

APPLICANT: ADVOCATE PENELOPE MAGONA-DODA

**COURT FOR WHICH CANDIDATE APPLIES: WESTERN CAPE
DIVISION OF THE HIGH COURT**

NOTE: A review / report in respect of this candidate was prepared and submitted during March 2020 to the Judicial Service Commission in respect of the judicial vacancies of April 2020, of which this candidate had applied but not been appointed.

This report should, as such, be read with the aforesaid March 2020 report not necessarily because of there being a perceived need to update the report or because of any oversight or misrepresentation but rather to serve as a confirmation and at the same time provide updated information in respect of the period from March 2020 to date.

1. The candidate's appropriate qualifications

1.1. In addition to the candidate's BLuris and LLM in the field of labour law, she possess the requisite LLB degree from a recognised tertiary education university in the Republic of South Africa. This committee can, as such, confirm that the candidate is appropriately qualified to be permanently appointed.

2. Whether the candidate is a fit and proper person

2.1. To the best of our knowledge, the candidate has no criminal convictions or findings against her for having acted unprofessionally by any regulatory body of the legal profession.

2.2. There is, as such, no reason to find that the candidate is not fit and proper. The secretary of the Cape Bar Council has also confirmed that as at 8 March 2021 that there are no pending disciplinary proceedings / investigations against her with the Disciplinary Committee of the Cape Bar Council.

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

3.1. The candidate is an African female and South African citizen by birth.

3.2. The candidate's appointment will contribute to the racial and female composition of the judiciary.

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

4.1. The committee has no further comments in this regard.

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

5.1. The committee has no further comment.

6. Whether any judgments have been overturned on appeal

6.1. The committee has no further comments in this regard.

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

7.1. The candidate is relatively junior. She is known to be amiable in court, but the quality of her judgments is questioned. She has, for example, in a recent matter in the Western Cape High Court (*Bwanya v Master of the High Court, Cape Town and Others*

2021 (1) SA 138 (WCC)) failed to follow precedent set in the Constitutional Court in relation to findings of unconstitutionality of legislation. She also made factual findings not sustainable on the papers. Comment has been received, and concerns expressed, from various members to the effect that her judgment in the determination of disputes is unsound.

8. The candidate's linguistic and communication skills

8.1. No comment is offered.

9. The candidate's ability to produce judgments promptly

9.1. To the best of our knowledge, there are no reported incidents or concerns raised with the Cape Bar in respect of outstanding judgments for unreasonably lengthy periods of time.

10. The candidate's fairness and impartiality

10.1. The candidate is amiable but, because of the distrust in her judgments, her fairness and impartiality do not come to the fore.

11. The candidate's independent mindedness

11.1. The committee has no further comments in this regard.

12. The candidate's ability to conduct court proceedings

12.1. The candidate has proven her ability to conduct court proceedings during her various appointments as an acting judge.

13. The candidate's administrative ability

13.1. We are not able to comment on the candidate's administrative abilities in her capacity as an acting judge.

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

14.1. There have been no complaints in relation to the candidate's integrity and ethical behaviour.

15. The candidate's judicial temperament

15.1. The candidate is considered to have a sound judicial temperament. She is kind person and treats her colleagues with respect.

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

16.1. The committee has no further comments in this regard.

17. The candidate's potential

17.1. The candidate has demonstrated a commitment to the legal profession. Despite setbacks, such as having to re-apply for pupillage and again do an entire year of pupillage, she now presides in matters as an acting judge. She does need more experience, however (and perhaps as practitioner instead of judge) to get to grips with the details of law and procedure.

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

18.1. That the Judicial Service Commission is dedicated to transformation both in respect of gender and racial inequalities in our society and that the meaning of 'fit and proper' is also a consideration of public policy and that this is a dynamic concept that the JSC takes into consideration with every appointment it makes.

18.2. The candidate is, however, not ready for the task and needs more experience in order to be an asset to the Bench in relation to the quality of work expected from judges.