

CANDIDATE: ADV MMP MDALANA-MAYISELA

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG LOCAL
DIVISION (JOHANNESBURG)**

It should be noted that the Applicant appears to also have judgments reported under the name MP Mdalana. The reviewers found a MP Mdalana on the Constitutional Hill website (the candidate's group) and the contact details for MP Mdalana and MMP Mdalana-Mayisela are identical. It would appear that they are the same person, and the reviewers have assumed this to be the case in this review.

1 The candidate's appropriate qualifications:

1.1 B.Juris (*cum laude*) – The candidate indicated that she obtained this degree in her *curriculum vitae*, but attached two copies of her LLB degree instead of a copy of her B.Juris degree. It is recommended that the candidate be requested to provide a copy of her B.Juris degree as this is presumably a simple oversight on her part.

1.2 LLB.

2 Whether the candidate is a fit and proper person:

2.1 The candidate has letters of support from the advocates' group of which she is a member, (Constitutional Hill Group), Advocates for Transformation (Johannesburg) ('AFT'), and Adv WH Mokhare SC, all

indicating her to be a suitable candidate for judicial appointment. The Johannesburg Society of Advocates confirms that she is a member in good standing and that there are no pending disciplinary hearings against her. No negative comments have been received concerning whether the candidate is 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 candidate is a black woman.

3.2 The appointment of the candidate would contribute the gender and racial transformation of the judiciary.

3.3 In addition, the candidate has the support of the Johannesburg Branch of Advocates for Transformation, who specifically mention that her appointment would assist in broadening the transformation of the bench.

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

4.1 The candidate attached six judgments, handed down during stints as an acting judge, to her application. In addition, a further five judgments online were considered.

4.2 The candidate's knowledge of criminal law appears to be good.

4.3 While she appears to have a fair amount of experience in civil matters, one senior member submitted an adverse comment indicating that the candidate's knowledge of contract and basic commercial law was of

some concern. No further information was obtained in order to provide context to this comment.

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

5.1 The candidate has acted extensively as a judge, is a member of Advocates for Transformation, a member of the Mondeor Community Policing Forum and a teacher at the Tirhano School of Repentance. These roles do point to a commitment to community service, which in itself indicates a commitment to the Constitution.

5.2 None of the judgments handed down by the candidate deal in any depth with constitutional issues. In one matter (the **Notshele** matter) the candidate dismissed an exception based on a constitutional issue.

6 Whether any judgments have been overturned on appeal:

6.1 The candidate indicated that two of her judgments have been taken on appeal. One appeal is apparently still pending. The candidate indicates that the appeal in the second one was upheld. The appeal judgment could not be located.

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

7.1 The candidate had extensive experience working as a Senior State Advocate and for the Directorate of Public Prosecutions. In total the candidate worked in this field for nine years.

7.2 The candidate worked in the Forensic Department of an Auditing Firm for a year.

7.3 The candidate is a member of the Johannesburg Bar and has practised as such for approximately twelve years.

7.4 The candidate has acted as a judge for 39 weeks in total at various times from 2013 to present.

8 The candidate's linguistic and communication skills:

8.1 Some of the candidate's judgments contain grammatical errors, but otherwise read reasonably well. All the candidate's judgments were written in English.

8.2 In the matter of Mlangeni v The State, one of the paragraphs contained in the judgment (para 3) did not clearly reflect what what was meant to be conveyed.

9 The candidate's ability to produce judgments promptly:

9.1 No adverse comments have been received in this regard.

9.2 The candidate indicates that she has no outstanding judgments.

10 The candidate's fairness and impartiality:

10.1 No negative comments have been received in this regard and it must be assumed that the candidate is fair and impartial.

11 The candidate's independent mindedness:

11.1 There is no indication that the candidate is not independent.

12 The candidate's ability to conduct court proceedings:

12.1 No negative comments have been made indicating that the candidate cannot conduct court proceedings properly.

12.2 Information received is that the candidate is polite and even-handed with counsel. This would indicate that she conducts proceedings in a manner befitting a judge.

13 The candidate's administrative ability:

13.1 The grammatical errors in the candidate's judgments may raise questions around the candidate's administrative ability.

13.2 Other than the above stated, no adverse comments arose in respect of the candidate's administrative ability.

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

14.1 The letters of support attached to the application indicate that the candidate is a suitable candidate for the bench.

14.2 There is nothing to indicate that the candidate is anything but a person of integrity and an ethical practitioner.

15 The candidate's judicial temperament:

15.1 No adverse information was received which would cast doubt on the candidate's judicial temperament. On the contrary, information gathered indicated that the candidate has a good judicial temperament.

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

16.1 As indicated above the candidate is involved in community service which is indicative of a broader public interest commitment.

16.2 Her extensive experience as a State Advocate and her work in the Directorate of Public Prosecutions' Office has also presumably provided her with insight into the needs of the community.

16.3 There is nothing to indicate that the candidate is not committed to human rights.

17 The candidate's potential:

17.1 There is no reason to doubt the candidate's potential.

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

The candidate is a black woman and her appointment will send a positive message to the community at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Nelly v Queen Court Trading CC and another [2017] JOL 37233 (GJ) (not referenced by candidate – candidate was judge)

Refugee Appeal Board of South Africa and others v Mukungubila 2019 (3) SA 141 (SCA) (candidate was a junior counsel in matter)

S v Western Areas Ltd and others [2005] 3 All SA 541 (SCA) (candidate was a junior counsel in the matter)

Unreported decisions

Dehill N.O. and another v Bezuidenhout and Others Case 15152/2017¹

Pretorius N.O. v Jones and another Case 55701/2917²

Notshele v Transnet Freight Rail Ltd and another Case 2561/2016³

Botha N.O. v RAF Case 23512/2015⁴

Khoza v The State Case A672/2016⁵

Khoza v The State Case A184/2018⁶

¹ See: Page 35 of the application

² See: Page 42 of the application

³ See: Page 48 of the application

⁴ See: Page 55 of the application

⁵ See: Page 62 of the application

⁶ See: Page 71 of the application

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S v Assante (446/02)[2003] ZASCA 39

Somali Association of South Africa v Refugee Appeal Board and others (99766/15)
[2019] ZAGPPHC 78

Mlangeni v The State (A736/2015) [2017] ZAGPPHC 168 (Not mentioned by candidate)

First Rand Bank Ltd v Fondse and others (65596/17) [2018] ZAGPPHC 316 (Not mentioned by candidate)

Rabie v Rabie (55793/2104) [2017] ZAGPPHC 241 (Not mentioned by candidate)

Maluleke v S (A634/2016) [2018] ZAGPPHC 319 (Not mentioned by candidate)

Judgments upheld on appeal

Alli Zebunisa v Minister of Safety and Security (2013) – Reviewer could not find a copy of this judgment.

Judgments overturned on appeal

N/A

Judgments referred to by candidate that could not be found

Steam & Electrical Services Tzaneen CC 767/2017 LD

Alli Zebunisa v The Minister of Safety and Security (2013)

Pretorius v Pretorius (2015)