

**APPLICANT: VUYO THEMBILE MTATI****COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION****1. The candidate's appropriate qualifications:**

- 1.1. The candidate holds a B.Proc (1992) degree.
- 1.2. The B.Proc degree was conferred upon the candidate by the University of Fort Hare.
- 1.3. The candidate has worked in the following capacities in the legal field:
  - 1.3.1. Candidate Attorney - Mhlambi and Company 1993 - 1995
  - 1.3.2. Attorney - TV Mtati & Partners; Mtati, Mashilo, Sesele and Matati Sehume 1995 - 2001
  - 1.3.3. Attorney - Legal Aid South Africa 2001 – 2019
  - 1.3.4. Commissioner - Small Claims Court - 2014 to date
  - 1.3.5. Consultant - Derrocks Inc - 2019 to date.
- 1.4. The reviewers consider that the candidate is appropriately qualified and experienced for appointment as a Judge of the High Court.

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

- 2.1. The candidate has extensive experience in the legal field, having worked as an attorney for approximately 26 years.

- 2.2. The candidate has acted as a judge regularly and for considerable periods of time in the Johannesburg and Pretoria divisions of the High Court.
- 2.3. It has however come to the attention of the writers hereof, that there is presently a criminal complaint pending against the candidate under CAS number 55/2/2021 (Mondeor Police Station, Johannesburg), which is presently being investigated by SAPS Captain MP Radebe, and which relates to a claim of sexual assault and harassment of a junior female member of the Johannesburg Society of Advocates (“the JSA”). Captain Radebe can be contacted on (011) 274 7300.
- 2.4. Since the candidate is not a member of the JSA, the matter has been referred for determination to the LPC, and the investigation there is still pending. The JSA has no jurisdiction to investigate the allegations, but is in possession of a copy of the complaint, should this be necessary. For purposes of the present review, the complainant’s details have been withheld due to the sensitivity of the matter.
- 2.5. There is nothing in the application or the candidate’s judgments as an acting judge that would suggest that the candidate is not a fit and proper person to be a judge of the High Court from a qualification or experience perspective. This is however to be considered in light of the contents of paragraph 2.3. above.
3. **Whether the candidate’s appointment would help to reflect the racial and gender composition of South Africa:**

3.1. The candidate is a 50-year-old black male. His appointment to the High Court would further the constitutional imperative of the judiciary and enhance the racial composition of the High Court.

3.2. This must however again be considered in light of the contents of paragraph 2.3. above, regarding the sensitivities surrounding gender-based issues.

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

4.1. The candidate has practised as an attorney for the last 26 years (from 1995).

4.2. The candidate appears to have a vast amount of experience across the legal spectrum.

4.3. The candidate's judgments reveal a thorough understanding and knowledge of the 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 has in terms of his judgments as an acting judge demonstrated a firm commitment to the values of the Constitution and to the rule of law.

5.2. The candidate's contribution to the values of the Constitution also appears from his acting appointments as judge of the High Court.

5.3. The concern raised *supra* however, ought to be considered.

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

- 6.1. The candidate has indicated in his application that a judgment has been taken on appeal which appeal is pending.

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

- 7.1. The candidate has extensive experience as a practicing attorney over a period of approximately 26 years. He has also regularly and for extended periods acted as a judge in the High Court, in total 55 weeks. He has delivered 10 judgments while acting as judge.

- 7.2. No judgments could be found where the candidate appeared to have argued a matter. All the matters in which the candidate indicated he had appeared in his application were argued by counsel.

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

- 8.1. From the candidate's judgments, it appears that he has good written communication skills.

- 8.2. To the best of the reviewers' knowledge, no adverse comments have been received regarding the candidates linguistic and/or communication skills.

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

- 9.1. Several judgments handed down by the candidate were considered.
- 9.2. All of these judgments were delivered promptly, some within a matter of days, of hearing the matters.
- 9.3. We are advised that the candidate has no outstanding judgments or part-heard matters and appears to manage his work load efficiently.

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

- 10.1. The candidate's fairness and impartiality are evident from the judgments that he has written, which resonate with humanity and a determination to do justice to the parties.
- 10.2. There is nothing in the candidate's application to suggest that he does not perform his duties as a judicial officer with fairness and impartiality.
- 10.3. To the best of the reviewers' knowledge, no adverse comments have been received regarding the candidate's fairness and / or impartiality in carrying out his duties as an acting judicial officer.

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

- 11.1. There is nothing to suggest that the candidate is not independently minded.

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

- 12.1. The candidate has numerous unreported cases. The candidate appears to have conducted proceedings efficiently and delivered judgments timeously.
- 12.2. There is nothing that the reviewers have found which suggests an inability to conduct court proceedings.

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

- 13.1. The candidate has held several positions of leadership of bodies and committees, within and outside the legal profession.

13.2. No adverse comments pertaining to his administrative roles have been received in this regard. The candidate has served as Chair on the Black Lawyers Association (1996 - 1998); Attorneys Fidelity Fund (2003 - 2005) and Attorneys Insurance Indemnity Fund (2005 - 2007) and Councillor at the Law Society of South Africa (1998 - 2005).

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

14.1. The review panel is referred to what is stated *supra* at paragraph 2.3. This may impact on the ethical integrity of the candidate.

14.2. This will depend on the outcome of the process pending with SAPS and the LPC.

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

15.1. The reviewers are unaware of any matter which suggests a lack of judicial temperament on the part of the candidate.

**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 the values of the Constitution is demonstrated in the manner he has discharged his duties as a judicial officer.

16.2. The review panel is referred to what is stated *supra* at paragraph 2.3. This may impact on the candidate's commitment to human rights, and more particularly his approach towards issues surrounding gender sensitive issues.

16.3. This will depend on the outcome of the process pending with SAPS and the LPC.

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

17.1. Academically, the candidate has potential as a High Court judge which is apparent from the judgments that he has delivered.

17.2. The review panel is again referred to what is stated *supra* at paragraph 2.3. This may impact on the candidate's commitment to human rights, and more particularly his approach towards issues surrounding gender sensitive issues.

17.3. This will depend on the outcome of the process pending with SAPS and the LPC.

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

18.1. From an academic perspective, and in light of the candidate's previous judicial diligence, legal insight and experience and his commitment to become a judge, the candidate's appointment would send a positive message to the community at large for the following reasons:

18.2. he is a senior attorney with considerable experience and expertise;

18.3. he has acted as a judge for a considerable period, commencing from 2018;

18.4. he has an understanding of the various aspects of law;

- 18.5. he displays a range of qualities and values that lie at the core of judicial endeavour, including fairness, impartiality and a strong work ethic; and
- 18.6. considered on the strength of his experience and expertise, the candidate's knowledge of the law and commitment to applying it in a manner which gives effect to constitutional values would strongly commend his appointment.
- 18.7. **However**, and should the allegations as pending be found to be true in due course, the appointment of the candidate may attract negative responses from the profession, the media and public at large, especially in light of the extreme sensitivity at present surrounding gender sensitive issues.
- 18.8. The reviewers **expressly** record however, that they are unable to make any adverse findings in this regard, as we have not investigated the matter. This will be subject to findings of other tribunals as set out above.

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

None

**Unreported Decisions:**

*S v Nkomo* 2020 JDR 1873 (GJ)

*S v Dithlakanyane* 2020 JDR 2785 (GJ)

*S v Mbatha* 2020 JDR 2935 (GJ)

*Kemm v The Minister of Energy* 2019 JDR 1479 (GP)

*Klaas v 19th Episcopal District: A.M.E Church* 2019 JDR 1991 (GJ)

*Mohamed v Nedbank Limited* 2019 JDR 2324 (GJ)

*LS v RS* 2019 JDR 2479 (GJ)

*Dr Maureen Allem Inc v Dr Baard* 2019 JDR 2480 (GJ)

*Ferreira NO. v Van Tonder Transport* 2019 JDR 2660 (GJ)

*S v Memani* 2018 JDR 0583 (GP)

**Judgments upheld on appeal:**

*Candyland Bedfordview (Pty) Ltd & Others v Jones*

**Judgments overturned on appeal:**

One pending