

APPLICANT: MS ANTOLIZE LAMMINGA

COURT FOR WHICH APPLICANT APPLIES: THE LIMPOPO DIVISION OF THE HIGH COURT OF SOUTH AFRICA AND THE MPUMALANGA DIVISION OF THE HIGH COURT OF SOUTH AFRICA, MBOMBELA & MIDDELBURG

The JSC's shortlist issued on 12 August 2021 indicates that the applicant is a candidate for both the Limpopo and the Mpumalanga Divisions. Neither the letters of nomination by Mr Mahundla and The Association of Regional Magistrates of South Africa, nor the candidate's acceptance of her nomination (letter to the Secretariat of the Judicial Service Commission) makes any reference to a nomination for appointment as Judge in the Mpumalanga Division of the High Court.

1. The candidate's appropriate qualifications

1.1 The candidate is duly qualified, having obtained the following degrees:

1.1.1 BJuris (University of South Africa) on 26 April 1993; and

1.1.2 LLB (University of South Africa) on 24 April 1996.

1.2 The candidate is experienced, having worked as:

1.2.1 An administration clerk at the Department of Justice (February 1992 to November 1992);

1.2.2 An estate controller at the Department of Justice (November 1992 – April 1995);

1.2.3 A state prosecutor in the Department of Justice (May 1995 – November 1997);

- 1.2.4 Articled clerk at Thomas Swanepoel Inc (January 1998 – March 2000);
- 1.2.5 Attorney at Thomas Swanepoel Inc (March 2000 – July 2001);
- 1.2.6 Attorney at Lamminga Attorneys (August 2001 – October 2003);
- 1.2.7 Magistrate in the Department of Justice and Constitutional Development (October 2003 – December 2008);
- 1.2.8 Aspirant Regional Magistrate in the Department of Justice and Constitutional Development (January 2009 – September 2013), and
- 1.2.9 Regional Magistrate in the Department of Justice and Constitutional Development (September 2013 to date).

2. Whether the candidate is a fit and proper person

- 2.1 The candidate is a fit and proper person, because:
 - 2.1.1 The Magistrates Commission of the Republic of South Africa issued a certificate of good standing in support of her application, dated 2 July 2021, confirming there was - to date of the issuing of that certificate - no disciplinary matters or investigations for any misconduct pending against the candidate;
 - 2.1.2 The Legal Practice Council issued a certificate of good standing on 22 June 2021, certifying that the candidate:

- 2.1.2.1 was duly admitted and enrolled as an attorney of the High Court of South Africa (Gauteng Division, Pretoria) on 16 March 2000;
- 2.1.2.2 her name has not been removed from the Roll of Attorneys,
- 2.1.2.3 she had not been suspended from practice and
- 2.1.2.4 there were at the date of the signing of the certificate, no proceedings pending by the Legal Practice Council to strike her name from the Roll or to suspend her from practice.
- 2.1.3 No disciplinary proceedings or investigations for any misconduct has ever been initiated by any employer against the candidate.
- 2.1.4 The candidate has been extensively involved in training of Regional Court Magistrates and Assistant Registrars.
- 2.1.5 There do not appear to be any:
 - 2.1.5.1 Complaints or disciplinary proceedings pending against her in her professional capacity;
 - 2.1.5.2 Criminal or civil litigation pending against her.
- 2.1.6 The candidate has been a member of the Association of Regional Magistrates of South Africa (**ARMSA**) since 2009 and served as the Provincial Chairperson of ARMSA from 2009 until March 2018.

2.1.7 She has been a member of South African Judicial Education Institute (**SAJEI**) Curriculum Development Task Team and was the co-ordinator for the development of training material for the aforementioned course.

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

3.1 The candidate is a white woman.

3.2 The candidate is seeking appointment to the Limpopo Division of the High Court. Currently no **white** women judges in this Division, and as such the candidate's appointment would improve the specific demographic composition of the Limpopo Division of the High Court.

3.3 Her appointment will in that context contribute to reflect the racial and gender composition of South Africa

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

4.1 The candidate is well-versed in the law, having obtained the BJuris and LLB degrees in 1993 and 1996 respectively.

4.2 She has 24 years post graduate experience in various spheres of the legal profession in South Africa, which includes 2.5 years' experience as a prosecutor, 2 years as an article clerk and 3.5 years post-admission as an attorney. She left practice in 2003, whereafter she joined the judiciary as a Magistrate.

4.3 The candidate has attended numerous courses, workshops and seminars in advancement of her knowledge and abilities in the legal field.

- 4.4 She has further also facilitated various **SAJEI** courses on Civil Adjudication, one on the evidentiary aspects of SORMA and one Regional Court Criminal Refresher Course.
- 4.5 Although the candidate left practice to further her career as a Magistrate in 2003, she has practiced in different fields of the law and has given judicially sound judgments as an acting judge.
- 4.6 The candidate has periodically acted as Judge in the High Courts of the Gauteng and Limpopo Divisions during 2014, 2015, 2016, 2017 and 2019, for a total of four and a half terms (39 weeks).
- 4.7 She has sat in both civil and criminal courts, adjudicating criminal trials, appeals and reviews, as well as civil trials, civil appeals and petitions. She has also adjudicated motions: unopposed, opposed and urgent.
- 4.8 In respect to her 6 (six) years of practicing in the legal field, her litigation experience appears to have been mostly in the fields of criminal law (30%) and personal injury claims (35%) with some litigation in the field of the law of contract (20%).
- 4.9 Although it is indicated that the candidate is not experienced in constitutional law, she did deal with the constitutionality of the provisions of section 7(1) of the Recognition of Customary Marriages Act 120 of 1998 (“the Recognition Act”), which she found to be inconsistent with the Constitution and invalid: see her judgment in the case of *Ramuhovhi and Another v The President of the Republic of South Africa and Others* 2016 (6) SA 210 (LT), where she finds that s 7(1) of the Recognition Act discriminated unfairly against women in

pre-Act polygamous customary marriages on the basis of (a) gender; and (b) race, ethnic or social origin.

- 4.10 The Constitutional Court subsequently confirmed the High Court's declaration of constitutional invalidity of s7(1) of the Recognition Act, despite it disagreeing as to the appropriate remedy.¹
- 4.11 She has experience as Magistrate, adjudicating criminal, civil and family law case since 6 October 2003 until 31 December 2008 (5 years).
- 4.12 Further she has vast experience as a Regional Magistrate, adjudicating criminal cases since 1 January 2009, and civil and family law matters since 9 August 2010, to date.

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

- 5.1 The candidate appears to be committed to the values of the Constitution, which is apparent among others, from her involvement in:
 - 5.1.1 **ARMSA**, as the chairperson of the wellness portfolio, and currently still as member of the National Executive of that organization.
 - 5.1.2 She has repeatedly facilitated the training of Regional Magistrates and Aspirant Regional Magistrates under the auspices of **SAJEL**.
 - 5.1.3 Inspiring junior colleagues through her knowledge, dedication and work ethic, as is evident from the letter of nomination by Mr Tsakani Ulenda Mahundla, a practicing attorney practicing under

¹ *Ramuhovhi and Others v President of the Republic of South Africa and Others* 2018 (2) SA 1 (CC)

the name of Mahundla Attorneys at Sasekani Giyani in the Limpopo Province.

- 5.1.4 Mr Mahundla specifically highlights the candidate's efforts in taking time to teach him in the preparing of cases. He refers to her as a mother, advisor and mentor.

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

- 6.1 One judgement given by the candidate has been taken on appeal: *Limpopo Legal Solutions & Others v Vhembe District Municipality and Others* [Limpopo Local Division, Thohoyandou CASE No 430/2016 (02 June 2016)] was taken on appeal to the Constitutional Court: *Limpopo Legal Solutions and Others v Vhembe District Municipality and Others* (CCT159/16) [2017] ZACC 14; 2017 (9) BCLR 1216 (CC) (18 May 2017) where leave to appeal the High Court's order dismissing the application was refused. The High Court's order in respect to costs was however set aside as the High Court was found to have misdirected itself by not applying the *Biowatch* principle.
- 6.2 The candidate's judgment in the case of *Ramuhovhi and Another v The President of the Republic of South Africa and Others* 2016 (6) SA 210 (LT), finding that s 7(1) discriminated unfairly against women in pre-Act polygamous customary marriages, was confirmed by the Constitutional Court. The Constitutional Court however disagreed as to the appropriate remedy.²

² *Ramuhovhi and Others v President of the Republic of South Africa and Others* 2018 (2) SA 1 (CC)

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

7.1 Although the candidate has not practiced as a lawyer since 2003, she nevertheless is obviously a proficient lawyer, as may be garnered from:

7.1.1 Her 18 years judicial experience as Magistrate (October 2003 until December 2008) and as Regional Magistrate (January 2009 to date).

7.1.2 Before so being appointed as Magistrate, she gained experience in the practice of law, comprising the following:

7.1.2.1 2 years and 6 months as prosecutor (May 1995 to November 1997); she was appointed the first specialist fraud prosecutor in a district court and was awarded Prosecutor of the Year in 1996;

7.1.2.2 5 years and 9 months as article clerk and attorney (January 1998 to October 2003);

7.1.2.3 During her employment as Magistrate the candidate attended to all civil trials and motions in the Ritavi Magistrates' Court, as well as criminal court cases, domestic violence protection order applications, maintenance enquiries and children's court matters. She provided training and assistance to clerks of the court and volunteer personnel at the office.

7.1.2.4 As Regional Magistrate in the Regional Division Limpopo, situated in Tzaneen, the candidate adjudicated

in criminal as well as civil cases. She assisted with the training of Assistant Registrars and was facilitating at the **SAJEI** Regional Court Course: Civil Adjudication in the Regional Court.

7.1.2.5 The candidate was a member of the **SAJEI** Curriculum Development task team and coordinator for the development of training material for Regional Magistrates.

7.1.2.6 She also facilitated Decentralized Civil Adjudication Workshops in Limpopo, KZN and the Eastern Cape Provinces.

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 she was a facilitator of various workshops for Regional Magistrates and assisted in the development of training material for Regional Magistrates;

8.1.2 Her well-defined and accessible judgments;

8.1.3 The manner in which she drafted her submission in support of her nomination.

9. The candidate's ability to produce judgments promptly

9.1 The candidate is able to produce judgments promptly.

9.2 The candidate has held acting appointments in the Gauteng Division (North and South Gauteng) and Limpopo Division of the High Court for 39 (thirty-nine) weeks between 2014 and 2019, and there is not a single judgment outstanding.

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 Question not answered

13. The candidate's administrative ability

13.1 The candidate is administratively proficient, as may be gleaned from her career record and more specifically her having been awarded the Prosecutor of the Year award, Mr Mahundla's recommendation as per his letter of nomination, and her duties as Magistrate in assisting the Head of Office with the judicial administration of the Ritavi Magistrates' Court.

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

14.1 The candidate's integrity and ethical behavior are beyond question.

14.2 Mr Mahundla, now an attorney practicing under the name of Mahundla Attorneys, specifically refers to the candidate's dedication to and excellence in her work, her preparedness before trials as prosecutor, her ability to provide work of high standard in difficult circumstances and her practical presentation with reference to case law when facilitating training on Act 32 of 2007. She further had assisted him when he was an acting Magistrate in the writing of judgments and in the drafting of heads of argument whilst he was an attorney.

14.3 Mr Mahundla specifically mentions the candidate's passion to transfer skills through offering training and guidance, as grounds for his assessment that she is a fit and proper person to be appointed as Judge of the High Court.

15. The candidate's judicial temperament

15.1 The candidate's integrity is beyond question, having regard to her appointment as magistrate, regional magistrate and acting judge 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 her involvement in the facilitation of the training of Magistrates and Acting Registrars, mentioned above, as well as her willingness to take the time to assist practitioners new to the legal arena with practical advice on how to prepare for a case, and the importance of being so prepared.

16.2 It is evident the candidate had spent considerable time on the training of magistrates and has a passion for the transfer of skills.

17. The candidate's potential

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

17.2 The candidate's age, to wit 51 years, should not inhibit her ability to reach her full potential before reaching retirement age.

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;

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

18.1.3 That the judiciary is committed to transformation by the appointment of a female to the bench.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED:

Reported decisions

Ramuhovhi and Another v The President of the Republic of South Africa and Others
2016 (6) SA 210 (LT) delivered on 1 August 2016.

Limpopo Legal Solutions and Others v Vhembe District Municipality and Others
((Limpopo Local Division, Thohoyandou Case No 430/2016 (2 June 2016)).

Absa Bank Ltd v Jill Wesley Kleynhans N.O and Others (Limpopo Division, Polokwane
Case No 1135/2017, delivered on 12 September 2019.

S v Sebe (Limpopo Local Division, Thohoyandou Review Case No 69/2016
delivered on 15 June 2016).

Ndove v S (Limpopo Local Division, Thohoyandou Appeal Case No A01/2016,
delivered on 3 June 2016).

S v Mbele (Gauteng Local Division, Johannesburg Review Case No 12/15 (VSH
89/14) delivered on 26 March 2015).

Unreported decisions

Siaga v S (North Gauteng High Court, Pretoria, Appeal Case No A250/2013
delivered on 28 May 2015).

S Nevhutanda (Limpopo Local Division, Thohoyandou Review Case No 48/2016
delivered on 15 June 2016).

Nyamande and Another v Nyamande & Another (Limpopo Local Division,
Thohoyandou Case No 756/2015, delivered on 13 June 2016).

Thulamela Municipality and Another v Ramulifho and Another (Limpopo Local Division, Thohoyandou Case No 987/2015 delivered on 14 June 2016).

S v Mabasa (Limpopo Local Division, Thohoyandou Review Case No 69/2017, delivered on 25 August 2017).

University of Venda v Mathivha and Others (Gauteng Division Pretoria functioning as the Limpopo Local Division, Thohoyandou Case No 684/2012, delivered on 27 August 2015).

The Law Society of the Northern Provinces v Hotane (North Gauteng High Court, Pretoria Case No 67016/2013, delivered on 26 May 2014).

Mbambo v S (South Gauteng High Court, Johannesburg Appeal Case No A532/2013).

Mokoena v S (South Gauteng High Court, Johannesburg Appeal Case No A277/2013 delivered on 15 May 2014).

Judgments upheld on appeal

Limpopo Legal Solutions v Vhembe District Municipality (2016) ZALMPTHC 20 (save for the Costs order which was set aside and replaced).

Judgments overturned on appeal

None.