

APPLICANT: JUDGE RS MATHOPO**COURT FOR WHICH THE APPLICANT APPLIES: CONSTITUTIONAL COURT****1. The candidate's appropriate qualifications**

- 1.1. B.Proc (University of the North 1985)
- 1.2. Member of the Court Practice Committee
- 1.3. Member of the Criminal Law Committee
- 1.4. Motor Vehicle Accident Committee
- 1.5. Mediator of the Housing Tribunal

2. Whether the candidate is a fit and proper person

- 2.1. There is nothing in the candidate's application or in the candidate's judgments that would suggest that the candidate is not a fit and proper person to be a Judge of the Constitutional Court.
- 2.2. The candidate practised as an attorney and was a member of the Law Society Rules and Ethics Committee from 2000 to 2005. He acted as a Judge of the Constitutional Court, has been a Judge of the Supreme Court of Appeal for a considerable period of time and a Judge at the Gauteng Local Division of the High Court.
- 2.3. The candidate, whilst he was a judge in the Gauteng Local Division, had a very good reputation with members of the Johannesburg Society of Advocates. The candidate is eminently fit and proper for appointment to the position of Constitutional Court 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 composition of South African.

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

- 4.1. The candidate practiced as an attorney from 1986 - 2006 (20 years), a Judge of the Gauteng Local Division from 2006 - 2016 (9 years), a Judge of the Supreme Court of Appeal from 2015 to date (6 years) and as an acting Judge of the Constitutional Court from August - November 2019 (4 months).
- 4.2. The candidate has a vast amount of experience across all legal fields and has been involved in a number of high profile and complex cases.
- 4.3. The candidate's judgments reflect a thorough understanding of procedural and substantive law.
- 4.4. The candidate has a firm understanding of jurisprudence and the proper approach thereto.

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

- 5.1. The candidate's judgments demonstrate a strong commitment to constitutional values and an understanding of various Constitutional imperatives.
- 5.2. The candidate's contribution to the values of the Constitution also appears from his various memberships of organisations.

6. Whether any judgments have been overturned on appeal

- 6.1. There are a total of 7 judgments that have been overturned on appeal which could be found in the public domain.

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

- 7.1. The candidate has extensive experience as a practising attorney with extensive court experience over a 20 year period and has delivered in excess of 400 judgments whilst a judge.
- 7.2. The candidate has extensive and broad professional legal experience. This fact is apparent from his well-reasoned judgments.

8. The candidate's linguistic and communication skills

- 8.1. From the candidate's judgments, it appears that he has excellent written linguistic skills in English.

9. The candidate's ability to produce judgments promptly

- 9.1. All of the candidate's judgments were delivered promptly.

10. The candidate's fairness and impartiality

- 10.1. No adverse comments have been received in this regard. Whilst the candidate was a judge in the Gauteng Local Division, he had a very good reputation with members of the Johannesburg Society of Advocates for fairness and impartiality.

11. The candidate's independent mindedness

- 11.1. There is nothing to suggest that the candidate is not independently and fair minded and his judgments clearly reflect this fact. This

aspect is dealt with in the Nomination Letter by the Black Lawyers Association.

12. The candidate's ability to conduct court proceedings

- 12.1. There is nothing that the reviewers have found which suggests an inability to conduct court proceedings. The candidate had a good reputation in the Gauteng Local Division for efficiently and effectively dealing with his rolls in the opposed and unopposed courts.

13. The candidate's administrative ability

- 13.1. No adverse comments have been received in this regard. The candidate has served on several bodies and appears to possess proven administrative abilities.

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

- 14.1. No adverse comments have been received in this regard.
- 14.2. There is nothing in the candidate's application to indicate that the candidate has been charged with or found guilty of any disciplinary indiscretions.

15. The candidate's judicial temperament

- 15.1. The reviewers are unaware of any matter which suggests a lack of a judicial temperament on the part of the candidate. Whilst a judge in the Gauteng Local Division the candidate was courteous with litigants.

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

16.1. The candidate's application reveals that he is committed to human rights and this is also apparent from the judgments that he has delivered.

16.2. The candidate has a strong commitment to human rights, and experience with regard to the values and needs of the community.

17. The candidate's potential

17.1. The candidate has excellent potential as a judge of the Constitutional Court which is apparent from the high standard of the judgments that he has delivered.

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

18.1. In light of the candidate's diligence, legal insight and experience the candidate's appointment would send a positive message to the community at large.

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

National Union of Metalworkers of SA & others & Aveng Trident Steel (A Division of Aveng Africa (Pty) Ltd) & another (2021) 42 ILJ 67 (CC)

Member of the Executive Council for Health, Western Cape v Coetzee & others (2020) 41 ILJ 1303 (CC)

S v Tshabalala 2020 (5) SA 1 (CC)

Viziya Corporation v Collaborit Holdings (Pty) Ltd and Others 2019 (3) SA 173 (SCA)

Minister of Home Affairs v Ali 2019 (2) SA 396 (SCA)

Shaw v Mackintosh 2019 (1) SA 398 (SCA)

Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd 2018 (2) SA 314 (SCA)

Advertising Standards Authority v Herbex (Pty) Ltd 2017 (6) SA 354 (SCA)

Minister of Justice v SA Restructuring & Insolvency Practitioners Assoc 2017 (3) SA 95 (SCA)

Fisher v Natal Rubber Compounders (Pty) Ltd 2016 (5) SA 477 (SCA)

Pheiffer v Van Wyk and Others 2015 (5) SA 464 (SCA)

Democratic Alliance and 2 others v JG Zuma and 2 others [2013] 4 All SA 610 (GNP)

Amrich 159 Property Holding CC v Van Wesembeek 2010 (1) SA 117 (GSJ)

Michaels v MSCSA Investments t/a MacSteel Corporate Services (Pty) Ltd & others (2010) 31 ILJ 2018 (GSJ)

Govender v Salgados Fruiters t/a Lyndhurst Basket and Another 2009 (1) SA 500 (W)

Bridgeway Ltd v Markam 2008 (6) SA 123 (W)

Unreported Decisions

Carneiro v S (425/18) [2019] ZASCA 45 (29 March 2019)

Shaw and another v Mackintosh and another (267/17) [2018] ZASCA 53

Dinnermates (Tvl) CC v Piquante Brands International (Pty) Limited and another (401/17) [2018] ZASCA 43

Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interest (Pty) Ltd (183/17) [2017] ZASCA 176

Mphahla v Road Accident Fund (698/16) [2017] ZASCA 76 (1 June 2017)

Minister of Justice v The SA Restructuring and Insolvency Practitioners Association (693/15) [2016] ZASCA 196

Mthimkulu v S (1135/15) [2016] ZASCA 180

Jansen and another v S (236/2015) [2016] ZASCA 133

Minister of Safety and Security and another v Tembop Recovery CC and others (006/15) [2016] ZASCA 52 (1 April 2016)

Fisher v Natal Rubber Compounders (Pty) Limited (20640/2014) [2016] ZASCA 33

ABSA Bank Limited v Knysna Auto Services CC [2016] JOL 36038 (SCA)

Mothwa v S [2016] JOL 34192 (SCA)

City of Cape Town v Arun Property Developments (Pty) Ltd [2016] JOL 33586 (SCA)

Swart v Heine and others (192/2015) [2016] ZASCA 16

Pheiffer v Van Wyk and Others [2015] JOL 33632 (SCA)

Lelaka v The State (409/2015) [2015] ZASCA 169 (26 November 2015)

Planet Waves 581 (Pty) Limited v Newman, Sean [2014] JOL 31481 (GSJ)

Alcron Properties (Pty) Limited v Member of the Executive Council for Housing, Gauteng and another [2014] JOL 31472 (GSJ)

Brashville Properties 51 (Pty) Ltd v Colmant and others (154/13) [2014] ZASCA 61

Mudau v State (547/13) [2014] ZASCA 43 (31 March 2014)

Twoline Trading 2 (Pty) Ltd v Brainwave Projects 1232 CC and Others (29175/12) [2012] ZAGPJHC 260 (15 October 2012)

Seletela v SA Rail Commuter Corporation Ltd [2012] JOL 28709 (GSJ)

Gauteng Gambling Board and another v MEC for Economic Development: Gauteng Provincial Government Corporation Ltd (01563/2012) [2012] ZAGPJHC 96 (8 May 2012)

Pareto Ltd & others v Kalnisha Sigaban t/a KS Flowers N More (A3096/09) [2010] ZAGPJHC 21 (15 April 2010)

Amla v RAF [2010] JOL 25991 (GSJ)

Sali-Ameen v Smit NO & another [2009] JOL 24727 (GSJ)

Amrich 159 Property Holding CC v Van Wesemb Eeck [2009] JOL 24142 (GSJ)

Judgments overturned on appeal

Butler v van Zyl (554/13) [2014] ZASCA 81 (30 May 2014)

Gauteng Gambling Board v MEC for Economic Dev, Gauteng 2013 (5) SA 24 (SCA)

Arun Property Development (Pty) Ltd v City of Cape Town (CC 78/14) [2014] ZACC 37 (15 December 2014)

Paixao v RAF 2012 (6) SA 377 (SCA)

SA Taxi Securitization (Pty) Ltd v Media 24 Mamaila Kathu and Mapiloko Jackie 2011 (5) SA 329 (SCA)

Don Bruwer v Nova Risk Partners 2011 (1) SA 234 (GSJ)

Jose Manuel Pstana v Nedbank Limited 2009 (2) SA189 (SCA)

Judgments upheld on appeal

DT Robertson v Road Accident Fund (A05692/10) [2014] ZAGPJHC 68

Print Media South Africa v Minister of Home Affairs 2012 JDR 1774 (CC)

Congress of the People and Another v Shilowa and Others (6779/2011) [2012] ZAGPJHC 172

State of Muchanga South Gauteng High Court (SS50/110)

Allandick African Property Ltd v S Grobler South Gauteng High Court (08608/10)

Allianz Insurance Ltd v RHI Refractories Africa (Pty) Ltd 2008 (3) SA 425 (SCA)

SUMMARIES OF JUDGMENTS CONSIDERED

Minister of Home Affairs v Ali (1289/17) [2018] ZASCA169 (30 November 2018)

This matter deals with the Citizen Amendment Act 17 of 2010, specifically the interpretation of section 4 (3) of the Act and the failure by the relevant minister to promulgate regulations for applications for citizenship in terms of section 23 of the Act. The judgment deals with the retrospectivity argument as applied to legislative acts of parliament and also the separation of powers. The judgment is well-reasoned, concise and to the point.

Minister of Justice v The SA Restructuring and Insolvency Practitioners Association (693/15) [2016] ZASCA 196

This matter dealt with the Insolvency Act 24 of 1936 and specifically section 18 (1) thereof. The judgment found that the policy issued by the Minister in terms of section 18(1) was unconstitutional and irrational and declared unlawful and invalid. The judgment is well written and shows a good understanding of Insolvency law and commercial legal principles in general. The judgment also shows a clear understanding by the candidate of the equality provisions as contained in the Constitution.

Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interest (Pty) Ltd (183/17) [2017] ZASCA176

This was a contractual matter dealing with the enforceability of a breach clause in a lease agreement. The judgment is well-written and shows a clear understanding and appreciation of the relevant case law dealing with *pacta sunt servanda* and the role of fairness and *bona fides* in contract law. The judgment shows that the candidate has a good grasp of the legal principles governing contractual obligations and considerations of public policy, including constitutional imperatives.

Viziya Corporation V Collaborit Holdings (Pty) Ltd & others (1189/17) [2018]
ZASCA 189

This matter deals with the requirements of an Anton Piller order. The judgment is clear, concise and well written. The practical approach taken in the judgment shows the candidate's experience as a legal practitioner and a judge. The judgment shows the candidate's clear understanding of this highly technical and difficult part of our law.

XO Africa Safaris v CSARS (395/15) [2016] ZASCA 160

The judgment is of a technical nature as it deals with Value Added Tax and whether services attract VAT at the standard rate or whether the services are zero rated in terms of Section 11(2) of the Value Added Tax Act 89 of 1991. The judgment is well-written, clear and succinct. The judgment shows the candidate's versatility and understanding of a wide range of legal disciplines including tax law.

Tshabalala v The State; Ntuli v The State [2019] ZACC 48

This case dealt with the applicability of the common law doctrine of common purpose to the crime of rape. In a well written and well-reasoned judgment the candidate found that the doctrine of common purpose applies to the common law crime of rape. The judgment shows an understanding and appreciation of gender issues and criticizes the perpetuation of patriarchy and rape culture in South Africa. The judgment deals with the relevant arguments, meets them and gives a considered outcome. The candidate also deals exhaustively with conflicting decisions of the various divisions of the High Court. The judgment shows a sensitivity to issues involving women and a good understanding by the candidate of both criminal law concepts and constitutional principles.

Member of the Executive Council for Health, Western Cape v Coetzee and others
2020 (6) BCLR 674 (CC)

The central issue in this application is whether the respondents who are health professionals, are entitled to receive a scarce skills allowance in terms of the scarce skills agreement, a collective agreement concluded within the registered scope of the Public Health and Welfare Sector Bargaining Council.

In a unanimous judgment, the Constitutional Court dismissed the application for leave to appeal as the Departments' application lacked reasonable prospects of success and that the interests of judgment militated against the granting of leave to appeal. In a well written and well-reasoned judgment the candidate found that that the Labour Appeal Court had correctly found that the teaching hospital agreements had had the effect of bringing professors in the medical faculties into the Public Service in appropriate posts so as to give them authority to provide clinical services to the public and to subject them to direct governmental control and accountability in relation to the provision of those services.

National Union of Metalworkers of South Africa v Lufil Packaging (Isithebe) (A Division of Bidvest Paperplus (Pty) Ltd) and others [2020] 7 BLLR 645 (CC)

The applicant union ("NUMSA") claimed organisational rights from the respondent ("Lufil") when its membership reached 70% of the company's workforce. The company claimed in the CCMA that NUMSA lacked locus standi to bring an application for organisational rights because the union's constitution confined membership to employees in the metal and related industries and Lufil was engaged in packaging.

In a well reasoned judgment, the candidate accepted that freedom of association applies equally in the workplace. Trade unions must be protected against external interference if freedom of association is to be upheld.