

**APPLICANT: JUDGE RAMMAKA STEVEN MATHOPO**

**COURT FOR WHICH THE APPLICANT APPLIES: JUSTICE OF THE  
CONSTITUTIONAL COURT**

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

- 1.1. B.Proc (University of the North 1985);
- 1.2. Member of the Court Practice Committee;
- 1.3. Member of the Criminal Law Committee;
- 1.4. Motor Vehicle Accident Committee; and
- 1.5. Mediator of the Housing Tribunal.

**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 that would suggest that the candidate is not a fit and proper person to be a Judge of the Constitutional Court.
- 2.2. The candidate practised as an attorney and was a member of the Law Society Rules and Ethics Committee from 2000 to 2005. He acted as a Judge of the Constitutional Court, has been a Judge of the Supreme Court of Appeal for a considerable period of time and a Judge at the Gauteng Local Division of the High Court.
- 2.3. The candidate, whilst he was a judge in the Gauteng Local Division, had a very good reputation with members of the Johannesburg Society

of Advocates. The candidate is eminently fit and proper for appointment to the position of Constitutional Court judge.

**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. There are currently only eight permanent members of the Constitutional Court (five men and three women, of which only one is white, being a white man).

3.3. The appointment of the candidate would therefore not materially affect the racial or gender composition of the bench.

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

4.1. The candidate practiced as an attorney from 1986 - 2006 (20 years), a Judge of the Gauteng Local Division from 2006 - 2016 (9 years), a Judge of the Supreme Court of Appeal from 2015 to date (6 years) and as an acting Judge of the Constitutional Court from August - November 2019 (4 months).

4.2. The candidate has a vast amount of experience across all legal fields and has been involved in a number of high profile and complex cases.

4.3. The candidate's judgments reflect a thorough understanding of procedural and substantive law.

4.4. The candidate has a firm understanding of jurisprudence and the proper approach thereto.

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

5.1. The candidate's judgments demonstrate a strong commitment to constitutional values and an understanding of various Constitutional imperatives.

5.2. The candidate's contribution to the values of the Constitution also appears from his various memberships of organisations.

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

6.1. There are a total of 7 judgments that have been overturned on appeal which could be found in the public domain.

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

7.1. The candidate has extensive experience as a practising attorney with extensive court experience over a 20 year period and has delivered in excess of 400 judgments whilst a judge.

7.2. The candidate has extensive and broad professional legal experience. This fact is apparent from his well-reasoned judgments.

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

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

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

9.1. All of the candidate's judgments were delivered promptly.

9.2. The candidate has 1 judgment outstanding since November 2019 from the Constitutional Court.

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

10.1. No adverse comments have been received in this regard. Whilst the candidate was a judge in the Gauteng Local Division, he had a very good reputation with members of the Johannesburg Society of Advocates for fairness and impartiality.

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

11.1. There is nothing to suggest that the candidate is not independently and fair minded and his judgments clearly reflect this fact. This aspect is dealt with in paragraphs 7 and 8 of the Nomination Letter by the Black Lawyers Association at page 5 of the candidate's application.

**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 court proceedings. The candidate had a good reputation in the Gauteng Local Division for efficiently and effectively dealing with his roles in the opposed and unopposed courts.

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

13.1. No adverse comments have been received in this regard. The candidate has served on several bodies 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. Whilst a judge in the Gauteng Local Division the candidate was courteous with litigants.

**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 he is committed to human rights and this is also apparent from the judgments that he has delivered.
- 16.2. The candidate's commitment to human rights, and experience with regard to the values and needs of the community cannot be doubted.

**17. The candidate's potential**

- 17.1. The candidate has excellent potential as a judge of the Constitutional Court which is apparent from the high 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 diligence, legal insight and experience the candidate's appointment would send a positive message to the community at large.

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

### **Reported Decisions**

*Amrich 159 Property Holdings CC v Van Wesembeeck* 2009 JDR 0780 (GSJ)

*Print Media South Africa v Minister of Home Affairs* 2012 JDR 1774 (CC)

*Democratic Alliance and 2 others v JG Zuma and 2 others* [2013] 4 ALL SA 610  
(GNP)

*Govender v Salgados Fruiters t/a Lyndhurst Basket and Another* 2009 (1) SA 500  
(W)

*Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interest (Pty) Ltd*  
(183/17) [2017] ZASCA 176

*Minister of Justice v The SA Restructuring and Insolvency Practitioners Association*  
(693/15) [2016] ZASCA 196

### **Judgments overturned on appeal**

*Gauteng Gambling Board and Sefako Phanel Mafojane v MEC for Economic  
Development* (620/2012) [2013] ZASCA 67

*Jose Manuel Pstana v Nedbank Limited* 2009 (2) SA189 (SCA)

*Butler v van Zyl* (554/13) [2014] ZASCA 81 (30 May 2014)

*SA Taxi Securitization (Pty) Ltd v Media 24 Mamaila Kathu and Mapiloko Jackie*  
2011 SA 329 (SCA)

*Paixio v Road Accident Fund* 2012 (6) SA 377 (SCA)

*Don Bruwer v Nova Risk Partners* 2011 (1) SA 234 (GSJ)

*Arun Property Development (Pty) Ltd v City of Cape Town* (CC 78/14) [2014]  
ZACC 37 (15 December 2014)

### **Judgments upheld on appeal**

*Print Media South Africa v Minister of Home Affairs* 2012 JDR 1774 (CC)

*Congress of the People and Another v Shilowa and Others* (6779/2011) [2012]  
ZAGPJHC 172

*DT Robertson v Road Accident Fund* (A05692/10) [2014] ZAGPJHC 68

*Alcron Properties v MEC of Housing Gauteng State of Muchanga South Gauteng  
High Court* (SS50/110)

*RHI Refractories Africa v Allianz Insurance Limited* 2008 (3) SA 425 (SCA)

*Allandick African Property Ltd v S Grobler South Gauteng High Court* (08608/10)

### **JUDGMENTS CONSIDERED**

*Minister of Home Affairs v Ali* (1289/17) [2018] ZASCA169 (30 November 2018)

This matter deals with the Citizen Amendment Act 17 of 2010, specifically the interpretation of section 4 (3) of the Act and the failure by the relevant minister to promulgate regulations for applications for citizenship in terms of section 23 of the Act. The judgment deals with the retrospectivity argument as applied to legislative acts of parliament and also the separation of powers. The judgment is well-reasoned, concise and to the point.



*Minister of Justice v The SA Restructuring and Insolvency Practitioners Association*  
(693/15) [2016] ZASCA 196

This matter dealt with the Insolvency Act 24 of 1936 and specifically section 18 (1) thereof. The judgment found that the policy issued by the Minister in terms of section 18(1) was unconstitutional and irrational and declared unlawful and invalid. The judgment is well written and shows a good understanding of Insolvency law and commercial legal principles in general. The judgment also shows a clear understanding by the candidate of the equality provisions as contained in the Constitution.

*Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interest (Pty) Ltd*  
(183/17) [2017] ZASCA 176

This was a contractual matter dealing with the enforceability of a breach clause in a lease agreement. The judgment is well-written and shows a clear understanding and appreciation of the relevant case law dealing with pacta sunt servanda and the role of fairness and bona fides in contract law. The judgment shows that the candidate has a good grasp of the legal principles governing contractual obligations and considerations of public policy, including constitutional imperatives.

*Viziya Corporation V Collaborit Holdings (Pty) Ltd & others* (1189/17) [2018]  
ZASCA 189

This matter deals with the requirements of an Anton Piller order. The judgment is clear, concise and well written. The practical approach taken in the judgment shows the candidate's experience as a legal practitioner and a judge. The

judgment shows the candidate's clear understanding of this highly technical and difficult part of our law.

*XO Africa Safaris v CSARS (395/15) [2016] ZASCA 160*

The judgment is of a technical nature as it deals with Value Added Tax and whether services attract VAT at the standard rate or whether the services are zero rated in terms of Section 11(2) of the Value Added Tax Act 89 of 1991. The judgment is well-written, clear and succinct. The judgment shows the candidate's versatility and understanding of a wide range of legal disciplines including tax law.

*Tshabalala v The State; Ntuli v The State [2019] ZACC 48*

This case dealt with the applicability of the common law doctrine of common purpose to the crime of rape. In a well written and well-reasoned judgment the candidate found that the doctrine of common purpose applies to the common law crime of rape. The judgment shows an understanding and appreciation of gender issues and criticizes the perpetuation of patriarchy and rape culture in South Africa. The judgment deals with the relevant arguments, meets them and gives a considered outcome. The candidate also deals exhaustively with conflicting decisions of the various divisions of the High Court. The judgment shows a sensitivity to issues involving women and a good understanding by the candidate of both criminal law concepts and constitutional principles.