

CANDIDATE : MR PITSO EPHRAIM MOLITSOANE

APPLICANT: MR. PITSO EPHRAIM MOLITSOANE

COURT FOR WHICH APPLICANT APPLIES: HIGH COURT, FREE STATE DIVISION, BLOEMFONTEIN

1 The candidate's appropriate qualifications

1.1 The candidate holds the following academic qualifications:

1.1.1 *Baccalaureus Procurationis.*

1.2 The candidate is appropriately qualified.

1.3 The candidate was admitted as an attorney on 17 August 1995.

1.4 The candidate was appointed as Magistrate on 1 November 2008 as Head of the Court in Edenburg, Free State Province.

1.5 The candidate has acted in the Regional Court for the period 2 May 2017 to 26 August 2017.

1.6 The candidate has acted as Judge in the Free State Division during 2017 and 2018 as set out below.

1.7 The candidate has acted as Judge in the Free State Division 2017 for the following periods:

1.7.1 29 August 2016 – 23 September 2016;

1.7.2 10 October 2016 – 11 November 2016;

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1.7.3 21 November 2016 – 15 December 2016;

1.7.4 9 October 2017 – 15 December 2017.

1.8 The candidate is currently busy with an acting stint in the Free State Division for the first term from 29 January 2018. His acting stint will endure until 2 April 2018.

1.9 The candidate is appropriately qualified.

2 Whether the candidate is a fit and proper person

2.1 The Magistrates Commission: Republic of South Africa has indicated that the candidate is in good standing and there are no pending disciplinary matters or investigations for any misconduct against him.

2.2 There is no information at hand to suggest that the candidate is not a fit and proper person.

3 Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa

3.1 The candidate is a black man.

3.2 The appointment of the candidate to the bench would help to ensure a racial and gender diversity which reflects the demographic profile of the Republic, as well as the Free State Province.

4 The candidate's knowledge of the law, including constitutional law

4.1 The candidate obtained the Baccalaureus Procuratoris degree in 1989.

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4.2 In 1990 he worked as a candidate attorney with Molefi Litheko Attorneys.

4.3 In 1995 he was admitted as an Attorney.

4.4 He worked as a professional assistant at Mophatchwane Attorneys until 2001.

4.5 During 2001 he joined Madikizela Attorneys. Thereafter he worked for Moroka Attorneys (Thaba Nchu) until he started to act as a Magistrate in Bloemfontein.

4.6 The candidate has vast experience in criminal law, civil law, domestic violence matters, maintenance matters and Insolvency law.

4.7 In the High Court he has gained experience in criminal trials, criminal appeals, reviews, applications for leave to appeal, petitions, criminal pre-trial procedures, Motion Court, opposed Rule 53 applications, opposed exceptions, opposed applications to compel, summary Judgments and evictions.

4.8 A brief synopsis of the relevant judgments is set out below. The judgments attest to the candidate's ability to deliver well-reasoned and structured judgments which are thoroughly researched:

4.8.1 *Lihambile Zwinde vs The State*, Case Number A161/2016

This appeal related to a contravention of section 3 of the Criminal Law (Sexual Offences and Related matters) Amended Act 32 of 2007. The Appeal was upheld taking into account the personal circumstances of the accused and

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weighing it against the seriousness of the offence and the interests of the society.

4.8.2 *The State v Melefi Mokhitlane* Case Number R212/2016

This matter related to the offence of contravention of section 5(b) of the Drug and Drug Trafficking Act 140 of 1992. The conviction and sentence were confirmed and the order in terms of section 103 (1) of the Firearms Control Act was set aside.

4.8.3 *The State v Macebo Joseph Rabele*, Case Number 76/2014

This was an application for the release of the accused on warning to be revoked and to be kept in custody. The application was dismissed in terms of section 72A of the Criminal Procedure Act.

4.8.4 *Hans Seuntjie Matoto v Free State Gambling and Liquor Authority and Three Others*, Case Number 4629/2015

This judgment concerned a condonation application in terms of section 7(1) of the Promotion of Administrative Justice Act 3 of 2000. The Application was dismissed with costs. Rampai J agreed with the candidate. A subsequent application for leave to appeal against the judgment was thereafter argued after the candidate had finished his acting stint and was dismissed by Daffue J with who Rampai J agreed.

4.8.5 *Vukani Gaming Free State (Pty) Ltd v The Chairperson Free State Gambling and Others*

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This was an application to review and set aside a decision to grant a limited gambling Machine operator licence in terms of the Free State Gambling and Liquor Act 6 of 1996. The decision was reviewed and set aside.

4.8.6 *Jan Johannes Neethling v Transnet Limited*, Case Number 2735/2016

This judgment dealt with an application for an interdict to compel the respondent to repair a fence. The Application was dismissed with costs.

4.8.7 *Tshiya infrastructure Development (Pty) Ltd and Thabiso Johannes Khofu v Standard Bank of SA Ltd and Another*, Case Number 5175/2017

This judgment concerned an application to stay the sale in execution of attached vehicles. The application was dismissed with costs.

4.8.8 *Kleo investments (Edms) Bpk v Marius Wessels N.O. and Others*, Case Number 2479/2016

This was an application for a declaration order to declare an agreement valid. The order was granted with costs.

4.8.9 *JDJ Knipe and Others v Carol Jessie Kathleen Lotz and Others*, Case Numbers: 5081/2014 and 4817/2014

The judgment, delivered on 9 February 2017, concerned the review of taxation (the applicants were dissatisfied with the

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Taxing Master's allocation) in terms of rule 48 of the Uniform rules of this court. The Court gave a well-researched, thorough, well-reasoned, well-structured judgment dismissing the application.

4.9 In light of the above, we are of the view that the candidate has a good knowledge of the law generally.

5 The candidate's commitment to the values of the Constitution

5.1 The candidate is committed to the values of the Constitution. He has shown an astute awareness and commitment to democratic and fundamental human rights values as well as for social justice. The candidate is a founding member of the Board of Rethusanang Day Care Centre for children with special needs.

5.2 The judgments appended to the candidate's application evidence the candidate's commitment to the values that underlie a democratic and open society. In our opinion, the candidate is undoubtedly willing and able to give expression to the values of the Constitution, and to actively partake in the protection and development of core values that underlie the Constitutional disposition.

6 Whether any judgments have been overturned on appeal

6.1 None that the reviewers are aware of.

7 The extent and breadth of the candidate's professional experience

7.1 As is evident from the candidate's *curriculum vitae* he has been exposed to various fields of the legal profession, since 1990 when he

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started as a candidate attorney up until the present where he is an acting Magistrate who also acts as Judge from time to time.

8 The candidate's linguistic and communication skills

8.1 The candidate has produced well-reasoned, well-structured, and lucid written judgments.

8.2 In Court as an Acting Judge, the candidate communicates well and clearly. Information received from colleagues about the candidate's abilities in Motion Court were very positive. He was well prepared, decisive, posed relevant questions, raised pertinent issues and was in control of the Court.

9 The candidate's ability to produce judgments promptly

9.1 There is no indication that the candidate has failed to deliver his judgments timeously.

10 The candidate's fairness and impartiality

10.1 It appears that the candidate is fair and impartial and applies the law without fear and favour.

10.2 No adverse comments have been received.

11 The candidate's independent mindedness

11.1 The Candidate appears to be independent minded.

11.2 No adverse comments have been received.

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12 The candidate's ability to conduct court proceedings

12.1 No adverse comments have been received. Feedback received from colleagues about the candidate's abilities in Motion Court were positive.

12.2 He was well prepared, decisive, posed relevant questions, raised pertinent issues and was in control of the Court. This is also perceived to be the case in other courts where the candidate presides.

13 The candidate's administrative ability

13.1 The candidate has a background as attorney and Magistrate. It seems reasonable to assume that he has a good administrative ability.

13.2 No adverse comments have been received.

14 The candidate's reputation for integrity and ethical behaviour

14.1 No adverse comments have been received.

15 The candidate's judicial temperament

15.1 Only positive feedback has been received from members. The candidate is fair tempered and affords litigants an opportunity to address the relevant issues without letting proceedings get out of hand. The candidate's experience as Magistrate obviously benefits him.

16 The candidate's commitment to human rights, and experience with regard to the values and needs of the community

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16.1 The candidate has shown a strong commitment to serve the community, particularly through his involvement with the Rethusanany Day Care Centre for children with special needs.

17 The candidate's potential

17.1 With the candidate's background, clear commitment and principled approach to the legal profession, we are of the view that the candidate has significant potential as a Judge.

18 The message that the candidate's appointment would send to the community at large

18.1 The candidate has clearly achieved success through hard work. The candidate commenced his career as candidate attorney. The candidate qualified himself as an attorney. The candidate achieved the appointment of Magistrate and has acted in the Free State Division with distinction.

18.2 His appointment would demonstrate that through hard, diligent work and effort an appointment to the bench is now within reach of all South African, regardless of gender and race, background or the circumstances in which you were born and raised.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None

Unreported decisions

Lihambile Zwinde vs The State, Case Number A161/2016

The State vs Melefi Mokhitlane Case Number R212/2016

The State vs Macebo Joseph Rabele, Case Number 76/2014

Hans Seuntjie Matoto vs Free State Gambling and Liquor Authority and 3 Others,
Case Number 4629/2015

*Vukani Gaming Free State (Pty) Ltd vs The Chairperson Free State Gambling
and 2 Others*

Jan Johannes Neethling vs Transnet Limited, Case Number 2735/2016

*Tshiya infrastructure Development (Pty) Ltd and Thabiso Johannes Khofu vs
Standard Bank of SA Ltd and 1 Other*, Case Number 5175/2017

Kleo investments (Edms) Bpk vs Marius Wessels N.O. and 2 Others, Case Number
2479/2016

JDJ Knipe and 2 Others v Carol Jessie Kathleen Lotz and 8 Others, Case
Numbers: 5081/2014 and 4817/2014

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