

36 Pearson Avenue
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KwaZulu-Natal
25 February 2021

The Honourable Chief Justice Mogoeng Mogoeng

Chairperson: Judicial Service Commission

By email: slingers@concourt.org.za & moloto@concourt.org.za

Cc:

The Honourable Deputy Chief Justice Raymond Zondo

Member of the Judicial Service Commission

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The Honourable Cyril Ramaphosa

President of the Republic of South Africa

By email: presidentrsa@presidency.gov.za

And other interested parties.

Dear Justice Mogoeng

**MY MEETING WITH FORMER PRESIDENT ZUMA TO BRIEF HIM ABOUT
MY GROSS MISCONDUCT COMPLAINTS AGAINST MLAMBO JP
AND THE JSC'S FAILURE TO PROSECUTE THEM**

At around 9 o' clock on Monday night, 22 February 2021, I met former President Jacob Zuma in the upstairs study of his house at Nkandla, to brief him about my eight capital misconduct complaints against Dunstan Mlambo JP, filed with the Judicial Service Commission ('JSC') in mid-2017, and about the JSC's failure to

prosecute them in the three-and-a-half years since, despite my persistent pleas to you and to Deputy Chief Justice Zondo to see to it.

The reason the former President requested to see me was apparent from his repeated criticism of Mlambo JP in his media statement released a week earlier (online at bit.ly/3pNgKdG). An attorney friend had informed a junior ANC leader about my unresolved complaints to the JSC against Mlambo JP, and he'd got word to the former President about it.

At our meeting, I handed him an indexed bundle of hard copies of my letters to you in November 2019, to JSC secretary Chiloane in August 2020, and to Zondo DCJ in November 2020 and January 2021 – as well as Judiciary spokesperson Mncube's letter to me a week ago in which he acknowledged receipt of my first letter to Zondo DCJ in November 2020, covering a copy of my letter to you a year earlier.

The index to this correspondence is annexed. As appears from its endnote, all my letters, my complaints to the JSC, the accused judges' responses, and my invited comments on them, are accessible in PDF via the 'Judicial Service Commission' link on the front-page of my online document archive in this colossal corruption case: illegal-aid.co.za.

Since some of my letters incidentally criticised the former President, I told him bluntly, 'I haven't come here as your friend. Nor have I come as your enemy. But as they say up there in the Middle East, my enemy's enemy is my friend' – and he laughed appreciatively at my candour.

I walked him through the substance of my eight complaints against Mlambo JP, pointing up that two of them charged jailable crimes.

I mentioned how he'd suborned the most fantastic, poisonous perjury in an affidavit put up by his attorney on his instructions, totally fabricated out of thin air to wreck my credibility and blow me out of court in my application for leave to subpoena him for cross-examination on his repeated criminal lies told in his 'confidential report' signed and submitted to the National Assembly's Justice

Portfolio Committee to pervert its enquiry into (i) top-level recruitment corruption at Legal Aid SA ('LASA') in which he was centrally involved as Board chairperson, and (ii) LASA's repeated and persistent, illegal and unconstitutional refusals to comply with my PAIA requests duly made in an investigation of this corruption, in which obstruction he was complicit, as LASA's email records reveal.

I canvassed also my gross misconduct complaint filed against Waglay JP in mid-2017 for breaking his judicial oath and corruptly throwing a case LASA's way at its *written* behest, which the JSC has likewise neglected to prosecute. I mentioned that the unstamped, anonymous 'memorandum' slipped to Waglay JP, crudely disparaging me and importuning him to dismiss the case with lies about it – which note he disastrously left in the court file for me to discover very fortuitously some months later during an inspection of the file in search of other information in it – was photocopied for me by the registrar and certified present in the file by stamping an inventory of its contents after checking them item by item. I mentioned the indications (set out in my invited comments on Waglay JP's response to my complaint against him) that the likely author of this criminal 'memorandum' used to defeat the ends of justice was Mlambo JP – in other words that Mlambo JP had corruptly prevailed on his long-time judicial colleague Waglay JP to pervert the decision of the case in which he stood direly exposed.

I told him how to further protect Mlambo JP, both the JSC and LASA were illegally and unconstitutionally withholding records duly requested under PAIA to obstruct my access to documents needed for use in support of a further complaint against him regarding his especially unethical and scandalous role in fixing the appointment of a certain woman to the original tribunal constituted to try the Constitutional Court's complaint against Hlophe JP. I mentioned to the former President that Hlophe JP had recently telephoned me and confirmed the hearsay report I'd received about this from a reliable inside source, a former national management executive at LASA (sick to the gills with the corruption he'd encountered there).

The key point I emphasized to the former President was that as the Zondo Commission was coming after him and the JSC was coming after Hlophe JP, the JSC – of which both you and Zondo DCJ are obligatory members – is giving a free pass to two other judge presidents guilty of the most extreme impeachable documented misconduct.

At the end of our meeting, the former President was profuse in his thanks for my information about the Mlambo JP case and the JSC's failure to hold him to account. My parting suggestion was that he pass on my letters to you and Zondo DCJ to his lawyers, saying, 'They'll jump out of their chairs when they read this.'

On the very day of the meeting, President Cyril Ramaphosa used his weekly newsletter to rebuke his predecessor for charging 'without any evidence' that Mlambo JP and certain other judges had violated their judicial oaths; and he urged that 'Anyone who has evidence of any wrongdoing by any judge should make use of the avenues provided in our Constitution and in our law to ensure that appropriate action is taken.' (See bit.ly/3usuvSB.)

As I told the former President at our meeting, no 'appropriate action' had been 'taken' against Mlambo JP and Waglay JP, despite my presentation to the JSC of hard documentary 'evidence' of the most egregious imaginable 'wrongdoing' by them. I informed him that my eight complaints against Mlambo JP, substantiated by supporting documents, showed that he was guilty of far more than political bias in his judgments – as evinced by his ludicrously contradictory decisions against him (Zuma) in 2017 on the powers of the Public Protector and in favour of his successor in 2020. I advised him, as I'd advised you in my November 2019 letter, that my complaints against Mlambo JP and their supporting documents show unequivocally that he's an unconvicted criminal with no regard for the truth, for the law, and for the Constitution. And that Waglay JP had corruptly tossed a case, prematurely, before all the papers were in, at the secret *written* instance of my opponent, and almost certainly Mlambo JP himself. In other words, as President Ramaphosa put it very correctly, albeit suggesting the contrary, 'there are some within the judiciary

who are failing to uphold the values and principles with which they have been entrusted.’

Even though there are indeed ‘clear processes established in law to deal with allegations of misconduct against members of the judiciary’, as President Ramaphosa put it, what I found when proceeding to ‘make use of the avenues provided in our Constitution and in our law to ensure that appropriate action is taken’, by providing documentary ‘evidence of any wrongdoing by any judge’ in support of nine complaints about it, was that zero ‘appropriate action [was] taken.’

That is, despite my due ‘presentation of evidence to support these claims [‘of misconduct’ to] the relevant authorities’, the JSC did nothing to hold the guilty judge presidents to account.

It seems to me that it’s precisely the JSC’s strange inaction that ‘undermine[s] the judiciary and the important function that it performs in our democracy’, because it shows that the JSC doesn’t care if a judge president tells blatant vicious lies in an affidavit put up by his attorney on his instructions; repeatedly connives at and colludes in the illegal and unconstitutional suppression of duly requested public records in service of a corruption cover-up in which he’s centrally involved, so as to obstruct its investigation and exposure; and tells multiple objectively demonstrable lies, with the same corrupt intention, in a ‘confidential’ report to the Justice Minister and to the Justice Portfolio Committee to pervert their separate, independently instituted enquiries into recruitment corruption and malicious non-compliance with PAIA at the public entity he chaired at the time – all of which illegality and unconstitutionality he’s involved in. And the JSC doesn’t care if another judge president betrays his judicial oath by corruptly throwing a case, after being anonymously importuned to do so *in writing* by a public entity chaired by his long-time colleague, Mlambo JP, and almost certainly by Mlambo JP himself.

Which is to say, your and President Ramaphosa's very nice assuring words about presenting clear evidence of judicial malfeasance to the JSC for appropriate disciplinary action *don't line up so well with the reality situation.*

The lesson for the public would seem to be: Don't bother complaining to the JSC about gross judicial misconduct, especially not by judge presidents, because as the Hlophe JP, Mlambo JP, and Waglay JP cases illustrate, over at the JSC some judge presidents are more equal than others.

The purpose of this letter is to alert you to the fact that former President Jacob Zuma is now fully apprised of the JSC's failure to discipline two utterly corrupt judge presidents, and that the JSC's unlawful and unconstitutional dereliction of its obligations looks certain to be ventilated by him and/or his lawyers – and sooner rather than later, considering his bitter criticism of Mlambo JP and Zondo DCJ in his mid-February media statement.

So this might be a good time for the JSC to start getting a move on.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. Brink', with a stylized, somewhat abstract shape.

ADV ANTHONY BRINK

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PS: When I got home after the meeting, I found an email from JSC secretary Chiloane covering affidavits by Mlambo JP and his former court secretary telling more brazen lies in a laughably feeble and dishonest attempt to refute the first of my eight complaints against him. I'll be dealing with Mlambo JP's aggravation of my first complaint in my comments thereon, invited in the email.

Encl: Index to JSC letter bundle.

**RE: ADV BRINK'S GROSS MISCONDUCT COMPLAINTS
TO THE JUDICIAL SERVICE COMMISSION AGAINST
MLAMBO JP AND WAGLAY JP**

Letters:

1. to Mogoeng CJ, chairperson of the Judicial Service Commission and of its Judicial Conduct Committee, 29 November 2019 – with proof of dispatch by courier on 2 December 2019 and of delivery on 4 December 2019 – unacknowledged
2. to Sello Chiloane, JSC secretary – with proof of delivery by email – unacknowledged
3. to Zondo DCJ, member of the JSC and of its JCC, 29 November 2020 (enclosing a copy of letter to Mogoeng CJ) – with proof of despatch by courier on 30 November 2020 – receipt acknowledged on 17 February 2021 (see #5 below)
4. to Zondo DCJ, 29 January 2021, despatched by ordinary mail for speed, but copied by email to secretary Chiloane on 3 February 2021 with the request that he forward it to Zondo DCJ – unacknowledged.
5. from Judiciary Spokesperson Nathi Mncube, 17 February 2021, acknowledging receipt on 11 February 2021 of first letter to Zondo DCJ (#3 above) couriered on 30 November 2020

These letters and the gross misconduct complaints to which they refer (outlined in paragraphs 3ff of Brink's letter to Mogoeng CJ), plus the accused judges' responses and Brink's invited comments on them, can all be accessed via the 'Judicial Service Commission' link on the front page of illegal-aid.co.za.