

**APPLICANT: PATRICK HASANI MALUNGANA**

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

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

- 1.1. The candidate has obtained a BProc degree from the University of the North.
- 1.2. The candidate has obtained a Post Graduate Diploma in interpretation and drafting of contracts from the University of Johannesburg.
- 1.3. These qualifications are adequate, if not ideal, in particular the absence of an LLB degree.

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

- 2.1. Neither the application nor the judgments reviewed suggest that the candidate is not a fit and proper person.

**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 person. The candidate's appointment would help to improve the racial but not the gender composition of the bench.

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

- 4.1. Based on the judgments listed by the candidate in his CV, the candidate has demonstrated an ability to develop his knowledge of the law when analysing the facts before him. The 3 judgments

attached to the candidate's CV cover established areas of the law. The first is an intervention application in a company law context. The second consists of a Rule 28 application – amendment of pleadings. The third judgment is an appeal against the decision of a magistrate. There were no constitutional points raised by the parties, hence the candidate did not find it necessary to deal with and interpret constitutional issues.

4.2. The candidate's other judgments, which are unreported, to a large degree comprise matters pertaining to: rule 43 applications; damages arising out of unlawful arrest and detention; personal injury claims; summary judgment applications; a rescission application and appeals emanating from decisions of the magistrates' courts. The judgments do not raise or include constitutional issues and deal with settled law.

4.3. The candidate does not mention being involved in any matter as an attorney that required knowledge of constitutional law.

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

5.1. There is little detail in the candidate's CV indicating a commitment to the values of the constitution.

5.2. Mention is made of the candidate assisting indigent litigants in accessing justice through pro bono work.

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

6.1. The candidate has attached three recent judgments. The reviewers have not found any judgments which have been overturned on appeal.

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

- 7.1. The candidate left university in 1994. He was a candidate attorney from 1995 to 1997. He practised as an attorney in 2003 at Magabane Incorporated. He moved to KP Phasha Incorporated where he practised from 2004 to 2007. He has practiced as an attorney at Matojane Malungana Attorneys from 2008 to date. He remains a director at this firm of attorneys.
- 7.2. His areas of practice consist of personal injury, arbitration at AFSA, general civil litigation and divorces. Insofar as litigation is concerned, his criminal law practice represents 10%, his involvement in administrative law is 30%, his involvement in constitutional law is at 1% and his labour law practice is at 10%.
- 7.3. The candidate participated in a commercial litigation course and obtained a certificate for this participation in Effective Dispute Resolution. The candidate is a court-annexed mediator.
- 7.4. He has appeared occasionally in court in criminal appeals, motion proceedings and trials in the magistrates' court. He has appeared in both civil and matrimonial matters.
- 7.5. He has no reported cases whilst practising as an attorney.
- 7.6. He has not published in any field of law, nor has he any publications outside the field of law.
- 7.7. He was never an advisor to a community law centre or advice office. He did not sit as a commissioner in the small claims court nor was he part of organising or addressing a legal conference.

- 7.8. He presided over disciplinary hearings at the Independent Development Trust in 2013 and Tsoga Security Services from 2015-2019.
- 7.9. He did not sit as a magistrate. He sat as an acting judge in the North and South Gauteng High Courts for the periods: 4th term, 2016; 2nd term, 2017; 4th term, 2017; 4th term, 2018; 2nd term, 2019; 1st, 3rd and 4th terms, 2020. The candidate sat in civil courts in 2016; 2017; 2018; 2019 and 2020. The candidate sat in the criminal court in the 3rd term of 2020. His judgments have not been taken on appeal. He has a part heard matter cited by him as MassBuild (Pty) Ltd. No further information is given on this part-heard matter.
- 7.10. The candidate lists being a member of the Black Lawyers Association (BLA) in 2010. He does not specify the role he played in the BLA.
- 7.11. The candidate's application and CV lack detail. For example, he states that he chaired a few disciplinary hearings without providing dates. He has failed to provide details of his part-heard matter. He only cites one party of the part-heard matter, MassBuild (Pty) Ltd.
- 7.12. He fails to provide details of the indigent people he had assisted in his CV. He does not elaborate on the kind of legal assistance given to these indigent people.

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

- 8.1. The judgments attached to the candidate's CV contain grammatical errors and/or typographical errors, which indicate, at the least, a failure to proof-read them.

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

9.1. The candidate has attached 3 judgments, none of which indicate dates.

9.2. On a perusal of the candidate's list of unreported judgments it would seem that the candidate was prompt in producing judgments.

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

10.1. The candidate has a relatively long stint as an acting judge. He has been an acting judge for 5 years.

10.2. He has presided over matters that are in areas where the law is established. These matters include: Rule 43 applications, an application to amend pleadings, an intervention application, personal injury claims, summary judgment applications, damages for unlawful arrest and detention, appeal against the judgment of a magistrate and one review brought under PAJA.

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

11.1. There is no evidence that the candidate is not independent-minded.

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

12.1. Nothing indicates that the candidate does not conduct proceedings in an efficient manner.

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

13.1. The only time the candidate has deviated from his practice as an attorney is when he became an acting judge. He has not held any

leadership positions and has not shown any administrative ability outside of his law firm.

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

14.1. There is no evidence that the candidate lacks integrity.

**15. The candidate's judicial temperament:**

15.1. There is no evidence of any concerns regarding the candidate's 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 candidate does not specify in detail his commitment to human rights whilst an attorney. He does, however, mention that he assisted indigent people without taking any fees for work done.

16.2. Little can be gleaned from the candidate's application regarding the extent of his commitment to human rights and his experience with regard to the values and needs of the community.

**17. The candidate's potential:**

17.1. The candidate appears to have the potential to become a competent judge.

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

18.1. The candidate comes from a disadvantaged background and the message to the community means that people from any background have the potential to become a judge.

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

There are no reported cases listed.

**Unreported Cases:**

*S v Ndebele* (A207/2016) [2018] ZAGPJHC 690 (26 June 2018)

*M v G* (94700/19) [2020] ZAGPPHC 211 (5 May 2020)

*A v A* (2019/53377) [2020] ZAGPPHC 186 (5 May 2020)

*S v W* (69408/2019) [2020] ZAGPPHC 84 (22 February 2020)

*Fenn v Mellet* (A303/2016) [2016] ZAGPPHC 1172 (11 November 2016)

*K N v R N* (38941/2019) [2020] ZAGPPHC 35 (11 November 2016)

*Mabova v Road Accident Fund* (77603/17) [2020] ZAGPPHC 365 (17 July 2020)

*Mdluli v Road Accident Fund* (769316/2015) [2020] ZAGPPHC 285(15 June 2020)

*Kota v Road Accident Fund* (68865/2017) [2020] ZAGPPHC 265(4 June 2020)

*M v M and Another* (65757/2012) [2020] ZAGPPHC 258 (25 May 2020)

*Mabelane v Road Accident Fund* (86183/14) [2017] ZAGPPHC 295 (28 June 2020)

*Ndlovu and Another v Minister of Police* (A3171/2018) [2019] ZAGPJHC 261 (12 August 2019)

*Madima and Others v Ratshitanga and Others* (35748/2018) [2019] ZAGPJHC 257 (1 August 2019)

*Ahmed v Minister of Police and Others* (11823/2017) [2019] ZAGPJHC 256 (1 August 2019)

*Dikopane Project Management v Emfuleni Local Municipality* (67235/2019) [2020] ZAGPPHC 259 (4 June 2020)

*King Price Insurance Company (Pty) Ltd v Serakwane* (A354/2018) [2019] ZAGPPHC 392 (16 August 2019)

*Mafole v Passenger Rail Agency of South Africa* (64994/14) [2017] ZAGPPHC 31 (1 February 2017)

*Moroane v Passenger Rail Agency of South Africa* (46493/12) [2017] ZAGPPHC 21 (1 February 2017)

*Jent v Road Accident Fund Tribunal and Others* (39375/18) [2020] ZAGPPHC 256 (8 June 2020)

*Bizz Tracers v Eskom Holdings Soc Ltd* (175352/2019) [2020] ZAGPPHC 191 (18 May 2020)

*Magnum Packaging (Pty) Ltd v Franchising To Africa (Pty) Ltd* (13306/17) [2017] ZAGPPHC 459 (28 June 2017)

*Opperman v Companies and Intellectual Property Commission of South Africa and Others* (54506/2019) [2020] ZAGPPHC 208 (14 May 2020)

**Judgments upheld on appeal:**

None found

**Judgments overturned on appeal:**

None found