

36 Pearson Street
Eshowe 3815
KwaZulu-Natal
18 August 2020

Secretary Sello Chiloane
Judicial Service Commission
188 14th Road, Noordwyk, Midrand
By email: chiloane@concourt.org.za

Dear Mr Chiloane

GROSS MISCONDUCT COMPLAINTS AGAINST
MLAMBO JP AND WAGLAY JP

1. Six months ago today, on Tuesday 18 February 2020, you called me after-hours at 20h33, urgently requesting copies of my gross misconduct complaints against Mlambo JP and Waglay JP, filed and acknowledged in mid-2017.
2. Your call followed my letter to the Chief Justice six weeks earlier,¹ in which I protested the failure of the Judicial Conduct Committee ('JCC') of the Judicial Service Commission ('JSC') to have resolved my said complaints, then two-and-a-half years since I made them.
3. I made a record of your call by taking a screenshot of calls received on my cellphone that day, showing your name, number and the date and time you called. I'd saved your number after you called me in November 2017, so your name showed up when you called me this second time.
4. Concerning the delay in the prosecution of my complaints, you mentioned the illness, incapacity and death of former JSC secretary Lynette Bios, to which I responded that indeed she'd extraordinarily unprofessionally lost my original complaint against Waglay JP and had asked for a copy, which I'd provided.

¹ My letter, my complaints, the judges' responses, and my invited comments, are all now freely accessible online at illegal-aid.co.za/JSC.

5. The breakdown of her health seemed a plausible if unsatisfactory explanation for the breakdown of proper administration in the JSC's office and the delayed disposal of my complaints.
6. To my enquiry about where you were phoning from at such a strangely late hour, you answered that you were still in your office. Since this was four hours after your colleagues had gone home, I conveyed my concern for you that gathering scanned copies of my complaints, the responses they drew and my invited comments on them, and then uploading them all in PDF to a Dropbox folder for you – the latter step an unavoidably technically slow process – would take me another hour or two. You responded that it didn't matter, and that you'd wait for them, mentioning that you were preparing them for immediate consideration.
7. I inferred from this that after reading my letter the Chief Justice had ordered immediate action taken to finalize my disgracefully long-outstanding complaints.
8. During our conversation, I expressed my outrage at Ms Bios' reply to my enquiry about progress in the disposal of my complaints against Mlambo JP (I'd asked her this when she called to request a copy of my complaint against Waglay JP) that the JCC had resolved to deal with my eight capital complaints against him, two of which charged crimes, merely under section 17 of the Judicial Service Commission Act, governing the disposal of serious but non-impeachable judicial misconduct. You responded with the mollifying assurance that under this section a Tribunal could still be appointed to try my complaints against him.
9. When during our conversation I lamented the JSC's shocking unconstitutional failure to respond to my record requests under the Promotion of Access to Information Act ('PAIA'), made primarily to establish the identity of the judges who'd resolved to proceed against Mlambo JP only under section 17 and who were responsible for delaying the prosecution of my complaints, you responded that my requests had become practically redundant, in that my

complaints were now being given immediate attention – adding that if the JCC’s eventual decisions didn’t satisfy me, I could take them on review under the Promotion of Administrative Justice Act (‘PAJA’).

10. As undertaken, I provided you the same night with all the documents you’d requested, by emailing you at 22h48 a hyperlink to a Dropbox folder to which I’d uploaded them. You acknowledged receipt the follow day. Like the log of your call to me, I’ve obviously kept the record of these emails for future use if needs be.

11. Six months later I’ve heard nothing more.

12. The JCC’s conduct makes a mockery of the ‘Basic values and principles governing public administration’ prescribed by section 195(1) of the Constitution, including that ‘Transparency must be fostered by providing the public with timely, accessible and accurate information.’ The unreasonableness of the delay in dealing with my complaints and keeping me in the dark about it is illustrated analogously by the rule in the Judicial Norms and Standards issued by the Chief Justice that judgments should ordinarily be delivered within three months of the hearing.

13. The JCC’s resolution of my now three-year-old complaints has now become pressing for two reasons.

14. *First*, paragraphs 49–60 of my letter to the Chief Justice mentioned the severe retaliation I experienced on multiple fronts for complaining of Mlambo JP’s gross misconduct as Board chairperson of Legal Aid South Africa (‘LASA’), including his criminal misconduct on two counts.

15. Having failed at this before, LASA is having another go at getting me struck off the roll of advocates for impugning Mlambo JP’s integrity in my labour litigation against it in the period 2011–14. (Neither the trial judge nor the appeal judge found any fault with my court papers that LASA is complaining about.)

16. As said in my letter to the Chief Justice, my complete answer to LASA’s complaint against me to the Society of Advocates of KwaZulu-Natal in November

2015 (of which I chanced to learn only in April 2017) was to provide the Society with copies of my eight gross misconduct complaints against Mlambo JP made to the JCC in June-July 2017; and with that the matter ended.

17. Earlier this year, however, LASA revived the same complaint before the Legal Practice Council ('LPC') on the ludicrous basis that the Society didn't have jurisdiction to handle the matter. (It dealt with it before the LPC even came into office.)

18. Should I need to answer the revived complaint (and on account of *autrefois acquit* I believe not), I will want to report to the LPC the JCC's decision of my gross misconduct complaints. The JCC's continued foot-dragging is making them look meritless, and they certainly aren't.

19. *Second*, the Auditor-General ('AG') enquired a month ago about progress in the disposal of my complaints to the JCC, and I was bound to report that five months after providing you with the copies you'd requested, I'd heard nothing more.

20. The AG's Investigation division is currently dealing with Part One of my complaint of criminal and other capital contraventions of the Public Finance Management Act by current and former top officers of LASA,² as well as twelve criminal charges made against former LASA CEO Vidhu Vedalankar.³ (Contrary to its sainted public image, LASA became prodigiously corrupt during the tenure of Mlambo JP as its Board chairperson.)

21. Again, I'm concerned that the JCC's silence and apparent inactivity might be construed by the AG as an indication that my complaints against Mlambo JP

² Accessible online at illegalaid.co.za/AG. Near completion, Part Two of my complaint details wholesale procedural and ethical recruitment corruption at LASA in which Mlambo JP was centrally involved – a 'material irregularity' under section 1 of the Public Audit Act and therefore of direct concern to the Auditor-General.

³ Accessible at illegalaid.co.za/NPA. Like my criminal charges against former CEO Vedalankar, criminal charges against Chief Legal Executive Patrick Hundermark, National Operations Executive Brian Nair, and Human Resources Amanda Clark will follow.

have been found meritless, because this will surely prejudice the handling and determination of my complaints to the AG.

22. The purpose of this letter therefore is to enquire as to (i) the reason the JCC hasn't decided my complaints three years since I filed them, and six months since I supplied copies of them, along with the accused judges' responses and my invited comments on them, and (ii) when I can expect action on them.

23. If I haven't heard from you by Tuesday next week, I'll conclude that the JCC will not be performing its statutory function in duly disposing of my complaints against Mlambo JP and Waglay JP without the stimulus of:

- (i) adverse publicity in the Sunday Times, Sunday Independent, City Press, Business Day, Rapport, Daily Maverick online, and in the television programme Carte Blanche;
- (ii) public agitation by such anti-corruption and similar public interest NGOs as Corruption Watch, Freedom Under Law, OUTA, SAIRR, CASAC, AfriForum, Accountability Now, and Judges Matter;
- (iii) more criticism by the German, British, American, Dutch and Swiss governments – as in January 2019 about the rampant corruption in our country – now about the corruption in the top ranks of the South African judiciary, about which the French, Chinese, Russian and Indian governments are likely also to be interested;
- (iv) a public complaint by Hlophe JP about the JCC's selective prosecution of him alone, while tacitly granting his colleagues Mlambo JP and Waglay JP impunity for their impeachable high crimes and misdemeanours, just as serious as, if not more serious than, those with which he's to be tried in October; and,
- (v) enquiries from the President and Justice Minister as to why the JCC is giving the said judges a free pass.

24. Anticipating six silent months since you asked for copies of my complaints, and now more than three years since I filed the originals, that the JCC will continue conducting itself in the Mlambo JP and Waglay JP matters as a judicial mutual defence union rather than as a judicial disciplinary body, and expecting the need to spur the prosecution of my complaints by disseminating them to the above interested parties, I've just taken delivery of a special order of five reams (5000 folios duplex-printed) of light copy paper especially suitable for bulk printing and mailing with a view to distributing copies of my complaints, the judges' responses, and my comments on them, together with copies of my letter to the Chief Justice and this one to you.

25. If you consider that my recordal above of what you told me on 18 February is inaccurate on any score, please identify in what respect, because should it be necessary to take up your suggestion to sue the JSC under PAJA in the High Court at Pietermaritzburg for an order compelling it to decide my complaints, I'll be relying on the facts recounted in this letter, which will be annexed to my founding affidavit together with my preceding letter to the Chief Justice.

26. Finally, in telling me that my PAIA requests concerning my misconduct complaints had become redundant, you overlooked my unrelated request for records concerning Ms Noxolo Maduba's appointment to, and then odd resignation from, the Tribunal originally appointed to try the Constitutional Court's complaint against Hlophe JP. My information is that her appointment was grossly improper in the particularly disgraceful circumstances of which I've been apprised, involving grossly unethical abuse of power and influence, to Hlophe JP's considerable prejudice. You'll recall relating during your call to me in November 2017 that, as you remembered it, she'd resigned (about five years earlier) to avoid an 'unseemly scandal'. My unanswered PAIA request in March 2019 about this was directed at collecting evidence for use in a further gross misconduct complaint against Mlambo JP.

27. Please see to it that I'm furnished with these records⁴ at last. Your failure to do so will found the only reasonable conclusion to be drawn by any reader of this letter to whom it's been copied, namely that the JSC is suppressing these records to protect Mlambo JP from being held to account.

28. Kindly advise me (i) who the current chairperson of the JCC is, and (ii) who the judge is who's dealing with my complaints against Mlambo JP and Waglay JP.

29. I might have mentioned during your last call to me that I'm working virtually full-time on exposing the corruption that I've run into at LASA and in judiciary,⁵ and that my determination in this project is absolute and implacable.

30. Be assured therefore that my complaints against Mlambo JP and Waglay JP are not going to die in someone's bottom drawer, and that to guarantee this I'm preparing to launch my complaints into the court of public opinion by way of the nuclear option mentioned above. So you would be well advised to take this communication seriously. Please discuss it with the Chief Justice and with the chairperson of the JCC.

Yours sincerely



ADV ANTHONY BRINK

anthonybrink.sa@gmail.com | 083 779 4174

⁴ Records requested: (1) The terms of reference of the Tribunal appointed under section 16 of the said Act to investigate and report on the complaints to the Commission made against Hlophe JP. (2) Mlambo JP's nomination of attorney Noxolo Maduba for appointment to the said tribunal in 2012/2013. (*Note: Only the part of the record reflecting the identity of Mlambo JP as the person who nominated Maduba for appointment is required; the text of his commendation of her in the nomination, i.e. its contents, hit by section 12 of PAIA, may be redacted.*) (3) Maduba's letter of appointment to the said Tribunal in or about February 2013. (4) Hlophe JP's (and/or other) subsequent objection(s) to her appointment. (5) Maduba's response, if any, to the objection(s). (6) Maduba's letter of resignation from the Tribunal.

⁵ See generally: illegal-aid.co.za.