

APPLICANT: JUDGE NOLWAZI PENELOPE MABINDLA-BOQWANA

COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL

1. The candidate's appropriate qualifications

- 1.1. BPROC (University of the Witwatersrand, 1996)
- 1.2. LLB (University of the Witwatersrand, 1998)
- 1.3. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

- 2.1. The candidate has served in the legal profession as a student intern at a law firm (during the Decembers of 1993, 1994 and 1995), as candidate attorney from 1997 to 1998, as an associate attorney from 1998 to 1999, as labour law counsel for a large corporation from 2000 to 2005, as a director of two consulting services from 2005 to 2007, and as attorney from 2008 to 2013. She has also been a member of various legal organisations, including the Cape Law Society, the South African Society for Labour Law, and the South African Women Lawyers' Association.
- 2.2. She has served as a judge of the Western Cape High Court from 2013 to date, and as a judge of the Competition Appeal Court from January 2017.

2.3. We are not aware of any professional complaint being made against the candidate in any of these capacities.

2.4. The candidate is known to members of the profession as a hard-working person of integrity. There is accordingly no reason to find that the candidate is not fit and proper.

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 female.

3.2. As such, her appointment would enhance the representation of black and female persons on the bench.

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

4.1. The candidate has experience in various areas of the law, particularly labour law and competition law. The range of matters dealt with in her reported judgments is wide, ranging from criminal and administrative law to commercial and constitutional law.

4.2. Before her appointment as a permanent judge of the Cape High Court, the candidate acted on four occasions in the High Court, and on three occasions in the Labour Court. She acted in the Competition Appeal Court from 2015 until her permanent appointment in 2017. She has acted in the Supreme Court of Appeal on three occasions.

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

5.1. There is no reason to doubt the candidate's commitment to the values of the Constitution.

5.2. Constitutional considerations were mentioned in, or central to, a number of her reported cases. These include:

5.2.1. *Legal Centre Trust v President of the Republic of South Africa and Others, Faro v Bingham NO and Others, Esau v Esau and Others* (22481/2014, 4466/2013, 13877/2015) [2018] ZAWCHC 109; [2018] 4 All SA 551 (WCC); 2018 (6) SA 598 (WCC) (31 August 2018), which dealt with non-recognition and non-regulation of marriages solemnized and celebrated according to the tenets of Islamic law (Muslim marriages). The court found that such non-regulation violated the rights of women and children in Muslim marriages whose human dignity, equality and access to courts were impaired. The matter was taken on appeal to the Supreme Court of Appeal with the leave of the high court and judgment is still outstanding.

5.2.2. *Sonke Gender Justice NPC v President of the Republic of South Africa and Others* (24227/16) [2019] ZAWCHC 117; 2019 (2) SACR 537 (WCC); [2019] 4 All SA 961 (WCC) 2020 (2) BCLR 218 (WCC) (5 September 2019), in which it was sought to declare invalid and unconstitutional, certain provisions of the Correctional Services Act 111 of 1998 (the Act) which deal with the structure and functionality of the Judicial Inspectorate of

Correctional Services (JICS). Sections 88A(1)(b), 88A(4) and 91 of the Act were declared inconsistent with the Constitution and invalid to the extent that they fail to provide an adequate level of independence to the JICS. The declarations of invalidity were referred to the Constitutional Court for confirmation. Judgment is still outstanding.

5.2.3. *Cape Bar v Minister of Justice and Correctional Services and Others* (9435/19) [2020] ZAWCHC 51; [2020] 3 All SA 413 (WCC); 2020 (6) SA 165 (WCC) (10 June 2020), which dealt with the constitutionality of the Regulations and Rules published under the recently introduced Legal Practice Act 28 of 2014 ('the Act').

5.3. The candidate's involvement in advocacy training for junior members of the Bar also reflects her commitment to the rule of law and the need for competent advocacy in the courts.

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

6.1. To our knowledge, only the following judgments have been overturned on appeal:

6.1.1. *James v City of Cape Town* (11785/2009) (2013] ZAWCHC 110 (14 AUGUST 2013) - Apportionment of damages increased from 60/40 to 70/30 by the full court.

6.1.2. *S v Nakani* (SS15/2015)[2017] ZAWCHC 55 (14March2017) - sentence reduced from life imprisonment to 23 years by the full court.

- 6.1.3. *Folley v Pick 'n Pay Retailers (Pty) Ltd and Others* (15559/2009) [2017] ZAWCHC 86 (23 August 2017).
- 6.1.4. *Mountain Oaks Winery (Pty) Ltd and Another v Smith and Another* (20117/2017) [2018] ZAWCHC 69 (11 June 2018).
- 6.1.5. *S v Mncwengi and Others* (SS02/2013) [2014] ZAWCHC 216 (19 November 2014).
- 6.1.6. *Standard Bank of South Africa v Competition Commission of South Africa* (165/CAC Mar 18) [2018] ZACAC 3 (22 June 2018).

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

- 7.1. The candidate's work experience prior to her appointment to the Bench in 2013 are set out above.
- 7.2. 7.2 Her extensive involvement in the community, as set out under item 8 of her JSC Questionnaire, has allowed her exposure to many areas of law, including labour and pension funds law. She has also been involved in the training of judges in cybercrime and electronic evidence, as well as in competition law, and has assisted new and acting judges in the Western Cape Division. She has received training in mediation, so as to assist other judges in that respect. The extent of her involvement in different areas of law during her time as a permanent judge is apparent from her list of reported judgments.

8. The candidate's linguistic and communication skills

- 8.1. From the documents submitted it is clear that the candidate is proficient in English. She has not indicated any other proficiency.

9. The candidate's ability to produce judgments promptly

- 9.1. The candidate is known to produce her judgments promptly.
- 9.2. She also has a reputation of being well-prepared for argument, and in most cases to have researched the legal aspects before hearing argument. This has allowed her to engage constructively with counsel, and has assisted her in handing down judgments speedily after argument.

10. The candidate's fairness and impartiality

- 10.1. We are not aware of any complaints that have been made pertaining to the candidate's fairness and impartiality, and have no reason to question these aspects.

11. The candidate's independent-mindedness

- 11.1. We are not aware of any complaints that have been made pertaining to the candidate's independent-mindedness.
- 11.2. The candidate's reported judgments also reveal her focus on applying the law without fear or favour.

12. The candidate's ability to conduct court proceedings

- 12.1. Members experienced the candidate as a competent judicial officer. She has conducted court proceedings diligently, efficiently, impartially and courteously.
- 12.2. She has a reputation for having read the papers before coming to court, and time in her court tends to be well used.

13. The candidate's administrative ability

- 13.1. The profession cannot comment on the candidate's administrative abilities in her capacity as a judge.
- 13.2. Having regard to the various community and other organisations that she has been involved in, however, one gleans that she possesses adequate administrative ability in order to render her duties as a judge.

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

- 14.1. The candidate has a reputation for integrity and ethical behaviour.
- 14.2. No complaints or queries about her ethical standards or integrity have been received.

15. The candidate's judicial temperament

- 15.1. The candidate is known for an even and constructive judicial temperament.
- 15.2. She is considered to have a sound judicial temperament.

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

16.1. The list of reported judgments of the candidate demonstrates her commitment to human rights, and to the enhancement of the values and needs of the community.

16.2. Her experience with regard to the values and needs of the community, in particular in relation to the rights of women, is also evident from her involvement in various community and other organisations, as referred to earlier.

17. The candidate's potential

17.1. The candidate's performance as a judge of the High Court and the Competition Appeal Court demonstrates that she has the potential to be a solid judge of appeal, and to contribute to transformation both inside and outside the legal profession.

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

18.1. The candidate is a black female. The public will thus view her appointment as transformation in relation to both race and gender.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

Bavasah v Stirton and Another [2014] 2 All SA 51 (WCC)

City of Cape Town v South African National Roads Agency Ltd and Others
2016 (1) BCLR 49 (WCC); [2016] 1 All SA 99 (WCC); 2015 (6) SA
535 (WCC)

*Dippenaar N.O. and Others v Business Venture Investments No 134 (Pty) Ltd
and Another* [2014] 2 All SA 162 (WCC)

S v Makhakha 2014 (2) SACR 457 (WCC)

*Top Assist 24 (Pty) Limited T/A Form Work Construction v Cremer and
Another* [2015] 4 All SA 236 (WCC)

*Van Staden and Another v Knoetze N.O and Another; In Re: National
Director of Public Prosecutions v Van Staden and Others* 2015 (1)
SACR 96 (WCC)

*Audi Financial Services (a division of Wesbank; a division of Firstrand Bank
Ltd) v Safter* [2017] 3 All SA 778 (WCC)

Mdlalose and another v Minister of Police and another [2016] 4 All SA 950
(WCC)

*Fransman v Speaker of the Western Cape Provincial Legislature and
another* [2016] 4 All SA 424 (WCC)

*MFV "Polaris" Southern African Shipyards (Pty) Ltd v MFV "Polaris" and
others* [2018] 3 All SA 219 (WCC); 2018 (5) SA 263 (WCC)

Amandla GCF Construction CC and Another v Municipality Manager of Saldanha Bay Municipality and Others 2018 (6) SA 63 (WCC)

Women's Legal Centre Trust v President of the Republic of South Africa and Others, Faro v Bingham N.O. and Others, Esau v Esau and Others [2018] 4 All SA 551 (WCC)

Sonke Gender Justice NPC v President of the Republic of South Africa and Others (24227/16) [2019] ZAWCHC 117; 2019 (2) SACR 537 (WCC); [2019] 4All SA 961 (WCC) 2020 (2) BCLR 218 (WCC)

City of Cape Town v Namasthetu Electrical (Pty) Ltd and Another (446/2017) [2018] ZAWCHC 150; [2019] 1 All SA 634 (WCC) (12 November 2018)

S v Cronje (19113) [2019] ZAWCHC 133; 2020 (1) SACR 74 (WCC) (3 October 2019)

Cape Bar v Minister of Justice and Correctional Services and Others (9435/19) [2020] ZAWCHC 51; [2020] 3 All SA 413 (WCC); 2020 (6) SA 165 (WCC) (10 June 2020)

Mokhethi v General Public Service Sectoral Bargaining Council and Others (2012) 33 ILJ 1215 (LC)

UASA- The Union and Others v Lonmin Platinum (2012) 33 ILJ 1491 (LC)

National Union of Mineworkers and Another v Commission for Conciliation, Mediation and Arbitration and Others (2012) 33 ILJ 1898 (LC)

Rambar Construction (Pty) Ltd t/a Rixi Taxi v Commission for Conciliation, Mediation and Arbitration and Others (2012) 33 ILJ 1911 (LC)

Urban Africa Security (Pty) Ltd v Commission for Conciliation Mediation and Arbitration and Others (2012) 33 ILJ 2201 (LC)

DHL Supply Chain SA (Pty) Ltd v De Beer NO and Others [2013] 1 BLLR 20 (LC); (2013) 34 ILJ 1530 (LC)

Van Metzinger & another v Conservation Corporation t/a CC Africa (2013) 34 ILJ 1309(LC)

South African Transport and Allied Workers Union and Another v Nationwide Airlines (Pty) Ltd and Another (2013) 34 ILJ 1612 (LC)

Xakaza v Ekurhuleni Metropolitan Municipality and Others [2013] 7 BLLR 731 (LC)

Langa v South African Local Government Bargaining Council (Mpumalanga) and Others (2013) 34 ILJ 2248 (LC)

MEC: Free State Provincial Government: Tourism, Economic and Environmental Affairs v Moeko and Others (2013) 34 ILJ 2256 (LC)

Unreported decisions

No comment is offered

Judgments upheld on appeal

No comment is offered

Judgments overturned on appeal

No comment is offered

Judgments that have not been overturned on appeal

Judgments written by the candidate which have not been overturned on appeal include the following:

Director of Public Prosecutions Cape of Good Hope v Denvor Paul Fielies
(A338/12) (2013) (21 May 2013)

City of Cape Town v South African National Roads Agency Ltd and Others
(6165/2012) [2015] ZAWCHC 189 (4 December 2015)

City of Cape Town v Namasthethu Electrical (Pty) Ltd and Another
(446/2017) (2018) ZAWCHC 150; (2019] 1 All SA 634 (WCC) (12
November 2018)

Jiyana and Another v Absa Bank Limited and Others (A18/2018) [2018]
ZAWCHC 102 (21 August 2018)

*National Union of Mineworkers and Another v Commission for Conciliation
Mediation and Arbitration and Others* (JR 1557/2010)

UASA- The Union and Others v Lonmin Platinum (JS 1193/09) [2011]
ZALCJHB 107; (2012) 33 ILJ 1491 (LC) (5 December 2011)