

**APPLICANT: JUDGE SELEWE PETER MOTHLE****COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL****1. The candidate's appropriate qualifications:**

- 1.1. BProc (1980) University of South Africa, Pretoria
- 1.2. LLM in Trial Advocacy (1987) Georgetown University, Washington DC
- 1.3. NITA Diploma in Trial Advocacy (1987) Harvard University, Massachusetts
- 1.4. The candidate is appropriately qualified.

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

- 2.1. The candidate has been a Judge of the Gauteng Division of the High Court for many years and has served as an Acting Judge in the Supreme Court of Appeal for a period of 12 months.
- 2.2. There are no adverse comments as to the candidate's fitness for appointment as a Judge of the Supreme Court of Appeal.
- 2.3. The candidate authored judgments during his time as an Acting Judge in the Supreme Court of Appeal, three of which were confirmed by the Constitutional Court, including the candidate's minority judgment in *Malebane v Dykema and Another* [2019] All SA 316 (SCA).

2.4. Accordingly, the candidate is fit and proper for appointment to the position of a Judge in the Supreme Court of Appeal.

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

3.1. Yes, the candidate is a black male.

3.2. The appointment of black candidates to senior positions in the judiciary is currently not at the level required to reach the equality and transformation goals of the judiciary.

3.3. The candidate's appointment as a Judge of the Supreme Court of Appeal will promote the transformation objectives of the judiciary.

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

4.1. The candidate has held a variety of positions in 20 years in the legal profession, ranging from a practicing attorney, the National Director of Lawyers for Human Rights, legal consultant to the International Organisation for Migration which provided assistance to the United Nations High Commissioner, legal advisor to the Premier and leading the legal team that presented to the Hoexter Commission for the establishment of the High Court in Limpopo, to a Senior Counsel at the Pretoria Bar, Judge of the High Court and acting Judge of the Supreme Court of Appeal.

4.2. During the candidate's acting appointment in the Supreme Court of Appeal he authored a minority judgement in *Malebane v Dykema and Another* [2019] All SA 316 (SCA), which was confirmed by the Constitutional Court. This was one of three of the candidate's judgments that were confirmed by the Constitutional Court.

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

- 5.1. The candidate's judgments demonstrate a firm commitment to the values underlying our Constitution.
- 5.2. The candidate was involved in the establishment of the National Directorate of Lawyers for Human Rights and campaigned for the adoption of a Bill of Rights in South Africa's democratic dispensation.
- 5.3. The candidate has been involved in various committees and organisations that are geared towards constitutional and human rights objectives, such as the International Organisation for Migration which provided assistance to the United Nations High Commissioner for refugees' repatriation programme, and the Special Investigating Unit dealing with corruption cases.
- 5.4. Throughout his career, the candidate has demonstrated a firm commitment to the values enshrined in the Constitution.
- 5.5. The candidate has displayed his continued commitment to the values that underpin our Constitution in the judgments he has written, both in the High Court and during his acting appointment in the Supreme Court of Appeal.

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

- 6.1. The candidate has had six judgments that were overturned on appeal.
- 6.1.1. *Special Pensions Appeal Board and another v Masemola* [2018] ZASCA 117 (20 September 2018) – Overturned by the Constitutional Court in *Masemola v Special Pensions Appeal Board and Another* 2020 (2) SA 1 (CC)

- 6.1.2. *M and Another v Minister of Police* 2013 (5) SA 622 (GP) – Overturned by the Supreme Court of Appeal in *Minister of Police v Mboweni and Another* 2014 (6) SA 256 (SCA)
- 6.1.3. *Dinnermates (TVL) CC v Piquante Brands International (Pty) Ltd* 2017 JDR 0239 (GP) – Overturned by the Supreme Court of Appeal in *Dinnermates (TVL) CC v Piquante Brands International (Pty) Ltd* 2018 JDR 1291 (SCA)
- 6.1.4. *Vermeulen v Medi-Clinic Ltd* 2013 JDR 0602 (GNP) – Overturned by the Supreme Court of Appeal in *Medi-Clinic Ltd v Vermeulen* 2015 (1) SA 241 (SCA)
- 6.1.5. *Ndaba and others v Minister of Police* (2014) ZAGPPHC 180 (02/04/14) – Overturned by the Full Court of the Gauteng Division in *Minister of Police v Ndaba and others* 2016 JDR 0838 (GP)
- 6.1.6. *Standard Bank v Echo Petroleum* – Overturned by the Supreme Court of Appeal in *Standard Bank Of South Africa Ltd V Echo Petroleum CC* 2012 (5) SA 283 (SCA)

6.2. There is nothing concerning about the judgments being overturned on appeal save for the fact that the Appeal Courts come to a different conclusion. There was no real criticism for the court *a quo* in these judgments or adverse findings made about the court *a quo*.

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

7.1. The candidate has been a Judge of the Gauteng Division of the High Court for ten years (1 January 2011 – to date).

7.2. The candidate was an Acting Judge of the Supreme Court of Appeal (December 2017 – November 2018).

7.3. The candidate was appointed to serve on the Special Tribunal established to deal with corruption cases (March 2019 – to date).

7.4. The candidate has been an advocate at the Pretoria Society of Advocates (2001 – 2008) and was elevated to Senior Counsel status (2008).

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

8.1. The candidate's judgments are well written and presented, showing an ability to assimilate large amounts of information and to present this information in a logical fashion.

8.2. The candidate's judgments show great attention to detail.

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

9.1. The candidate has no outstanding judgments and the vast majority of judgments are delivered within a short period of time.

9.2. The candidate works efficiently, yet maintains attention to detail.

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

10.1. No adverse comments have been received.

10.2. The candidate's judgments show his fairness and impartiality

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

11.1. The candidate handed down a minority judgment during his acting appointment in the Supreme Court of Appeal, showing a willingness

and ability to stand alone in his views. This minority judgment was confirmed by the Constitutional Court.

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

12.1. The candidate has been a Judge in the High Court for 10 years and is therefore well versed in conducting court proceedings.

12.2. There have been no adverse comments regarding the manner in which the candidate conducts his court proceedings.

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

13.1. Given that the candidate has no outstanding judgments, the candidate appears to have good administrative ability.

13.2. There are no adverse comments regarding the candidate's administrative ability.

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

14.1. There are no adverse comments regarding the candidate's integrity or ethical behaviour.

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

15.1. There have been no adverse comments regarding the manner in which the candidate conducts his court proceedings.

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

16.1. The candidate was involved in the establishment of the National Directorate of Lawyers for Human Rights and campaigned for the

adoption of a Bill of Rights in South Africa's democratic dispensation.

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

- 17.1. The candidate has extensive experience as a Judge in the High Court and undertook a 12-month acting appointment in the Supreme Court of Appeal.
- 17.2. The candidate has handed down 10 reported judgments and has had four decisions confirmed on appeal by the Constitutional Court, with a further five upheld by the Supreme Court of Appeal.
- 17.3. The candidate would provide valuable knowledge and experience in the Supreme Court of Appeal and would assist in achieving the transformation objectives in the superior courts of South Africa.

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

- 18.1. The candidate's appointment as a Judge of the Supreme Court of Appeal would align this with the current transformation objectives and aspirations of the judiciary.
- 18.2. The candidate's appointment, based on his experience and excellence, will show that a dedication to the legal profession and to Constitutional values are the basis upon which Judges are appointed to the Supreme Court of Appeal, regardless of race and background.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported decisions**

*Houtbosplaas (Pty) Ltd and Another v Nedbank Ltd* 2020 (4) SA 560 (GP)

*Mphephu v Mphephu-Ramabulana and Others* [2019] 3 All SA 51 (SCA); 2019 (7) BCLR 862 (SCA)

*Malebane v Dykema and Another* [2019] All SA 316 (SCA)

*Ackermans Ltd v Commissioner, South African Revenue Service* 2015 (6) SA 364 (GP)

*Graham v Law Soc, NP (RAF Intervening)* 2014 (4) SA 229 (GP)

*M and Another v Minister of Police* 2013 (5) SA 622 (GNP)

*Manwood Underwriters (Pty) Ltd and others v Old Mutual Life Assurance Company (South Africa) Limited* [2013] 1 All SA 701 (WCC)

*Retmil Financial Services (Pty) Ltd v Sanlam Life Insurance Company Ltd and others* [2013] 3 All SA 337 (WCC)

*Holdsworth v Reunert Ltd* 2013 (6) SA 244 (GNP)

*Henley v ABSA Bank Ltd* [2012] 4 All SA 318 (GP)

### **Unreported Decisions:**

*South African Association for Water User Associations and Others v Minister of Water and Sanitation and Others* (719132018) [2020] ZAGPPHC 364 (14 August 2020).

*President of the Republic of South Africa v Democratic Alliance and Others* (664/17) [2018] ZASCA 79 (31 May 2018)



*The Re-Opened Inquest into the Death of Ahmed Essop Timol* (2017) ZAGPPHC 652 (12/10/17).

*Sizazonke Electrical CC and Others v Eskom Holdings Limited* (75781/2013) [2017] ZAGPPHC 305 (7 July 2017)

*Germiston Retirement Fund v Ekurhuleni Metropolitan Municipality* [2015] ZAGPPHC 1143 (22 May 2015)

*Trencon (Pty) Ltd v Industrial Development Corporation of South Africa Ltd* [2013] ZAGPPHC 147 (03/06/13)

**Judgments upheld on appeal:**

*President of the Republic of South Africa v Democratic Alliance and Others* 2020 (1) SA 428 (CC)

*Sizazonke Electrical CC and Others v Eskom Holdings SOC Limited* (222/2018) [2019] ZASCA 36 (29 March 2019)

*Malebane v Dykema and Another* 2019 (11) BCLR 1299 (CC)

*Mangwale v State* 2018 JDR 0935 (GP)

*Special Pensions Appeal Board and Another v Masemola* (1171/17) [2018] ZASCA 117 (20 September 2018)

*Ekurhuleni Metropolitan Municipality v Germiston Municipal Retirement Fund* 2017 (6) BCLR 750 (CC)

*Politis NO v Member of the Executive Council for Health, Limpopo* [2017] ZASCA 86 (2 June 2017).

*Trencon Construction (Pty) Ltd v Industrial Dev Corp of SA Ltd* 2015 (5) SA 245 (CC)

*Absa Bank Ltd v Hanley* 2014 (2) SA 448 (SCA)

*Law Society of the Northern Provinces v Dube* [2012] 4 All SA 251 (SCA)

**Judgments overturned on appeal:**

*Masemola v Special Pensions Appeal Board and Another* 2020 (2) SA 1 (CC)

*Dinnermates (TVL) CC v Piquante Brands International (Pty) Ltd* 2018 JDR  
1291 (SCA)

*Minister of Police v Ndaba and others* 2016 JDR 0838 (GP)

*Medi-Clinic Ltd v Vermeulen* 2015 (1) SA 241 (SCA)

*Minister of Police v Mboweni* 2014 (6) SA 256 (SCA)

*Standard Bank of South Africa Ltd v Echo Petroleum CC* 2012 (5) SA 283 (SCA)