

CANDIDATE: JUDGE PETER SELEWE MOTHLE

APPLICANT: JUDGE PETER SELEWE MOTHLE

COURT FOR WHICH APPLICANT APPLIES: SUPREME COURT OF APPEAL

1 The candidate's appropriate qualifications

1.1 The candidate has the following qualifications:

1.1.1 BProc (University of South Africa) (1980);

1.1.2 LLM in Trial Advocacy (Georgetown University, Washington DC) (1987); and

1.1.3 NITA Diploma (Harvard University, Massachusetts) (1987).

1.2 The candidate is appropriately qualified.

2 Whether the candidate is a fit and proper person

2.1 The candidate has served as a Judge of the High Court of South Africa since January 2011.

2.2 He has been described by those nominating him, from both the attorneys and advocates' professions, as a person with integrity, who believes in fairness, and is a dedicated judge who respects, protects and promotes the values of the Constitution.

2.3 He served an Acting Judge of the Supreme Court of Appeal from November 2017 to December 2018.

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2.4 A review of his judgments provides no indication that he would not be able to fulfil his role as an Appeal Court Judge.

2.5 No adverse comments have been received.

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 Supreme Court of Appeal bench currently composes 22 Justices of Appeal, of whom 15 are men (5 white, 6 black, 3 Indian and 1 coloured) and 7 are women (5 black, 1 white and 1 Indian).

3.3 The appointment of Black, male candidates would further the goals of racial transformation, but would not further the goals of gender transformation.

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

4.1 The candidate has a wide knowledge of the law and has produced judgments on a wide range of topics, including constitutional and administrative law, land restitution, customary law, and tax law.

4.2 One nominee notes that his stature and understanding of the law and in particular constitutional interpretation was noted by the Supreme Court of Appeal in *Patmar Explorations (Pty) Ltd and Others v Limpopo Development Tribunal and Others* 2018 (4) SA 107 (SCA) where the Court stated:

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“...the proper approach was to ask whether Mothle J’s judgment was a tenable interpretation of the Constitutional Court’s decision and order. There could be only one answer to that question, namely, that it was, as the lengthy discussion of the very issue in the High Court’s judgment amply demonstrated...”

4.3 His judgments are clear, well-reasoned and comprehensively researched.

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

5.1 The candidate has demonstrated commitment to justice and the constitution throughout his life. As part of Lawyers for Human Rights he campaigned for the abolition of the death penalty and assisted prisoners on the death row to exhaust their available remedies. He campaigned and lobbied for the inclusion of a Bill of Rights in the then envisaged constitutional dispensation for South Africa, and has also assisted in raising funds to financially support indigent law students at university through a revolving loan bursary offered jointly with African Bank.

5.2 The candidate has written judgments and been entrusted to be part of the full bench in ground-breaking cases including *Democratic Alliance v Acting National Director of Public Prosecutions and Another* [2016] 3 All SA 78 (GP), which was confirmed by the SCA in *Zuma v Democratic Alliance and Others* 2018 (1) SA 200 (SCA), *Democratic Alliance v Minister of International Relations and Others* 2017 (3) SA 212 (GP) (on the withdrawal of South Africa from the Roman Statute),

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and *M v Minister of Police* 2013 (5) SA 622 (GNP). The latter considered constitutional damages following a child's loss of parental care (not only loss of support) consequent to the death of the father in police custody. The question of constitutional damages remains alive, with the retired Moseneke DCJ recently granting such constitutional damages to relatives of the Life Esidimeni mental health patients, which would normally not be part of the solatium in the common law of Delict.

5.3 During his time as an attorney the candidate represented accused charged with public violence in political trials. He is said to be compassionate and has been involved in the development of acting judges and advocates alike. The candidate was instrumental in the establishment and development of the Advocates for Transformation movement, and involved with drafting its constitution.

6 Whether any judgments have been overturned on appeal

6.1 Apart from the 7 judgments listed by the candidate at paragraph 16.4 and Annexure D of his application, no other judgments overturned on appeal have been identified.

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

7.1 The candidate has 38 active years of experience in the legal profession.

7.2 He registered (in 1980) and completed his articles of clerkship with the firm Maluleke Seriti and Moseneke Attorneys, doing mostly litigation work. He continued to work at the firm as a professional assistant until

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leaving to start a practice under the name and style of Mothle Matlala Mahlangu and Moabi Attorneys.

7.3 He left to complete his Masters abroad under a Fullbright Scholarship, and whilst abroad he joined the firm Pillsbury Madison and Sutro Attorneys in Washington DC as an intern, working mainly in the section monitoring gas and oil legislation.

7.4 After returning to the country in 1987, he formed part of the team that established the National Directorate of Lawyers for Human Rights (LHR). He was also contracted as a legal consultant, to the International Organisation for Migration, an inter-governmental organisation, and established its offices in South Africa. He became a Special Advisor to the Premier of the Northern Province after the 1994 elections. In 1997 he took up the position as Head of the Investigation Unit of the Independent Complaints Directorate. Between 1998 and 2000, the candidate was contracted as the Head of the Democracy Development Directorate of the Independent Electoral Commission.

7.5 In 2001 he joined the Pretoria Bar as an advocate. He was conferred the status of silk in 2007, and received his letters patent in 2008. In that year he started acting as a Judge in the Pretoria High Court intermittently between 2008 and 2010.

7.6 In 2010 the candidate was appointed a permanent Judge of the High Court, Gauteng Division and based in Pretoria. He took up office in January 2011. He acted at the Supreme Court of Appeal from November 2017 to December 2018.

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7.7 His judgments (as a Judge of the Gauteng Division of the High Court and as an Acting Judge of the Supreme Court of Appeal) cover a wide area of the law. They serve as an indication that the candidate commands a diverse legal mind and is not inhibited in finding innovative solutions to current South African legal problems. In 2017 the candidate presided over the re-opened inquest into the death of Ahmed Essop Timol, the first of its kind to be held in any Superior Court in South Africa.

8 The candidate's linguistic and communication skills

8.1 The candidate has an appropriate command of the English language and expresses himself clearly and succinctly.

8.2 His judgments are well-structured and are a model of linguistic excellence and clarity.

9 The candidate's ability to produce judgments promptly

9.1 The candidate indicates that he has no outstanding judgments. No adverse comments were received. There is therefore no reason to doubt that he produces judgments efficiently.

10 The candidate's fairness and impartiality

10.1 The judgments of the candidate indicate that he is fair. He seems to be specifically sensitive towards vulnerable groups and issues.

10.2 There is no reason to doubt his impartiality.

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11 The candidate's independent mindedness

11.1 The judgments written by the candidate indicate that he is able to apply himself independently in arriving at his decisions.

12 The candidate's ability to conduct court proceedings

12.1 Members of the Bar have reported that that the candidate is courteous in Court.

12.2 No adverse comments have been received.

13 The candidate's administrative ability

13.1 He has been involved in Bar matters (at provincial and national level) and played a strong leadership role in the establishment and development of the Advocates for Transformation movement.

13.2 No adverse comments were received.

14 The candidate's reputation for integrity and ethical behaviour

14.1 The candidate has demonstrated that he is fearless, impartial, resolute and relentless in the pursuance of justice.

14.2 No adverse comments have been received in this regard.

15 The candidate's judicial temperament

15.1 The candidate has a reputation for fairness and impartiality.

15.2 Members of the Johannesburg Bar report that he is always courteous and respectful towards counsel.

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

16.1 The candidate demonstrates an understanding of and sensitivity for constitutional rights and their value in society. He has throughout his life (professionally and otherwise) demonstrated a commitment to promoting transformation, especially that of the legal profession. As a Judge he has also been actively involved in advising and guiding of acting and junior Judges.

17 The candidate's potential

17.1 The candidate has proven himself as a competent Judge. He is committed to the Constitution and the need to assist in the development of legal practitioners, be it junior advocates or aspiring Judges.

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

18.1 In general, it can be said that the candidate is suited to fulfil a role as a Judge of the Supreme Court of Appeal.

18.2 The SCA, despite no longer being the apex Court in all matters other than constitutional matters, continues to shape the law as the *de facto* last court of appeal in many matters. The candidate appears to be a competent jurist, and there can be no doubt that his diverse background, and knowledge in the various areas of law in which the candidate has practiced or adjudicated upon, and commitment to human rights and the constitution will be of value to the Appeal Court.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Netshimbupfe and Another v Carthcart and Others 2018 (3) All SA 397 (SCA)

Freedom Under Law (RF) NPC v National Director of Public Prosecutions and Others 2018 (1) SACR 436 (GP)

Ackermans Ltd v Commissioner, South African Revenue Service 2015 (6) SA 364 (GP)

Graham and Another v Law Society, Northern Provinces and Others (Road Accident Fund Intervening) 2014 (4) SA 229 (GP)

M and Another v Minister of Police 2013 (5) SA 622 (GP)

Holdsworth and Others v Reunert Ltd 2013 (6) SA 244 (GNP)

Hanley v ABSA Bank Limited 2012 (4) All SA 318 (GNP) (31 August 2012)

S v SN 2012 (2) SACR 317 (GP)

Unreported decisions

Ngema v S [2017] ZAGPPHC 579 (12 September 2017)

Van der Merwe v De Klerk [2017] ZAGPPHC 593 (12 September 2017)

Sizazonke Electrical CC and Others v Eskom Holdings Limited [2017] ZAGPPHC 305 (7 July 2017)

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Ebisu Dealers CC and Another v Chevron South Africa (Pty) Ltd [2017] ZAGPPHC 393 (23 June 2017)

Tshabalala v Minister of Police (2017) ZAGPPHC 331 (8 June 2017)

Grammaticus (Pty) Ltd v Minister of South African Police and Others (2017) ZAGPPHC 342 (22 March 2017)

Dinnermates (TVL) CC v Piquante Brands International (Pty) Ltd and Others (2016) ZAGPPHC 1039 (15 December 2016)

Maluleke v S [2016] ZAGPPHC 847(20 September 2016)

Chunnett v Roytblat [2016] ZAGPPHC 800 (6 September 2016)

Gani v Essa Steel Manufacturers CC [2016] ZAGPPHC 435 (27 May 2016)

Ngobeni v Minister of Police [2016] ZAGPPHC 61 (9 February 2016)

Germiston Municipal Retirement Fund v Ekurhuleni Metropolitan [2015] ZAGPPHC 1143 (22 May 2015)

Lebang v S [2015] ZAGPPHC 252 (21 April 2015)

Biochlor (Pty) Ltd v G E Betz South Africa (Pty) Ltd [2014] ZAGPPHC 1030 (12 December 2014)

O v O [2014] ZAGPPHC1040 (11 December 2014)

Van Wyk v Rheeders [2014] ZAGPPHC 607 (17 July 2014)

Tshabalala v S [2014] ZAGPPHC 435 (30 May 2014)

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S v Mahlaule [2014] ZAGPPHC 466 (13 MAY 2014)

ABSA Bank Limited v Investment Property 42 (Pty) Ltd [2014] ZAGPPHC 228 (25 April 2014)

Ndaba and Others v Minister of Police [2014] ZAGPPHC 180 (2 April 2014)

Voltex (Pty) Ltd v Ras 2010 JDR 0236 (GNP) (12 March 2010)

Dynamic Wealth Stockbrokers (Pty) Ltd v Bezuidenhout Hepple Inc. 2009 JDR 0950 (GNP) [2009] ZAGPPHC 271 (22 September 2009)

Clicks Retailers (Pty) Ltd v Killarney Mall Properties (Pty) Ltd [2017] ZAGPPHC 626 (22 September 2017)

Special Pensions Appeal Board and Another v Masemola [2018] ZASCA 117 (20 September 2018)

President of the Republic of South Africa v Democratic Alliance and Others [2018] ZASCA 79 (31 May 2018)

Judgments upheld on appeal

Hanley v ABSA Bank 2012 (4) All S 318 (GNP) / 2014 (2) SA 448 (SCA)

Mangwale v S 2013 JDR 2774 (GNP) / A744/2016 2018 JDR 0935 (GP)

Trencon (Pty) Ltd v Industrial Development Corporation of South Africa Limited 2013 JDR 1267 (GNP) / 2015 (5) SA 245 (CC)

Germiston Municipality Retirement Fund v Ekurulenti Metropolitan Municipality 2015 JDR 1016 (GP) / 2017 (6) BCLR 750 (CC)

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Mdluli v S [2015] JDR 2607 (SCA)

Law Society of the Northern Provinces v Dube 2012 (4) All SA 251 (SCA)

Politis NO v Member of the Executive Council for Health on Limpopo [2017]
ZASCA 86 (2 June 2017)

Judgments overturned on appeal

M and Another v Minister of Police 2013 (5) SA 622 (GP) / 2014 (6) SA 256 (SCA)

Dinnermates (TVL) CC v Piquante Brands International (Pty) Ltd and Others 2017
JDR 0239 (GP) / [2018] ZASCA 43 (28 March 2018)

Ndaba and Others v Minister of Police [2014] ZAGPPHC 180 (2 April 2010)
A553/2014 / [2016] ZAGPPHC 277 (6 May 2016)

Vermeulen v Medi-Clinic Ltd [2013] ZAGPPHC 166 (12 June 2013) / 2015 (1) SA
241 (SCA)

Selli v S 2015 ZASCA 173

Standard Bank v Echo Petroleum [2012] ZASCA 18 (22 March 2012)

Gonya v S [2016] ZASCA 34 (24 March 2016)