

*CANDIDATE: JUDGE EDWIN MOGOMOTSI MOLAHLEHI*

**APPLICANT: JUDGE EDWIN MOGOMOTSI MOLAHLEHI**

**COURT FOR WHICH APPLICANT APPLIES: DEPUTY JUDGE  
PRESIDENT OF THE LABOUR COURT AND LABOUR APPEAL COURT**

**1. The candidate's appropriate qualifications**

1.1. The candidate has the following degrees and qualifications:

1.1.1. BA Law (University of the Lesotho 1983)

1.1.2. LLB (University of the Witwatersrand 1986)

1.1.3. LLM (University of Georgetown, USA 1990)

**2. Whether the candidate is a fit and proper person**

2.1. There is nothing in the candidate's application or to our knowledge suggesting that he is not a fit and proper person.

2.2. A review of his judgments and information in the public domain provides no indication that he is unfit for the position applied for.

**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.

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3.2. The appointment of a black male candidate will advance the Constitutional imperative of racial representation within the Judiciary, but not that of gender transformation.

3.3. The appointment of the candidate will not assist to reflect the gender composition of South Africa.

**4. The candidate's commitment to the values of the Constitution**

4.1. The candidate has in his career dedicated himself to the Community by being a trainer and facilitator at Cosatu's winter and summer schools.

4.2. He has been a facilitator and mediator at the Land Claims Commission.

4.3. The candidate has sat on various Commissions of Inquiries in various hospitals, universities and communities.

4.4. The case of *KS v AM* 2018 (1) SACR 240 (GJ) (24 October 2017), comprised of an appeal against the decision of the Magistrate Court refusing to grant additional conditions to an interdict made in terms of section 7(1) of the Domestic Violence Act 116 of 1998, as well as the discretionary powers granted to the Court in terms of section 7(2).

4.5. The lower court had a duty to strike a balance between the right to dignity of the applicant and the right of ownership and possession of the respondent.

4.6. The candidate dealt with the Constitutional principles extensively and emphasized the imperative of protecting the Constitutional rights of

domestic violence victims. In this judgment the candidate seems to be well conversant with this specific area of the law.

**5. The candidate's knowledge of the law, including constitutional law**

- 5.1. During the period February 2006 to December 2006, the candidate was a Panelist at Tokiso Dispute Resolution and a part time senior arbitrator/commissioner at the Commission for Conciliation, Mediation and Arbitration.
- 5.2. During 2001 and again from December 2006 to March 2007, the candidate held the position of an Acting Judge in the Labour Court.
- 5.3. The candidate has held the position of a Judge since April 2007.
- 5.4. From the period of 2007 to 2017, the candidate was a Judge at the Labour Court.
- 5.5. The candidate presently sits as a judge at the Gauteng Local Division of the High Court and has done so since 2017.
- 5.6. The candidate, amongst other contributions throughout his career, has also participated as a Facilitator, Mediator and Trainer in both the public and private sector, has been a Lecturer and Director at Wits University's Centre for Applied Legal Studies and has also held several positions as chairperson for the Department of Labour.
- 5.7. The candidate's application demonstrates over 30 years' experience in labour law.

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- 5.8. Further, the candidate has a publication which provides as a guide on how to handle disputes in the labour market. This publication has been used by students, practitioners and academics.
- 5.9. Based on the above as well as his judgments which have been considered, the candidate has extensive experience in many areas of law, with a particular focus on labour law and related matters. His judgments show a good understanding of both procedural and substantive law.
- 5.10. In the matter of *Hlabangwane v MEC for Public Works, Roads, Transport, Mpumalanga Provincial Government and Others* (J2170/11) [2011] ZALCJHB 151 (24 October 2011) (Reported) the principle of legality was applied by the candidate in the context of it being implicit in the Constitution.
- 5.11. Further, in the matter of *Nongena v Ali NO and Others* (JR231/09) [2010] ZALC 281 (8 December 2010), the candidate dealt with the issue of the constitutionality of those sections of the various legislation (Section 5(3) of PEPUDA) which the applicant contended are unconstitutional. The candidate held that discrimination disputes related to workplace are not covered by PEPUDA.
- 5.12. In *Food and Allied Workers Union and Others v Chauke and Others* (C122/16) ZALCJHB 246 (12 July 2016) (Unreported) the candidate relied on CC cases which upheld the jurisprudence that emerged from the SCA regarding the approach to adopt when dealing with appeals against interim orders.

5.13. The aforementioned illustrates matters of a Constitutional nature that have been determined by the candidate.

**6. Whether any judgments have been overturned on appeal**

6.1. The candidate provided an extensive number of judgments in his application, of which he raises ten decisions which have been overturned on appeal. Comments are provided below where the appeal Court made specific reference to the candidate.

6.2. The ten matters listed by the candidate are:

6.2.1. *Tulwana & Ano v The City of Johannesburg JA (59/15) {2016} ZALAC 85 (26 July 2016).*

6.2.2. *Standard Bank of South Africa Ltd v Letsoalo J (18/2014) [2016] ZALAC 43 (27 July 2016).*

6.2.2.1. In this more recent judgment on appeal, one of the grounds of appeal was that the appellant had been severely prejudiced by virtue of the fact that the candidate went beyond the scope of the pleadings and evidence in coming to his conclusion in the Court a quo.

6.2.2.2. This ground, however, was not considered on the basis that the other ground raised by the appellant was dispositive of the appeal.

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6.2.3. *Rustenburg Platinum Mines Ltd (Amandelbult Section) v NUM on behalf of Manageng and Others JA (12/2015) [2016] ZALAC 21 (26 May 2016).*

6.2.3.1. This case concerned a review application. The candidate subjected the reviewing of the award to an appeal standard, thereby failing to correctly apply the review test.

6.2.3.2. The candidate failed to assess whether the decision of the commissioner is one that a reasonable decision-maker could make.

6.2.3.3. The Labour Appeal Court held that the candidate had misconstrued both the nature of the enquiry and the facts before the commissioner.

6.2.4. *Academic & Professional Staff Association v City of Tswane Metropolitan Municipality JA (61/14) [2016] ZALAC 70 (16 February 2016).*

6.2.4.1. This matter concerned a condonation application.

6.2.4.2. The Labour Appeal Court found that there was an oversight by the candidate in that he failed to consider and evaluate the prospects of success and prejudice in respect of the condonation application.

6.2.5. *Registrar of the Labour Court v Consolidation Association of Employers of South African Region JA (5/13) [2014] ZALAC 45.*

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6.2.6. *Quest Flexible Staffing Solutions (Pty) Ltd (A Division of Adcorp Fulfilment Services (Pty) Ltd v Lebogate JA (104/13) [2014] ZALAC 55.*

6.2.6.1. This matter also concerned a review application. Here, the Labour Appeal Court found that the candidate failed to appreciate the review test and the distinction between appeals and reviews. A review test is a two-stage enquiry, the candidate failed to deal with the second leg of the enquiry as to whether the commissioner failed to apply his mind, which affected the outcome of the proceedings, thus rendering the award unreasonable.

6.2.7. *Woolworths (Pty) Ltd / CCMA & Others (LAC) [2011] ZALAC 15.*

6.2.7.1. This matter also concerned a review application.

6.2.7.2. The Labour Appeal Court held that the candidate:

6.2.7.2.1. only concentrated on the commissioner's reasons and omitted to deal exhaustively with the fundamental grounds of the review presented; and

6.2.7.2.2. failed to deal with the reasonableness of the award.

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6.2.8. *Department of Finance & Economic Development (The Province of Gauteng) v Mesame & Others* (JA1/2013) [2014] ZALAC (19 September 2014).

6.2.8.1. In this matter the candidate misconstrued a first review judgment and the issue with which he needed to deal.

6.2.9. *Professional Transport Workers Union v Malema & Others* (JA67/12) [2014] ZALZ.

6.2.9.1. This matter concerned a review by the court a quo of a rescission ruling.

6.2.9.2. The Labour Appeal Court found that the candidate correctly set aside the ruling, however, he did not remit the matter for arbitration but considered the matter. However, he only considered the explanation for the delay and not the merits, which he should have done.

6.2.10. *Grootboom v National Prosecuting Authority & Others* (C696 (08) [2009].

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

7.1. The candidate has by virtue of his experience as a Judge of the Labour Court as well as the High Court, his position at the Independent Mediation Service of South Africa, Commission for Conciliation Mediation and Arbitration, Legal Aid South Africa, Department of Labour and as a lecturer, gained intimate knowledge, understanding and

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experience of the legal profession, procedure and principles of the law, especially in the area of labour law.

7.2. The candidate's judgments reflect his knowledge in various principles of labour law and show that he is independent in his thinking. He reflects and refers to case law and legislation extensively in his judgments and always makes it a point to distinctly apply the law to the set of facts before him.

7.3. His judgments always reflect his fairness in his application of the law and his own opinions.

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

8.1. The candidate's style of writing has remained consistent. However, the candidate's judgments reflect some spelling and grammatical errors.

8.2. The candidate has experience in writing and giving judgments and uses a simplest language styles which is easy to read and comprehend.

8.3. The candidate's judgments are well written, succinct and well-structured. The judgments show an understanding of the legal principles dealt with, that enables him to express his findings in a way that is easily understood.

8.4. The judgments which were considered demonstrate the candidate's ability to:

8.4.1. Understand and clearly outline what the dispute concerns;

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8.4.2. Apply the relevant principles of law to the material facts;

8.4.3. Make a determination on the disputed issues; and

8.4.4. Clearly reason, persuade and articulate his judgments.

8.5. In most of his judgments, the candidate tends to paint a picture and tell a story of the facts and the issues before him in a manner that makes it easier for the reader to understand and follow.

8.6. The candidate has the requisite linguistic and communication skills.

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

9.1. The judgments reviewed, reflect that the candidate mostly hands down judgments within three months of the hearing of the matter.

9.2. The candidate appears to delay in handing down judgments in urgent applications.

9.3. The candidate, at the time of the compiling of this report, only had one judgment outstanding. It concerns a matter he heard during December 2018.

9.4. Overall, the review team is satisfied that the candidate hands down judgments within a reasonable time.

**10. The candidate's independent mindedness**

10.1. No adverse comments were received.

**11. The candidate's fairness and impartiality**

- 11.1. The candidate has shown signs of impartiality and fairness in all his reviewed judgments.
- 11.2. He has displayed a sense of fairness and justice.
- 11.3. None of his judgments reviewed have displayed a trait of bias or undue favour. This has been the case in both his Labour Court and High Court judgments.

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

- 12.1. The candidate has twelve years' experience in conducting Court proceedings, in both the Labour Court as well as in the High Court.
- 12.2. In terms of the judgments reviewed, the candidate demonstrates an impressive understanding and application of the rules of court and rules of evidence and is able to apply such knowledge fairly and correctly in his judgments.

**13. The candidate's administrative ability**

- 13.1. There is no reason to believe that the candidate does not have the appropriate administrative ability, especially given the fact that several of the positions that he occupied were administrative in nature.
- 13.2. The candidate was appointed as a director at the Commission for Conciliation Mediation and Arbitration for a period of two years.

13.3. The candidate has been a Director at Wits University's Centre for Applied Legal Studies and has also held several positions as chairperson for the Department of Labour.

13.4. This is demonstrative of the fact that the candidate's administrative abilities are of a high standard.

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

14.1. The candidate has an excellent reputation when it comes to integrity and

14.2. ethical behaviour.

14.3. The review team is not aware of anything contrary to the aforesaid.

**15. The candidate's judicial temperament**

15.1. The candidate has a very calm and even-tempered judicial temperament. This excellent attribute not only demands respect but also contributes to, enhances and upholds the dignity of the court.

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

16.1. The candidate has sat in commissions of inquiries in various communities, universities and hospitals.

16.2. He was a facilitator and mediator in the Land Claims Commission and has a strong commitment to constitutional principles and land claims redress.

16.3. He has given his time to facilitate and train in dispute resolution. He has had a clear commitment to education as a lecturer as well as being a director at Wits University Centre for Applied Legal Studies in Community dispute resolution.

**17. The candidate's potential**

17.1. The candidate has already been acknowledged in the legal field as a person deserving of respect and leadership.

17.2. He has developed his skills during the course of his tenure as a Labour Court Judge as well as his extensive experience already noted in this application, in dispute resolution. The candidate is also currently serving as a Judge in the Gauteng Division of the High Court.

17.3. The candidate, in his nomination for the appointment as Deputy Judge President of the Labour Court and Labour Appeal Court, shows the candidates willingness and therefore potential to grow in this field of law.

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

18.1. The candidate is a black male and would contribute significantly to enforce the diversity needed in the judiciary. Not only that, but it is also important to appoint someone of vast legal experience, deserving of the appointment. As mentioned in his application the candidate demonstrates an extensive experience in labour law.

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- 18.2. He has committed himself to academic excellence and sharing his knowledge by training the community in dispute resolution.
- 18.3. The candidate is someone from a disadvantaged community. From being a taxi driver and working as a teller in a supermarket who has qualified himself, made a success of his career and been elevated to the bench. This will send a positive and inspiring message to the community at large.