

APPLICANT: MR MPOPELELE BRUCE GILBERT LANGA

COURT FOR WHICH APPLICANT APPLIES: MPUMALANGA

DIVISION OF THE HIGH COURT, MIDDELBURG OR MBOMBELA

1 The candidate's appropriate qualifications

1.1 The candidate is duly qualified having obtained the following University qualifications:

1.1.1 Diploma Iuris 1981, University of the North;

1.1.2 Bachelor of Laws (LLB) 2003, UNISA; and

1.1.3 Master of Laws (LLM) 2004, UNISA.

1.2 The candidate is experienced, having worked as:

1.2.1 Administrative Clerk, Department of Interior (1978-1979);

1.2.2 Public Prosecutor, Department of Justice (1982-1983);

1.2.3 Assistant Magistrate, Department of Justice (1983-1985);

1.2.4 Additional Magistrate, Department of Justice (1985-2004);

1.2.5 Regional Magistrate, Department of Justice (2004-2013);

1.2.6 Acting Regional Court President, Western Cape (2010-2013);

1.2.7 Regional Court President, Department of Justice (2013-to date);

- 1.2.8 Acting Head of Office, Mapulaneng Magistrates Court (1996, 1997, 2000, 2001 and 2003);
- 1.2.9 Acting Judge Western Cape High Court (July 2017 – September 2018);
- 1.2.10 Acting Judge, Gauteng High Court (April 2019);
- 1.2.11 Acting Judge, Mpumalanga High Court (January 2019 – to date).

2 Whether the candidate is a fit and proper person

- 2.1 The candidate appears to be a fit and proper person for the following reasons:
 - 2.1.1 on or about the 9th of December 2019, the Association of Regional Magistrates (“ARMSA”), nominated the candidate to fill a vacancy as Judge in the High Court of South Africa, Mpumalanga Division;
 - 2.1.2 ARMSA certified (December 2019) that the candidate is a member of good standing;
 - 2.1.3 ARMSA certified that there are no disciplinary proceedings pending against the candidate, nor has the candidate ever been accused of, or tried by ARMSA for misconduct;
 - 2.1.4 ARMSA stated that the candidate is well conversant with the law and that the candidate has facilitated many training sessions in the past;

- 2.1.5 ARMSA confirmed that the candidate has acted in the Divisions of the High Courts of the Western Cape and Mpumalanga;
- 2.1.6 ARMSA further confirmed that the candidate is appropriately qualified and a fit and proper person to be appointed to the High Court Bench;
- 2.1.7 For the period 1994 to 1996 the candidate was an “ordinary member” of the Magistrates Association of South Africa;
- 2.1.8 For the year 2002 the candidate was the Provincial Chairperson of the Judicial Association of South Africa;
- 2.1.9 For the period 1999 to 2003 the candidate was an “NEC” member;
- 2.1.10 For the period 2005 to date the candidate was an “ordinary member” of ARMSA.
- 2.2 The candidate contributed to the community and transformation for the following reasons:
 - 2.2.1 for the period 1998 to 2003 the candidate was the Chairperson of the Gender Forum, Limpopo;
 - 2.2.2 for the period 1997 to 2003 the candidate was a facilitator/trainer at the Law, Race and Gender Unit, UCT;
 - 2.2.3 for the period 2001 to 2003 the candidate was a Magistrate Mentor at the Justice College;

- 2.2.4 for the period 2001 to 2002 the candidate was an Equality Court Judicial Education Trainer /Facilitator;
- 2.2.5 for the year 2002 the candidate was the chairperson of JOASA, Limpopo;
- 2.2.6 for the period 2010 to 2012 the candidate was the chairperson, of the SGB, J.G. Meiring High School, Goodwood; and
- 2.2.7 for the period 1998 to 2003 the candidate was the chairperson of the Gender Forum, Limpopo.

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 candidate's appointment would help to transform the racial composition of the bench but not the gender composition.

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

- 4.1 The candidate's academic qualifications in Law have been mentioned above.
- 4.2 Except for what is mentioned in paragraph 6.2.3 hereunder no other point of reference could be found concerning the candidate's experience in Constitutional Law.

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

5.1 The candidate is committed to the values of the Constitution, as it appears, among others, from his involvement in various seminars and workshops, to wit:

5.1.1 Diversity, Culture and Gender in the law, Law, Gender & Gender Unit, UCT;

5.1.2 Impartiality and Integrity in the law;

5.1.3 Sexual Offences;

5.1.4 Judicial Skills Training;

5.1.5 Social Context in Judicial Decision Making;

5.1.6 Judicial Backlogs and Solutions – International;

5.1.7 Association of Judges;

5.1.8 Strengthening Integrity & Capacity – UN Office on Drugs & Crime of Courts in South Africa;

5.1.9 Justice Leadership Strengthening Workshop;

5.1.10 Gender Based Violence & The HIV/AIDS Pandemic; and

5.1.11 Diploma – Women’s Human Rights – Lund University, Sweden.

6 Whether any judgments have been overturned on appeal

6.1 The candidate presented 13 judgments delivered by him for consideration.

6.2 A short summary of these judgments are listed hereunder:

6.2.1 *Water Berry Trading 23 CC v Aristonas (Pty) Ltd – (WC)*

This matter involved eviction based on a breach of contract lease. The application of the Consumer Protection Act 68 of 2008, in a case of a cancelled lease agreement, was tested in what is untested terrain as there are no precedents dealing with the specific issues raised. The appeal was dismissed by the Supreme Court of Appeal which found that there was no prospect of success on appeal.

6.2.2 *Marthinus Phillipus Van Der Berg v Silver Solutions 2564 CC-(WC)*

This matter was an appeal from the Magistrates court involving the law of contract. The court had to inter alia make a determination whether the agreement was one of sale or mandate. The matter involved complex issues around the principles of agency and representation in the law of contract.

6.2.3 *Benchmark Consultancy (Pty) Ltd and Another v Ascension Properties Limited-(WC)*

6.2.4 This matter also involved eviction, summary judgment, suretyship and rescission of a judgment where a lease agreement had allegedly been breached. The court had to interrogate and interpret the concepts of good cause and good reason within the context of Rule 49(1). It also involved the application of the Consumer Protection Act, Rental Housing Act 50 of 1999, the National Credit Act 34 of 1956, the Companies Act 71 of 2008

as well as the Apportionment of Damages Act 34 of 1956 which had to be interpreted in the context of the disputes in the matter. The court also had to make a determination whether or not the appellant's constitutional rights of equality, dignity and just administrative action had been violated.

6.2.5 *Passenger Rail Agency v Sabel Sizwe Sibusiso Ngoqi – (North Gauteng)*

This was a full court appeal in which the court had to determine whether or not the court a quo had misdirected itself. It also had to deal with the complex issue of how to approach mutually destructive evidence.

6.2.6 *Namib Mills v Mark Louis Maingard – (WC)*

In this matter the court had to deal with an exception and striking out. The application to strike out was dismissed as no prejudice was established and the exception was upheld with costs after the defendant established that the particulars of claim did not disclose a cause of action and lacked the necessary averments.

6.2.7 *Phathi Catherine Poohopedi v Edwin Poohopedi – (South Gauteng)*

In this matter the court had to deal with a lien as a defence to an eviction in terms of the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998. The court had to determine whether the lien was a salvage or debtor lien. The

appeal was dismissed as the court found that no lien had been established.

6.2.8 *Wirecard SA (Pty) Ltd v Jaro (Pty) Ltd – (WC)*

This matter involved a contract the subject of which was software. The court had to interrogate the concept of the reciprocity of performance, the exception *non adimpleti contractus* as well as urgency.

6.2.9 *University of Mpumalanga v Magma Masemola Attorneys Inc – (MP)*

6.2.10 This matter involved an interlocutory application to compel based on Rule 30A of the Uniform Rules. The court further had to interpret Rule 35(12) as well as the meaning of produce within the context of the Rule. The determination thus involved the rules of interpretation.

6.2.11 *NHBRC v Beachmaster Investments 700 (Pty) Ltd – (WC)*

This was an application for contempt of court arising out of the enforcement of the Housing Consumer Protection Act 95 of 1998 and it involved the interpretation of the principles and legal requirements of contempt of court. The exercise also involved the examination of the provisions of the Companies Act dealing with the liability of the directors as well as the difference between civil and criminal contempt.

6.2.12 *Floris Daniel De Kock Halgryn and 1 v The Trustees for the Rudolph Trust – (WC)*

This case dealt with the setting aside of an attachment order to found jurisdiction. An attachment was made on seven vessels and this triggered the application of the Admiralty Act and Admiralty jurisdiction. The court also dealt with the concepts of ownership and *locus standi*.

6.2.13 *The State v Sibusiso Colane Lushaba – (MP)*

The matter was dealt with as a special review and involved the Drugs and Drug Trafficking Act 140 of 1992 and in particular what sentence was ordained in terms of section 17 of the Act. The exercise involved the interpretation of the relevant penal provisions in these sections which are unusual as they prescribe a sentence of imprisonment with an additional fine.

6.2.14 *The State v Sheree Prince – (WC)*

This is a sentencing judgment involving a young female offender convicted of a very serious violent crime and the court had to determine whether given her age it was appropriate to impose a sentence of life imprisonment.

6.2.15 *Appeal Elliot Sbusiso Masilela v The State – (MP)*

This appeal involved the application of the Criminal Law Amendment Act and whether a cumulative sentence of 25 years imprisonment is appropriate – appeal upheld on count 1 and 6 –

sentence substituted with a sentence of 12 years imprisonment on each count – part of the sentences ordered to run concurrently.

6.3 Judgments of the candidate that have been taken on appeal.

6.3.1 The judgments in the matters of *Namib Mill (Pty) Ltd v Mark Louis Maingard* 11540/16 [2017] ZAWCHC 165 (17 May 2017), and *Waterberg Trading 23 CC v Aristonas (Pty) Ltd* WC 15725/2017 were taken on appeal.

It appears that the appeals in these matters were dismissed.

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

7.1 The candidate's professional career has been mentioned in paragraph 1.2 above.

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

8.1 The candidate is proficient in the English language.

8.2 Apart from English the candidate has indicated in his Adumbrated Curriculum Vitae that he is also proficient in Ndebele, Sepedi, Afrikaans, Sesotho, Zulu, Tsonga and Isiswati.

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

9.1 There is no indication that the candidate is not able to produce judgments promptly.

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

10.1 There is no indication of any reservations or concerns concerning the candidate's impartiality and/or fairness.

11 The candidate's independent mindedness

11.1 There is no indication of any reservations or concerns regarding the candidate's independent mindedness.

12 The candidate's ability to conduct court proceedings

12.1 No adverse comments have been received.

13 The candidate's administrative ability

13.1 The candidate's administrative capability can be gleaned from the content of paragraph 1.2 above.

14 The candidate's reputation for integrity and ethical behaviour

14.1 No reason could be found to doubt the candidate's integrity and ethical behaviour.

15 The candidate's judicial temperament

15.1 No reason could be found to doubt the candidate's "judicial temperament" if regard is had to the candidate's career as Magistrate and Acting Judge.

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

16.1 No reason could be found to doubt the candidate's commitment to human rights and experience regarding the values and needs of the

community, as can be gleaned from the candidate's involvement in numerous Ad Hoc and other appointments, as well as the seminars and workshops mentioned in paragraphs 2.2 and 5.1 above.

17 The candidate's potential

17.1 Having regard to the candidate's academic qualifications and work experience, as well as the candidate's involvement in matters of society, no reason could be found to doubt the candidate's potential to contribute to the judiciary.

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

18.1 No reason could be found to indicate that if the candidate is appointed, it will convey to the community at large that the judiciary:

18.2 consists of judges that are competent, experienced, proficient, fair and just, and open minded; and

18.3 judges are involved in and understand the needs of society.