

*Note: These annexures to the original founding affidavit for the court file are all initialled.*

1 Boast Street

Eshowe

7 September 2015

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Thulani Vilakazi,  
Registrar of the Labour Court and  
Labour Appeal Court, Durban  
Liberty Life House  
269 Anton Lembede Street  
Durban

Cc to:

The Honourable Mr Justice Dennis Davis JA, and,  
The Honourable Mr Justice Roland Sutherland JA  
Labour Appeal Court

And to:

Corporate Services Executive Thembile Mtati: Legal Aid SA, and,  
Hunter Mazoue Attorneys, Durban

All by email

Dear Mr Vilakazi

BRINK V LEGAL AID SA: D529/11

TAXATION ON 15 SEPTEMBER 2015

NOTICE TO REMOVE THE MATTER FROM THE ROLL

I refer to the 'Notice of Setdown of Unopposed Taxation' for the 15th instant issued by Legal Aid South Africa ('LASA') in the above-mentioned matter. A copy is annexed marked 'A'.

LASA relies on a document styled 'Order' under case number DA21/14, signed and issued by Johannesburg Labour Appeal Court registrar Civilious Phophi, notifying the dismissal of my petition for leave to appeal by Waglay JP and Davis and Sutherland JJA at the Labour Appeal Court in Durban on 18 February 2015. A copy is annexed marked 'B'.

The document is a forgery. I've established that contrary to the false information it contains, my petition for leave to appeal has yet to be duly determined by three judges of appeal in compliance with Labour Appeal Court rule 4(7).

The immediate first indication that my petition had been perverted, and that it hadn't been decided by three designated judges of appeal as required, was that the order was hurriedly issued before LASA's application for condonation for filing its opposing affidavit out of time had been answered, much less decided; which means its opposing affidavit was not yet properly before court. The matter was consequently not yet ripe for decision, and for that reason alone was unlawfully disposed of. Obviously three senior, experienced appeal judges wouldn't all have made so elementary a mistake as to decide my petition before all the papers in the condonation application were in; before they'd decided the application; and before they'd allowed LASA's late opposing affidavit – or rejected it as out of time, non-compliant with their court rules, and dishonestly explained. Clearly three judges of appeal hadn't seen all the papers filed in the case at the time the dismissal order was issued.

Another pointer right away to the irregular disposal of my petition was that according to the heading of the order it was considered and decided at the Labour Appeal Court in Durban, yet it was signed and issued by the registrar of a different court – ultra vires obviously. The registrar of the Labour Appeal Court in Johannesburg isn't your superior, and doesn't have the power to issue orders based on judicial decisions made in your court. Had my petition indeed been decided in

Durban, as alleged in Phophi's order, it would have been signed and issued by you, and not by him in Johannesburg.

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A further early clue that Davis and Sutherland JJA hadn't concurred in Waglay JP's dismissal of my petition, as falsely alleged in the order, was the glaring inconsistency between the 'no order as to costs' ruling on the first page and the fulsome justification for ordering me to pay the costs of my rejected petition on the second. Davis and Sutherland JJA wouldn't have associated themselves with such a dull contradictory order. Nor with the pitifully defective logic in its second paragraph.

Obviously no appeal judge acting in good faith, let alone three, could have held that my 'intended appeal' against the trial judge's many clear errors, such as his most basic blunder in misallocating the final burden of proof (which he elliptically concedes, and LASA unequivocally admits) had 'no reasonable prospects of success' and that my petition identifying these many clear errors, including the just-mentioned fatal root one, was 'devoid of any merit whatsoever'.

My suspicion naturally deepened when Phophi failed to furnish me with the record of the three designated judges' decision to reject my petition, despite my repeated requests for it. The reason he couldn't provide it, I later found out, is that no such record exists.

Contrary to the false allegation in the order that Waglay JP and Davis and Sutherland JJA considered my petition and rejected it at the Labour Appeal Court in Durban on 18 February 2015, in truth and in fact none of them were there that day.

You know this yourself, because although the Labour Appeal Court's first term in 2015 commenced on 15 February (see annexure 'C'), your court roll (annexure 'D') shows that no appeals were heard in Durban in the first week Monday the 16th to Friday the 20th. Nor were any Labour Appeal Court judgments delivered in

February, as the court's list of judgments shows; see annexure 'E'. Your roll shows that both courts 1 and 2 in Durban were occupied all week by Cele and Witcher JJ trying referrals and applications to the Labour Court.

So Waglay JP and Davis and Sutherland JJA had no appeal court business in Durban in the first week of the first term of 2015, the middle of which, according to the fake order, they were there considering and dismissing my petition on the 18th.

The law reports tell us that on 19 February, the day after the order alleges that they bounced my petition in Durban, the said three appeal judges were trying appeals in different courts across the country: Waglay JP and Davis JA in Cape Town and Sutherland JJA in Johannesburg; see annexures 'F' and 'G'.

Davis and Sutherland JJA will confirm that on the 18th, the day before the arguments of these appeals, and on the day on which the phoney dismissal order alleges that they were busy considering and deciding my petition, they were in fact preparing themselves for the arguments of their appeals the next day by diligently and attentively studying the trial records and the parties' heads of argument.

(Unlike Cele J, who shamelessly admitted in his chambers before the argument of my case a whole ten months after the two-week trial – set down for three days since my main heads alone were a phone-book thick bristling with 857 footnotes to the 1037 pages of bundled trial documents and to LASA's dense, lengthy pleadings (tactically elicited) and several interlocutory affidavits contradicted again and again by its single trial witness, but which argument he cut to a few hours, saying he just wanted our leading points – that he hadn't troubled to prepare himself in this manner, as might have been expected of a highly-paid judge trying an exceptionally serious case involving fundamental rights violations, millions of rands in damages, and serious maladministration, abuse of power and pervasive corruption in the top echelons of a major public entity headed by a Judge President. It explains his abysmal judgment whitewashing it a further three-and-a-half months later,



disgracefully enabling the guilty to evade accountability and to walk away smirking. If only for now.)

Waglay JP and Davis JA were indeed in the Labour Appeal Court in Durban in the first term of 2015, but not at the material time, and not with Sutherland JA. More than a week after the dismissal order alleges they decided my petition in Durban on 18 February, they were there to hear an appeal with Ndlovu JA on the 24th; see annexure 'H'.

The earliest Waglay JP and Davis and Sutherland JJA sat en blanc in the first term of 2015, and would have been in a position to meet and consider and decide my petition, was several weeks later on 26 March, but in Johannesburg, not Durban; see annexure 'J'.

I say meet, because it's settled practice in the Labour Appeal Court for appeal judges designated to consider and decide petitions to do so face to face at a 'Meeting after court' or at a given time on formally allocated dates for this; see 'Discussion of the petitions' set down in 'Week One' and 'Week Seven' of the Labour Appeal Court's '3rd Term Roll 2015', annexed marked 'K'.

And there's no possibility that in my special case, singled out by Waglay JP for special treatment, the appeal judges named in the order might have unusually and irregularly, and also prematurely, considered and decided my petition individually in isolation in their various home chambers in Johannesburg and Cape Town, without debating it in the normal course, and then pooled their votes on it; or there'd be records in the court file to vouch this, showing either their identical negative decisions or their majority negative and dissenting positive ones.

This is because as Cachalia JA very correctly observed during the debate of the Presidency's appeal against the *Mail & Guardian's* PAIA compliance order, the state is not 'a glorified spaza shop' that doesn't keep records of its decisions. (Cele J evidently disagrees.) And this includes the judiciary: whenever judges duly decide a

matter to determine rights, there's a signed typed or manuscript record of their decision, or an audio recording of it, on the basis of which the court registrar issues an order.

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Contrary to the false implication of the order that the dismissal of my petition was the unanimous decision of the three named judges – and Phophi later repeated this lie to me expressly in a letter ghost-written for him (annexure 'L'), his second paragraph perfectly irrelevant, his third a flourish of dismally obtuse contradiction and illogic – I established from an inspection of the petition file at the Durban Labour Appeal Court in April that it contains no record of any such decision by the three named judges or by even one of them. You've got the file in your office; you can see for yourself.

To pre-empt any tampering with the real evidence of judicial corruption that the file discloses, by adding to and subtracting from it, I had the file inventoried and the true and complete inventory verified and stamped by one of your clerks after confirming its perfect accuracy.

To eliminate the outside possibility that there might have been a judgment against me sitting in a second court file at the Johannesburg Labour Appeal Court, I travelled up there in July to enquire. The registrar's clerks insisted that there's no second petition file in Johannesburg and that the only one is in Durban.

Contrary to the false information uttered in the forged order, calculated to defraud me into abandoning my pursuit of justice after years of struggle – with criminal prosecution and terrible sanctions in store for those who brazenly lied to the Justice Portfolio Committee in the National Assembly about my matter, and perjured themselves in the Labour Court and in the Labour Appeal Court – Davis and Sutherland JJA weren't involved in rejecting my petition, and their names were abused in the perpetration of the fraud on me without their knowledge. Ask them, they'll tell you.

In sum, Waglay JP acted alone in rejecting my petition, prematurely before all the papers were in and the matter was ready for decision, and without designating three appeal judges to consider and decide my petition as rule 4(7) required of him at a live debate of its merits conducted in committee, in conformity with normal Labour Appeal Court practice.

He then covered up his malicious obstruction of my right to appeal (if, under LAC rule 4(8), at least two designated appeal judges thought I was in with a chance), firstly by ordering his registrar in Johannesburg to issue a counterfeit order he'd ghost-written, pretending that he, Davis and Sutherland JJA had considered and unanimously rejected my petition in Durban on 18 February 2015, and secondly by ghost-writing a letter for the said registrar to send me, repeating this lie and basically telling me to push off and stop asking dangerous questions threatening to blow the lid on his impeachable misconduct.

It isn't any mystery why Waglay JP intentionally violated my fundamental right to due process guaranteed by section 34 of the Constitution by blocking my access to the Labour Appeal Court to appeal and remedy the complete hash that Cele J made of my case. In a magnificent stroke of good fortune, I landed the written evidence of the stunningly dishonest improper influence that caused him to do so. And I have a photocopy of it worth a bar of gold.

In reaction to Police Minister Nkosinathi Nhleko's reported charge that 'some elements of the judiciary meet with characters to produce certain judgments', as essentially occurred in my case, the Chief Justice, Heads of Court, and other senior judges urged in their public statement on 8 July, and again on 27 August, that complaints of such serious unethical misconduct by judges be referred to the Judicial Service Commission.

I've substantially completed drawing such a complaint regarding the perversion of my petition, identifying the other corrupt judge responsible for it and his motives, and I'll be filing it imminently.

In the situation, you are required to remove the premature, irregular taxation in this case from the roll. Not being based on any judgment, as the bogus order falsely implies, it's a nullity, and for this reason the taxation cannot properly and lawfully proceed.

If you carry on to tax LASA's bill, in full knowledge that the so-called order on which it relies is a fraud, and that contrary to false appearances my case is still very much alive and has yet to be properly determined on petition and then on appeal, you'll be acting improperly, in bad faith and unlawfully.

In which event, I'll apply to the Pietermaritzburg High Court to have your allocatur set aside, and will put this letter up with my application to demonstrate that you turned a deliberate blind eye to the true facts that I brought to your attention, and proceeded to tax a bill you well know is not yet due.

I trust this won't be necessary. Please let me know your intentions.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

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IN THE LABOUR COURT OF SOUTH AFRICA  
HELD AT DURBAN

CASE NO: D529 / 2011

In the matter between :

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

NOTICE OF SET DOWN OF UNOPPOSED TAXATION

TO : THE REGISTRAR OF THE ABOVE  
HONOURABLE COURT  
DURBAN

AND TO : ANTHONY ROBIN BRINK  
APPLICANT  
1 BOAST STREET  
ESHOWE

SIRS

KINDLY TAKE NOTICE that the Bill of Costs in this matter will be taxed ex parte before the Taxing Master of the above Honourable Court on 10:30 the 15 day of SEPT, 2015 commencing at or so soon thereafter as the matter may be heard.

DATED AT Durban ON THIS 6<sup>th</sup> DAY OF AUGUST 2015.

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*Hunter*

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LEGAL AID SOUTH AFRICA  
RESPONDENT  
29 De Beer Street  
Legal Aid House  
Braamfontein  
Tel: 011 877 2000  
Ref Solly

Email: [sollys@legal-aid.co.za](mailto:sollys@legal-aid.co.za)  
C/O HUNTER MAZOUÉ ATTORNEYS  
(for the purposes of the taxation only)  
111 Helen Joseph Road  
Glenwood  
Durban  
4001  
Ref: H/M/LASA/001  
Tel: 031 201 8289  
Email: [hunterlcc@telkomsa.net](mailto:hunterlcc@telkomsa.net)

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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

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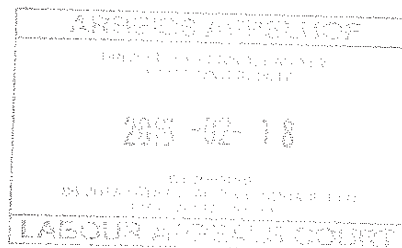
ORDER

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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:

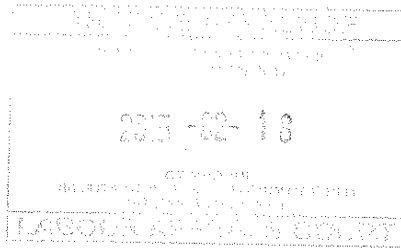


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1. This court does not give reasons for its order refusing a petition for leave to appeal. This is in line with international practice and does not offend any constitutional principle.
2. The refusal of a petition for leave to appeal signifies that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





## Court Terms ◀

### TERMS AND RECESSES FOR THE LABOUR APPEAL COURT & LABOUR COURT (Cape Town, Durban, Johannesburg and Port Elizabeth)

Notice is hereby given that the following have been determined as the terms for the **Labour Appeal Court**.

- **1st Term:** 15 February - 31 March
- **2nd Term:** 01 May – 31 May
- **3rd Term:** 15 August - 30 September
- **4th Term:** 01 November - 30 November

Notice is hereby given that the following have been determined as the terms and recesses for the **Labour Court**.

**2015**

TERMS	No of weeks in Term	RECESS	No of weeks in Recess
26 Jan – 29 March	9	30 Mar – 12 April	2
13 April – 28 June	11	29 June – 26 July	4
27 July – 20 Sept	8	21 Sept – 4 Oct	2
5 Oct – 13 Dec	10	14 Dec – 24 Jan 2016	6



WEEK 4 (16/2/15 to 20/2/15)

COURT 1		MOTION		WITCHER J	
Day	Date	Case No	Applicant	Respondent	Type of matter
Monday	16/2/15	1.D126/15	FELTEX	NUMSA & SACTWU	INTERDICT
Tuesday	17/2/15	1.D1244/13	N SIGWABELA	UMUZIWABANTU	OPP REV
		2.D1151/12 & D1100/12	KIMAR SUPPLIERS	Z DLAMINI	OPP REV
		3.D80/15	R SAMUELS	TRANSNET	INTERDICT
Wednesday	18/2/15	1.D254/12	LABOUR DEPT	PHUMZILE LANGA	U/OP BCEA
		2.D1143/13	LABOUR DEPT	VUMANKOSI	U/OP BCEA
		3.D351/14	LABOUR DEPT	HLALAJAHLE	U/OP BCEA
		4.D374/14	LABOUR DEPT	CLOTHING JUNTION	U/OP BCEA
		5.D379/14	LABOUR DEPT	DING DONG	U/OP BCEA
		6.D381/14	LABOUR DEPT	GENERATION SALON	U/OP BCEA
		7.D382/14	LABOUR DEPT	EMV ENGINEERING	U/OP BCEA
		8.D386/14	LABOUR DEPT	ELSA BROER	U/OP BCEA
		9.D530/14	LABOUR DEPT	INGWE CONST	U/OP BCEA
		10.D531/14	LABOUR DEPT	TALBRICK	U/OP BCEA
		11.D580/14	LABOUR DEPT	EMMANUEL NATHAN	U/OP BCEA
		12.D534/14	LABOUR DEPT	HAMASHE	U/OP BCEA
		13.D535/14	LABOUR DEPT	IHAWU SECURITY	U/OP BCEA
		14.D576/14	LABOUR DEPT	KASI'S FLAME	U/OP BCEA
		15.D577/14	LABOUR DEPT	CHEEKY SECURITY	U/OP BCEA
		16.D616/14	LABOUR DEPT	FOOD PALA CC	U/OP BCEA
		17.D619/14	LABOUR DEPT	RED ALERT	U/OP BCEA
		18.D329/14	LABOUR DEPT	PROMO DIRECT	U/OP BCEA
		19.D590/14	LABOUR DEPT	ISIDINGO SECURIYT	U/OP BCEA
		20.D997/14	LABOUR DEPT	METRO PROTECTION	U/OP BCEA
		21.D1007/14	LABOUR DEPT	GUARDCORP	U/OP BCEA
		22.D1014/14	LABOUR DEPT	L V PROTECTION	U/OP BCEA
		23.D1083/14	LABOUR DEPT	RITZTRADE	U/OP BCEA
		24.D1063/14	LABOUR DEPT	SNOOZE ME BED	U/OP BCEA
		25.D984/14	LABOUR DEPT	EMALANGENI	U/OP BCEA
Thursday	19/2/15	1.D733/13	K DLELA	SIBAYA CASINO	U/OP REV
		2.D741/13	BLENDCOR	T GOVINDAMY	U/OP REV
		3.D1088/13	VETERINARY	Z MJOLI	U/OP REV
		4.D1145/14	I ARCHER	UMVOTI MUNICIPAL	INTERDICT
Friday	20/2/15	1.D15/11	W DE BEER	RUBU BLUE	PTC
		2.D410/13	eTHEKWINI	N BAHADUR	U/OP DIS
		3.D475/11	RAINBOW FARMS	F MKHIZE	U/OP DIS
		4.D278/13	Z KHUZWAYO	eTHEKWINI	EXCEPTION
		5.D192/14	D NYAMEZELA	SA FENCE & GATE	PTC
		6.D1204/14	KZN TOURISM	N WASA	RETURN

WEEK 4 (16/2/15 to 20/2/15)

COURT 2		TRIAL		CELE J	
Day	Date	Case No	Applicant	Respondent	Type of matter
Monday	16/2/15	1.D1219/10	CEPPAWU	BAYFIBRE	RETRENCHMENT
Tuesday	17/2/15	1.D1219/10			
Wednesday	18/2/15	1.D1219/10			
Thursday	19/2/15	1.D1219/10			
Friday	20/2/15	1.D1051/13	T DLAMINI	DUT	ORAL EVIDENCE

## South Africa: Labour Appeal Court

**You are here:** [SAFLII](#) >> [Databases](#) >> [South Africa: Labour Appeal Court](#) >> [2015 South Africa: Labour Appeal Court Decisions](#)

### 2015 South Africa: Labour Appeal Court Decisions

#### January 2015

**Qibe v Joy Global Africa (Pty) Ltd, In re: Joy Global Africa (Pty) Ltd v Commission for Conciliation Mediation And Arbitration and Others (JA 119/13) [2015] ZALAC 1; [2015] 4 BLLR 415 (LAC); (2015) 36 ILJ 1283 (LAC) (15 January 2015)**

**Nehawu obo Kgekwane v Department of Development Planning and Local Government (JA 68/13) [2015] ZALAC 5; (2015) 36 ILJ 1247 (LAC) (15 January 2015)**

**General Motors (Pty) Limited v Numsa Obo Ruiters (PA 8/12) [2015] ZALAC 4 (22 January 2015)**

#### March 2015

**Edcon v Steenkamp and Others (JS648/13, JS51/14, JS350/14) [2015] ZALAC 2; 2015 (4) SA 247 (LAC) (3 March 2015)**

**South African Revenue Services v Mhlongo (JA115/2013) [2015] ZALAC 3 (12 March 2015)**

**National Employers Association of South Africa (NEASA) v Metal And Engineering Industries Bargaining Council (MEIBC) and Others (JA02/2015) [2015] ZALAC 11 (26 March 2015)**

#### April 2015

**Solidarity and Others v Department of Correctional Services and Others (CA23/13) [2015] ZALAC 6; 2015 (4) SA 277 (LAC) (10 April 2015)**

**Thanda Royal Zulu Football Club v Lester N.O. and Others (DA8/14) [2015] ZALAC 7 (21 April 2015)**

**Communication Workers Union ("CWU") and Others v Mobile Telephone Networks (Pty) Ltd ("MTN") and Another (DA10/13) [2015] ZALAC 8 (21 April 2015)**

**Independent Municipal And Allied Trade Union v City of Cape Town and Others (CA 13/2013) [2015] ZALAC 9 (23 April 2015)**

**South African Police Service v Public Service Association of South Africa and Others (DA01/2014) [2015] ZALAC 16 (24 April 2015)**

**National Union of Mineworkers and Another v Commission for Conciliation, Mediation & Arbitration and Others (JA123/2013) [2015] ZALAC 10 (29 April 2015)**

#### May 2015

**South African Transport And Allied Workers Union (SATAWU) and Another v Tokiso Dispute Settlement and Others (JA 117/13) [2015] ZALAC 12 (5 May 2015)**

**Builders Warehouse (Pty) Ltd v Commission for Conciliation, Mediation And Arbitration and Others (PA 1/14) [2015] ZALAC 13 (5 May 2015)**

**Putco (Pty) Limited v Transport And Allied Workers Union of South Africa and Another (JA106/13) [2015] ZALAC 14 (5 May 2015)**

**Coca Cola Sabco (Pty) Limited v Van Wyk (JA11/2013) [2015] ZALAC 15 (5 May 2015)**

**National Health Laboratory Service v Yona and Others (PA 12/13) [2015] ZALAC 33 (12 May 2015)**

**Monyakeni v SSSBC and Others (JA 64/13) [2015] ZALAC 17 (19 May 2015)**

**Mbashe Municipality v Dumezweni and Others (PA 4/14) [2015] ZALAC 18 (19 May 2015)**

#### June 2015

**Rabothata v Others v MEIBC and Others (JA40/2010) [2015] ZALAC 19 (3 June 2015)**

**Western Platinum Refinery Ltd v Hlebela and Others (JA32/2014) [2015] ZALAC 20 (3 June 2015)**

**Minister of Safety And Security and Others v Naidoo (JA66/2013) [2015] ZALAC 21 (11 June 2015)**

**Transnet Rail Engineering v Mienies and Others (CA20/2013) [2015] ZALAC 22 (18 June 2015)**

**Shoprite Checkers (Pty) Ltd v Tokiso Dispute Settlement and Others (JA49/14) [2015] ZALAC 23 (24 June 2015)**

**Transport And Allied Workers Union of South Africa (TAWUSA) and Others v Unitrans Fuel And Chemical (Pty) Ltd (JA44/2013) [2015] ZALAC 24 (24 June 2015)**

**Conti Print CC v CCMA and Others (JA53/2014) [2015] ZALAC 25 (24 June 2015)**

**South African Municipal Workers Union obo Manentza v Ngwathe Local Municipality and Others (JA 56/13) [2015] ZALAC 26 (24 June 2015)**

**CMH Luxury Motors (Lyndhurst) Pty Ltd T/A Lyndhurst Auto v Motor Industry Staff Association and Another (JA65/14) [2015] ZALAC 27 (24 June 2015)**

**Hudson and Another v South African Airways Soc Limited (JA84/2014) [2015] ZALAC 28 (24 June 2015)**

**CSS Tactical (Pty) Ltd v Security Officers Civil Rights And Allied Workers Union (SACRAWU) and Others (JA 69/14) [2015] ZALAC 31 (24 June 2015)**

## July 2015

**Potgietersrust Platinum Limited (Mokgalakwena Section) v Ditsela and Others (JA66/12) [2015] ZALAC 29 (2 July 2015)**

**DB Contracting North CC v National Union of Mineworkers and Others (JA 113/13) [2015] ZALAC 30 (2 July 2015)**

**National Union of Mineworkers and Another v Mogale Gold, A Division of Mintails (SA) (Pty) Ltd (JA11/2014) [2015] ZALAC 32 (22 July 2015)**

**Universal Church of the Kingdom of God v Myeni and Others (DA 3/14) [2015] ZALAC 31 (28 July 2015)**

## August 2015

**ARB Electrical Wholesalers (Pty) Ltd v Hibbert (DA3/) [2015] ZALAC 34 (21 August 2015)**

**MEC of the Western Cape Provincial Government Health Department v Coetzee and Others (CA3/2011) [2015] ZALAC 35 (24 August 2015)**

**Gemalto South Africa (Pty) Ltd v Ceppwawu obo Louw and Others (JA 54/14) [2015] ZALAC 36 (27 August 2015)**



**F**  
**A**

**REPUBLIC OF SOUTH AFRICA**

**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, CAPE TOWN**

Reportable

Case no: CA23/13

In the matter between:

**SOLIDARITY**

**First Appellant**

**P J DAVIDS**

**Second Appellant**

**C F FEBRUARY**

**Third Appellant**

**A J JONKERS**

**Fourth Appellant**

**L J FORTUIN**

**Fifth Appellant**

**G M BAARTMAN**

**Sixth Appellant**

**D S MERKEUR**

**Seventh Appellant**

**T S ABRAHAMS**

**Eighth Appellant**

**D R JORDAAN**

**Ninth Appellant**

**J J KOTZE**

**Tenth Appellant**

**D M A WEHR**

**Eleventh Appellant**

and

**DEPARTMENT OF CORRECTIONAL**

**SERVICES**

**First Respondent**

**THE MINISTER OF CORRECTIONAL**

**SERVICES**

**Second Respondent**

**THE NATIONAL COMMISSION OF THE DEPARTMENT**

**OF CORRECTIONAL SERVICES**

**Third Respondent**

**THE MINISTER OF LABOUR**

**Fourth Respondent**

**POLICE AND PRISONS CIVIL RIGHTS UNION**

**AMICUS CURIAE**

**Heard: 19 February 2015**

**Delivered: 10 April 2015**

**Coram: Waglay JP, Davis JA et Mngqibisa-Thusi AJA**

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## **JUDGMENT**

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WAGLAY JP and DAVIS JA

### Introduction

[1] This case involves an enquiry into the constitutional and legal scope of the implementation of positive measures designed to achieve equality through the medium of employment equity plans. The present dispute follows hard on the heels of the recent decision in *South African Police Services v Solidarity obo Barnard*<sup>1</sup> (“Barnard”). This judgment of the Constitutional Court notwithstanding, the law relating to racial quotas and targets and other mechanisms to achieve

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<sup>1</sup> 2014(6)SA123 (CC)



G

A

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no. JA 113/13

In the matter between:

**DB CONTRACTING NORTH CC**

**Appellant**

And

**NATIONAL UNION OF MINeworkERS**

**First Respondent**

**SIPHO NKABINDE & 105 OTHERS**

**Second and Further Respondents**

Heard: 19 February 2015

Delivered: 2 July 2015

**Summary: Dismissal for operational requirements – sectoral determination for industry published in the government gazette increasing hourly rate of employees – employer unable to afford increased rate – employer consulting with union and offering to maintain old rate or effect a retrenchment – common cause between parties that such offer was reasonable - Union representative undertaking to obtain a mandate as to whether or not to accept such offer to avoid retrenchment – agreement between Employer and union that if offer not accepted retrenchment would be effected on a stipulated date – no acceptance of the offer communicated to employer– employer issuing notice of dismissal – Union contending that the employees had accepted the offer but acceptance not communicated at any time – on the facts the version of the union that offer was accepted rejected – Labour Court’s judgment finding dismissal unfair and reinstating employees set aside- appeal upheld with costs.**

**Minority: *Onus* on employer to prove fairness of dismissal and not on employees to prove otherwise – employer alleging its attorney received phone call from union representative with message that employees rejecting employer’s offer – attorney not testifying and not filing confirmatory affidavit or letter – attorney’s alleged message inadmissible hearsay - however employer issuing letters of dismissals on strength of the said message and prior to final consultation meeting – employees disputing they rejected the offer but alleging they accepted it - Disputes of fact – Appeal Court not to lightly interfere with trial court’s credibility finding unless there is misdirection or finding clearly wrong - Retrenchment was premature and, on the facts, probably inspired by employer’s desire to re-employ employees through labour broker – Dismissals were therefore unfair – Reinstatement ordered.**

**Coram: Ndlovu, Landman et Sutherland JJJA**

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## JUDGMENT

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NDLOVU JA

### Introduction

- [1] This appeal is against the judgment of the Labour Court (Lallie J) handed down on 3 August 2012, in terms of which the Court *a quo* held that the second to further respondents, comprising a total of 106 employees listed in Table A annexed to the statement of claim (the employees), were unfairly dismissed by the appellant; and ordered that the employees be reinstated to the appellant’s employ. Leave to appeal was refused by the Court *a quo* on 13 September 2013 and only granted by this Court on 19 February 2014, upon petition.
- [2] The appellant, DB Contracting North CC carried on the business of digging trenches on the ground, laying cables and restoring the affected areas with backfill. The employees were members of the first respondent, the National Union of Mineworkers (the union) which, on their behalf, instituted an unfair



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IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, DURBAN

Reportable

Case no. DA 3/14

In the matter between:

THE UNIVERSAL CHURCH OF THE KINGDOM OF GOD

Appellant

*(Applicant in the Court a quo)*

and

MYENI, MXOLISI JUSTICE

First Respondent

*(Third Respondent in the Court a quo)*

THE COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

Second Respondent

*(First Respondent in the Court a quo)*

COMMISSIONER SULLIVAN N.O.

Third Respondent

*(Second Respondent in the Court a quo)*

Heard: 17 March 2015

Delivered: 28 July 2015

Summary: Appeal – Review – Jurisdiction of CCMA – Test applicable to determine jurisdiction restated – Alleged employer & employee relationship – Whether a pastor is employee of the church ito s213 r/w 200A of the LRA – Both CCMA commissioner & LC finding that church failed to rebut s200A presumption and holding that pastor was therefore an employee of the church.

On appeal: Interpretation of s200A – meaning of the words “*regardless of the form of the contract*” - s200A applicable only where there is a contract or contractual arrangement in place between parties. *In casu* s200A did not apply. On the facts, the parties never intended to engage in any form of legally binding agreement, including employment contract. Accordingly, appeal upheld.

Coram: Waglay JP, Davis et Ndlovu JJA

---

## JUDGMENT

---

NDLOVU JA

### Introduction

- [1] The issue in this appeal is whether the second respondent, the Commission for Conciliation, Mediation and Arbitration (“the CCMA”) possessed the requisite jurisdiction to arbitrate an unfair dismissal dispute between the appellant (“the Church”) and the first respondent, Mr Mxolisi Justice Myeni. The basis for this jurisdictional challenge (raised *in limine* by the Church in the Court *a quo*) was that Mr Myeni, the Church pastor, was not an employee of the Church, as defined in the Labour Relations Act<sup>1</sup> (“the LRA”).
- [2] In his arbitration award, the third respondent (“the commissioner”) found that Mr Myeni was indeed an employee of the Church. Having made this ruling, the commissioner proceeded and considered the merits of the unfair dismissal claim referred by Mr Myeni against the Church. The commissioner concluded that Mr Myeni was unfairly dismissed and ordered the Church to pay him compensation in the sum of R64 994.96, plus further ancillary relief. The Church launched a review application in the Labour Court, against the award, in terms of section 145 of the LRA. By agreement between the parties, the Court *a quo* was called upon to deal only with the jurisdictional issue raised by

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<sup>1</sup> Act 66 of 1995.



J  
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**REPUBLIC OF SOUTH AFRICA**

**THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG**

Reportable  
JA02/2015

In the matter between:

**NATIONAL EMPLOYERS**

**ASSOCIATION OF SOUTH AFRICA (NEASA)**

**Appellant**

and

**METAL AND ENGINEERING INDUSTRIES**

**BARGAINING COUNCIL (MEIBC)**

**First Respondent**

**GENERAL SECRETARY OF THE MEIBC**

**Second Respondent**

**MINISTER OF LABOUR**

**Third Respondent**

**THE PRESIDENT OF THE MEIBC**

**Fourth Respondent**

**FURTHER RESPONDENTS (PER LIST "A")**

**Fifth and Further Respondents**

**Heard: 26 March 2015**

**Delivered: Order delivered on 26 March 2015**

**Summary: Mootness – urgent application to interdict bargaining council from requesting extension of collective agreement to non-parties – interdict refused and Minister thereupon extending collective agreement to non-parties – Minister’s decision then on review – review of request to minister matter becomes moot as purpose of the interdict overtaken by events – no justifiable reasons to entertain merits of matter despite mootness –Appeal dismissed with costs.**

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**REASONS FOR THE ORDER**


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SUTHERLAND JA

Introduction

- [1] On 26 March 2015, this Court declared the appeal moot and dismissed the appeal with costs. These are the reasons of the court.
- [2] The appellant (NEASA) had sought in the Labour Court two orders. First, to interdict the first, second and fourth respondents, (together referred to as the MEIBC) from requesting the third respondent (the Minister of Labour) to extend a collective agreement to non-parties, pursuant to her powers in terms of section 32(3) of the Labour Relations Act 61 of 1995 (LRA). Secondly, to set aside any decisions taken by the MEIBC Management committee on 8 October 2014, which had been the occasion of the decision, as contemplated in terms of section 32(1) of the LRA, to make a request to the Minister of Labour.<sup>1</sup>

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<sup>1</sup> The relevant portions of Section 32 of the LRA provides:

- (1) A bargaining council may ask the Minister in writing to extend a collective agreement concluded in the bargaining council to any non-parties to the collective agreement that are within its registered scope and are identified in the request, if at a meeting of the bargaining council-
- (a) one or more registered trade unions whose members constitute the majority of the members of the trade unions that are party to the bargaining council vote in favour of the extension; and
  - (b) one or more registered employers' organisations, whose members employ the majority of the employees employed by the members of the employers' organisations that are party to the bargaining council, vote in favour of the extension.
- (2)...
- (3) A collective agreement may not be extended in terms of subsection (2) unless the Minister is satisfied that-
- (a) the decision by the bargaining council to request the extension of the collective agreement complies with the provisions of subsection (1);
  - (b) the majority of all the employees who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are parties to the bargaining council;
  - (c) the members of the employers' organisations that are parties to the bargaining council will, upon the extension of the collective agreement, be found to employ the majority of all the employees who fall within the scope of the collective agreement;
  - (d) the non-parties specified in the request fall within the bargaining council's registered scope;
  - (e) provision is made in the collective agreement for an independent body to hear and decide, as soon as possible, any appeal brought against-
    - (i) the bargaining council's refusal of a non-party's application for exemption from the provisions of the collective agreement;
    - (ii) the withdrawal of such an exemption by the bargaining council;



## Labour Appeal Court Roll

### 3rd Term Roll 2015

JUDGES: Waglay JP [WJP], Tlalets JA [TDJP], Davis JA [DJA], Ndlovu JA [NJA], Musi JA [MJA], Coppin JA [CJA], Makgoka AJA [MAJA] & Savage AJA [SAJA]

**NB: Court rolls are subject to change without notice or without prejudice.**

Share

### WEEK ONE: JOHANNESBURG

#### Tuesday: 18 August 2015

1. JA46/14 Schwatz JPJ v Sasol Polymers & others Beaters

Meeting of the Labour Appeal Court Judges and discussion of the petitions at 14h00

#### Wednesday: 19 August 2015

2. JA82/14 The Minister of Higher Education and Training v The Hospital Association of South Africa & others

#### Thursday: 20 August 2015

3. JA50/14 Xstrata South Africa (Pty) Ltd v The Commission for Conciliation and Arbitration & others
4. JA90/14 POPCRU Group of Companies (Pty) Limited v Thato Mahlase And Unique Standing Investments (Pty) Limited

#### Friday: 21 August 2015

5. JA103/14 Association of Mineworkers and Construction Union & others v Chamber of Mines of South Africa & others

### WEEK TWO: JOHANNESBURG

#### Tuesday: 25 August 2015

6. JA45/14 Tebogo Brian Monare v South African Tourism & Others

#### Wednesday: 26 August 2015

7. JA17/14 HJ Retief v Polokwane Local Municipality

#### Thursday: 27 August 2015

8. JA122/14 Sizwe Myathaza v Johannesburg Metropolitan Bus Service (SOC) t/a Metrobus
9. JA39/14 Daniel Mazibuko v Concor Plant
10. CA3/14 Cellucity (Pty) Limited v Chemical Workers Union obo Peters

#### Friday: 28 August 2015

11. JA43/14 National Union of Mineworkers and Mwachanda, MM v The Commission for Conciliation, Mediation and Arbitration & others

### WEEK THREE: CAPE TOWN

#### Tuesday: 01 September 2015

12. CA12/14 George Alexander Grey v Education Labour Relations Council & Others

#### Thursday: 03 September 2015

13. CA14/14 Campbell Scientific Africa (Pty) Limited v Adrian Simmers and Others

### JOHANNESBURG

#### Tuesday: 01 September 2015

14. JA15/14 Martin Vermaak v MEC for Local Government and Traditional Affairs, North West Province & others

**Thursday: 03 September 2015**

15. JA27/14 Clencor (Pty) Limited v Mngezana, KG N.O. and Others  
16. JA60/14 Renaissance BJM Securities (Pty) Ltd v Steven Grup

**WEEK FOUR: DURBAN**

**Tuesday: 08 September 2015**

17. DA5/13 South Africa Municipal Workers Union & others v South African Local Government Bargaining Council & others  
18. DA13/14 Servworks (Pty) Limited v Registrar of the Labour Relations & Others

**Thursday: 10 September 2015**

19. DA17/14 Ethekwini Municipality v Lovedale Moderate Hadebe & others

**JOHANNESBURG**

**Tuesday: 08 September 2015**

20. JA87/14 Jan Kruger and others v Aciel Geomatics (Pty) Limited  
21. JA79/14 Maluti-A-Phofung Local Municipality v Rural Maintenance (Pty) Ltd & Rural Maintenance Free State (Pty) Limited

**Thursday: 10 September 2015**

22. JA108/14 Atlas Packaging (Pty) Limited v Stylianos Palierakis

**WEEK FIVE: PORT ELIZABETH**

**Tuesday: 15 September 2015**

23. PA8/14 Buffalo City Metropolitan Municipality v South African Local Government Bargaining Council & others

**Thursday 17 September 2015**

24. PA5/14 MEC, Department of Health, Eastern Cape v Saville Kops and 16 others

**JOHANNESBURG**

**Tuesday: 15 September 2015**

25. JA96/14 National Union of Metalworkers of South Africa & others v Transnet SOC Limited  
26. JA99/14 POPCRU obo Members v The Minister of Correctional Services & Others

**Thursday: 17 September 2015**

27. JA55/14 Hendor Mining Supplies, a division of Marschalk Beleggings (Pty) Limited v National Union of Metalworkers of South Africa & others  
28. JA117/14 National Union of Metalworkers of South Africa v Johnson Matthey (Pty) Limited & others

**WEEK SIX: CAPE TOWN**

**Tuesday: 22 September 2015**

29. CA4/14 Doorgesh Jhupsee Harrinarain v The Commission for Conciliation, Mediation and Arbitration & others  
30. CA18/14 Trans Hex Group Limited v The Commission for Conciliation, Mediation and Arbitration and Others

**JOHANNESBURG**

**Tuesday: 22 September 2015**

31. JA77/14 K M Lawrence v Mutual & Federal (Pty) Limited  
32. JA44/14 Merafong City Local Municipality v SAMWU & Vuyisile Patrick Nqaba

**WEEK SEVEN: JOHANNESBURG**

**Tuesday: 29 September 2015**

33. JA89/13 Central University of Technology, Free State v Nicholas Morgan
34. JA112/13 City of Johannesburg Metropolitan Municipality & others v Independent Municipal and Allied Trade Union & Others
- Meeting: Discussion on new petitions after court or 12.00 PM

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A2010. Designed and maintained by the [Department of Justice and Constitutional Development](#)



Labour Appeal Court  
Private Bag X52  
Braamfontein, 2017  
86 Juta Street  
Braamfontein, 2016  
Tel: (011) 359 5766  
Fax: (011) 403 9327  
e-mail: cphophi@justice.gov.za

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A

Date: 27 February 2015

TO: ADV ANTHONY ROBIN BRINK  
1 BOAST STREET  
ESHOWE  
KWAZULU-NATAL

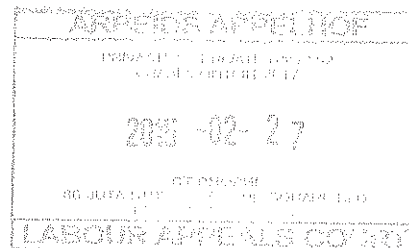
Dear Adv. Brink

RE: PETITION FOR LEAVE TO APPEAL: YOURSELF v LEGAL AID SOUTH AFRICA: DA21/14

1. I refer to your letter dated 23 February 2015 regarding the above petition for leave to appeal.
2. I write to advise you that Rule 4 of the Labour Appeal Court Rules, which govern petitions, does not make provision for the filing of a replying affidavit.
3. The three Judges whose names appear in the court order dealt with your petition. The mere fact that your petition was refused clearly indicates that it was a majority decision. (I may however inform you that the decision was unanimous).
4. Your file is closed and no further correspondence in relation to the above matter will be entertained by this office.

Yours faithfully

C T Phophi  
Legal Administration Officer  
Labour Appeal Court of South Africa





**Envelope label information for registered mail**

Thulani Vilakazi,  
Registrar of the Labour Court and  
Labour Appeal Court, Durban  
Private Bag X54370  
Durban 4000

The Honourable Mr Justice Dennis Davis  
High Court, Western Cape Division  
Private Bag X902  
Cape Town 8000

The Hon Mr Justice Roland Sutherland  
South Gauteng High Court  
Private Bag X7  
Johannesburg 2000

Sello Chiloane,  
Secretary: Judicial Service Commission  
Complaints Desk  
Office of the Chief Justice  
Private Bag X10  
Marshalltown 2107

Thembile Mtati,  
Corporate Services Executive  
Legal Aid South Africa  
Private Bag X76  
Braamfontein 2017

Hunter Mazoue Attorneys  
111 Helen Joseph Road  
Glenwood  
Durban 4001

T M

**REGISTERED LETTER**  
(with a domestic insurance option)  
ShareCall 0860 111 502 www.sapo.co.za  
**RC 052 442 658 ZA**

**CUSTOMER COPY 301028R**

T M

**REGISTERED LETTER**  
(with a domestic insurance option)  
ShareCall 0860 111 502 www.sapo.co.za  
**RC 052 442 587 ZA**

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H M - A

**REGISTERED LETTER**  
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**REGISTERED LETTER**  
(with a domestic insurance option)  
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**RC 052 442 627 ZA**

**CUSTOMER COPY 301028R**

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**REGISTERED LETTER**  
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**RC 052 442 613 ZA**

**CUSTOMER COPY 301028R**

S C

**REGISTERED LETTER**  
(with a domestic insurance option)  
ShareCall 0860 111 502 www.sapo.co.za  
**RC 052 442 600 ZA**

**CUSTOMER COPY 301028R**

B

1 Boast Street  
Eshowe 3815  
8 September 2015

B

Sello Chiloane,  
Secretary: Judicial Service Commission  
Complaints Desk  
Office of the Chief Justice  
Private Bag X10  
Marshalltown 2107

Dear Mr Chiloane

I enclose for information copies of my letters to Durban Labour Appeal Court registrar Thulani Vilakazi and to Davis and Sutherland JA.

I'll shortly be lodging an affirmed complaint concerning grossly unethical misconduct by Waglay JP and [REDACTED]. The worst the Commission has ever been faced with.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

1 Boast Street  
Eshowe 3815  
8 September 2015

B

The Honourable Mr Justice Dennis Davis  
High Court, Western Cape Division  
Private Bag X902  
Cape Town 8000

Dear Judge Davis

I enclose for your information a hard copy of a letter to Durban Labour Appeal Court registrar Thulani Vilakazi, which I emailed to your secretary Rowena yesterday.

As you'll see, you've been innocently dragged into something very serious.

I trust you'll take it up with the Judicial Service Commission.

A complaint of my own will be on its way shortly.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', with a stylized, cursive script.

ANTHONY BRINK

Cc: Sello Chiloane, Secretary: Judicial Service Commission

1 Boast Street  
Eshowe 3815  
8 September 2015

B

The Honourable Mr Justice Roland Sutherland  
South Gauteng High Court  
Private Bag X7  
Johannesburg 2000

Dear Judge Sutherland

I enclose for your information a letter to Durban Labour Appeal Court registrar Thulani Vilakazi. I intended emailing it to your secretary yesterday, but the Johannesburg High Court numbers were permanently engaged when I tried reaching her for her email address.

As you'll see from my letter, you've been innocently dragged into something very serious.

I trust you'll take it up with the Judicial Service Commission. A complaint of my own will be on its way shortly.

Yours sincerely

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

ANTHONY BRINK

Cc: Sello Chiloane, Secretary: Judicial Service Commission

1 Boast Street  
Eshowe  
21 September 2015



Njabulo Ndabukelwayo  
Taxing Master, Labour Court, Durban  
1st Floor Liberty House  
296 Anton Lembede Street  
Durban

By email: [NNdabukelwayo@justice.gov.za](mailto:NNdabukelwayo@justice.gov.za)

Dear Mr Ndabukelwayo

TAXATION  
LC D529/11: BRINK v LASA  
A REQUEST FOR CLARIFICATION,  
FAILING WHICH,  
NOTICE OF INTENTION TO INTERDICT

On the 7th instant I wrote to Durban Labour Court registrar Thulani Vilakazi about the taxation of LASA's bill of costs in the above matter, set down for the 15th, and requested that he remove it from the roll for the reasons I stated. (You have the letter.)

He emailed his reply the same day:

In reply to your emails regarding taxation set down for 15 September 2015, parties should agree to have taxation postponed by consent failing which they will have come to argue postponement and the taxing master will make his/her ruling whether the taxation will proceed or not.

Regarding other allegations are not for me to pronounce on them, there are relevant authorities who have powers to do so.



LASA opposed my request on the 9th. I annex a copy of its letter marked 'A'.

With a view to clearing up the misconception that I merely wanted the taxation postponed, I emailed the registrar on the 10th:

Please let me have your taxing master's name and email, so I can address a letter to him.

(Pardon me, I assumed you'd be doing the taxation.)

He spuriously avoided my request the same day:

I have forwarded all emails to him but I am the one responding as the Head of the Office as the other party has raised an objection.

I decided to travel down to appear before you to orally repeat my written case for the removal of the matter from the roll, but had overlooked and only recalled that evening that I couldn't appear on the 15th because I'd been appointed to relieve at the Mahlabatini Magistrate's Court from the 14th to the 16th.

I raised this hitch on the telephone with LASA's costs consultant Allisa Hunter in Durban the following day, and requested that the matter to be bumped from Tuesday to Thursday, or any day thereafter, when I'd be back at my home court and able to get away to appear. She told me she was amenable, and undertook to revert with instructions.

Which were to oppose my request, as I saw from LASA's unfortunately overheated and mixed-up email to the registrar later in the day:

Please note that it is our instructions to proceed with the taxation on the 15 September 2015 and we cannot agree to any suggestion for postponement. As indicated in our letter, there is no legal basis for the suggested removal of the matter from taxation and certainly no application before you to which the Respondent could respond. The Respondent regards this conduct by the Applicant and the conduct of his letter to your goodself as extremely disturbing

and calculated to intimidate you, cast aspersion on the reputation of the Labour Court together with its processes and to generally delay the finalisation of this matter. It is the Respondent's submission that this conduct is unprecedented and should not be accepted. As the matter stands, his appeal has been dismissed and the matter is finalised.

I responded by emailing the registrar, repeating my request that the matter be pushed out a bit:

I am occupied as a judicial officer on relief at a distant court beyond Ulundi from Monday to Wednesday.

Please see attached certificate.

If you need further confirmation, speak to Cluster Head Magistrate Moodley who ordered me there: 071 8406347

I'll be free to appear on Thursday or any day thereafter.

Mr Sekgota's (or Mr Nobetsu's) unpleasant histrionics and insults are unwarranted.

Indeed, as I told LASA's local costs consultant this morning, I have no quarrel with the bill and do not intend challenging it.

This is why I didn't object to it.

I don't doubt it's very professionally drawn.

I say this without having perused it yet, because as I pointed out in my letter on Monday, the taxation is premature in that no record exists of any decision to dismiss my petition.

An order incompetently issued by the registrar of a different court, issued in the middle of a pending interlocutory application, and containing readily demonstrably false information, is obviously no basis for the taxation to proceed.

So it's really both stupidly dishonest and dishonestly stupid to contend as Mr Sekgota or young Mr Nobetsu does that my 'appeal has been dismissed and the

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matter is finalised', when having read my letter he knows full well to the contrary.

If my petition had been dismissed, there'd be a record of this decision, a judgment signed by three designated appeal judges.

There isn't any.

That's the end of it.

I'm not looking to delay the matter. To the contrary, I look forward to arguing my point at court, on the record, for review purposes if needs be.

I just need 48 hours to clear my judicial obligations.

My request is not made to suit my private purposes, but for official reasons.

Please confirm the postponement of the hearing to Thursday or so soon thereafter as suits you and LASA.

I can easily arrange to get away from my base court at Eshowe anytime.

The certificate attached to my email is annexed marked 'B'.

On the 14th, the day before the set-down, you wrote to say that for personal reasons just arisen you'd also be unavailable on the 15th, so were removing the matter from the roll and re-enrolling it for 7 October, corrected in a further letter to the 8th.

Copies of your letters are annexed marked 'C' and 'D'.

On this first day of your return to your office, I write to request that you clarify your intentions.

Do you intend entertaining oral argument on the 8th as to why the taxation should be removed from the roll, and not re-enrolled until such time as my petition has been duly decided in conference by three designated appeal judges on a day allocated for this, in accordance with the rules and conventions of the Labour Appeal Court?

If so, I've nothing to add to my written case for the removal of the matter from the roll, set out in my letter of the 7th. There's consequently nothing more to say in any

oral debate, so on reconsideration I ask that you rule on my request for the removal of the matter from the roll on the written information already before you, and notify your decision.

I've made my case fully in my letter of the 7th; and besides foot-stamping and arm-waving LASA has no answer to it.

Or, disregarding the vouched facts set out in my letter, do you intend proceeding with the taxation on the strength of the fake order issued by Johannesburg registrar Phophi (ultra vires on its own terms), unsupported by any record of any judgment, pretending that on 18 February 2015 and at the Durban Labour Appeal Court my petition was considered and rejected by Waglay JP and Davis and Sutherland JJA – before the pending interlocutory proceedings brought by LASA had been concluded and determined?

Kindly advise.

If I haven't heard from you by Thursday the 24th, I'll conclude that you intend unlawfully proceeding to tax LASA's bill irrespective of the facts brought to your attention, and will proceed to apply to the High Court at Pietermaritzburg to interdict you from doing so.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

Cc by email:

LASA CLM Solly Sekgota

Alissa Hunter, Hunter Mazoue Attorneys



Our Ref: Mr. Solly Sekgota  
Your Ref: Mr. Vilakazi  
Date: 9 September 2015

29 De Beer Street  
Braamfontein  
Johannesburg 2017  
Private Bag X76  
Braamfontein 2017  
Tel: 011 877 2000, Fax: 011 877 2222  
[www.legal-aid.co.za](http://www.legal-aid.co.za)

Thulani Vilakazi,  
Registrar of the Labour Court and  
Labour Appeal Court, Durban  
Liberty Life House  
269 Anton Lembede Street, Durban  
Per Email: [tvilakazi@justice.gov.za](mailto:tvilakazi@justice.gov.za)

**'EXTREMELY URGENT'**

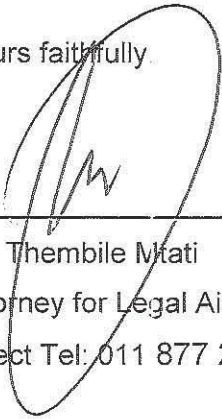
Dear Mr Vilakazi,

**RE: BRINK V LEGAL AID SA: D529/11: TAXATION ON 15 SEPTEMBER 2015  
OBJECTION TO NOTICE TO REMOVE THE MATTER FROM THE ROLL FROM AR BRINK.**

1. The above matter refers.
2. Legal Aid South Africa (the Respondent) does not intend to reply to the allegations made in as far as it relates to it but reserves the right to do so at the appropriate forum. Its failure to reply at this stage should not be construed as an admission but the contrary.
3. The Respondent objects to the removal of the matter for taxation on the 15 September 2015 as proposed by Applicant and submits that the taxation must proceed as allocated.
4. The Respondent further submits that there is no legal basis for the removal of the matter from the roll for taxation.
5. The Applicant was properly served with the notice of taxation and had an opportunity to either raise his objection to items set out in the bill of costs or alternatively bring the appropriate Court application to stop the taxation process. At this stage no such steps were taken by the Applicant and accordingly there is no legal basis to stop the taxation proceedings.

6. As the matter stands now, the matter is finalised as the appeal was dismissed and accordingly the Respondent will be attending the taxation proceedings on the 15 September 2015 at 10h30.

Yours faithfully,



Mr. Thembile Mfati  
Attorney for Legal Aid South Africa  
Direct Tel: 011 877 2000

cc. **Advocate AR Brink**  
1 Boast Street  
Eshowe  
Email: [arbrink@iafrica.com](mailto:arbrink@iafrica.com)

**Hunter Mazoue Attorneys & Legal Cost Consultants**

111 Helen Joseph Road (Davenport)

Glenwood, Durban, 4001

E-mail: [hunterlcc@telkomsa.net](mailto:hunterlcc@telkomsa.net)



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

B  
C

**MAGISTRATE: INKANYEZI**

PRIVATE BAG X 502, ESHOWE, 3815  
TEL (035) 4742171/2, Fax (035) 4744745

**TO WHOM IT MAY CONCERN**

This is to confirm that my magistrate colleague Anthony Brink stationed with me at the Inkanyezi Magistrate's Court, Eshowe, has been appointed by Cluster Head Magistrate Vassen Moodley to relieve for Chief Magistrate Joe Ngidi in A Court at the Mahlabatini Magistrates Court for the period Monday to Wednesday 14 – 16 September, while Mr Ngidi attends a workshop in Johannesburg.

Pat Naicker  
Magistrate  
Inkanyezi Magistrates Court  
11 September 2015





Registrar Labour Court Durban  
Private Bag X54370  
Durban 4000  
269 Anton Lembede Street  
Liberty House 1<sup>st</sup> floor  
Durban 4001

TEL: (031) 301-0104/6  
TEL: (031) 301-0111/2  
Fax: (031) 301-0145

**Date: 14 September 2015**

To: Anthony Brink  
Per email: [arbrink@iafrica.com](mailto:arbrink@iafrica.com)  
Ref:

And To: Legal Aid South Africa  
Per Email: [AkhonaN1@legal-aid.co.za](mailto:AkhonaN1@legal-aid.co.za)  
Ref: HM/LASA/001

Dear Sirs

**RE: D529/11 ANTHONY BRINK//LEGAL AID SA TAXATION**

We refer to the taxation enrolled for the 15<sup>th</sup> September 2015.

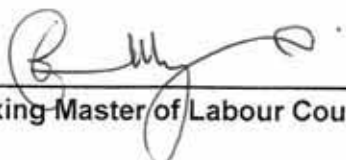
Please be advised that the taxing master seized with the taxation has to attend to a family emergency and will be absent from work for the entire week and therefore will not be available for the taxation.

Parties are therefore advised that the taxation is removed from the roll for tomorrow and is re-enrolled for the 7<sup>th</sup> October 2015.

We apologise for any inconvenience caused.

I hope you find the above in order.

Yours faithfully

  
\_\_\_\_\_  
Taxing Master of Labour Court Durban





Registrar Labour Court Durban  
Private Bag X54370  
Durban 4000  
269 Anton Lembede Street  
Liberty House 1<sup>st</sup> floor  
Durban 4001

TEL: (031) 301-0104/6  
TEL: (031) 301-0111/2  
Fax: (031) 301-0145

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C

**Date: 14 September 2015**

To: Anthony Brink  
Per email: [arbrink@iafrica.com](mailto:arbrink@iafrica.com)  
Ref: D529/11

And To: Legal Aid South Africa  
Per Email: [AkhonaN1@legal-aid.co.za](mailto:AkhonaN1@legal-aid.co.za)  
Ref: HM/LASA/001

Dear Sirs

**RE: D529/11 ANTHONY BRINK//LEGAL AID SA TAXATION**

We refer to our letter dated 14<sup>th</sup> September 2015.

Please kindly note that the taxation is re-enrolled for the 8<sup>th</sup> October 2015 and not the 7<sup>th</sup> October 2015 as previously stated.

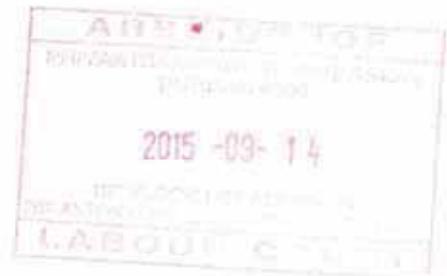
The matter is therefore enrolled for taxation on the 8<sup>th</sup> October 2015 at 10:30am.

We apologise for any inconvenience caused.

I hope you find the above in order.

Yours faithfully

  
Registrar of Labour Court Durban



## Anthony Brink

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**From:** Ndabukelwayo Njabulo [NNdabukelwayo@justice.gov.za]  
**To:** Anthony Brink  
**Sent:** Tuesday, September 22, 2015 7:45 AM  
**Subject:** Read: A request for clarification/notice of intention to interdict: taxation: Brink v LASA: D529/11



Your message

To: Ndabukelwayo Njabulo  
Subject: A request for clarification/notice of intention to interdict: taxation: Brink v LASA: D529/11  
Sent: Monday, September 21, 2015 2:14:54 PM (UTC+02:00) Harare, Pretoria

was read on Tuesday, September 22, 2015 7:44:32 AM (UTC+02:00) Harare, Pretoria.

## Anthony Brink

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**From:** Solly Sekgota [SollyS@legal-aid.co.za]  
**To:** Anthony Brink  
**Sent:** Monday, September 21, 2015 4:08 PM  
**Subject:** Read: A request for clarification/notice of intention to interdict: taxation: Brink v LASA: D529/11



Your message

To: Solly Sekgota  
Subject: A request for clarification/notice of intention to interdict: taxation: Brink v LASA: D529/11  
Sent: Monday, September 21, 2015 2:14:54 PM (UTC+02:00) Harare, Pretoria

was read on Monday, September 21, 2015 4:07:15 PM (UTC+02:00) Harare, Pretoria.

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Thank You.

## Anthony Brink

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**From:** Alissa [hunterlcc@telkomsa.net]  
**To:** 'Anthony Brink'  
**Sent:** Tuesday, September 22, 2015 8:23 AM  
**Subject:** Read: A request for clarification/notice of intention to interdict: taxation: Brink v LASA: D529/11



Your message

To: [NNdabukelwayo@justice.gov.za](mailto:NNdabukelwayo@justice.gov.za)  
Cc: 'Solly Sekgota'; 'Alissa'  
Subject: A request for clarification/notice of intention to interdict: taxation: Brink v LASA: D529/11  
Sent: 2015/09/21 02:14 PM

was read on 2015/09/22 08:22 AM.



Registrar Labour Court Durban  
Private Bag X54370  
Durban 4000  
269 Anton Lembede Street  
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Durban 4001

TEL: (031) 301-0104/6  
TEL: (031) 301-0111/2  
Fax: (031) 301-0145

E

**Date: 22 September 2015**

To: Anthony Brink  
Per email: [arbrink@iafrica.com](mailto:arbrink@iafrica.com)  
Ref: D529/11

And To: Legal Aid South Africa  
Per Email: [AkhonaN1@legal-aid.co.za](mailto:AkhonaN1@legal-aid.co.za)  
Ref: HM/LASA/001

Dear Sirs

**RE: D529/11 ANTHONY BRINK//LEGAL AID SA TAXATION**

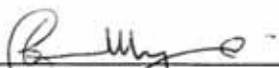
We refer to your correspondence dated 21<sup>st</sup> September 2015. The content thereof is duly noted.

Please take note that I have had sight of your previous correspondence addressed to the Registrar with regards to this Taxation. Please further take note that I do not intend on making any comments with regards to the allegations contained therein. Further take note that I do not intend on commenting on the alleged unlawfulness of the taxation processes to be placed before me on the **8<sup>th</sup> October 2015**.

Therefore you are reminded that the Taxation will proceed as scheduled for the **8<sup>th</sup> October 2015 at 10:30** subject to agreement between the parties or an instruction/decision from a competent body.

I hope you find the above in order.

Yours faithfully

  
\_\_\_\_\_  
**Taxing Master**  
**Labour Court Durban**

