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Eshowe 3815
10 November 2014

Patrick Hundermark
Deputy Information Officer,
Legal Aid South Africa
29 De Beer Street
Braamfontein

Per email: patrickh@legal-aid.co.za

Dear Mr Hundermark

PAIA REQUEST

According to LASA's PAIA manual, published for the true information of the public, you're one of several deputy information officers in LASA's national office – appointed, subsection 17(1) of the Act explains, and again in subsection 17(4), 'to render the public body as accessible as reasonably possible for requesters of its records.'

Herewith then a request for records under PAIA for your response please.

It was prompted by CLM Sekgota's amazing email to me on 15 October (annexed marked 'A'), that Mzochithwayo Ngcamu, shortlisted and interviewed with me for the Pietermaritzburg Senior Litigator post on 12 November 2009, but not recommended by the selection panel,¹ has been appointed LASA's local correspondent in my appeal against Cele J's dismissal of my claim of unfair discrimination in the abortion of my appointment to the post.² My Google search on his name then turned up the news that he's the Children's Court Practitioner at the Durban Justice Centre (annexure 'B').

In light of these new discoveries, some seemingly trivial and insignificant factual details that I established before trial and most peculiar, obviously false evidence given by your National Operations Executive Brian Nair, mentioned below, now suddenly loom large.

¹ Bundle (trial document bundle in my labour case, LC D529/11), pages 244–8.

² Heads of argument, judgment, and application for leave to appeal are all online at www.tig.org.za/LC.

Before trial and during argument of my case, I pertinently considered nepotism as a possible reason for the abortion of my recruitment. But finding no evidence of it, I eliminated it, and said so in court.

As far as I could see, my interview and the selection process had been conducted impeccably properly.³

The Calitz affair in Cape Town strongly militated against possible race prejudice in the national office as the reason I wasn't appointed.⁴ Indeed, after the judgment, a comparison performed by my accountant Rawlins of the demographics at the Pietermaritzburg Justice Centre in November 2009⁵ (when I was recommended for the Senior Litigator post) and in November 2010⁶ (when I was recommended for a temporary backlog court post) shows that white employment actually increased over the year by ten percent. This further precludes race prejudice as the reason I was not appointed.

Records that I sourced myself and elicited from LASA with PAIA and with demands for specific document discovery exposed the budgetary excuse given me eleven months after my interview as an obvious lie.

Consequently, until I saw that Ngcamu had been employed by your Durban Justice Centre, unfair political discrimination against me by the national office looked to be the most likely explanation of why I wasn't appointed.⁷

Now I'm beginning to wonder whether before the interviews were held, KZN ROE Mdaka, national NOE Nair, or even higher had decided to prefer Ngcamu, but that my unanticipated, last-minute application for the post, supported by a much better CV than Ngcamu's, followed by a much better showing at the interviews, stymied the plan. But because, objectively considered, I was the 'most suitable candidate for appointment'⁸ and not Ngcamu, and the selection panel unanimously recorded this,⁹ it was decided to quietly drop the panel's recommendation of me into Nair's bottom drawer, not communicate the happy result to me, and do nothing about finalising my appointment – hoping I'd conclude from the silence that I'd been unsuccessful and

³ Bundle, pages 2–4, paragraphs 5–16. And in argument.

⁴ Judgment, pages 13–14, paragraph 30.

⁵ Bundle, page 247.

⁶ PA bundle (in my upcoming CCMA claim), page 21. The PA bundle is accessible at the case document archive online: www.tig.org.za/LASA username: lasa password: LASA2010.

⁷ Judgment, pages 14–18, paragraphs 31–41.

⁸ Bundle, page 233, section 1.2.3.4.

⁹ Bundle, page 248.

just go away,* making way for Ngcamu's appointment instead of me later on. (*Revealing this at trial, LASA's counsel very clumsily asked me on Nair's instructions why I'd not concluded from LASA's silence that my interview had been unsuccessful and abandoned my pursuit of the post.)

In sum, I'm now investigating the possibility that (i) I was mistaken about the integrity of the selection process; and (ii) although the interviews were conducted unimpeachably, it had been pre-decided by Mdaka, Nair, or even higher that I should not be appointed, and that Ngcamu should be instead, without informing the panel/the other members of the panel, and that this decision had been taken even before Mdaka sent the selection panel's recommendation of me up to Nair; and (iii) the recruitment was thus corrupt, and it was nepotism after all that was behind the abortion of my appointment.

What got me thinking about this was the following:

1. My internet search on his name revealed that Ngcamu is a former acting Labour Court judge (annexure 'C') – and coincidentally an erstwhile judicial colleague of LASA Board directors Mlambo JP and Molahlehi J. In its original response to my first statement of claim in the Durban Labour Court, LASA pleaded that 'The Chairperson took particular interest in the interviews of senior practitioners as their experience would directly affect and impact on the Respondent's public image which has, for the most part, been negative due to a perception of incompetence and lack of vital court skills'.¹⁰ (Under the Approval Framework, Board chairperson Mlambo JP has zero authority to intrude himself in such operational matters.)¹¹

This makes me wonder now whether Ngcamu's application wasn't supported at the very top, considering Mlambo JP's egregious lack of concern¹² about (i) CEO Vedalankar's illegal blanket refusal¹³ of my first PAIA request for 51 records probing the circumstances in which my appointment had been aborted,¹⁴ under cover of a fake misquotation from a reported judgment claimed to justify her refusal,¹⁵ and (ii) the evidence then available to me, which I presented, that it had been irregular and that the budgetary excuse for it, eventually given me, was a

¹⁰ Pleadings bundle, page 143, paragraph 9

¹¹ Heads, pages 32–4, paragraphs 91–5.

¹² Bundle, pages 186 and 207.

¹³ Bundle, page 104, paragraph 8.

¹⁴ Bundle, pages 59–68.

¹⁵ Bundle, page 101, paragraph 1; pages 114–9, paragraphs 23–43.

lie, and I was repeatedly pleading for his and the Board's intervention.¹⁶ In response to which, he first tersely¹⁷ (with his 'knowledge and consent'¹⁸ Vedalankar, the very subject of my complaint, herself wrote his response dismissing it),¹⁹ then rudely and threateningly told me to hit the road,²⁰ later repeating this unpleasantness, by way of a block quotation of it, to the chairperson of the Justice Portfolio Committee.²¹

2. On 23 November 2009, the day that the recommendation of me²² was 'signed off',²³ as required by the Recruitment code, by 'all members of the selection panel and the line executive'²⁴ (Mdaka), RHRM Brijlal emailed it to Mdaka for forwarding to Nair and to HRE Clark, along with the CVs of all interviewed shortlisted candidates.²⁵

That is, Brijlal sent the CVs not only of the applicant and Mngadi whom the selection panel had selected to 'recommend'²⁶ for the Pietermaritzburg and Durban posts, but also 'the curricula vitae of all the individuals who had applied for the Senior Litigator positions (i.e. including those who had neither been shortlisted nor recommended for a second round of interviews)',²⁷ namely the 'two persons ... eliminated early in the selection process and ... not recommended for the second round of interviews',²⁸ van Wyk and Ngcamu.²⁹

The reason Brijlal also sent Mdaka the CVs of the unsuccessful, eliminated candidates for transmission to Nair is because he'd received 'instructions ... telephonically'³⁰ to do so.

This strongly suggests that (i) but for these special 'instructions', Brijlal wouldn't have sent Mdaka the CVs of the of the unsuccessful, eliminated candidates, and (ii) Nair knew of my selection even before Mdaka sent the recommendation up to

¹⁶ Bundle, pages 109–67, 190–1, and 197–206; bundle addendum, page 547–8.

¹⁷ Bundle, page 186.

¹⁸ Pre-trial conference bundle, answer to agenda, page 61, paragraph 69.2.

¹⁹ Bundle, page 187.

²⁰ Bundle, page 209.

²¹ Bundle, page 504.

²² Bundle, page 244–8.

²³ Bundle, page 234, 'N.B. ...'.

²⁴ Ibid.

²⁵ Bundle addendum, page 712.

²⁶ Bundle, page 247.

²⁷ (First) amended response, paragraph 10.3.

²⁸ Pre-trial conference bundle, answer to agenda, page 55, paragraph 34.2.

²⁹ Bundle, page 245.

³⁰ Bundle addendum, page 987, Part 2, document 11, paragraph 27.

him, and that he was contemplating appointing someone other than me, most probably Ngcamu, especially since:

3. Unlike the other three candidates interviewed for the simultaneously advertised Pietermaritzburg and Durban Senior Litigator posts, myself included,³¹ Mdaka never sent Ngcamu a letter alleging that it had been resolved not to fill the posts. Demanded during pre-trial discovery,³² no such letter to him was produced in my labour case; and indeed LASA explicitly confirmed that besides me, only 'two other applicants',³³ not all three were sent such letters.³⁴

This suggests that Ngcamu was comfortably kept waiting for his appointment to the Pietermaritzburg Senior Litigator post once I was out of the way. (Durban Justice Centre High Court Unit Manager Bongani Mngadi had been selected for the Durban post. Although the recommendation itself is not specific about this, LASA admitted before trial that I was selected for Pietermaritzburg³⁵ for which I'd applied, and by implication Mngadi for Durban.)

4. In April 2010, five silent months after the interviews, when I was repeatedly pleading with Human Resources Executive Amanda Clark for information about the upshot and the progress of the recruitment process, she told me the lie, among others: 'At this stage it is not even clear which applicants will be considered in the second round'. In truth and in fact, the selection panel's unanimous recommendation of me,³⁶ which I eventually disgorged from LASA after several months of determined concealment (my request for it under PAIA in August 2010,³⁷ was illegally ignored,³⁸ then illegally expressly refused,³⁹ then under SAHRC pressure⁴⁰ finally surrendered in January 2011)⁴¹ showed I was the lucky boy and no one else.⁴² (As said, Mngadi was recommended for a different post at Durban.)

³¹ Bundle, page 245.

³² Pre-trial conference bundle, page 35, item 28.

³³ Bundle, page 383, paragraph 26.

³⁴ Bundle, page 20; bundle addendum, pages 829 and 831.

³⁵ Bundle addendum, page 1020, paragraph 11.

³⁶ Bundle, page 248.

³⁷ Bundle, page 62, items 1 and 2.

³⁸ Bundle, page 113, paragraphs 17–20.

³⁹ Bundle, page 104, paragraph 8.

⁴⁰ Bundle, pages 262–314.

⁴¹ Bundle, page 215, section V7.

⁴² Bundle, pages 244–8.

Clark's lie to me strongly suggests that Nair was contemplating inviting Ngcamu to his so-called 'second round' interview for the post, and not me.

Only, what spoiled the plan was that I didn't walk away as hoped, and pressed increasingly insistently for information about the recruitment process, gradually moving up the corporate hierarchy as I did so.

5. In October 2010, illegally refusing my first PAIA request for the records that would have revealed the truth of it,⁴³ CEO Vidhu Vedalankar (Nair ghost-writing for her)⁴⁴ told me the lie: 'You were recommended together with other candidates for the second round of interviews.'⁴⁵

The same lie was told to Justice Portfolio Committee member Hon Schäfer MP: 'according to LASA, he was not the only candidate.'⁴⁶

Confirmed by Nair on oath,⁴⁷ and instructed by him to allege this, CSE Mtati falsely implied the same on oath in an interlocutory affidavit: the applicant's 'recruitment, together with the other candidates recommended for the second round of interviews was aborted immediately after the first round of interviews.'⁴⁸

On Nair's instructions (Nair denied it at trial, but certainly untruthfully) CLM Sekgota falsely implied likewise to the SAHRC in the respondent's section 32 report on its PAIA performance in 2010/11: 'No decision taken yet on who should be appointed'.⁴⁹ (Nair falsely blamed COO Makokoane for this lie.)

In truth and fact, I'd indeed been the only candidate recommended, as the recommendation, finally forced out of LASA in January 2011, confirmed. And obviously so: the selection panel's function circumscribed by the Policies and Procedures on Recruitment was precisely to interview all short-listed candidates⁵⁰ and to 'identif[y] the most suitable candidate for appointment in a

⁴³ Bundler, page 62, items 1 and 2.

⁴⁴ Heads, page 77, paragraph 233.

⁴⁵ Bundle, page 104, paragraph 7.2.

⁴⁶ Bundle addendum, page 680.

⁴⁷ Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

⁴⁸ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 83, paragraph 13.4.

⁴⁹ Bundle addendum, page 679.

⁵⁰ Bundle, pages 230–1, paragraphs 1.2.2.1–2.

post⁵¹ – singular, not plural. (Mngadi was recommended for a different post at Durban.)

That is, in October 2010 – while illegally refusing⁵² my request⁵³ for a copy of the recommendation that would have exposed the lie, dishonestly misquoting a reported judgment as his crooked justification for doing so⁵⁴ – Nair’s intention was to defraud me into thinking that ‘other candidates’, meaning Ngcamu, had also been recommended for the post.

He hadn’t bargained on my persistence in demanding the recommendation under PAIA, which exposed his lie, and showed that I was indeed ‘singly’⁵⁵ recommended for the post and no one else.

6. In court in July/August 2013, Nair testified – incredibly stupidly and contradicting all the correspondence, the pleadings and the interlocutory affidavits about this,⁵⁶ but most revealingly as to the corrupt plan – that all candidates interviewed by the selection panel had to be interviewed again by him and his so-called ‘second round’ interview panel (more about this below), including candidates eliminated by the selection panel; and that he and his panel were free to recommend for appointment a candidate (like Ngcamu) who’d been rejected by the selection panel – thus stultifying and defeating the very purpose of the selection process by competent persons (in my case by LASA’s top five lawyers in the region), prescribed by the Recruitment code.

This again strongly suggests that Nair had in mind to appoint Ngcamu and not me – his plans derailed by my determined pursuit of my appointment, commencing five months after my interview when Clark insolently suggested I ‘withdraw’ if I didn’t like ‘the pace we have decided’ (thereby backhandedly confirming I’d been recommended), five strangely silent months after my interview, and rudely kissing me off with a Don’t call us we’ll call you.⁵⁷

(Beyond mentioning elliptically that I’d shown Nair to be ‘less than generous with the truth’ on several scores,⁵⁸ the judge didn’t remark on Nair’s obvious lie about

⁵¹ Bundle, page 233, section 1.2.3.4.

⁵² Bundle, page 104, paragraph 8.

⁵³ Bundle, page 62, items 1 and 2.

⁵⁴ Bundle, page 101; and pages 114–15, paragraphs 23–8.

⁵⁵ Bundle, page 211, paragraph 3.

⁵⁶ Heads, page 46–7, paragraph 148.

⁵⁷ Bundle, page 256.

⁵⁸ Judgment, page 32, paragraph 67. (See footnote 2.)

all candidates interviewed by selection panels having been and having to be interviewed again by his so-called 'second round' panel, including those rejected by the selection panels; and Nair's lie on oath about this will be categorically exposed, for his criminal prosecution for perjury, once I have the responses of all regional deputy information officers in whose regions Senior Litigators are employed, to each of whom I'll be addressing pointed PAIA requests testing Nair's obvious lie.)

7. The qualifying criteria for the Pietermaritzburg and simultaneously advertised Durban Senior Litigator posts were set much higher than elsewhere in the country when re-advertised in 2009, including at Kimberly also advertised that year and at Mthatha advertised the following year, for which latter two posts the original lower criteria were set.⁵⁹ LASA admitted in the pleadings that no written authority exists for the doubling of the qualifying criteria for the KZN posts.⁶⁰

This suggests that the qualifying criteria for the KZN posts were manipulated and tailored for a particular applicant, and contrived to exclude other ordinarily suitable applicants – the standard trick in rigging a recruitment process to favour someone it had been pre-decided to employ.

8. On Nair's instructions, LASA alleged in paragraph 7 of its amended response that 'Mr Vela Mdaka' had final say over who was to be appointed Senior Litigator, 'after the CEO and the NOE had agreed with the recommendation.'⁶¹ (During his cross-examination when I referred him to the Approval Framework contradicting this and showing that Mdaka had no approval power subsequent to his vote as a member of the selection panel, Nair retracted this false allegation.)

That is, Nair claimed to court in the pleadings that the final (de facto, albeit unlawful) call as to who should be appointed was Mdaka's, not his, even as he initially told me contrariwise but correctly in his letter of 3 August 2010 that the final power to approve Senior Litigator appointments is his.⁶²

This suggests that Nair connived in disregarding:

⁵⁹ Heads, page 36, paragraph 100.

⁶⁰ Ibid.

⁶¹ Pleadings bundle, page 22, paragraphs 7.2.2–3.

⁶² Bundle, page 19.

- the function of the selection panel, prescribed by the Recruitment code, to decide who the most suitable candidate was, following interviews of all shortlisted candidates, and recommend him for appointment accordingly;⁶³
- which candidate had been duly selected and recommended after the interviews of all shortlisted candidates;⁶⁴ and,
- his (Nair's) and Vedalankar's respective approval prerogatives ('Final approval' and 'Must agree'), prescribed by the Approval Framework.⁶⁵

9. Everywhere I've looked, I've found recruitment at LASA to be utterly corrupt:

- (a) Despite the top seniority of the post, the Mthatha Senior Litigator post was advertised only on the respondent's website,⁶⁶ and not in the print media,⁶⁷ i.e. it was not publicly advertised 'nation-wide' as required for such a senior professional post in the public service⁶⁸ (at grade LP10,⁶⁹ formerly 'level 13',⁷⁰ Senior Litigators are the respondent's most 'Senior Professional staff').⁷¹

Furthermore, then Eastern Cape ROE Mtati allowed EC RHRM Thenjiwe Magazi, lacking any legal qualifications, to participate in the selection panel of just three members⁷² as a scoring member evaluating the shortlisted interviewees' suitability for the post⁷³ – in contravention of her and Mtati's obligation ('the responsibility of the Human Resources Department and the relevant line manager')⁷⁴ imposed by the Recruitment code 'to jointly ensure that a diverse and knowledgeable selection committee/panel is appointed.'⁷⁵

This suggests that the recruitment process was a sham to circumvent section 1.2.3.3 of the Recruitment code – 'An internal candidate who qualifies for the post in terms of the advertised requirements will not automatically be appointed to the position but will be selected through the same process as an

⁶³ Bundle, page 233, paragraph 1.2.3.4.

⁶⁴ Bundle, pages 244–8.

⁶⁵ Bundle addendum, pages 1034 and 1036, section 8.2.2(b).

⁶⁶ Bundle, page 46.

⁶⁷ Bundle addendum, page 1021, paragraph 15.

⁶⁸ Bundle addendum, page 791, section 6.4(1), and page 793, section 7.

⁶⁹ Bundle addendum, page 1021, paragraph 16; and page 1036.

⁷⁰ Bundle, page 372, paragraph 8.2.2.b; and bundle addendum, page 690.

⁷¹ Bundle addendum, page 1036, section 8.2.2 (b).

⁷² Bundle addendum, page 995.

⁷³ Ibid.

⁷⁴ Bundle, page 231, section 1.2.2.2.

⁷⁵ Bundle, page 231, section 1.2.2.2.

external candidate’ – and that the outcome, namely the selection and transfer of Adv Nzame Skibi at the Mahikeng JC,⁷⁶ had been pre-decided. (Port Elizabeth JCE Lynette Franklin was evidently not complicit in this corruption, because her grading of Skibi was much lower than Mtati’s and Magazi’s.)⁷⁷

- (b) Without the approval of the Board, and in a massive illegal deviation from and contravention of the Board’s Recruitment code and Approval Framework, Nair has been conducting so-called ‘second round’ interviews of Senior Litigator candidates (and, he testified, some ROE candidates too) duly recommended by selection panels, which so-called ‘second round’ interview panels have comprised him (a former schoolmaster with no legal qualifications), HRE Clark (without any either, for her useless and irrelevant ‘perspective’, he testified) and Board chairperson Mlambo JP (with no authority as a non-executive director to involve himself in recruitment decisions, besides approving the appointment of the CEO and NOE, but even then, only in committee with the rest of the Board and not on his own).⁷⁸

Lies repeatedly told me and court⁷⁹ about you and COO Makokoane also being members of Nair’s so-called ‘second round’ panel are refuted by my firm knowledge that only the three said persons re-interviewed recommended candidates for the Port Elizabeth and Pietermaritzburg Senior Litigator posts when originally advertised. Imminent further PAIA requests will establish the truth about the so-called ‘second round’ interviews for the other posts.

- (c) When a year after my appointment to the Pietermaritzburg Senior Litigator post had been aborted and I applied for and was selected and recommended for appointment to a temporary public defender post for which I’d applied to tide me over while preparing my claim to my appointment to the Senior Litigator post (I’d crossed the country in anticipation, and been left in a jam), Mdaka instructed then Pietermaritzburg Justice Centre Executive Bertus Appel (I only discovered via PAIA last year) to ‘redo the interviews’ to find someone else to hire instead, raising transparently specious objections to my appointment to this light post even as he’d (formally) recorded his support for

⁷⁶ Bundle addendum, pages 995–6.

⁷⁷ Ibid.

⁷⁸ Heads, page 31–5, paragraphs 90–8.

⁷⁹ Heads, page 34, paragraph 96.

my appointment to LASA's top professional post a year earlier. Only, I was told a completely different story, in Appel's absence and without his knowledge, a couple of weeks later, namely that it had been decided not to fill the post: the selfsame lying cover-story, likewise unsupported by any records, that I'd been fed about the Senior Litigator post, eight months after I was interviewed for it, and I'd written to Vedalankar pressing for my appointment. In short, I was unlawfully blocked a second time under cover of the same casually told but easily refuted lie. The second case comes up for a preliminary hearing in the CCMA at Richards Bay later this month on the 28th. My papers record that Mdaka and Nair have grossly irregularly been appointing practitioners at the Pietermaritzburg Justice Centre without any interviews of them at all, and how in one case Mdaka specifically ordered the reappointment of a consistent underperformer despite constant written complaints about him by his supervisors at LASA and the prosecutors at the Pietermaritzburg Magistrate's Court.⁸⁰

(d) The corrupt manner in which my appointment as Senior Litigator, Pietermaritzburg, was blocked, and the several different, contradictory lies about this variously told to me, to the SAHRC, to the Board, to the Minister, to the National Assembly, and to court (with different, contradictory lies told to court before and during trial), is enough to fill a book – all detailed in my heads of argument and my application for leave to appeal.⁸¹

It's against this rotten background that I've decided to investigate the circumstances in which Ngcamu was employed by LASA; because I wonder now whether the plan from the start wasn't to ease him into the Senior Litigator post for which I'd been recommended, once I'd been disposed off, first with studied silence, then stonewalling, then more silence, and finally multiplying contradictory lies in the classic dynamic of a disintegrating cover-up.

Their correspondence with me shows that Clark,⁸² Nair,⁸³ Mdaka,⁸⁴ Vedalankar⁸⁵ and Mlambo JP⁸⁶ all tried very hard to put me off pursuing my appointment – and in this

⁸⁰ See CCMA referral, footnote referenced to PA bundle (see footnote 6).

⁸¹ www.tig.org.za/LC. All trial documents referenced in the heads are accessible at the main case document online (see footnote 6).

⁸² Bundle, page 256.

⁸³ Bundle, pages 19 and 380–1.

⁸⁴ Bundle, page 20.

⁸⁵ Bundle, pages 101–8, 210–58; and 390–1.

⁸⁶ Bundle, pages 186 and 209.

endeavour never mind LASA's Code of Ethics and Conduct⁸⁷ and the Ethics and Conduct provisions of the Senior Management Services Handbook.⁸⁸

I could be quite wrong in my new ruminations, sparked by Sekgota's recent email, and that political prejudice against me was indeed the problem, as I believed all along. Your response to my PAIA request, going to the propriety of Ngcamu's appointment, may be illuminating here.

But one thing's for sure: as the records very clearly show, budgetary insufficiency did not prevent my appointment,⁸⁹ as Nair,⁹⁰ Vedalankar,⁹¹ and Mlambo JP⁹² all falsely alleged it did, to me, to the Minister, to the National Assembly, and to court.

I mention all this for your background information only. Under section 11(3) of PAIA, my purpose, or what you think it is, is irrelevant to your decision as to whether to grant my request; and the only grounds on which you may refuse it are those listed in Chapter 4 of the Act. Collecting documents for the purpose of litigation, whether future (section 7(1)) or even current (section 7(2)), isn't among them.

Unfortunately, despite the repeated lessons the SAHRC has given them about this, your corporate services lawyers still have trouble understanding this. Hence my three pending applications to court⁹³ to compel LASA's compliance with my PAIA requests made in October last year.

I'd like to conclude that in making this records request, I've no beef with Ngcamu personally. We chatted before the Senior Litigator interviews and he struck me as a very nice guy. I'm certainly not looking to dislodge him.

But make no mistake, I will have the Senior Litigator post that I was duly selected and recommended for, and no one else; and I will not permit prejudice, dishonesty, and corruption to succeed in perverting this.

This PAIA request comprises two parts: the first interrogates Ngcamu's appointment to the Children's Court post, and the second lists a few other records I require.

⁸⁷ Bundle addendum, pages 770–80.

⁸⁸ Bundle addendum, pages 802–16.

⁸⁹ Heads, pages 41–3, paragraphs 134–41.

⁹⁰ Bundle, page 381, paragraphs 14–6.

⁹¹ Bundle, page 101, paragraph 103, paragraph 6.7; page 223, paragraph 39; and pages 390–1.

⁹² Bundle addendum, page 1012; and bundle, page 505.

⁹³ Online at the main case document archive; see footnote 6.

Please be advised that I'll sue immediately for whatever records you refuse,* and likewise for any records you deny exist if I have reason to believe they do. In this latter regard, my founding affidavit in my PAIA application against Eastern Cape deputy information officer Bambiso records LASA's history of concealing records from me under cover of lies that they don't exist. (*I was constrained to delay suing Bambiso, Vedalankar, and Msweli for the full six months allowed by the Act to apply to court to compel their compliance with my PAIA requests because I was seriously hands-full at the time with my labour case.)

If you have in mind to refuse any of the records I've duly requested, before you do please consider consulting the SAHRC's PAIA Unit for expert advice on whether the Act permits it – especially recalling the SAHRC's PAIA training workshop report in October 2012, which recorded LASA's 'challenges [in] complying with PAIA';⁹⁴ its 'lack of application based knowledge';⁹⁵ 'the fact that they had previously been misapplying the provisions of PAIA';⁹⁶ that this 'misinterpretation and misapplication was identified as high risk to LASA';⁹⁷ 'LASA compliance history was flagged with participants and most reacted to the reporting of LASA as non-compliant to Parliament with concern';⁹⁸ 'Most participants were a little overwhelmed by the requirements of the legislation';⁹⁹ 'personnel from the Legal Department were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA and to create guidelines within the organisation to ensure misapplication does not recur';¹⁰⁰ and 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation'.¹⁰¹

As you will see from my replying affidavits in my three pending PAIA applications,¹⁰² LASA's very junior counsel used to date is clueless, so looking to and relying on him again will be disastrous.

Notwithstanding LASA's concessions and undertakings to the SAHRC minuted in its report following its PAIA training course for LASA, its information officers have

⁹⁴ Bundle addendum, page 916.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Bundle addendum, page 919.

⁹⁹ Ibid.

¹⁰⁰ Bundle addendum, page 920.

¹⁰¹ Ibid.

¹⁰² Online, see footnote 6.

continued illegally refusing me access to duly requested records, hence my pending applications.

I'm sure you don't want an embarrassing repeat of this, with your name on the front page of another set of court papers and then shamefully included in the SAHRC's next section 84 report to the National Assembly.

If, as I suspect, information officer Vedalankar hasn't yet designated you a deputy information officer in writing under section 17(6) of PAIA, please be sure to fix this before commencing to deal with my request (like Nair did in March 2011¹⁰³ before dealing with my first three PAIA requests made in 2010/11), or you'll be acting ultra vires and unlawfully (like Mtati did in November 2013),¹⁰⁴ thus exposing you and LASA to more remedial litigation in the Eshowe Magistrate's Court. As an attorney, you'll appreciate that merely being named a deputy information officer in LASA's revised PAIA manual, even if the Board approves it, isn't a valid designation under the section.

In view of the ongoing post office strike, a cheque mailed you for the prescribed R35 request fee isn't likely to reach you any time soon, so if you email me LASA's bank details, I'll deposit it by EFT. My address is arbrink@iafrica.com.

Thanks.



ANTHONY BRINK

Cc:

Nokwanda Molefe, PAIA Unit, South African Human Rights Commission

Sinthia Reddy, Public Protector investigator (ref: 7/2-040815/12)

Ben Mthembu, Chairperson, Public Service Commission

Lesleigh Timothy, LASA Board Secretary

Lynette Franklin, LASA Justice Centre Executive, Port Elizabeth

And other parties.

¹⁰³ Bundle, page 387.

¹⁰⁴ Replying affidavit in application to compel Vedalankar; online, see footnote 6.

From: Solly Sekgota [SollyS@legal-aid.co.za]
Sent: 15 October 2014 09:11 AM
To: sdwarika@justice.gov.za; Anthony Brink
Cc: Mzochithwayo Ngcamu; Thembile Mtati
Subject: Notice to oppose application for leave to appeal
Attachments: Notice to oppose Appeal_Brink and Legal Aid South Africa.pdf

Importance: High

Good Day

Please find the notice to oppose leave to appeal
The original notice will be sent to Mr Mgcamu of our Durban Justice Centre
Regards

Mr Solly Sekgota
Legal Aid South Africa
Tel: 011 877 2004

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Premature baby now doing well

April 16 2014 at 06:15pm
By ANELISA KUBHEKA

Durban -

A KwaZulu-Natal infant who had been given an "extremely urgent" blood transfusion by doctors who obtained a high court order to allow the procedure, is now 6 months old and doing well.

The infant, from Empangeni, was born prematurely at 28 weeks, weighing 730g in November when his mother had to have an emergency caesarian section.

The child's pediatrician, Dr Tavengwa Usaiwevhu, said the infant was a bundle of joy and now weighed 4kg.

"I last saw the child in February and he is doing very well," he said.

According to papers filed in the High Court in Empangeni by Legal Aid SA on behalf of doctors at the Garden Clinic Hospital, the baby had been on cardio-respiratory support and an urgent blood transfusion was discussed with the parents.

They refused the procedure because it was against their beliefs as Jehova's Witnesses.

The court order giving authority to doctors at Garden Clinic to perform the transfusion was granted on November 15 and the baby had the transfusion on that day.

Usaiwevhu, who spoke to the Daily News this week, said the infant would not have survived if he had not had the transfusion.

"The transfusion was needed because most nutrients are transported in the blood from the mother to the child in the last 13 weeks of pregnancy and this infant didn't get this as he was premature," he said.

He said the baby had a low blood cell count and the number had been dropping daily.

Bhekisgcino Dladla, an elder at Klaarwater Jehovas Witness near Pinetown, said the child's parents were merely obeying the word of God.

"In (the Bible's book of) Proverbs it says promiscuity and worshipping man-made gods are an equal sin as taking blood through consumption or transfusion," he said.

Dladla in an interview this week said blood was life and could not be accepted to save your own because only God could do so.

"The sin is upon the doctors who gave the blood, and not the parents or the child."

In the application for the order to be granted, Mzochithwayo Ngcamu, a children's court practitioner with Legal Aid SA, said the application had been made on an urgent basis as any delay would have prejudiced the child's right to life.

"On November 13, in the afternoon, I received instructions to investigate a matter relating to a child who had been admitted in the Garden Clinic Hospital... On receipt of instructions, I telephoned the hospital. I was advised that there was a child who was very sick and I was also advised to speak to Dr Ladie (Dr Usaiwevhu)," the application read.

When Ngcamu went to the hospital, before the application was made, Ladie showed him a text message sent by the child's father, saying there should be no blood transfusion owing to his religious beliefs.

"I was also advised by Dr Ladie that the father of the child came to the hospital on November 9 to confirm that there should be no blood transfusion," the application read.

"The father came with two elders from the church, as well as the paternal grandmother of the child."

While at the hospital, the child's father wrote a letter confirming that the family refused the transfusion; the letter was attached to the application papers.

In the letter, the father asked for any other available methods to be used on his child, and "not the blood transfusion".

In the application papers, Ngcamu wrote that the transfusion was "extremely urgent" as other means of saving the child's life would have no effect.

"The child is unable to absorb the mother's milk and supplements cannot be used because of his tiny body.



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Past misconduct haunts judge candidate

April 13 2007 at 07:06pm

A KwaZulu-Natal acting judge, who at one stage doubled as a taxi owner, could be barred from practising on the bench after the Judicial Service Commission discovered he was found guilty of professional misconduct in the past.

Mzochitwayo Ngcamu, a KwaZulu-Natal attorney and acting judge, was appearing before the Judicial Service Commission (JSC) in Cape Town on Friday.

He admitted during his interview for a labour court judge position that he did not during his appointment disclose the fact that he had been found guilty of professional misconduct.

Ngcamu, who was twice found guilty of professional misconduct by the KwaZulu-Natal provincial law society, told the commission following a grilling by JSC panellists that he should have told Natal Judge President Mka Tshabalala, who appointed him as acting judge, about the issue.

"I do realise now that I should have discussed it with him, it was an error of judgment," he said.

The law society a few years ago found Ngcamu guilty of professional misconduct after the acting judge failed to respond to letters from the society, and made him pay a fine of R2000.

In 2006, the society once again found him guilty after he failed to submit his legal practice's audited statements on time. He was ordered to pay a R3000 fine before the end of March 2007.

It later emerged during the interview that he had also failed to pay the fine on time. "I only paid the fine in April," he said.

JSC member Advocate George Bizos expressed concern about Ngcamu's professional conduct.

"Integrity is of the utmost importance in the position that you are applying for, and your problems with your professional body are of great concern to us," he said.

Bizos also berated Ngcamu for failing to indicate in his application documents that the Law Society was now in the process of instituting court action against him.

"They sent you a notice - why did you not indicate this on your application - is it once again another error of judgment on your part," he asked.

About his involvement in the taxi business, Ngcamu said he had since sold his taxi and was now only a legal adviser to one of the provincial taxi associations. - Sapa

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Legal Aid SA

**Patrick Hundermark
Deputy Information Officer,
National Office
29 De Beer Street
Braamfontein**

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.

(b) Furnish an address and/or fax number in the Republic to which information must be sent.

(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname : **Anthony Robin Brink**
Identity number : **590225 5116 081**
Postal address : **1 Boast Street, Eshowe 3815, KwaZulu-Natal**
Fax number : **086 672 0776**
Telephone number : **035 474 0145**
E-mail address : **arbrink@iafrica.com**

Capacity in which request is made, when made on behalf of another person:

N/A

C. Particulars of person on whose behalf request is made

This section must be completed only if a request for information is made on behalf of another person.

Full names and surname : **N/A**
Identity number : **N/A**

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

*(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:
2. Reference number, if available:
3. Any further particulars of record:

See annexure

E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason therefor.

Reason for exemption from payment of fees:

N/A

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: N/A	Form in which record is required:			
<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>				
1. If the record is in written or printed form -				
X	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px;">copy of record*</td> <td style="width: 30%; padding: 5px;"></td> <td style="width: 40%; padding: 5px;">inspection of record</td> </tr> </table>	copy of record*		inspection of record
copy of record*		inspection of record		

2. If record consists of visual images -

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)

	view the images	X	copy of the images*		transcription of the images*
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3. If record consists of recorded words or information which can be reproduced in sound -

	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)
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4. If record is held on computer or in an electronic or machine-readable form -

	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (on compact disc)
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*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

YES

A postal fee is payable.

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

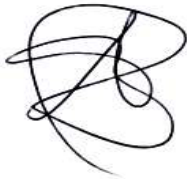
In which language would you prefer the record? **English**

G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record? **By email**

Signed at Eshowe on 10 November 2014

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the text 'SIGNATURE OF REQUESTER'.

SIGNATURE OF REQUESTER

ANNEXURE: RECORDS REQUIRED

PART ONE

Concerning the Children's Court Practitioner post at Legal Aid SA's Durban Justice Centre, currently occupied by Mzochithwayo Ngcamu:

1. The minute of the regional management meeting at which it was decided that the Durban Justice Centre required a Children's Court Practitioner and to apply for the creation of such post at such centre.
2. KwaZulu-Natal Regional Operations Executive Vela Mdaka's motivation under section 8.1.2(b) of the Approval Framework to the Legal Services Committee to recommend (he 'originates') the creation of the post at the Durban Justice Centre.
3. The record showing that Human Resources Executive Amanda Clark was 'consulted (before)' the post was created, as required by section 8.1.2(b) of the Approval Framework.
4. The LSTC's resolution to recommend the creation of the post.
5. National Operations Executive Brian Nair's and Chief Executive Officer Vidhu Vedalankar's approval of the LSTC's resolution to recommend the creation of the post, in their capacities as executing authorities delegated by section 8.1.2(b) of the Approval Framework to co-approve the creation of new posts at 'levels 11-13' and 'OSD-LP- 9 & 10'.
6. The record of HRE Amanda Clark's confirmation, under Note 17 of the Approval Framework, that the vacancy and budget for the post existed before it was advertised.
7. The record showing the vacancy existed prior to the advertisement.
8. The record showing the post was budgeted for prior to the advertisement.
9. The advertisement for the post.
10. The shortlist of applicants for the post.
11. The portion of the interview minute showing that Ngcamu disclosed to LASA his two convictions for professional misconduct by the Law Society, and his rebuke by the Judicial service Commission for not disclosing these when applying for a Labour Court judgeship in 2007.
12. The selection panel's recommendation of Ngcamu, showing the names of the panel members, the names of the interviewed candidates, and whether or not



they met the advertised qualifying criteria. (Confidential information within the meaning of section 34(1) of PAIA may be blacked out.)

13. The covering letter or email transmitting the recommendation to NOE Nair for his approval under section 8.2.2(b) of the Approval Framework.
14. The record of Nair's approval of the recommendation, and if applicable to the level of the post, Vedalankar's agreement per the said section.
15. Ngcamu's contract of employment as Children's Practitioner.
16. The letters to the other shortlisted, interviewed candidates informing them that they had been unsuccessful, as required by section 1.5 of the Policies and Procedures on Recruitment.
17. If it's not indicated on the advertisement or Ngcamu's employment contract, any record showing the grade of the post (e.g. LP9).

PART TWO

18. All and any contract(s) of employment between Ngcamu and Legal Aid SA, at any Justice Centre, entered into prior to his employment as Children's Practitioner at the Durban Justice Centre.
19. All email or letter communications between Ngcamu and Legal Aid SA prior to his employment as Children's Practitioner at the Durban Justice Centre or any other employment by LASA.
20. The selection panel's recommendation of Brink and Mngadi for the Pietermaritzburg and Durban Senior Litigator posts, showing (i) Ngcamu's fulfilment or otherwise of the advertised qualifying criteria, and (ii) the reason he was not recommended.
21. The letter sent Ngcamu informing him that he had been unsuccessful as a shortlisted candidate in his application for the Senior Litigator post, as required by section 1.5 of the Policies and Procedures on Recruitment.
22. The letter sent Ngcamu informing him that LASA has decided not to fill the KwaZulu-Natal Senior Litigator posts (like the identical letters sent the other shortlisted and interviewed candidates Brink, Mngadi and van Wyk on 23 August 2010).
23. Deputy information officer Patrick Hundermark's written delegation by information officer Vedalankar under section 17(3) of PAIA.



PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

23 Records that cannot be found or do not exist

(1) If-

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record-

(i) is in the public body's possession but cannot be found; or

(ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

25 Decision on request and notice thereof

(1) Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, the information officer to whom the request is made or transferred, must, as soon as reasonably possible, but in any event within 30 days, after the request is received-

(a) decide in accordance with this Act whether to grant the request; and

(b) notify the requester of the decision and, if the requester stated, as contemplated in section 18

(2) (e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

90 Offences

(1) A person who with intent to deny a right of access in terms of this Act-

(a) destroys, damages or alters a record;

(b) conceals a record; or

(c) falsifies a record or makes a false record,

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

INTERPRETATION ACT 33 OF 1957

4 Reckoning of number of days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

