

*CANDIDATE: JUDGE BULELWA MYRA PAKATI*

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**COURT FOR WHICH THE CANDIDATE APPLIES: NORTHERN CAPE  
DIVISION AS DEPUTY JUDGE PRESIDENT**

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

- 1.1. Diploma Juris (University of Transkei, now known as Walter Sisulu University 1986)
- 1.2. B Juris (University of Transkei 1988)
- 1.3. LLB (University of Transkei 1990)
- 1.4. The candidate is appropriately qualified for the post.

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

- 2.1. The candidate is a member in good standing of the South African Chapter of the International Association of Woman Judges.
- 2.2. The Northern Cape Society of Advocates have reported the following:
  - 2.2.1. Although we have the opportunity and the right to raise our personal preferences and opinions in the JSC, this particular submission is not primarily about personal preferences of any individual or group of persons in our association.
  - 2.2.2. Our association has been provided with information that we feel we are obliged to disclose to the JSC in order for it to make an

informed decision. This information arises from the case of S V Brooks and Others, in which Pakati J presided, and an application for a permanent stay of prosecution in that matter brought under case number KS21/2015. In that case Daffue J granted a permanent stay of prosecution in favour of the applicants.

2.2.3 The Director of Public Prosecution, Northern Cape (DPP, NC) sought leave to appeal the said decision. Leave to appeal was refused. The DPP, NC has now brought an application to the Supreme Court of Appeal (SCA) and it is in the affidavit of one Roothman, a Deputy Director of Public Prosecutions, that the relevant information is stated under oath.

2.2.4. The relevant passages appear in paragraphs 33 and 34 of this affidavit. the said paragraphs read as follows:

“33. The Court a quo remarked that ‘I do not wish to criticise my colleague for not informing the legal representatives of the conversation with Captain Gugu and her fears in that regard.’ The court also did not find or rule that there was a primary duty on the trial judge to inform the parties timeously of the bribe.

34. The code of Judicial conduct published in the Government Gazette of 18 October 2012 stipulates with regard to recusal in Article 13 Note (iv):

‘If a judge is of the view that there are no grounds for recusal but believes that there are such facts which, if

known to a party, might result in an application for recusal, such facts must be made known timeously to the parties, either by informing counsel in chambers or in open court, and the parties are to be given adequate time to consider the matter.”

- 2.2.5. Firstly, from the surrounding facts that we are aware of there was never anything more than an attempt to bribe Pakati J. We are aware that Pakati J informed an official in the office of the Chief Justice of this attempt promptly. The criticism that we believe Roothman attempts to make is that in the permanent stay application Daffue J did not take cognisance of the fact that the primary duty to bring this to the attention of the parties in the criminal trial rested on Pakati J. This is supported by the Code of Judicial Conduct which Roothman quotes and which is set out above.
- 2.2.6. Our association also wishes to point out that whilst we have taken care to obtain as much background information as possible to keep our submission appropriate to the context, there may be certain facts which we are not aware of. We trust that Pakati J will be given a fair opportunity to deal with this at the appropriate time.
- 2.2.7. Arising from the point made by Roothman in the said application for leave to appeal, we point out that Pakati J is applying for a position of leadership. In that position of leadership, she will be required to give guidance to aspirant and junior judges who might

find themselves in a similar position. This raises a concern in regard to this candidate.

2.2.8. For the sake of clarity, we believe that Pakati J has potential for a leadership position, but given the circumstances, this may not be the time. Perhaps Pakati J is a little bit too approachable particularly to persons outside the profession.”

**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 woman.

3.2. The appointment of female candidates to senior positions in the judiciary currently lags behind the goal of equal gender representivity, and the candidate’s appointment would therefore further this end.

**4. The candidate’s knowledge of the law, including constitutional law**

4.1. A scrutiny of the cases cited by the candidate in which she presided as Acting Judge, Judge and Acting Deputy Judge President, reveals that the candidate has a sound knowledge of the law, including constitutional law. The candidate has experience in many areas of the law.

4.2. The candidate has more than 30 years’ experience being a member of the Judiciary. The candidate acted 7 times as a judge in the Kimberley High Court and once in the North Gauteng, Pretoria High Court.

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4.3. She was appointed as a judge of the High Court, Northern Cape Division since May 2012 and as acting deputy judge president during the period between 29 January 2018 until 13 April 2018.

4.4. The following judgment was reported: *Abrinah 7804 (Pty) Ltd v Kapa Koni Investments CC (717/2016)* [2017] ZANCHC 63; 2018 (3) SA 108 (NCK) (1 December 2017)

Coram: Olivier J et Phatshoane ADJP et Pakati J

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

5.1. In the nomination of Towell & Groenewaldt Attorneys, it reads:

“We believe her strong work ethic, pleasant disposition, unwavering human rights outlook and a knowledgeable legal mind, makes her a suitable candidate for the position”.

5.2. In the nomination of Mzuzu Attorneys, it reads:

“She is known to me as a Judge with deep sense of humour, very patient and detailed, a good listener, open to persuasion, a protector of the constitution and the rule of law.”

5.3. In the nomination of Gqadushe Attorneys, it reads:

“Judge Pakati is a suitable candidate for this position due to her vast experience, her knowledge of the Law, Human Rights and the Constitution and her ability to articulate legal issues.”

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

6.1. None of the judgments listed below were overturned on appeal.

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

7.1. The candidate worked as an administrative clerk (1985 – 1986) and as an interpreter and legal assistant (1986 – 1991) at Mqanduli Magistrate's Office.

7.2. Thereafter the candidate was promoted to the rank of Magistrate acting as a senior prosecutor in Butterworth from 1991 – August 1993.

7.3. From 1993 – 1997 the candidate took the position as a judicial officer at Qumbu Magistrate's Court and acted as head of office in the absence of the senior magistrate.

7.4. During the period between 1998 – 1999 the candidate was a lecturer at Justice College in Pretoria.

7.5. Since 1999 the candidate was a Magistrate and Head of Office at various Magistrate's and Regional Courts: from 1 June 1999 – 31 October 2000 Magistrate at Brakpan Magistrate's Office; from 1 November 2000 Head of Office at Maclear Magistrate's Office; from 13 June 2002 Senior Magistrate at the Magistrate's Office Cape Town; from 27 May 2003 Acting Regional Magistrate at Wynberg; Cape Town, Parow and Bellville Magistrate's Court; from 1 June 2004 Regional Magistrate at Temba Magistrate's Office and from 2006 to 2012 Permanent Regional Magistrate at Temba Magistrate's Office.

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7.6. The candidate acted 7 times as a judge in the Kimberley High Court and once in the North Gauteng, Pretoria High Court.

7.7. She was appointed as a judge of the High Court, Northern Cape Division since May 2012 and as acting deputy judge president during the period between 29 January 2018 until 13 April 2018.

7.8. The candidate attended various training seminars and courses, as well as the Intensive Social Context Course and the Case Flow Management training.

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

8.1. The candidate is proficient in English and an able communicator in that language, as well as approachable.

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

9.1. The candidate's judgments have been delivered with promptness.

9.2. *Millenium Waste Management (Pty) Limited v Sol Plaatje Municipality* (1585/2008) [2018] ZANHC 63 (11 September 2018)

9.2.1. Coram: Pakati ADJP et Mamosebo J et Stanton AJ

9.2.2. Matter heard on: 19 March 2018

9.2.3. Delivered on: 11 September 2018

9.3. *Mdubane v State* (CA & R 97/17) [2018] ZANHC 58 (18 May 2018)

9.3.1. Coram: Pakati ADJP et Stanton AJ

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- 9.3.2. Matter heard on: 9 February 2018
- 9.3.3. Delivered on: 18 May 2018
- 9.4. *Louw v Wesbank a division of Firstrand Bank Ltd (905/2018) [2018] ZANCHC 84 (19 November 2018)*
- 9.4.1. Matter heard on: 14 September 2018
- 9.4.2. Delivered on: 19 November 2018
- 9.5. *Kivedo v Minister of Safety And Security and Another (CA&R 76/13) [2014] ZANCHC 23 (31 October 2014)*
- 9.5.1. Coram: Lacock J et Pakati J
- 9.5.2. Matter heard on: 18 August 2014
- 9.5.3. Delivered on: 31 October 2014
- 9.6. *Ntshoeu v Smith (CA&R107/16) [2017] ZANCHC 30 (11 April 2017)*
- 9.6.1. Coram: Mamosebo J et Pakati J
- 9.6.2. Matter heard on: 20 February 2017
- 9.6.3. Delivered on: 11 April 2017
- 9.7. *Laubscher v Road Accident Fund (2018/2013) [2018] ZANCHC 75 (24 October 2018)*
- 9.7.1. Matter heard on: 28 August 2018
- 9.7.2. Delivered on: 24 October 2018



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9.8. *Rampagane v S* (K/S 3/2015) [2018] ZANCHC 5 (23 February 2018)

9.8.1. Coram : Tlaletsi JP, Williams J et Pakati J

9.8.2. Matter heard on: 30 October 2017

9.8.3. Delivered on: 23 February 2018

9.9. *De Bruin v S* (CA&R135/2014) [2016] ZANCHC 12 (29 January 2016)

9.9.1. Coram: Olivier J et Pakati J

9.9.2. Matter heard on: 25 January 2016

9.9.3. Delivered on: 29 January 2016

9.10. *Abrinah 7804 (Pty) Ltd v Kapa Koni Investments CC* (717/2016) [2017] ZANCHC 63; 2018 (3) SA 108 (NCK) (1 December 2017)

9.10.1. Coram: Olivier J et Phatshoane ADJP et Pakati J

9.10.2. Matter heard on: 20 November 2017

9.10.3. Delivered on: 1 December 2017

9.11. *Sebeela and Others v S* (CA&R17/2018) [2018] ZANCHC 54 (24 August 2018)

9.11.1. Coram: Olivier ADJP et Pakati J

9.11.2. Matter heard on: 13 August 2018

9.11.3. Delivered on: 24 August 2018

9.12. *Selaletsi v S* (KAP08/15) [2017] ZANCHC 55 (2 June 2017)

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- 9.12.1. Coram: Pakati J et Snyders AJ
- 9.12.2. Matter heard on: 8 December 2017
- 9.12.3. Delivered on: 16 January 2018
- 9.13. *Burger NO and Others v Land and Agricultural Development Bank of South Africa* (324/18 & 409/2018) [2018] ZANCHC 93 (22 November 2018)
  - 9.13.1. Matter heard on: 8 August 2018
  - 9.13.2. Delivered on: 22 November 2018
- 9.14. *Kruger v Van der Wath and Kie* (CA&R123/2016) [2017] ZANCHC 20 (17 March 2017)
  - 9.14.1. Matter heard on: 20 February 2017
  - 9.14.2. Delivered on: 17 March 2017
- 9.15. *Barnard and Another v Henderson and Another* (2303/2018) [2018] ZANCHC 78 (2 November 2018)
  - 9.15.1. Matter heard on: 11 October 2018
  - 9.15.2. Delivered on: 2 November 2018
- 9.16. *Merementsi v Visser* (CA&R 3/2011) [2013] ZANCHC 9 (26 March 2013)
  - 9.16.1. Coram: Kgomo JP; Williams J et Pakati J
  - 9.16.2. Matter heard on: 21 November 2011 and 11 February 2013

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- 9.16.3. Delivered on: 26 March 2013
- 9.17. *Oliphant NO v Oliphant and Others* (48/2017) [2018] ZANCHC 3 (16 January 2018)
- 9.17.1. Matter heard on: 8 December 2017
- 9.17.2. Delivered on: 16 January 2018
- 9.18. *Magawu v S* (CA&R28/2018) [2018] ZANCHC 71 (2 October 2018)
- 9.18.1. Matter heard on: 20 September 2018
- 9.18.2. Delivered on: 2 October 2018
- 9.19. *Dundi Lodge (Pty) Ltd v Compensation Insure International Consultants (Pty) Ltd and Others* (2080/2015;1749/2017) [2018] ZANCHC 50 (3 August 2018)
- 9.19.1. Matter heard on: 16 February 2018
- 9.19.2. Delivered on: 3 August 2018
- 9.20. *Kalamore v S* (CA&R100/2016) [2017] ZANCHC 10 (3 February 2017)
- 9.20.1. Coram: Pakati, J et Erasmus, AJ
- 9.20.2. Matter heard on: 12 December 2016
- 9.20.3. Delivered on: 3 February 2017

**10. The candidate's fairness and impartially**

10.1. The candidate displays a deep sense of fairness.

10.2. No adverse comments were received in respect of the candidate's fairness and impartiality.

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

11.1. No adverse comments were received in respect of the candidate's independent mindedness.

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

12.1. The candidate is a seasoned judicial officer with vast experience in court. See paragraph 7 above.

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

13.1. The candidate is an experienced administrator, having gained most of her experience in the Department of Justice.

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

14.1. The candidate maintains a high standard of ethics.

14.2. No adverse comments were received in respect of the candidate's reputation for integrity and ethical behaviour.

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

15.1. The candidate is approachable and sensitive to the needs of practitioners.

15.2. The candidate displays proper judicial temperament.

15.3. No adverse comments have been received.

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

16.1. The candidate's commitment is demonstrated in her judgments, for instance, *Kivedo v Minister of Safety And Security and Another* (CA&R 76/13) [2014] ZANHC 23 (31 October 2014):

“[19]Section 12(1) (a) (b) and (c) of the Constitution guarantees everyone the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial; and to be free from all forms of violence from either public or private sources. Kriegler J in EX PARTE MINISTER OF SAFETY AND SECURITY AND OTHERS: IN RE S v WALTERS 2002 (2) SACR 105 (CC) at 123 para 30 enunciated:

“[30]...The arrest of a person by definition entails deprivation of liberty and some impairment of dignity and bodily integrity. Where in addition, it is accompanied by the use of force, the impairment of these rights is all the greater, and, ultimately, the use of potentially lethal force jeopardises the most important of all individual rights, the right to life itself.”

“[21]Const Kola explained that it is their practise to arrest offenders for causing nuisance for four hours. Mr Kgotlagomang, for the appellant, submitted that when the plaintiff was detained there was no intention to bring him to

court. Mr Khokho, for the Minister, conceded this but submitted that the intention was to calm the plaintiff down. In *ZEALAND v MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND ANOTHER 2008 (2) SACR 1 (CC)* at paras 24 and 25 Langa CJ enunciated:

“[24] There is another, more important reason why this court should rule in the applicant’s favour. The Constitution enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom. Accordingly, it was sufficient in this case for the applicant simply to plead that he was unlawfully detained. This, he did. The respondents then bore the burden to justify the deprivation of liberty, whatever form it may have taken.”

“[25] This is not something new in our law. It has long been firmly established in our common law that every interference with physical liberty is prima facie unlawful. Thus, once the claimant establishes that an interference has occurred, the burden falls upon the person causing that interference to establish a ground of justification.”

**17. The candidate’s potential**

- 17.1. There is no reason not to believe that the candidate has the potential to be a good deputy judge and to contribute to transformation.

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

18.1. The candidate is a Black woman. As such, her appointment to the position of Deputy Judge President would send a positive and transformative message to the community at large.

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**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

**Reported decisions**

*Millenium Waste Management (Pty) Limited v Sol Plaatje Municipality (1585/2008)*  
*[2018] ZANHC 63 (11 September 2018)*

Coram: Pakati ADJP et Mamosebo J et Stanton AJ

*Mdubane v State (CA & R 97/17) [2018] ZANHC 58 (18 May 2018)*

Coram: Pakati ADJP et Stanton AJ

*Louw v Wesbank a division of Firstrand Bank Ltd (905/2018) [2018] ZANHC 84*  
*(19 November 2018)*

*Kivedo v Minister of Safety And Security and Another (CA&R 76/13) [2014]*  
*ZANHC 23 (31 October 2014)*

Coram: Lacock J et Pakati J

*Ntshoeu v Smith (CA&R107/16) [2017] ZANHC 30 (11 April 2017)*

Coram: Mamosebo J et Pakati J

*Laubscher v Road Accident Fund (2018/2013) [2018] ZANHC 75 (24 October*  
*2018)*

*S v Mmolawa and Another (97/11) [2012] ZANHC 23 (11 May 2012)*

Coram: Pakati AJ et Hughes-Madondo AJ

*Rampagane v S (K/S 3/2015) [2018] ZANHC 5 (23 February 2018)*



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Coram : Tlaletsi JP, Williams J et Pakati J

*De Bruin v S (CA&R135/2014) [2016] ZANCHC 12 (29 January 2016)*

Coram: Olivier J et Pakati J

*Abrinah 7804 (Pty) Ltd v Kapa Koni Investments CC (717/2016) [2017] ZANCHC 63; 2018 (3) SA 108 (NCK) (1 December 2017)*

Coram: Olivier J et Phatshoane ADJP et Pakati J

*Sebeela and Others v S (CA&R17/2018) [2018] ZANCHC 54 (24 August 2018)*

Coram: Olivier ADJP et Pakati J

*Selaletsi v S (KAP08/15) [2017] ZANCHC 55 (2 June 2017)*

Coram: Pakati J et Snyders AJ

*Burger NO and Others v Land and Agricultural Development Bank of South Africa (324/18 & 409/2018) [2018] ZANCHC 93 (22 November 2018)*

*Kruger v Van der Wath and Kie (CA&R123/2016) [2017] ZANCHC 20 (17 March 2017)*

*Barnard and Another v Henderson and Another (2303/2018) [2018] ZANCHC 78 (2 November 2018)*

*Merementsi v Visser (CA&R 3/2011) [2013] ZANCHC 9 (26 March 2013)*

Coram: Kgomo JP; Williams J et Pakati J

*Oliphant NO v Oliphant and Others (48/2017) [2018] ZANCHC 3 (16 January 2018)*

*CANDIDATE: JUDGE BULELWA MYRA PAKATI*

*Magawu v S (CA&R28/2018) [2018] ZANHC 71 (2 October 2018)*

*Dundi Lodge (Pty) Ltd v Compensation Insure International Consultants (Pty) Ltd  
and Others (2080/2015;1749/2017) [2018] ZANHC 50 (3 August 2018)*

*Kalamore v S (CA&R100/2016) [2017] ZANHC 10 (3 February 2017)*

Coram: Pakati, J et Erasmus, AJ