

APPLICANT: PETRUS GCINUMUZI MALINDI SC

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG LOCAL
DIVISION**

1. The candidate's appropriate qualifications:

- 1.1. Competition Law Certificate course (2006) Wits;
- 1.2. LLB (1995) Wits;
- 1.3. BA (1993) Wits; and
- 1.4. National GCB Bar Examinations (1995).

2. Whether the candidate is a fit and proper person:

- 2.1. The candidate is fit and proper and has an extensive career in the practice of the law.
- 2.2. There is no information that would suggest that the candidate will not make an excellent appointment as a 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 male and his appointment would help reflect the racial and gender composition of South Africa.

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

- 4.1. The candidate has extensive knowledge of the law, including constitutional law. The candidate has appeared on several occasions

in the Constitutional Court, SCA, High Court, Labour Court and Competition Tribunal.

4.2. The candidate has a diverse practice in areas including labour law, defamation law, medical negligence, competition law, criminal, administrative and constitutional law.

4.3. The candidate was conferred silk status in 2010.

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

5.1. The candidate is committed to the values of the constitution as evidenced by the candidate's judgments and work at the Bar, other professional organisations and earlier in his life as an activist.

5.1.1. The candidate is best described as a legal activist who promotes access to justice and transformation of the legal profession in line with the values of the constitution.

5.1.2. The candidate is a founding member of the Pan Africa Bar Association of South Africa (PABASA) and represents the Advocates profession on the Gauteng Provincial Council of the Legal Practice Council. He is also a past president of the National Association of Democratic Lawyers (NADEL).

6. Whether any judgments have been overturned on appeal:

6.1. *State Bank of India v Denel SOC Limited* (947/13) [2014] ZA SCA 212 (3 December 2014).

6.2. In upholding the appeal, the SCA did not make any adverse comments against the candidate or his approach to the matter.

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

7.1. The candidate has extensive professional experience. Has been a member of the Johannesburg Society of Advocates from 1995 to 2019 when he left to join PABASA.

7.2. He was appointed Acting Judge of the Gauteng Local Division, Gauteng Provincial Division and the Labour Court from 2011 to 2020 for approximately 30 weeks.

7.3. The candidate is often appointed as an arbitrator in commercial matters by AFSA and labour matters by the Bargaining Council.

8. The candidate's linguistic and communication skills:

8.1. The candidate has excellent linguistic and communication skills. The judgments penned by the candidate are linguistically sound.

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

9.1. The candidate has no outstanding judgments and produces judgments promptly. From the previous JSC interview we picked up that the longest judgment the candidate took to write took 3 months.

10. The candidate's fairness and impartiality:

10.1. The candidate applies the law to the facts with fairness and impartiality as evidenced in his judgments.

11. The candidate's independent mindedness:

11.1. The candidate appears to be of independent mind as referenced by the judgments he has delivered.

12. The candidate's ability to conduct court proceedings:

12.1. The candidate conducts court proceedings in an efficient manner.

13. The candidate's administrative ability:

13.1. Member of the Bar Council for the years 1998/1999; 1999/2000; 2001/2002 and 2005/2006.

13.2. Professional Committee 1999/2000.

13.3. Interim Council's Management and Transformation Committees 2006/2007.

13.4. Member of the Advocacy Training programme that conducts advocacy training for junior members for a lengthy period.

13.5. Group leader of Victoria Mxenge for two terms commencing 2015.

13.6. Founding member of PABASA which was established in October 2018.

13.7. The above roles and various other roles in organisations such as NADEL that the candidate has served in demonstrate the candidate's leadership, managerial and administrative skills.

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

14.1. The candidate is known amongst legal practitioners as a person with integrity and ethical behaviour.

15. The candidate's judicial temperament:

- 15.1. The candidate exhibits qualities of proper judicial temperament. The candidate is courteous, compassionate, is humble and has a common sense approach to matters and is firm.
- 15.2. The candidate commands great respect amongst practitioners.
- 15.3. During his previous JSC interview in 2016, after a tough round of questioning, the candidate appeared to become emotional. This followed an earlier court appearance when the candidate also became emotional while appearing in a matter as counsel in a very emotionally charged matter. Concerns were raised by the Chief Justice as to whether this would impact on his ability to control his emotions on the Bench. The candidate assured the JSC that he would have better control of the court and his emotions as a judge. The candidate mentioned that if on the rare occasion he were to get emotional when he presides he will adjourn briefly and gather himself in chambers, which is reasonable.
- 15.4. There is nothing to suggest that during his extensive acting stints that the candidate won't be able to control his emotions. To the contrary, the candidate has by all accounts displayed a very even temperament in the cases he has presided over.

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 committed to human rights and this is evidenced by:
- 16.1.1. his activism in his earlier life;

- 16.1.2. the significant pro bono work which the candidate has done is an indication that he has served the community through giving access to justice to individuals who would otherwise not have had such access; and
- 16.1.3. the positions and memberships he has held in activist legal organisations committed to transformation, human rights and the rule of law (NADEL, AFT and PABASA).

17. The candidate's potential:

- 17.1. The candidate has great potential and would be a welcome addition to the bench. The candidate has integrity, technical experience and a commitment to the constitution and its values.

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

- 18.1. That there is a commitment to a credible and transformed judiciary by the appointment of a candidate who is committed to upholding the constitution and its transformation project.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED**Reported decisions:**

Hickman v Tsatsimpe NO (in her capacity as Commissioner CCMA Johannesburg) and Others (JR2354/2010) [2011] ZALCJHB 87; [2012] 5 BLLR 493 (LC); (2012) 33 ILJ 1179 (LC) (20 October 2011)

Denel SOC Limited v Absa Bank Limited (19910/2011) [2013] ZAGPJHC 102; [2013] 3 ALL SA 81

National Director of Public Prosecutions v Bobroff and Another 2020 (1) SACR 288 (GP)

Unreported Decisions:

Mphaphuli v S (A784/13) [2014] ZAGPPHC 76 (20 February 2014)

Maboya v Norman Berger & Partners Inc (19500/15) [2016] ZAGPJHC 17 (18 February 2016)

Greenhouse Funding (Pty) Ltd v Willemse and Another (71399/2011) [2014] ZAGPPHC 486 (12 March 2014)

Opperman v Minister of Defence And Military Veterans (6600/13) [2014] ZAGPPHC 105 (12 March 2014)

Makama v Ivory Park Taxi Association and Others (24487/12) [2014] ZAGPPHC 20 (18 February 2014)

Stenkamp and Others v Edcon Ltd (J294/16) [2017] ZALCJHB 487 (13 June 2017)

Figo Putso Construction CC v Lereko Mining Supplies (Pty) Ltd (32630/13) [2014] ZAGPPHC 134 (12 March 2014)

Fisher v Marcus Michael N.O. and Others (JR1906/10) [2014] ZALCJHB 2 (17 January 2014)

Van Vuuren v Minister of Safety And Security and Another (50994/2008) [2014] ZAGPPHC 104 (12 March 2014)

Thomas v Registrar, In Re; B Triebiger (Pty) Ltd v Hill (38792/2011) [2014] ZAGPPHC 29 (18 February 2014)

Glencore Operations South Africa (Pty) Ltd v Malapane and Others (JR603/2015) [2017] ZALCJHB 5 (5 January 2017)

Aviel Tilon Nadel v Johannesburg Jewish Helping Hands and Burial Society (JS135/2014, JS306/2015) [2016] ZALCJHB 570 (3 November 2016)

BMW (South Africa) (Pty) Ltd v National Union of Metal Workers of South Africa (NUMSA) obo Members (J 1752/2013) [2013] ZALCJHB 238 (4 September 2013)

Provincial Commissioner: North West South African Police Service and Another v Safety and Security Sectoral Bargaining Council and Others (JS787/14) [2017] ZALCJHB 69 (22 February 2017)

Hickman v Tsatsimpe NO (in her capacity as Commissioner CCMA Johannesburg) and Others (JR2354/2010) [2011] ZALCJHB 87; [2012] 5 BLLR 493 (LC); (2012) 33 ILJ 1179 (LC) (20 October 2011)

Pestana v Gense Property Services Limited Trading as JHI and Another (JS619/07) [2013] ZALC 1 (19 November 2013)

Mokhwele and Others v Courier Freight Group (JS220/2011) [2014] ZALCJHB 82 (20 March 2014)

Satawa Obo Mtshweni v Xinergistix Management Services Proprietary Limited
(JS 326/12) [2014] ZALCJHB 523 (6 November 2014)

Judgments upheld on appeal:

Malapalane v Glencore Operations South Africa (Pty) Ltd (Goedevonden Colliery) and Others (JA59/2017) [2018] ZALAC 22; (2018) 39 ILJ 2467 (LAC) (15 August 2018)

Opperman v Minister of Defence and Military Veterans (20752/14) [2015] ZASCA 153 (2 October 2015)

Steenkamp and Others v Edcon Limited 2019 JDR 0798; (2019) 40 ILJ 1731 (CC); 2019 (7) BCLR 826 (CC)

Judgments overturned on appeal:

State Bank of India v Denel SOC Limited (947/13) [2014] ZA SCA 212 (3 December 2014)