

**APPLICANT: MR MESHACK PUMELELE CANCA**

**COURT FOR WHICH THE APPLICANT APPLIES: GAUTENG DIVISION  
OF THE HIGH COURT FOR SECONDMENT TO THE LAND CLAIMS  
COURT**

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

1.1. BA (University of Fort Hare 1979), and

1.2. LLB (University of Cape Town 1984).

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

2.1. There is nothing in the candidate's application or in the candidate's judgments as an acting judge that would suggest that the candidate is not a fit and proper person to be a judge of the Land Claims Court.

2.2. The candidate has acted as a judge at the Land Claims Court for a considerable period of time and in various other divisions of the High Court.

**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 appointment of the candidate would therefore broadly help to reflect the racial composition of South Africa.

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

- 4.1. The candidate practiced as an attorney from 1986 - 2008 (22 years), and as an acting judge from 2014 - 2019 (5 years).
- 4.2. The candidate has experience in the commercial sphere and has been involved in a few high profile and complex cases.
- 4.3. The candidate's judgments reflect an understanding of procedures and substantive law.
- 4.4. With specific regard to Constitutional Law the candidate has indicated in his application that he does not have any constitutional litigation experience.

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

- 5.1. The candidate in his application does not make any specific reference to his commitment to the values of the Constitution, but there is no reason to question such commitment.

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

- 6.1. A number of judgments which have been overturned on appeal could be found in the public domain.

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

- 7.1. The candidate has over 20 years experience as a practising attorney where he acted in large complex commercial matters. He has also acted as a judge in the Land Claims Court and various other divisions of the

High Court and has delivered in excess of 60 judgments whilst an acting judge.

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

8.1. From the candidate's judgments, it appears that he has good written linguistic skills in English.

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

9.1. All of these judgments were delivered promptly, some on the same day and others within 3 months of the hearing.

9.2. The candidate has 2 judgments outstanding since August 2019 from the Land Claims Court.

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

10.1. No adverse comments have been received in this regard.

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

11.1. There is nothing to suggest that the candidate is not independently fair minded.

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

12.1. There is nothing that the reviewers have found which suggests an inability to conduct proceedings.

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

13.1. No adverse comments have been received in this regard. The candidate has served on several boards and appears to possess proven administrative abilities.

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

14.1. No adverse comments have been received in this regard.

14.2. There is nothing in the candidate's application to indicate that the candidate has been charged with or found guilty of any disciplinary indiscretions.

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

15.1. The reviewers are unaware of any matter which suggests a lack of a judicial temperament on the part of 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 candidate's application reveals that his last involvement in human rights was during his tenure at the Labour Resources Centre in 1986.

**17. The candidate's potential**

17.1. The candidate has potential as a judge of the Land Claims Court which is apparent from the standard of the judgments that he has delivered.

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

18.1. In light of the candidate's legal insight, experience and his commitment to becoming a judge, the candidate's appointment would send a positive message to the community at large.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported Decisions**

#### *Anna Johanna Erasmus v Godfrey Ntenje and others [2018] ZALCC 12*

Return date in respect of an interdict application to prevent the further construction of a structure by the first and second respondent's on the applicant's property together with a counter application by the respondents, in terms of ESTA, to be permitted to remain in occupation of the structure until lawfully evicted. The respondents lived in tents on the applicant's property and sought to upgrade such tents by building a structure on the property in which to live. The judgment while relying on the Constitutional Court decision of *Daniels v Scribante and Another* 2017 (4) SA 341 (CC) fails to properly appreciate that in the present matter the structure was unlawful and did not comply with the property's title deed. The applicant sought leave to appeal to the SCA which was correctly granted by Canca AJ. The decision of the SCA could not be found.

#### *Abraham Lama Wollach N.O. v The Government of the Republic of South Africa and others [2018] ZALCC 1*

The matter involved the issue of whether the compensation paid to the plaintiff, as landowner, arising from the disposition of the plaintiff's farm was just and equitable. The plaintiff contented that it was undercompensated. The judgment provides a thorough and detailed exposition of the evidence which was presented at trial and concludes that the plaintiff was not undercompensated. The judgment while thorough with regards to the factual analysis does, however, provide considerably brief reasoning with regards to the conclusion reached.

#### *Ian Lynn v Jabulani Nene and others [2018] ZALCC 21*

Eviction application in terms of the Extension of Security of Tenure Act 67 of 1997 ("ESTA") and, in the alternative, section 7(2)(b) of the Land Reform (Labour Tenants) Act, 3 of 1996 ("the Labour Tenants Act"). The judgment provides a thorough and well-reasoned evaluation of the facts when applied to the applicable legislation. The judgment shows a well-considered application of Constitutional principles.

*D v M ZAGPJHC 288*

The applicant sought an order to compel and require a mother and her minor son to DNA tests for the purposes of determining whether the applicant's deceased son, SD, was the biological father of the minor child and which would result in the payout of a death benefit to the minor child. The applicant was the appointed executrix of the deceased's estate. The Judge accurately determined the crisp issue in the application, being whether the executrix had locus standi to seek such relief. The judgment is well written and found, correctly so, that such a determination was in the best interests of the minor child.

*Netcare Hospitals (Pty) Ltd v HPCSA and others [2016] ZAGPPHC 293*

Appeal as well as a review application in which Netcare sought to appeal the decision of the HPCSA in which Netcare was denied accreditation to employ radio therapists and medical physicists at those of its hospitals that provide oncology health services. In the review application the decision by the committee of the HPCSA which denied Netcare the requisite accreditation to employ medical physicists and radiotherapists was sought to be reviewed and set aside. The judgment provides a considered and well written synopsis of the facts and relevant law. Judge N Janse van Nieuwenhuizen concurring.

*Emakhasaneni Community and others v Minister of Rural Development and Land Reform and others 2019 (4) SA 286 (LCC)*

An application in which the relevant State departments had concluded a settlement agreement in terms of which the State acquired land from various owners for the purposes of land reform. The settlement agreement was made an order of Court. The State sought to not be bound by terms of the settlement agreement. The judgment is succinct and considers the Court's jurisdiction with regards to the determination of just and equitable compensation.

*Moloto Community v Minister of Rural Development and Land Reform and Other 2019 (3) SA 523 (LCC)*

The judgment considers the Court's jurisdiction to determine the amount of compensation payable and whether the Court is bound by the decision of the Valuer-General. The judgment provides a well-reasoned interpretation of the relevant legislation. The judgment, however, concludes in a rapid fashion that the Minister is estopped from relying on the provisions of the Property Valuation Act 17 of 2014, such conclusion is not well-reasoned (no reasoning being provided at all) and does not properly consider, if at all, the requirements of estoppel.

*Klaase and another v Van Der Merwe NO and others 2016 (6) SA 131 (CC)*

Appeal to the Constitutional Court in respect of certain decisions of the Land Claims Court. The candidate is not listed as one of the judges in the Constitutional Court, but was the Judge in the Labour Court. The decision of the Constitutional Court considers the requirement of consent in order for a person to be considered an occupier of land. In a detailed and well-written judgment, the Constitutional Court found that consent included tacit consent.



## **Unreported decisions**

*Glencore Operations South Africa (Pty) Ltd v Mnguni and Others (LCC105/2017)*  
[2018] ZALCC 2 (23 January 2018)

*Lynn v Nene and Others (LCC95/2016)* [2018] ZALCC 21 (29 January 2018)

*Botha v Mtholo and Others (LCC 25R/2018, 157/2016)* [2018] ZALCC 28 (12  
September 2018)

*Le Roux NO and Another v Louw and Another (LCC223/2016, 2828/2015)* [2017]  
ZALCC 10 (12 June 2017)

*Zybrands N.O and Others v Occupants, Remainder Portions 2 and 9, Farm 143,  
Division Paarl Rd, Western Cape and Others (LCC 199/12)* [2015] ZALCC 8  
(2 October 2015)

## **Judgments overturned on appeal**

*Klaase and Another v Van Der Merwe NO and Others* 2016 (6) SA 131 (CC)

*Uys NO and Another v Msiza and Others* 2018 (3) SA 440 (SCA)