

CANDIDATE : JUDGE BOISSIE HENRY MBHA

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COURT FOR WHICH CANDIDATE APPLIES: ELECTORAL COURT

1 The candidate's appropriate qualifications

1.1 The candidate is applying for the position of Chairperson of the Electoral Court.

1.2 The candidate has the following qualifications:

1.2.1 B. Juris (University of Fort Hare) 1981;

1.2.2 LLB (University of Witwatersrand) 1985;

1.2.3 Advanced Diploma in Labour Law (University of Johannesburg) 1996;

1.2.4 Diploma in Tax Practice (University of Johannesburg) 1999;

1.2.5 Advanced Military Law Course (SA National Defence Force) 2003;
and

1.2.6 LLM in Tax (University of Johannesburg) 2010.

1.3 The candidate is appropriately qualified.

2 Whether the candidate is a fit and proper person

- 2.1 The candidate is a Judge of the Supreme Court of Appeal. He has been permanently appointed as a Judge of the Supreme Court of Appeal since 2014.
- 2.2 Prior to being appointed to the Supreme Court of Appeal, the candidate:
- 2.2.1 practiced as an attorney, having been admitted as such in 1987;
 - 2.2.2 acted as a Judge of the Gauteng Division of the High Court of South Africa, Pretoria and Johannesburg, from October 2003 to October 2004;
 - 2.2.3 was a Judge of the Gauteng Division of the High Court of South Africa, Johannesburg from October 2004; and
 - 2.2.4 acted as a Judge of the Supreme Court of Appeal from October 2012 to May 2013.
- 2.3 The candidate has also acted as a Judge of the Constitutional Court from 15 August to 30 November 2016.
- 2.4 The candidate has also served in the following positions:
- 2.4.1 Councillor of the Law Society of the Northern Provinces.
 - 2.4.2 Senior Military Judge of the SA National Defence Force (Reserve Force).
 - 2.4.3 Chancellor of the Ethiopian Episcopal Church.

CANDIDATE : JUDGE BOISSIE HENRY MBHA

- 2.4.4 President of the All Sports Council at the University of Fort Hare in 1975.
- 2.4.5 Executive Member and Vice-President of the World Boxing Association (African Region).
- 2.4.6 Executive Member and Legal Adviser of the South African National Boxing Control Commission.
- 2.5 The candidate was a guest speaker at the 18th International Conference of Chief Justices held in New Delhi, India, in 2017.
- 2.6 The candidate was awarded the 2016 Alumni Dignitas Award by the University of Johannesburg in 2016.
- 2.7 The candidate has written numerous judgments which are listed in his application form. There is nothing in these judgments to suggest that the candidate is not a fit and proper person for the position applied for.
- 2.8 The Johannesburg Society of Advocates has not received any information to suggest that the candidate is not a fit and proper person for the position applied for and the reviewers are not aware of any complaints lodged with the JSC about the candidate or negative comments levelled against the candidate to suggest that the candidate may not be a fit and proper person.
- 2.9 The candidate has not been a member of a secret organization. A list of the organizations in which the candidate served are listed in paragraph 8 of his application form and none of them reflect negatively on the candidate.

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

3.1 The candidate is a black man.

3.2 The Electoral Court consists of three judges and two other members. There are currently three male judges of the Electoral Court. There are no women judges of the Electoral Court.

3.3 The candidate's appointment would therefore not help to reflect the gender composition of the Republic of South Africa in that it would not advance the number of women judges in the Electoral Court.

3.4 The candidate's appointment would help to reflect the racial composition of the Republic of South Africa.

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

4.1 The candidate has the requisite experience as a judge and extensive knowledge of the law and constitutional law.

4.2 The candidate has provided a list of cases decided by him as a Judge of the Supreme Court of Appeal and as a Judge of the High Court.

4.3 Amongst other cases, the applicant has listed the following cases:

4.3.1 *Governing Body, Rivonia Primary School And Another v MEC for Education, Gauteng* 2012 (1) All SA 576 (GSJ) in which the candidate demonstrated his understanding of constitutional values and he emphasized the constitutionally protected right to education.

- 4.3.2 *Commissioner for SARS v Char-Trade* [2018] ZASCA 89 (31 May 2018) was heard on 21 May 2018 and the candidate's judgment was delivered promptly on 31 May 2018. This case dealt with the prescription of an assessment issued by the Commissioner for the South African Revenue Service. On the facts, the taxpayer had not submitted a return for the relevant tax, i.e. Secondary Tax on Companies but contended that the time period for raising the assessment in issue had prescribed. The candidate, writing for the full Court of the Supreme Court of Appeal, read the relevant legislation to mean that prescription cannot commence to run against the Commissioner for the South African Revenue Service until such time that the taxpayer had submitted the relevant tax return, which the taxpayer had not done in this case. This judgment demonstrates the candidate's knowledge of the law and its application.
- 4.3.3 *Naidoo v Discovery Life Limited And Others* [2018] ZASCA 88 (31 May 2018) was heard on 10 May 2018 and judgment was delivered on 31 May 2018. This judgment further demonstrates the candidate's understanding and application of the law and his ability to analyze and apply judicial precedents to cases before him. The short period of time which it took for the candidate to deliver this judgment demonstrates his commitment not to delay justice.
- 4.3.4 *General Alfred Moyo And Others v Minister of Justice And Others* [2018] ZASCA 100 (20 June 2018) was heard on 2 March 2018 and judgment was delivered on 20 June 2018. The candidate delivered a judgment dissenting in part to the majority judgment. This case dealt

with two appeals concerning the constitutional validity of section (1)(1)(b) and (2) of the Intimidation Act 72 of 1982. The candidate would have declared these subsections constitutionally invalid and referred both of them to the Constitutional Court in terms of section 172(2)(a). The basis on which the candidate partially dissented from the majority judgment does not constitute a basis to conclude that the candidate does not have a proper understanding of the law and its application. On the contrary, the candidate's dissenting (in part) judgment is well written and reasoned and demonstrates his independence.

- 4.4 The candidate's aforesaid judgments and others listed in his application which have been reviewed show that the candidate has the necessary knowledge of and ability to apply our constitutional jurisprudence and that he is sufficiently qualified for the position applied for.

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

- 5.1 The candidate's judgments which have been reviewed indicate a clear and firm commitment to the values of the Constitution.
- 5.2 In particular, the candidate's partially dissenting judgment in *Moyo* confirms his unwavering commitment to the protection of the values of the Constitution.
- 5.3 There is therefore nothing to suggest that the candidate will not uphold the Constitution and its values.

6 Whether any judgments have been overturned on appeal

- 6.1 The candidate has listed three judgments which have been overturned on appeal.
- 6.2 The reviewers do not consider that the overturned judgments reflect negatively on the candidate's competence and ability when regard is had to the candidate's most recent judgments referred to above.

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

- 7.1 The candidate started his career as an attorney and practiced for a considerable period of time before being appointed as a Judge of the High Court.
- 7.2 The candidate also served as a permanent Judge of the High Court for a considerable period of time before being appointed to the bench of the Supreme Court of Appeal.
- 7.3 The candidate's judgments are well written and reasoned and this is a positive reflection of his experience on the bench.

8 The candidate's linguistic and communication skills

- 8.1 The judgments authored by the candidate show that he has excellent linguistic skills in English.
- 8.2 No adverse comments have been received about the candidate's communication skills from those who have appeared before him.

9 The candidate's ability to produce judgment promptly

9.1 There is no record of long outstanding judgments.

9.2 The recent judgments referred to above were all delivered within a very short period of time – two of the candidate's own judgments were delivered on the very same month on which the appeals were heard.

10 The candidate's fairness and impartiality

10.1 No adverse comments have been received against the candidate.

11 The candidate's independent mindedness

11.1 No adverse comments have been received against the candidate.

12 The candidate's ability to conduct court proceedings

12.1 No adverse comments have been received against the candidate.

13 The candidate's administrative ability

13.1 No adverse comments have been received against the candidate.

14 The candidate's reputation for integrity and ethical behaviour

14.1 No adverse comments have been received against the candidate.

15 The candidate's judicial temperament

15.1 No adverse comments have been received against the candidate.

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

- 16.1 The application does not indicate any extra judicial activities in relation to the promotion of human rights.
- 16.2 The candidate's judgments to which reference has been made above indicate sufficient and considerable commitment to the values of our Constitution and the rights which are protected in the Bill of Rights of our Constitution.

17 The candidate's potential

- 17.1 When regard is had to the candidate's extensive experience as a Judge and the judgments authored by the candidate, the candidate is appropriately qualified for appointment as Chairperson of the Electoral Court.
- 17.2 The candidate is currently 66 years of age. His remaining years prior to the mandatory retirement age from the bench would no doubt be well served in the Electoral Court and the candidate's skills would be a valuable addition to the Electoral Court.

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

- 18.1 The appointment of the candidate to the Electoral Court will help to ensure that the composition of that Court is reflective of the demographics of the country.

CANDIDATE : JUDGE BOISSIE HENRY MBHA

18.2 The judiciary and the community at large would benefit from the candidate's permanent appointment to the Electoral Court.