory I made of the contents of the case file, including the said memorandum, which I had a registry clerk verify on 2 April 2015 before applying the court stamp to certify it, as described in paragraphs 20–24 of the Complaint. And indeed, the memorandum was still in the court file when I looked again in August 2016.

Signed at Durban on 16 June 2017.

CHRISTOPHER FRANK MILMAN RAWLINS

Signed before me at Durban on 16 June 2017 by the deponent who acknowledged that he knows and understands the contents of this affidavit, stated that he has

no objection to taking the Oath, confirmed that he considers it binding on his conscience, and swore that the contents of this affidavit are true.

2120715-2
M. KHUZWAYO

COMMISSIONER OF OATHS

Name: MHLABUNZIMA KHUZWAYO

Address: 82 BOTANIC GARDENS Rd

Capacity: SAC

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2017 -06- 13
BEREA
KWAZULU-NATAL