

**APPLICANT: ADVOCATE KEITUMETSE JOHANNA MOGALE**

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION OF  
THE HIGH COURT**

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

- 1.1. B.Proc (1996, University of the North);
- 1.2. LLB (2002, Vista University, Mamelodi Campus)

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

- 2.1. There is no evidence 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. There are currently 73 full time judges on the Gauteng bench, comprising (as far as could be ascertained):
  - 3.1.1. 22 black women (17 African, 3 Indian, 2 Coloured);
  - 3.1.2. 25 black men (18 African, 5 Indian, 2 Coloured);
  - 3.1.3. 13 white women; and
  - 3.1.4. 13 white men.
- 3.2. The candidate is a black woman.

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

- 4.1. There is no doubt that the candidate is well-versed in criminal law. The candidate indicates in her application, that she has devoted the overwhelming proportion of her practice to the field of criminal law and indicates this as 96%.
- 4.2. Other fields of law are indicated with low percentages and this is unfortunately reflected in the candidate's judgments, dealing with civil law.
- 4.3. It is regrettably evident from some of the civil law judgments penned by the candidate, that criminal law evidentiary principles were applied in circumstances where it was not appropriate and evidence was not dealt with appropriately in a civil law context. An example of this is the judgment attached to the candidate's application of *Van Greunen v RAF*.
- 4.4. While the candidate's criminal law experience may be commendable, it is of concern that the candidate has drastically less civil law experience which, if elevated, she will undoubtedly be confronted with.
- 4.5. The concern, then, is that if the candidate adopts criminal law standards into civil law matters, important constitutional principles (and the application thereof) would be imperilled necessitating litigants to either take matters on appeal or be stuck with inappropriate and inapposite consequences.

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

5.1. The candidate's application doesn't disclose particular commitment to the value of the Constitution.

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

6.1. Although the candidate herself indicates that some of her judgments have been taken on appeal, no successful appeals against her judgments were found.

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

7.1. While the candidate's professional experience (primarily in criminal matters) is to be commended, and her various acting judicial stints are to be applauded, the reservation already expressed is repeated.

7.2. All of the candidate's judgments surveyed (and available from Saflii) span the period 1 June 2020 to 19 August 2021.

7.3. Thus, although the candidate has acted for a far longer period as a District Magistrate, the candidate's time as an Acting Judge appears to be significantly less.

7.4. It is also notable that the candidate has spent the majority of the last two years acting as an Acting Judge. It appears that the candidate may have essentially given up private practice to become a "full time" Acting Judge.

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

8.1. The candidate's linguistic and communication skills are below average.

8.2. There are many instances of judgments that are replete with grammatical errors and spelling mistakes. This is also true for the candidate's application.

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

9.1. From the judgments surveyed, it seems that the candidate delivers judgments within seven weeks on average. This is highly commendable.

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

10.1. It is not in doubt that the candidate attempts to be fair and impartial in her judgments, but a misunderstanding of evidentiary principles in civil law will lead (even if inadvertently) to undesirable results reflected in judgments.

10.2. No adverse comments have been received regarding the candidate's fairness and/or impartiality.

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

11.1. There is nothing to suggest that the candidate is not independently minded.

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

12.1. There is nothing to suggest that the candidate is not able to conduct Court proceedings suitably.

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

- 13.1. Save to record the candidate's own disclosure regarding her unheard matters at paragraph 9.6 of her application (with no details provided), there is nothing to suggest that the candidate does not have appropriate administration skills.

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

- 14.1. There is nothing to suggest that the candidate does not enjoy a reputation of integrity and high ethical standards.

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

- 15.1. There is nothing to suggest that the candidate does not possess a suitable judicial temperament.

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

- 16.1. The candidate specialises in the field of criminal law and through her judgments in this field, as well as her work history, her commitment to human rights is reflected.
- 16.2. The candidate also served as a hospital board member for three years from 2015 to 2018 for the North West Department of Health, Brits Hospital, which reflects her commitment to the needs of the community.

**17. The candidate's potential**

17.1. The candidate displays potential as a judicial officer, in the criminal sphere.

17.2. The candidate might show promise as a more well-rounded Judge if her appointment were deferred to a later date so that she could gain suitable additional experience to bolster her application.

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

18.1. The candidate is an experienced litigator, but given the limited scope of that experience, the candidate's appointment may send the wrong message to the community at large.

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

### **Reported decisions**

None found.

### **Unreported Decision**

*(Attached to application) The State v S W Matshaya* (sentence handed down September 2020).

*(Attached to application) S M van Greunen v Road Accident Fund* (date 6 January 2021).

*(Attached to application) K L Mothibi v Health Professions Council of South Africa and Another* (date of judgment 12 April 2021).

*Mkhize v S* (A040/2019) [2020] ZAGPJHC 336 (24 June 2020).

*Khoza v S* (A45/2020) [2020] ZAGPJHC 319 (1 June 2020).

*Mokoena v S* (A859/2013) [2020] ZAGPPHC 504 (25 June 2020).

*Raborife v Paledi and Another* (22575/18) [2020] ZAGPJHC 397 (5 November 2020).

*Monametsi v Miway Insurance* (83091/2019) [2021] ZAGPPHC 478 (22 July 2021).

*Monametsi v Miway Insurance* (83091/2019) [2021] ZAGPPHC 478 (22 July 2021)  
[94%]

*Nkosi and Another v S* (A512/2017) [2020] ZAGPPHC 502 (22 July 2020) [94%]

*Firststrand Bank Limited v Hardijzer* (85463/2016) [2020] ZAGPPHC 339 (8 July 2020) [94%]

*Lombard v Road Accident Fund* (47666/2017) [2020] ZAGPPHC 335 (3 July 2020) [94%]

*Ngobeni v Government Employees Pension Fund* (2119/2018) [2021] ZAGPPHC 218 (29 March 2021) [88%]

*Cawood obo Abrahams v Road Accident Fund* (82302/2016) [2020] ZAGPPHC 535 (19 June 2020) [82%]

*Firststrand Bank Limited v KTV Properties (Pty) Ltd and Another* (19553/2019) [2020] ZAGPJHC 395 (3 December 2020)

*Helios Petroleum (Pty) Ltd v BP Southern Africa (Pty) Ltd and Another* (9074/2020) [2021] ZAGPPHC 223 (3 May 2021)

*Mkhwanazi and Another v Standard Bank of South Africa SOC Limited* (40804/2012) [2021] ZAGPPHC 169 (29 March 2021)

*VJ Logistics Services (Pty) Ltd and Others v Fuchs Lubricant South Africa (Pty) Ltd* (43596/2019) [2020] ZAGPJHC 396 (4 December 2020)

*Jansen van Vuuren v Member of the Executive Council for Health, Gauteng Province* (13438/2018) [2021] ZAGPPHC 548 (19 August 2021)

**Judgments upheld on appeal:**

None found.

**Judgments overturned on appeal:**

None found.