

CANDIDATE : MS SUNGAREE PATHER

APPLICANT: SUNGAREE PATHER

COURT FOR WHICH APPLICANT APPLIES: ELECTORAL COURT

1 The candidate's appropriate qualifications

1.1 The Electoral Court is established by section 18 of the Electoral Commission Act 51 of 1996.

1.2 In terms of section 19(1) of the Act, the Electoral Court consists of five members, all appointed by the President on the advice of the Judicial Service Commission: a judge of the Supreme Court of Appeal, two judges of the High Court and “*two other members who are South African citizens*”.

1.3 The candidate is applying for a position as one of the members of the Court who need not be a judge and must merely be a South African citizen.

1.4 The candidate is appropriately qualified for this position.

1.5 According to her application, the following degrees have been bestowed upon the candidate:

1.5.1 B.A. – University of Durban-Westville (1975); and

1.5.2 B.Proc – University of South Africa (1978).

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2 Whether the candidate is a fit and proper person

2.1 There is no reason to believe 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 current composition of the Electoral Court is one Black man and two white men, with two vacancies available.

3.2 The candidate is a black woman of Indian descent. Her appointment would therefore help to reflect the racial and gender composition of South Africa on that Court.

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

4.1 The candidate describes her principal areas of legal interest and involvement as follows:

“General legal practice background with specialist qualifications in conveyancing and labour law and specialist experience in pension and community schemes.”

4.2 The candidate states that she applies the constitutional principles in all areas of her work, as required by all lawyers and adjudicators.

4.3 According to the candidate,

4.3.1 she does not appear in court; and

4.3.2 she has not had any litigation work in the field of constitutional law.

4.3.3 The judgments reviewed by us cover a broad spectrum of legal issues, including electoral disputes, labour disputes, reviews, interdicts, contractual disputes, insolvency and aspects of civil procedure. The only judgment we could find where the candidate referred explicitly to the Constitution was *Democratic Alliance & Another in re: The African National Congress & Another v The Electoral Commission & Another*. In that judgment, the candidate referred to section 1(d) of the Constitution in applying a more tolerant approach where a deficient candidate nomination was rectified shortly after the deadline for nominations. Having said this, the applicant's judgments do not show a lack of appreciation of the requirements and values of the Constitution.

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

5.1 The candidate states that –

5.1.1 she applies the constitutional principles in all areas of her work; and

5.1.2 her most significant contribution to the law and the pursuit of justice in South Africa is “[s]preading the principles of the bill of rights.”

5.2 There is no reason to doubt that the candidate is committed to the values of the Constitution.

6 Whether any judgments have been overturned on appeal

6.1 The candidate answered in the affirmative to the question in the Judicial Service Commission questionnaire as to whether any of her judgments have been taken on appeal. However, she neither identified the relevant judgment or judgments nor indicated what the results were on appeal.

6.2 We were unable to find any judgments of the candidate that have been taken on appeal. The candidate should be questioned on this aspect.

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

7.1 The candidate's career spans more than thirty years.

7.2 During her career, the candidate has –

7.2.1 been employed in a variety of professional capacities since leaving university, including as candidate attorney, professional assistant, CCMA commissioner, the managing commissioner at the Dispute Resolution Centre of the MIBC, and chairperson of the Special Pensions Appeal Board; and

7.2.2 acted as a judge in the –

7.2.2.1 Eastern Cape Division of the High Court from April to July 2002;

7.2.2.2 Land Claims Court from October 2005 to March 2006;

7.2.2.3 Labour Court from 18 April to 2 July 2011;

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7.2.2.4 Labour Court during that court's recess in 2013 and again in December 2014/January 2015; and

7.2.2.5 Gauteng Local Division of the High Court from 21 August to 22 September 2017.

7.3 In our view it is important to note that the candidate was a member of the Electoral Court from 2 December 2013 to 1 December 2017.

8 **The candidate's linguistic and communication skills**

8.1 The candidate's linguistic and communication skills are good.

9 **The candidate's ability to produce judgments promptly**

9.1 From the judgments reviewed by us, it seems that the candidate produces judgments reasonably promptly in most matters, that is, one to two months.

10 **The candidate's fairness and impartiality**

10.1 However, in the following matters reviewed by us the candidate did not produce judgments promptly:

10.1.1 In *Independent Municipal and Allied Trade Union obo D Gurriah v Ethekewini Municipality & Others* it took the candidate two weeks short of a year to produce a judgment;

10.1.2 In *Indaka Municipality v South African Local Government Bargaining Council & Others* it took the candidate almost ten months to produce a judgment; and

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10.1.3 In *Imbabazane Municipality v IMATU obo N H Gumbi and Others & Others* it took the candidate almost four months to produce a judgment.

11 **The candidate's independent mindedness**

11.1 We did not find anything in the application or the judgments reviewed by us to suggest that the candidate is not fair and impartial.

12 **The candidate's ability to conduct court proceedings**

12.1 We did not find anything in the application or the judgments reviewed by us that reflects negatively on the candidate's conduct of court proceedings.

13 **The candidate's administrative ability**

13.1 We did not find anything in the application or the judgments reviewed by us that reflects negatively on the candidate's administrative ability.

14 **The candidate's reputation for integrity and ethical behaviour**

14.1 We did not find anything in the application or the judgments reviewed by us that reflects negatively on the candidate's integrity and ethical behaviour.

15 **The candidate's judicial temperament**

15.1 We did not find anything in the application or the judgments reviewed by us that reflects negatively on the candidate's judicial temperament.

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

16.1 It appears that the candidate is committed to the values of the Constitution.¹

16.2 The candidate states that –

16.2.1 she applies the constitutional principles in all areas of her work; and

16.2.2 her most significant contribution to the law and the pursuit of justice in South Africa is “[s]preading the principles of the bill of rights.”

16.2.3 The candidate states that she was a founder member of the National Association of Democratic Lawyers (Nadel), and a member of the South African Women Lawyers’ Association and the South African Communist Party. It is not clear from the application whether the candidate remains a member of those organisations.

16.2.4 The candidate has seemingly extensive experience with regard to the values and needs of the community. This is reflected by her membership of and involvement in various community and other organisations, including –

16.2.4.1 Earthlife Africa;

¹ *Democratic Alliance supra.*

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- 16.2.4.2 Wildlife and Environmental Society of South Africa;
- 16.2.4.3 Greenpeace;
- 16.2.4.4 Women in Action;
- 16.2.4.5 Chairing disciplinary hearings for community establishments; and
- 16.2.4.6 Mediating disputes between labour tenants and landowners.

17 The candidate's potential

- 17.1 The candidate is clearly qualified and able to fulfil the position for which she applies.

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

- 18.1 The candidate's appointment would send a positive message to the community at large.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Not applicable

Unreported decisions

SAMWU v JMS Meter Reading (Pty) Ltd. Unreported judgment, 31 May 2011 under Labour Court, Johannesburg case number J 909.11

Independent Municipal and Allied Trade Union obo D Gurriah v Ethekewini Municipality & Others. Unreported judgment, 14 April 2012 under Labour Court, Durban case number D350/09

Indaka Municipality v South African Local Government Bargaining Council & Others. Unreported judgment, 8 October 2014 under Labour Court, Durban case number D889/11

Democratic Alliance & Another in re: The African National Congress & Another v The Electoral Commission & Another. Unreported judgment (Shongwe J A and Wepener J concurring), 5 March 2015 under Electoral Court, Bloemfontein case number 001/15EC

Imbabazane Municipality v IMATU obo N H Gumbi and Others & Others. Unreported judgment, 14 May 2015 under Labour Court, Durban case number D04/14

Mogorosi Ikgopoleng Pitse v City of Johannesburg Metropolitan Municipality & Others. Reportable judgment, 30 October 2017 under Gauteng Local Division case number 2016/14138

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Ferreira & Another v Nedbank Limited & Another. Unreported judgment, 24 November 2017 under Gauteng Local Division case number 45240/16

Royal Energy Limited v Mio One Stop Motors and Property Investment General Trading 1612 (Pty) Ltd. Undated unreported judgment under Gauteng Local Division case number 32104/15

Judgments upheld on appeal

Not applicable

Judgments overturned on appeal

Not applicable

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