

**APPLICANT: MS SUNGAREE PATHER**

**COURT FOR WHICH CANDIDATE APPLIES: ELECTORAL COURT  
(NON-JUDGE MEMBER)**

**1 The candidate's appropriate qualifications**

1.1 B.A – 1975 (University of Durban-Westville)

1.2 B.PROC – 1978 (UNISA)

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

2.1 The candidate has been in the legal profession for quite a while and has been appointed to the Electoral Court since 2013 although her CV does not contain detail in this regard.

2.2 The candidate has no disciplinary matters against her, and this committee is not aware of any adverse comments that were received.

2.3 The applicant is therefore considered to be fit and proper.

**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 of Indian descent.

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

4.1 The candidate has vast experience of more than 35 years in the law, in which times she served articles, was involved in all types of legal matters in practice, served as a Commissioner at the CCMA, mediated and arbitrated labour disputes and even served on the Special Pensions Appeal Board.

4.2 In such a wide practice, the Constitution plays a large role in the dispensing of justice, and it is believed that the candidate upheld the values instilled upon legal practitioners at all times.

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

5.1 The candidate's experience as legal practitioner already commenced during 1976 and expanded over the labour and electoral fields of the law, apart from her general practice.

5.2 The candidate has specific experience in electoral matters, where the constitution is the benchmark to be used in the measurement of legality.

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

6.1 None could be found.

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

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

7.1 The candidate commenced her career, serving articles until mid-1979. She then practiced as a professional assistant, and then served for 10 years as a commissioner in the CCMA until 2006.

7.2 From 2006, the candidate was elevated to the position of a Managing Commissioner until 2011.

7.3 The candidate served as an Acting judge of the High Court during 2002 and 2017 and as a judge in the Land Claims Court during 2005-2006 and the Labour Court during 2011 and during 2014-2015.

7.4 The candidate also has specific relevant experience, having served on the Electoral Court from 2013 to 2017.

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

8.1 The candidate's interview in the JSC was considered and from that it was established that she has very good linguistic and communication skills, despite the sparsity of information in her application.

8.2 It is expected that the candidate will be able to hand down judgments which are clear, to the point and crafted in a professional manner.

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

9.1 The candidate's judgments were all handed down timeously, except one judgment to which she made reference in her previous JSC interviews, which judgment took more than a year.

9.2 It is accepted that the candidate can produce judgments promptly.

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

10.1 Based on the candidate's performance as an Acting Judge, the candidate appears to be fair and impartial.

10.2 No adverse comments have been received in this regard.

**11 The candidate's independent mindedness**

11.1 No adverse comments have been received.

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

12.1 As an Acting Judge, the candidate has shown that she is able to conduct court proceedings.

**13 The candidate's administrative ability**

13.1 The candidate practiced as an Attorney for a number of years and was appointed on numerous occasions to chair proceedings and was required to produce judgments therefrom. It is thus expected that the candidate will have adequate if not proficient administrative abilities.

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

14.1 The candidate is well respected by her peers as is evident from the leadership roles that she plays.

14.2 The candidate had already earned the trust of the JSC during the past, which would indicate that she is perceived as a person of integrity and ethical behaviour.

14.3 No adverse comments were received.

**15 The candidate's judicial temperament**

15.1 One member of the Free State Bar appeared in a matter where the candidate formed part of the Court, namely *Freedom Front Plus v*

*Electoral Commission of South Africa and Another (005/2019) [2019] ZAEC 1 (14 May 2019).* The Court consisted of Mbha JA, WL Wepener, Lamont J, and the candidate as member. No adverse comments were received.

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

16.1 The candidate is involved in various areas where human rights and the values of the community play a role.

16.2 The candidate is expected to be committed to the upholding of the constitutional values guaranteeing human right and recognising the community's needs where this crosses her path.

**17 The candidate's potential**

17.1 The candidate seems eager to lend her experience in electoral matters yet again to the electoral court, should she be appointed to that court.

17.2 The candidate has potential to provide a valuable contribution to members who may be elected to the electoral court who are currently judges, but who may not have served in the electoral court before. The experience that the candidate brings in deciding matters which may be pivotal in a hotly contested election would make her appointment a natural choice.

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

18.1 The candidate is a well-respected female attorney and Labour expert with vast amounts of experience.

18.2 The public at large as well as the legal fraternity itself should welcome her appointment to the Electoral Court.

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

### **Reported decisions**

*United Democratic Movement and Others v Tlakula and Another* (EC 05/14) [2014]  
ZAEC 5; 2015 (5) BCLR 597 (Elect Ct) (18 June 2014) (Concurred with the judgment of Wepener J)

*African National Congress v Democratic Alliance and Another* (004/14 EC) [2014]  
ZAEC 4; 2014 (5) SA 44 (EC) (6 May 2014) (Concurring with the judgment of Mthiyane DP)

### **Unreported decisions**

None referred to in CV

### **Judgments upheld on appeal**

None referred to in CV

### **Judgments overturned on appeal**

None referred to in CV