

APPLICANT: JUDGE JOSEPH JAMELA MHLAMBI

**COURT FOR WHICH CANDIDATE APPLIES: ELECTORAL COURT,
JUDGE MEMBER**

1 The candidate's appropriate qualifications

1.1 B. Proc. – 1986 (University of South Africa)

1.2 Certificates in Business Rescue – 2016 (Unisa)

1.3 Certificate in Corporate Law – 2017 (Unisa)

2 Whether the candidate is a fit and proper person

2.1 The candidate has been in the legal profession, first as an articled clerk since 1984 and as an Attorney since 1987. During 1989 the candidate opened his own firm and practiced under his own name until 1996, whereafter he became a partner to the firm Mhlambi & Hewetson and a director in Mhlambi Incorporated during 1999. The candidate practiced law as an attorney until 2016 when he was appointed as a Judge in the Free State Division from January 2017 since to date.

2.2 No disciplinary proceedings have been held against the candidate. There is no reason to find that the candidate is not a fit and proper person.

2.3 The candidate served as an Acting Judge ever since 2012 on frequent occasions in the Free State as well as in the North and South Gauteng Divisions of the High Court and as an Acting Judge in the Lesotho High Court. The candidate was appointed as a Judge in January 2017.

2.4 It is also of importance to note that the candidate participated in the structures that gave rise to the establishment of the Law Society of South Africa and was involved in the transformation of the Law Society of the Orange Free State into the Free State Law Society, in which society the candidate served as President on two occasions.

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

3.1 No published information could be found on the current composition of the Electoral Court.

3.2 The candidate is a black man.

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

4.1 The candidate has ample experience in both civil and criminal law having the wealth of experience of appearing in courts for more than 34 years. He has also sat as a presiding officer for more than four years, excluding the periods spent as an acting judge.

4.2 A scrutiny of the candidate's judgments reveals that the candidate has sound knowledge of the law, including constitutional law.

4.3 The candidate has dealt with many different spheres of the law as is evident from the judgments delivered by him, having ample experience in both civil and criminal matters.

4.4 The cases referred to in the candidate's application touch on the interpretation of statutes which must ultimately meet with the principle of legality as entrenched in the Constitution.

4.5 Three of the judgments by the candidate were unsuccessfully appealed against and one of the judgments was unsuccessfully taken on rescission, being the matter of *Joseph v Joseph* (939/2014) [2020] ZAFSHC 146 (2 July 2020).

4.6 In a judgment not reflected in the candidate's application, an unsuccessful appeal was made against his judgment in the matter of *Commissioner: South African Revenue Services v Alves* (A194/2019) [2020] ZAFSHC 123 (27 July 2020): the Full Court of the Free State Division dismissed the appeal and held that the candidate interpreted provisions of the Customs and Excise Act, 1964 correctly.

5 The candidate's commitment to the values of the constitution

5.1 The candidate's experience as legal practitioner and as Judicial Officer, as set out in his application, relates to civil work as well as criminal work. The candidate's judgments depict his understanding of the law. He has narrated and evaluated the evidence placed before him in detail and has applied the law coherently and succinctly.

5.2 Only one of the candidate's judgments have been successfully appealed against. One of the candidate's judgments has been found upheld by the Supreme Court of Appeal in the matter of *Kalil N.O. v Mangaung Metropolitan Municipality* 2014 (5) SA 123 (SCA).

5.3 One of the candidate's judgments has been reported. (See: *Canton Trading 17 (Pty) Ltd v Hattingh NO* (1293/2018) [2019] ZAFSHC 250.) The said Judgment in Canton, although the matter deals with the Arbitration Act 42 of 1965, also grapples with the authority vested in

the courts by section 165(1) of the Constitution whereby judges wield tremendous power. The candidate refers to the matter of *Motswai v RAF* 2014 (6) SA 360, within the Judgment, wherein the said Constitutional principle is discussed. The aforesaid relates to the candidate's knowledge of the Constitution and his appropriate application of same.

6 Whether any judgments have been overturned on appeal

6.1 *Director of Public Prosecutions, Free State v Mashune* (675/17) [2018] ZASCA 60 (18 May 2018) - the sentence was increased.

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

The candidate's professional experience can be summarized as follows:

7.1 The candidate commenced his interest in the law by serving as a court interpreter from 1980 - 1984.

7.2 The candidate then practiced as an articled clerk from 1984 – 1987 and progressed to being appointed as a professional assistant at the same firm from 1987 - 1989.

7.3 In 1989 the candidate started a practice in the predominantly white central business district of Welkom, braving the existing segregation laws in the Free State at that time to announce his arrival as a competent, fit and proper attorney whose doors were open for the masses of people in the Goldfields of who had not been granted access to the courts up to that stage in the beginning of the 1990s.

7.4 The candidate thereafter joined two other firms as director/partner from 1996 to 2016 up to the date of his appointment. The candidate's

experience as a senior leading attorney in the Goldfields for more than 30 years stands uncontradicted.

8 The candidate's linguistic and communication skills

8.1 Based on the language used in the candidate's Judgments and his communication skills used during Court hearings, the candidate has very good linguistic skills.

8.2 From experience in appearing before the candidate, it is well-known that the candidate is equally conversant in Afrikaans, English and Sesotho and has been known to assist translators from time to time with the correct translation when they do not correctly translate evidence.

9 The candidate's ability to produce judgments promptly

9.1 The candidate's judgments have been delivered with admirable promptness. The candidate furthermore has only one reserved judgment at the time of his application.

10 The candidate's fairness and impartiality

10.1 Based on the candidate's performance as Judge, the candidate has always appeared fair and impartial, and his judgments reflect same.

10.2 No adverse comments have been received in this regard.

11 The candidate's independent mindedness

11.1 The Judgments delivered by the candidate display an adequate degree of independence and open mindedness.

12 The candidate's ability to conduct court proceedings

12.1 The candidate has served as Acting Judge on many occasions before being appointed as Judge of the High Court, Free State Division and has been a Judge for more than four years. The candidate has presided over many different civil and criminal matters and conducts court proceedings with efficacy.

12.2 Members from the Free State Bar who have appeared before the candidate confirm the candidate's ability to conduct court proceedings effortlessly. The candidate has been described as a Judge who is always well prepared for matters and who has read the papers and interacts well with counsel appearing before him.

12.3 The candidate approaches issues raised by parties in a practical manner, whilst still employing the necessary legal prescripts.

13 The candidate's administrative ability

13.1 The fact that the candidate practised as an Attorney for many years, was appointed as the Chairperson of the Free State Law Society twice and acted on several stints speaks volumes of his administrative ability.

14 The candidate's reputation for integrity and ethical behaviour

14.1 The candidate is well respected by his peers but also by those who have appeared before him.

14.2 The candidate's rise through the proverbial ranks of the law, commencing as a translator to being a well-respected Judge is proof of

the integrity that he has always displayed, but also of the reputation that he has installed over years as an absolutely ethical jurist.

14.3 No adverse comments have been received regarding the candidate.

15 **The candidate's judicial temperament**

15.1 The members of the Free State Bar commend the candidate for his judicial temperament. The candidate's well-known quick-witted responses during trials place parties and counsel at ease when tempers rise.

15.2 The candidate treats everybody that appears before him with respect; is approachable and engages with parties appearing before him with the utmost courtesy.

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

16.1 The candidate has demonstrated a high level of commitment to human rights and the values and needs of the community.

16.2 This is demonstrated by the fact that the candidate braved a hostile, white-dominated legal fraternity in the Welkom-area during the late 1980s to open the doors of a law firm which granted access to all.

16.3 In the judgment of *The Residents of Moodraai Fram, Sasolburg v Metsimaholo Local Municipality and Others*, Case No. 4902/2019, the candidate gave an interpretation to the definition of “*potential unlawful occupier*” which had due regard to the values of the community, allowing simple justice to be done between the parties.

16.4 The candidate is nominated by the National Association of Democratic Lawyers, Bloemfontein Branch, and this is indicative of the recognition that he has deserved over the years for his leading role in advancing basic human freedoms and rights in the spheres where the candidate could assert his knowledge.

17 The candidate's potential

17.1 Taking into account the years that the candidate has spent as an Acting Judge and as Judge of the Free State High Court, there is no reason not to believe that the candidate has the potential to be an excellent appointment to serve in the Electoral Court. There is no doubt that he will contribute well to this position.

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

18.1 The candidate is a well-respected, black African man who worked his way up from being a translator to being called to the Bench. The public at large as well as the legal fraternity itself will most certainly welcome his appointment to the Electoral Court and will see the appointment as recognition of the demographic of the Republic of South Africa.

18.2 The candidate has contributed to transformation and has a thorough knowledge of the law.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions:

Kalil N.O. v Mangaung Metropolitan Municipality 2014 (5) SA 123 (SCA)

Unreported decisions:

DPP, Free State v Mashune [2018] ZASCA 60 (19 May 2018)

A Du Preez v Thweo Development and Consulting FB Case No: 2304/2019.
Application for Special Leave to The Supreme Court of Appeal Dismissed In
SCA Case No. 884/2019

Eskom Holdings (SOC) Ltd v Maluti-A-Phofung Municipality FB Case No.
2719/2020

Letsatsi v S (A21/2020) [2020] ZAFSHC 112 (25 June 2020)

Ramohai and Others v Precinct Financial Consultants (Pty) Ltd and Others
(1071/2019) [2019] ZAFSHC 47 (26 April 2019)

F; Mokoena and Others v Magashule and Others (2555/2016) [2017] ZAFSHC 224
(14 December 2017)

Hlalele v Road Accident Fund (3329/2017) [2019] ZAFSHC 97 (24 June 2019)

Judgments upheld on appeal:

Eskom Holdings SOC Ltd v Maluti-A-Phofung (SCA Case No 117/2021)

DPP, Free State v Mashune [2018] ZASCA 60 (18 May 2018)

Judgments overturned on appeal:

DPP, Free State v Mashune [2018] ZASCA 60 (18 May 2018)