

APPLICANT: ADVOCATE JACQUES LOUIS BASSON

COURT FOR WHICH CANDIDATE APPLIES: LABOUR COURT

DIVISION: JOHANNESBURG

1 The candidate's appropriate qualifications:

1.1 BLC (University of Pretoria) 1990;

1.2 LLB (University of Pretoria) 1993.

2 Whether the candidate is a fit and proper person:

2.1 Nothing included in the candidate's application indicates that the candidate is not a fit and proper person.

2.2 No further information was discovered which would indicate that the candidate is not a fit and proper person.

2.3 No adverse comments were received in respect of the candidate's application.

3 Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa:

3.1 The candidate is a white male. His appointment would not contribute to the transformation of the judiciary.

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

4.1 The candidate estimates that 90% of his practice is devoted to labour law, administrative law, and constitutional law, with labour law making up 70% of his total practice.

4.2 In addition, the candidate appears to have extensive experience in the field of pension law.

4.3 The candidate has listed 28 reported judgments in matters in which he appeared as counsel. Of these, 19 are judgments of the Labour Court. Of the remaining 9, 8 relate also to labour or pension law. One judgment involved a constitutional challenge to the Mental Health Act 18 of 1973.

5 **The candidate's commitment to the values of the constitution:**

5.1 No inferences can be drawn about the candidate's commitment to constitutional values based on his application.

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

6.1 One of the three judgments provided by the candidate (*Samancor Limited (Eastern Chrome Mines) v Commission for Conciliation, Mediation and Arbitration Limpopo and Others* (JA910/2016)) was overturned on appeal to the Labour Appeal Court.

6.2 The Labour Appeal Court in *Samancor Limited (Eastern Chrome Mines) v Commission for Conciliation, Mediation and Arbitration Limpopo and Others* (JA140/2018) [2020] ZALAC 17; [2020] 9 BLLR 908 (LAC); (2020) 41 ILJ 2135 (LAC) (18 May 2020) made the following observations about the candidate's reasoning process:

“For some reason ... the court a quo concentrated on the issue of the response by the employees to the instruction given by Mr Madikwane rather than analysing the central finding of the second respondent, namely the inconsistency of discipline which justified a finding in favour of the five

employees. In other words, the central finding of the arbitration award was that there was unjustifiable differentiation between the employees and Ms Simphiwe Maseko. Yet this received no examination ... as Basson AJ made clear in his judgment”.

6.3 The reviewers are of the view that the LAC’s criticism of the candidate is possibly harsh, given that:

6.3.1 Neither of the two judgments make it clear that the review which formed the subject matter of the application was centrally against the inconsistency finding. It is possible that the review targeted the inconsistency finding, but that Samancor also sought to review the lawful instruction finding because this finding was fundamental to justifying a dismissal. In other words, even if Samancor’s conduct was found to be procedurally fair, it would still have to prove that the employees failed to follow instructions in order to dismiss them.

6.3.2 If Samancor brought the review against two separate findings, and the candidate decided that dismissing the review on the basis of the lawful instruction finding would dispose of the matter, the candidate’s failure to examine the inconsistency finding is understandable and the candidate’s reasoning process is not necessarily open to criticism.

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

7.1 The candidate was employed as a legal administrative officer with the Government Employees Pension Fund (GEPF) for 8 years and 9

months immediately after obtaining his BLC. He gained experience in pension and labour law and was involved in drafting legislation relating to pension law.

7.2 After his employment with the GEPF, the candidate was called to the bar in July 1999 and has been practising as an advocate for 21 years and 6 months.

7.3 The candidate served as a trustee of the Legal Provident Fund for 4 years from 2003 to 2007.

7.4 The candidate acts as a legal advisor to a project funded by the Canadian government for the purpose of supporting the research and design of a Public Administration Ethics, Integrity and Discipline Management Technical Assistance Unit within the South African Department of Public Service and Administration. It is not clear whether the candidate is employed by this project, or whether he acts on brief.

7.5 The candidate records that he has not published any material either in the field of law, or outside thereof.

7.6 The candidate frequently appears in court, an aspect which in our view is an asset in a judicial candidate.

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

8.1 The candidate speaks English and Afrikaans.

8.2 The candidate appears to communicate well in English. His application is carefully drafted. His judgments are clearly written.

9 The candidate's ability to produce judgments promptly:

9.1 The candidate's three judgments were handed down on average 4.3 weeks after hearing, with the longest period being 5.1 weeks, and the shortest 3.3 weeks.

10 The candidate's fairness and impartiality:

10.1 The candidate's judgments indicate that he is at pains to grant equitable relief in labour matters.

11 The candidate's independent mindedness:

11.1 No inferences can be drawn about the candidate's independent-mindedness from the judgments available, which dealt with comparably uncontroversial issues.

12 The candidate's ability to conduct court proceedings:

12.1 Nothing suggests that the candidate is not able properly to conduct court proceedings.

12.2 We have received positive feedback from the Johannesburg Bar membership, indicating that the candidate runs a smooth court, is courteous to litigants, and conducts himself judicially whilst acting as a judge.

13 The candidate's administrative ability:

13.1 The candidate has produced a neatly drafted application and appears comfortable drafting and generating electronic documents.

13.2 The candidate has served on boards and committees. In addition to his experience as an employee of the GEPF and his experience

practising as an advocate, this suggests that he is a capable administrator.

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

14.1 No comments were received from members of the JSA impugning the candidate's ethics. His nominators are unanimous in their respect for him.

15 The candidate's judicial temperament:

15.1 Nothing in the candidate's application, including judgments handed down, suggests his temperament to be unsuitable for appointment as a judge.

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

16.1 The candidate is clearly dedicated to the field of labour law and has devoted much of his practice to specialising in this area of the law. In the context of a society where labour relations were and are often a central tool of discrimination and oppression, this commitment shows a commitment to human rights and constitutional values.

16.2 The candidate has listed no involvement with community organisations or activities. However, it is apparent that he is prepared to give of his time to assist the legal profession.

17 The candidate's potential:

17.1 The candidate has acted in the Labour Court for only three weeks over the course of two years during 2018 and 2019. The candidate's judgments are generally well-reasoned and clearly set out.

17.2 Only one of the three judgments was overturned on appeal. From the candidate's judgment and the judgment of the Labour Appeal Court, it appears that the record of the arbitration proceedings in issue may have hampered a clear finding on the evidence.

17.3 It appears that the candidate has significant potential, given his extensive experience in labour and pension law. His suitability for appointment as a judge would surely improve with additional experience as an acting judge.

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

18.1 Were the candidate to be appointed despite his relative inexperience acting as a judge, this may send a message to other legal practitioners that it is not necessary to invest much time acting as a judge before being appointed permanently.

18.2 Given that the courts rely on acting judges to ease the burden of overloaded rolls, this may not be a favourable message to send.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

The candidate made only three judgments available. The reviewers were unable to find additional unreported judgments to consider.

Reported decisions:

Eskom Holdings SOC Ltd v De Wet NO & others (2018) 39 ILJ 2715 (LC)

Unreported Decisions:

Samancor Limited (Eastern Chrome Mines) v Commission for Conciliation, Mediation and Arbitration Limpopo and Others (JA910/2016)

Premier Mpumalanga Province v Sheriff: Johannesburg Central and others [2019] JOL 45412 (LC)

Judgments upheld on appeal:

None of the judgments considered have been upheld on appeal.

Judgments overturned on appeal:

Samancor Limited (Eastern Chrome Mines) v Commission for Conciliation, Mediation and Arbitration Limpopo and Others (JA910/2016) was overturned on appeal to the Labour Appeal Court in *Samancor Limited (Eastern Chrome Mines) v Commission for Conciliation, Mediation and Arbitration Limpopo and Others* (JA140/2018) [2020] ZALAC 17; [2020] 9 BLLR 908 (LAC); (2020) 41 ILJ 2135 (LAC) (18 May 2020)