

APPLICANT: JUDGE NOBULAWO MARTHA MBHELE**COURT FOR WHICH CANDIDATE APPLIES: FREE STATE
DIVISION OF THE HIGH COURT****1. The candidate's appropriate qualifications:**

- 1.1. B. Proc – 1995 (University of the North)
- 1.2. Certificate Programme in Leadership Development – 2009 (WITS Business School)
- 1.3. The Candidate has a certificate in Gender Development – 2000 (Umtapo Centre in conjunction with University of Amsterdam)

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

- 2.1. The Candidate has been a Judge of the Free State High Court since 1 January 2016.
- 2.2. The Candidate has acted in the position of Deputy Judge President of the Free State High Court for the period from 14 April 2020 to 26 June 2020 and 27 July 2020 to 18 September 2020.
- 2.3. The Candidate also acted as a Judge of the Lesotho High Court during April 2016.
- 2.4. Prior to this, the Candidate was admitted as an attorney in 1991 and practised as such.
- 2.5. Prior to this, the Candidate served on the Legal Aid South Africa at executive management level.

- 2.6. The Candidate was a Member of the National Forum on the Legal Profession and served as Chairperson of HR and Admin Committee.
- 2.7. There are no adverse comments as to the Candidate's fitness for appointment as Deputy Judge President of the Free State High Court.
- 2.8. Accordingly, the Candidate is eminently a fit and proper person for appointment to the position.

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 African Woman.
- 3.2. The appointment of the Candidate will advance both the cause of gender representation and racial representation in the High Court.

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

- 4.1. The Candidate holds a B. Proc degree which was obtained in 1995.
- 4.2. The Candidate was admitted as an attorney of the High Court of South Africa in 2001.
- 4.3. The Candidate served in several Leadership Positions within the legal fraternity.
- 4.4. The Candidate has been a Judge of the Free State High Court since 1 January 2016.
- 4.5. The Candidate acted in the position of Deputy Judge President of the Free State High Court for the period from 14 April 2020 to 26 June 2020 and 27 July 2020 to 18 September 2020.

- 4.6. The Candidate was admitted as an Attorney of the High Court in 2001 and practised as such.
- 4.7. The Candidate trained many Candidate Attorneys who were admitted as Attorneys and are running successful practices.
- 4.8. The Candidate was a Part Time Lecturer at the Free State Technikon for the period from 03 May 1999 to December 2002.
- 4.9. The Candidate has 3 reported judgments and in her various judgments she dealt with a variety of legal principles, namely:
- 4.9.1. In *Khoeli v Minister of Police and Others* the Candidate dealt with the disposal of animals seized by the South African Police Services for contravention of the Animals Diseases Act. The South African Police Services forfeiture of the animals to the State and the subsequent sale of the animals on auction, without notifying the owner of the animals, was set aside.
- 4.9.2. In *S v Makhetha* 2020 (2) SACR 410 FB the Candidate's judgment dealt with the conditions of suspended sentence which were too wide and failed to meet the requirements of precision and reasonableness.
- 4.10. The Candidate is appropriately qualified.

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

- 5.1. The Candidate's judgments demonstrate a strong commitment to constitutional values. In *Thozamile Eric Baba and Another v Justice Malanot and Others* it was held that the attachment and sale in execution of property for a claim of R10.00 was set aside and the

judgment dealt with the applicant's right in terms of section 34 of the Constitution.

- 5.2. The Candidate's commitment to constitutional values is evident in her involvement in the transformation of the legal system, her involvement in legal education through different structures, her focus on empowering women in the legal fraternity and her active implementation of access to justice.

6. Whether any judgments have been overturned on appeal:

- 6.1. In her application, the Candidate refers to one judgement which has been overturned on Appeal:

- 6.1.1. *VIP Consulting Engineers (Pty) Ltd v Mafube Local Municipality* (A274/2017) [2018] 3 All SA 922 (FB) (29 June 2018).

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

- 7.1. The Candidate has an extensive and impressive professional history.
- 7.2. The Applicant was a Candidate Attorney at Kubushi Molemela and TP Mosese Attorneys from 02 May 1996 to 31 January 2000.
- 7.3. The Applicant held the position of Coordinator at the Thusanang Advice Centre from 1 February 2000 to 31 March 2001.
- 7.4. The Applicant was thereafter employed as Professional Assistant: General Litigation and Office Manager of the Bethlehem Office of Peete Mosese Inc from 01 May 2001 to 31 January 2002.

- 7.5. Between 01 February 2002 to 31 March 2004, the Applicant was employed as Professional Assistant at the Legal Aid Board, Phuthaditjhaba Justice Centre.
- 7.6. For the period from 01 April 2005 to 14 December 2005, the Candidate held the position of Supervisory Professional Assistant at the Legal Aid Board, Phuthaditjhaba Justice Centre.
- 7.7. The Candidate was thereafter employed by Legal Aid South Africa, Welkom in the position of Justice Centre Executive from 14 December 2005 to 30 April 2009.
- 7.8. For the period from 01 May 2009 to 31 July 2012, the Applicant served as Regional Operations Executive of Legal Aid South Africa, Limpopo, Mpumalanga, Free State and North West.
- 7.9. The Candidate thereafter practised as an attorney at Mhlambi Attorneys and Partners from 01 August 2012 until 31 December 2015.
- 7.10. The Candidate served as Acting Judge of the Free State High Court from 13 April 2014 to 04 December 2015.
- 7.11. The Candidate was thereafter appointed as a Judge of the Free State High Court and has served as such from 01 January 2016 to date.
- 7.12. The Candidate served as Acting Deputy Judge President of the Free State High Court from 14 April 2020 to 26 June 2020 and again from 27 July 2020 to 18 September 2020.

8. The candidate's linguistic and communication skills:

8.1. The Candidate's judgments are in English and she is clearly proficient in the language.

8.2. Her judgments are generally concise and well written.

8.3. Her proficiency in other languages is unknown.

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

9.1. At the time of her application the Candidate has only four outstanding judgments, which were reserved for judgment during September and October 2020.

9.2. Her record indicates an ability to work efficiently and to produce judgments promptly.

10. The candidate's fairness and impartiality:

10.1. The review of the Candidate's judgments gives no reason to doubt her fairness and impartiality.

10.2. No adverse comments have been received.

11. The candidate's independent mindedness:

11.1. The Candidate's background and judgments are testament to her independent mindedness.

11.2. There is no record of any complaint or incident indicating a lack of independent mindedness on the part of the Candidate.

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

12.1. The Candidate is an experienced judge, who has served as a Judge of the Free State High Court since 1 January 2016.

12.2. Prior to this period the Candidate also acted as an Acting Judge of the Free State High Court from 13 April 2014 to 04 December 2015.

12.3. Members of the Free State Society of Advocates confirmed that the Candidate's preparedness results in an effective and constructive interaction with legal practitioners appearing before her and the prompt and effective adjudication of matters.

13. The candidate's administrative ability:

13.1. The Candidate's record of producing judgments promptly is indicative of her ability to administer her court roll efficiently.

13.2. In her experience as a Judge of the Free State High Court, and in the various senior managerial position held by the Candidate, it appears that the Candidate has developed skills that enable her to discharge the administrative responsibilities of a judge in the High Court.

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 else on record to indicate that the Candidate's integrity or ethics have ever been compromised.

15. The candidate's judicial temperament:

15.1. The Candidate's ability to conduct court proceedings and to produce sound judgments promptly can be said to show an appropriate judicial temperament.

15.2. No adverse comments have been received.

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 commitment to Community Involvement and experience with the values and needs of the community are evident from the following positions held by her:

16.1.1. Member: University of Limpopo SCM Alumni Committee, 2020;

16.1.2. Member: Peer Review Committee SAC-IAWJ, 2020;

16.1.3. Member: The Trial Advocacy Faculty of the BLA Legal Education Centre;

16.1.4. Board Member: Thusanang Advice Centre 2001 – 2007;

16.1.5. Member: Committee of Free State Gender Forum pioneered by the Office on Status of Women 2000 – 2003;

16.1.6. Executive Committee Member: Free State Network on Violence against Women 2000 – 2001;

16.1.7. Municipal Conflict Manager: FS 194 IEC for 2000 Municipal Elections.

16.2. The Candidate's commitment to human rights is evident from the judgments issued by her which indicate her understanding of and correct application of the principles of human rights.

17. The candidate's potential:

17.1. The Candidate has demonstrated her potential to serve in the position of Deputy Judge President of the Free State High Court.

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

18.1. The Candidate's appointment will send out a message of transformation of the Legal Profession.

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

S v Makhetha 2020 (2) SACR 410 FB

S v JN 2020 (2) SACR 412 FB

S v Motladile 2019 (1) SACT 415 FB

Kebautlwile v State (A162/2019)

Unreported decisions:

Khoeli v Minister of Police and Others (739/2018)

Social Housing Regulator v Free State Social Housing Company and Others
(1751/2019)

Thozamile Eric Baba and Another v Justice Malanot and Others (4628/2014)

Copper Sunset Trading 443 (Pty) Ltd v Centlec SOC Ltd (2189/2019)

Wahl v Wahl (A165/2019)

*The Royal Family of Amadlomo and Another v The Premier of the Eastern Cape
and Others* (1944/2020)

Judgments upheld on appeal:

ABSA Bank v Baumgarten NO and Others;

*Twilights Breeze Trading 119 CC and Another v Mantsopa Municipality and
Others* 4134/2017

Judgments overturned on appeal:

VIP Consulting Engineers (Pty) Ltd v Mafube Local Municipality (A274/2017)
[2018] 3 All SA 922 (FB) (29 June 2018)