

**APPLICANT: MAITU TSUNGAI MATHE PHAHANE**

**COURT FOR WHICH CANDIDATE APPLIES: LABOUR COURT**

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

- 1.1 Bachelor of Arts;
- 1.2 Bachelor of Laws (Honours);
- 1.3 Diploma in Legislative Drafting;
- 1.4 Post-Graduate Diploma in Labour Law (Pass with Distinction);
- 1.5 Certificate in Advanced Company Law.

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

- 2.1 The candidate is a practising advocate.
- 2.2 The candidate is a member of the Pretoria Society of Advocates.
- 2.3 The candidate acted as a judge of the Labour Court in Johannesburg from 04 – 31 March 2019 and 27 January 2020 to 29 March 2020.
- 2.4 We are not aware of any information that would cast doubt on the candidate's reputation as a fit and proper person, suitable for appointment to the Bench.

**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 female, and her appointment will enhance the racial and gender composition of South Africa.

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

4.1 The candidate has a good knowledge of labour law and its workings in practice. The bulk of the candidate's area of practice constitutes labour law (about 60%) (page 25).

4.2 The candidate has appeared in matters where there were constitutional issues and was exposed to those issues. Constitutional law comprises about 5% of her practice (pages 26 – 28).

4.3 Senior colleagues who have worked with the candidate as junior counsel speak highly of her professionalism, commitment, legal knowledge and drafting skills, and strongly support her application.

4.4 In our assessment, the candidate is well qualified for a position on the Labour Court Bench.

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

5.1 The candidate has mentored three pupils formally and many others informally in her practice (page 24). The candidate has also undertaken job shadowing by exposing young adults to the workings of the law (page 29). The candidate states that she is committed to transformation of the legal profession. She has acted on behalf of vulnerable individuals in pursuit of their rights (see pages 35-36).

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

6.1 The candidate is not aware of the outcome of a matter in which she granted leave to appeal. No details of the matter are listed in the application (page 34).

6.2 We did not find any reported decisions (on saflii or otherwise) on appeal in respect of any of the candidate's judgments.

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

7.1 The candidate has widespread experience in the legal profession. She did articles of clerkship, after which she practised law as an attorney. She has worked in a number of private companies as well as in a government department.

7.2 The candidate did her pupillage and commenced practice at the Bar as an advocate and she has dealt with diverse matters and predominantly labour matters. She has practised at the Pretoria Bar since November 2012.

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

8.1 The candidate states that she is conversant with English, Setswana, isiZulu and Afrikaans.

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

9.1 The candidate states that she does not have any outstanding judgments, following her role as an acting judge.

9.2 From an assessment of the candidate's judgments, she has delivered judgments promptly, in under three months.

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

10.1 The candidate appears to be fair and impartial. There are no complaints or negative assertions about her fairness or impartiality.

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

11.1 The candidate appears to be independent minded in her judgments.

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

12.1 Senior colleagues at the Johannesburg Bar speak highly of the candidate in her role as Acting Judge, having appeared before her.

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

13.1 We have no reason to doubt the candidate's administrative ability.

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

14.1 The applicant seems to enjoy an excellent reputation amongst her colleagues at the Pretoria Bar, with a good reputation for integrity and ethical behaviour.

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

15.1 Senior colleagues at the Johannesburg Bar speak highly of the candidate in her role as Acting Judge, having appeared before her.

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

16.1 The candidate demonstrates a firm commitment to human rights, and has acted for vulnerable individuals to assist them in asserting their rights.

17 **The candidate's potential:**

17.1 The candidate shows excellent potential, and in our view is likely to perform well as a judge. She has the potential to advance to positions on appellate courts in due course.

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

18.1 The candidate's appointment will demonstrate that the judiciary is transforming, and that it is possible for black women to ascend to the bench.

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

### **Reported decisions:**

*NUMSA obo Dhludhlu and Others v Marley Pipe Systems (SA) (Pty) Ltd (2020) 41 ILJ 2175 (LC).*

### **Unreported Decisions:**

*City of Tshwane Metropolitan Municipality v Samkelo Mgobozi and Others (Labour Court, Johannesburg)*

*Maila v Guards on Call Security CC (JS204/17) [2019] ZALCJHB 66 (2 March 2019)*

*Netswera v Commission for Conciliation, Mediation and Arbitration and Others (JR1657/14) [2019] ZALCJHB 64 (2 March 2019)*

*Ananias v Cashbuild (Pty) Ltd and Others (JR1348/17) [2019] ZALCJHB 181 (1 August 2019)*

*Kimberley Ekapa Mining Joint Venture v National Union of Mineworkers (J3723-18) [2019] ZALCJHB 179 (1 August 2019)*

### **Judgments upheld on appeal:**

None.

### **Judgments overturned on appeal:**

None.