

APPLICANT: JUDGE LEBOGANG TEMPERANCE MODIBA**COURT FOR WHICH CANDIDATE APPLIES: ELECTORAL COURT,
JUDGE MEMBER****1. The candidate's appropriate qualifications**

1.1 The candidate holds a BProc degree from the University of the Witwatersrand, which she obtained in 1994.

1.2 The candidate also holds a Master of Laws (LLM) degree in Human Rights and Constitutional Practice from the University of Pretoria which she obtained in 1997.

1.3 The candidate holds a Master of Public Administration degree from Harvard University, which she obtained in 2005. The candidate completed the Edward Mason Programme in Public Policy at the same institution in 2005.

2. Whether the candidate is a fit and proper person

2.1 There nothing to suggest that the candidate is not a fit and proper person.

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 woman.

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

4.1 The candidate has displayed in both her judgments and her professional life, a commitment to the values of the Constitution.

4.2 She has especially demonstrated a commitment towards advancing the cause of women and children in our society.

4.3 Her application demonstrates a consistent, ongoing and significant endeavour on her part to advance aspects of the law, which are rooted in the values of the Constitution. She has published works in relation to, *inter alia*, the law relating to abuse of women, domestic violence and Child Law.

5. The Candidate's commitment to the values of the Constitution

5.1 The candidate's commitment to the values of the Constitution is apparent from her judgments.

5.2 To this should be added that the candidate acted as the instructing attorney for the amicus curiae in *Van der Merwe v Road Accident Fund* (2006) 4 SA 230 (CC) which dealt with the prohibition of patrimonial damages claims between spouses married in community of property. This case resulted in section 18 of the Matrimonial Property Act being declared invalid and inconsistent with the Constitution. This made it possible for victims of domestic violence to sue their abusive spouses for patrimonial damages resulting from injuries sustained at their hands.

6. Whether any judgments have been overturned on appeal

6.1 Only four judgments of the candidate have been found that were overturned on appeal.

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

7.1 The candidate was an attorney for eighteen years and during that time she played a role in crafting public policy, drafting of legislation, and participating in key committees on the Law Reform Commission dealing with important legislation related to women and children.

7.2 The applicant has extensive experience, brief examples of which are:

7.2.1 Providing legal support to the Department of Justice and Constitutional Development to finalise the National Policy Framework on Sexual Offences;

7.2.2 Preparing a parliamentary report on the implementation of the Criminal Law Amendment Act (Sexual Offences and Related Matters).

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

8.1 The candidate has produced well-structured and clearly written judgments.

8.2 The candidate uses a reader friendly structure that is simple to follow and understand even for the lay person who is unrepresented.

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

9.1 There is no indication that the candidate has failed to deliver her judgments timeously.

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

10.1 Based on the judgments analysed, it appears that the candidate is fair and impartial and applies the law without fear or favour.

11. The candidate's independent mindedness

11.1 The candidate appears to be independent-minded and does not hesitate to speak out on unethical and criminal behaviour as set out in paragraph 7 above.

12. The candidate's ability to conduct court proceedings

12.1 No adverse comments have been received.

13. The candidate's administrative ability

13.1 The candidate was a successful attorney and, given the multitude of activities she has involved herself in, her numerous publications and achievements, it is reasonable to assume that she has a strong administrative ability.

13.2 She has furthermore served as a director in a government department and has a Master's Degree in Public Administration from Harvard University, which indicate professional administration abilities.

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

14.1 No adverse comments have been received.

15. The candidate's judicial temperament

15.1 No adverse comments have been received. From the reviews of her judgments, it appears that she is fair, firm and independent-minded, and not swayed by threats.

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 shown a commitment to serve by filling various leadership roles within her community.

16.2 We refer also to what is set out above in relation to the candidate's commitment and application of the values enshrined in the Constitution.

17. The candidate's potential

17.1 The candidate has demonstrated her knowledge and ability in a variety of legal fields. With her background, clear commitment, and principled approach to the legal profession, we are of the view that she has significant future potential to further develop as a judge.

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

18.1 The candidate was raised in Alexandra, and represents a demographic that was historically not privileged or represented within the judiciary.

18.2 Her appointment would demonstrate to the community at large that, with effort and commitment, achievements such as an appointment to the Electoral Court are within reach of appropriately qualified and skilled South Africans, regardless of gender or race or social background.

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

Kloberie v Absa Bank Limited 2013 JDR 1915 (GSJ) (Condonation, Rescission)

JSS Industrial Coatings CC v Inyatsi Construction (South Africa) (Pty) 2013 JDR 1902 (GSJ) (Exceptions, Amendment of Pleadings)

Veolia v Water Solutions and Technologies (Pty) Ltd 2013 JDR 1810 (GSJ) (Rule 33(4) Separation)

Logwin Air and Ocean Simesonke v JNB Ceramica CC 2013 JDR 1734 (GSJ) (Contract Formation)

Mabeta v Medshield Medical Scheme 2014 JDR 2626 (GP) (Exceptions)

L v M 2014 JDR 2603 (GP)

Scholtz v Marloth Park Client and Business Accommodation CC 2014 JDR 2601 (GP)

Bukula v Nkosi 2014 JDR 2392 (GJ)

Life Healthcare Group (Pty) Ltd v JMS 2014 JDR 2391 (GJ)

Yeni v De Kock 2014 JDR 2391 (GJ)

Ndola v Road Accident Fund 2014 JDR 2390 (GP)

Picota v Road Accident Fund 2014 JDR 2072 (GP)

Govan Mbeki Municipality v Ngomane 2014 JDR 2043 (GP)

Land and Agricultural Development Bank of SA v Flippen Beste Boerdery CC 2014 JDR 2010 (GP)

Guess NO v Pretoria Magistrate 2014 JDR 1983 (GP)

Kareeberg Home-Owners' Association v Donkerport Ontwikkelaars CC 2014 JDR 1977 (GP)

S v Sibeko 2014 JDR 1760 (GP)

Absa Bank Limited v Rabele 2014 JDR 1759 (GP)

Nedbank Limited v Finin 2014 JDR 1758 (GP)

Marumo v Minister Police 2014 JDR 1713 (GP)

Brightlight Co (Pty) Ltd v Sub Saharan Distributors (Pty) Ltd

State v Charles Thabane Case number SS36/2013 Gauteng Local Division. 2 September 2013

Judgments overturned on appeal:

Ngomane and Others v Govan Mbeki Municipality [2016] ZACC 31. (8 September 2016).

Minister of Safety and Security v Magagula (991/2016) [2017] ZASCA 40 (6 September 2017).

Johannesburg Society of Advocates v Edeling (326/2018) [2019] ZASCA 40 (29 March 2019)

Montanari v Montanari (1086/2018) [2020] ZASCA 48 (5 May 2020)