

APPLICANT: JUDGE MOLETJE GEORGE PHATUDI

**COURT FOR WHICH APPLICANT APPLIES: DEPUTY JUDGE
PRESIDENT, LIMPOPO DIVISION**

1. The candidate's appropriate qualifications:

1.1. The candidate is duly qualified, having obtained:

1.1.1. B Iuris (University of Pretoria) during 1983;

1.1.2. LLB (Unisa) during 1988; and

1.1.3. LLM.

1.2. The candidate is experienced, having worked as:

1.2.1. a legal adviser at the Mamelodi Town Council (1984 to 1985);

1.2.2. a legal adviser/assistant company secretary (1985 to 1986);

1.2.3. a law lecturer at the University of the North (1989 to 1996);

1.2.4. a practicing advocate (1989 to 1999) – the candidate, unfortunately, does not state at which Bar;

1.2.5. a practising attorney (1999 to 2016);

1.2.6. Judge of the High Court (2016 to date); and

1.2.7. Acting Deputy Judge President (2019 to date).

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

2.1. The applicant is a fit and proper person, because:

2.1.1. He has been nominated for the position of Deputy Judge President by a fellow Judge of the Labour Court, the Honourable Mr Justice G.N. Moshwana;

2.1.2. He has been nominated for the position of Deputy Judge President by a Senior Magistrate and head of the Seshego Magistrate Court, the Honourable Mrs M.S. Kotze;

2.1.3. He has been appointed as a Judge of the High Court of South Africa since 2016;

2.1.4. There do not appear to be any:

2.1.4.1. Complaints or disciplinary proceedings pending against him in his professional capacity as a Judge;

2.1.4.2. Criminal or civil litigation pending against him.

2.1.5. He was not only a law lecturer and both a practising advocate and attorney, but was also appointed as:

2.1.5.1. Chairperson of the disciplinary committee of SAFA (Northern Province, western region and Vodacom Promotional League);

2.1.5.2. Commissioner of the Small Claims Court;

2.1.5.3. Part-time Commissioner for conciliation, mediation and arbitration in the Northern Province; and

2.1.5.4. Chairperson of the Safety and Security Sectorial Bargaining Council for the SAPS in the Northern Province presiding over labour disputes involving the employer and unions.

2.2. The bundle of documents furnished did not contain a certificate of good standing.

2.3. We are therefore unable to comment on such standing at present.

2.4. Should same be made available, we will amplify these comments, should it become necessary to do so.

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 will contribute to reflect the racial and gender composition of South Africa.

3.2. This fact qualifies the candidate as eligible for appointment.

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

4.1. The candidate is well-versed in the law, having lectured, practised in different fields of the law and given judicially sound judgments as an appointed judge.

4.2. There is no indication that the candidate is inexperienced in constitutional law. In this regard, reference can be made to his judgment in the matters of:

4.2.1. *Inkokeli Projects v Emphraim Mogale Municipality*, Case Number 3298/2018 wherein the aspect of the constitutional

invalidity for non-compliance with the regulatory framework regarding alienation of municipal land was considered;

4.2.2. *MEC for Health, Limpopo v Rabalago* 2018(4) SA 270 (LP), wherein the Freedom of Religion as guaranteed by section 15 of the Constitution, as well as section 31 pertaining to the right of assembly as a religious community, were considered.

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

5.1. The candidate is committed to the values of the Constitution, as it appears, from his involvement:

5.1.1. as law lecturer at the University of the Northhe was involved with the Legal Aid Clinic, doing pro bono work for indigent litigants;

5.1.2. as the Chairman of the School Governing Body of the Pietersburg Comprehensive School;

5.1.3. as Chairman of the Technikon North West's Committee of Inquiry, he investigated irregularities and financial mismanagement;

5.1.4. in drafting municipal by-laws for certain municipalities in the Limpopo Province;

5.1.5. as a member of the Committee of the Commission established by the Premier of Limpopo in terms of section 26A of the Traditional Leadership and Governance Framework Act 41 of 2003, to deal with disputes and claims relating to traditional leadership and land disputes;

- 5.1.6. in assisting the Limpopo Regional Land Claims Commission and/or the then Department of Land Affairs in the following projects:
- 5.1.6.1. the establishment of Communal Property Associations for communities which successfully claimed dispossessed land or properties;
- 5.1.6.2. the verification process of land owners or beneficiaries;
- 5.1.6.3. and the establishment of trusteeship for land owners or beneficiaries under the restitution of land rights and conducting verification processes.
- 5.1.7. In participating in the 16 Days of Activism against abuse of Women and Children campaign at the Seshego Magistrate’s Court and giving a public lecture on the Domestic Violence Act and the Maintenance Act during 2004;
- 5.1.8. Publishing an article in African Law Review under the title “Law and Indigent Communities: Connecting African Traditional Legal System and the Constitution” during 2019;
- 5.1.9. In delivering a paper at the Turfloop Law Conference during May 2019 on the topic “Law and Indigent communities (Law and Community Engagement) A transformative view”.

6. Whether any of his judgments have been overturned on appeal:

- 6.1. Three of the candidate’s judgments were listed as being overturned on appeal, to wit
- 6.1.1. *Maake v Chemfit (Pty) Ltd* (Case no: HCAA04/18);

- 6.1.2. *DPP v Motloutsi* ((Case no: 527/18 – sentence only); and
- 6.1.3. *R.S Baloyi v The State* (Case no:1152/19 – sentence and whether the State established whether murder was premeditated).
- 6.2. This must be considered against the candidate’s judgments that were upheld on appeal, namely:
 - 6.2.1. *Friedman N.O. v Master, High court & Others*, Case number 411/2018 (a quo 2464/2017);
 - 6.2.2. *University of Limpopo v Makwela*, Case Number: 252/2018;
 - 6.2.3. *Liberty Life Group v Van Niekerk*, Case Number: 1392/2018;
 - 6.2.4. *Davhana Royal Council v Nesengani Royal Family*, Case Number: 1355/2016;
 - 6.2.5. *G & D Refrigerator v JPB Mulder*, Case Number: HAC05/16, SCA Case number1307/16); and
 - 6.2.6. *Kubjana v The State*, Case Number: 166/2016.

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

- 7.1. The candidate is a proficient lawyer, as may be garnered from:
 - 7.1.1. His 32 year experience in the law, comprising:
 - 7.1.1.1. 7 years as law lecturer at the University of the North (1989 to 1996);
 - 7.1.1.2. 10 years as a practising advocate (1989 to 1999);
 - 7.1.1.3. 17 years as a practising attorney (1999 to 2016); and

7.1.1.4. 5 years as a Judge of the High Court of South Africa (2016 to date).

7.1.2. The various fields of law in which he lectured and practised, to wit mercantile law, commercial law, administrative law, roman law, jurisprudence, labour law, corporate law, mineral law, municipal law, criminal law and civil and criminal litigation in the Magistrates' Court, High Court and Labour Courts.

8. The candidate's linguistic and communication skills:

8.1. The candidate is proficient in the English language and communication skills, as is apparent from:

8.1.1. The fact that he was a lecturer;

8.1.2. His well-defined and accessible judgments;

8.1.3. The manner in which he drafted his submission in support of his nomination.

8.2. In addition to English, the candidate is also proficient in Tswana, Sesotho, Sepedi and Afrikaans;

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

9.1. The candidate is able to produce judgments promptly.

9.2. The candidate was appointed in 2016 and as at date of application, had no apparent judgments that were reserved and still outstanding.

9.3. It is unknown whether the matter that would have been heard on 21 January 2021 has been disposed of.

10. The candidate's fairness and impartiality:

10.1. There are no reservations or concerns regarding the candidate's impartiality and fairness.

11. The candidate's independent mindedness:

11.1. There are no reservations or concerns regarding the candidate's independent mindedness.

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

12.1. No comment is offered.

13. The candidate's administrative ability:

13.1. The candidate is administratively proficient, as may be gleaned from his career record, both as practitioner and judge.

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

14.1. The candidate's integrity and ethical behaviour are incontrovertible.

15. The candidate's judicial temperament:

15.1. The candidate's judicial temperament is undisputable, having regard to his appointment as Chairperson of various disciplinary committees, Commissioner of the Small Claims Court and Commission for Conciliation, Mediation and Arbitration, Judge, and acting Deputy Judge President for prolonged periods.

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

16.1. The candidate's commitment to human rights, and experience regarding the values and needs of the community, appear from his involvement in the activities and subcommittees previously mentioned.

17. The candidate's potential:

17.1. The candidate demonstrates potential to contribute to the judiciary, having regard to his experience, capabilities, and demeanour.

17.2. The candidate's age, to wit 62 years, will inhibit his ability to reach his full potential before reaching retirement age, as he has already been appointed as Judge for 6 years.

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

18.1. If the candidate is appointed, it will convey to the community at large that the judiciary:

18.1.1. Consists of judges that are competent, experienced, proficient, fair and just, and open minded; and

18.1.2. Judges are involved in and understand the needs of the community.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED:

Reported decisions:

Land & Agricultural Development Bank of S.A. v Factaprops 1052 CC [2015] 3 All SA 319 (GP)

MEC for Health, Limpopo v Rabalago 2018(4) SA 270 (LP)

Mogola v Mogola & Others (Limpopo Division, Polokwane, HCA30/2017, reported on SAFLII as [2018] ZALMPPHC 57

Groot Constantia Trust v DGB (Pty) Ltd (Gauteng Division, Pretoria, Case number 52287/2013, reported on SAFLII as [2015] ZAGPPHC 1086

G and D Refrigeration CC v JPB Mulder (Limpopo Division, Polokwane, HCA05/2016, reported on SAFLII as [2016] ZALMPPHC 16

Unreported decisions:

Ephraim Mogale Local Municipality v Inkokeli Projects (Pty) Ltd 2019 JDR 0273 (LP)

Tshenolo Waste (Pty) Ltd v Lepelle Northern Water & Others (Limpopo Division, Polokwane, Case Number 7611/2018)

Judgments upheld on appeal:

Friedman N.O. v Master, High court & Others, Case number 411/2018 (a quo 2464/2017)

University of Limpopo v Makwela, Case Number: 252/2018

Liberty Life Group v Van Niekerk, Case Number: 1392/2018

Davhana Royal Council v Nesengani Royal Family, Case Number: 1355/2016

G & D Refrigerator v JPB Mulder, Case Number: HAC05/16, SCA Case number1307/16)

Kubjana v The State, Case Number: 166/2016

Judgments overturned on appeal:

Maake v Chemfit (Pty) Ltd (Case no: HCAA04/18)

DPP v Motloutsi ((Case no: 527/18 – sentence only)

R.S Baloyi v The State (Case no:1152/19 – sentence and whether the State established whether murder was premeditated)