

APPLICANT: ADVOCATE THOGOMELA COUTION TSHIDADA

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

1 The candidate's appropriate qualifications

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

1.2 LLB (University of Limpopo) 27 May 2008.

1.3 The candidate is experienced, having worked as follows:

1.4 Department of Justice & Constitutional Development:

1.5 Clerk of the Court (Gauteng Local Division, Johannesburg): 2001 - 2002;

1.6 junior judge's registrar (Gauteng Local Division, Johannesburg): 2002 – 2003;

1.7 senior judge's registrar (Gauteng Local Division, Johannesburg): 2004 – 2008;

1.8 High Court Criminal Trials Assessor (Gauteng Local Division, Johannesburg and Circuit Court): 2008 – 2009.

1.9 Member of the Johannesburg Society of Advocates: 07 December 2009 to date.

1.10 Acting Judge of the High Court – Limpopo Division, Polokwane:

1.10.1 10/10/2019 – 13/12/2019;

1.10.2 27/02/2020 – 30/06/2020;

1.10.3 01/02/2021 – 27/03/2021; and

1.10.4 01/07/2021 – 31/08/2021.

1.11 During his tenure as an acting judge, the candidate presided over both civil and criminal matters.

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 Legal Practice Council issued a certificate of good standing in respect of his application dated 21 June 2021;

2.1.2 The Johannesburg Society of Advocates issued a certificate of good standing in respect of his application dated 18 June 2021.

2.2 There do not appear to be any:

2.2.1 complaints or disciplinary proceedings pending against him in his professional capacity; or

2.2.2 criminal or civil litigation pending against him.

2.3 However, in 2014, the Johannesburg Society of Advocates (JSA) charged the candidate with overreaching during the period of 2011 to 2012. The candidate pled guilty and the JSA issued the candidate a warning and a fine.

2.4 The candidate is a member of the Black Lawyers Association (from 2018 to date) which aims to serve the legal fraternity and community, as well as to promote transformation.

- 2.5 The candidate has also presented a virtual lecture on “*Personal Injuries and Quantification of Damages in MVA (RAF) Claims*”, at a seminar hosted by the Black Lawyers Association, at Limpopo on 30 January 2021.

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

- 3.1 The candidate is a black man and his appointment will contribute to reflect the racial composition of South Africa, but not the gender composition of South Africa.

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

- 4.1 The candidate is relatively well-versed in the law, having been a legal practitioner for just shy of eleven years; his practice consisting predominantly civil matters – specifically RAF matters – and his having presided over both civil and criminal matters as an acting judge, continually during 2019 – 2021.

- 4.2 He has not published any written articles.

5 The candidate’s commitment to the values of the Constitution

- 5.1 The candidate is committed to the values of the Constitution, as it appears from the content of paragraph 2.1 above, among others, as well as his involvement in the following community and other organizations in the last ten years:

- 5.1.1 Tshiozwi Community Development Fund (2017 to date); and

5.1.2 Zakarriya Park Community Policing Forum (the duration of the candidate's involvement in such organization is unknown).

6 Whether any judgments have been overturned on appeal

6.1 The candidate is aware of two of his judgments – delivered in the High Court during his tenure as an acting judge – being taken on appeal.

6.2 One is pending before the Limpopo Division, Polokwane and the other is pending before the Supreme Court of Appeal.

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

7.1 It cannot be stated with absolute certainty whether the candidate is a proficient lawyer, as he has only been in practice for just shy of eleven years, and his practice consists predominantly of civil RAF matters. He has also only held the position of acting judge on four occasions over the last two years.

7.2 As a point of concern, the candidate possesses limited to no exposure to matters other than RAF matters and criminal matters. The candidate has never been exposed to constitutional litigation and has not specified the extent to which he has been exposed to contract law.

7.3 Also, the candidate has only appeared in the various High Courts (North and South Gauteng; North West and Limpopo (Thohoyandou and Polokwane)) and several Johannesburg Magistrate's Courts. It would appear that he has only attended at the Supreme Court of Appeal was with his mentor during his pupillage. The candidate has not appeared in the Constitutional Court.

8 The candidate's linguistic and communication skills

8.1 The candidate is relatively proficient in the English language and communication skills, as is apparent from the six written judgments attached to the candidate's application.

9 The candidate's ability to produce judgments promptly

9.1 It would appear that the candidate is able to produce judgments promptly – at the time of his application (dated 2 July 2021) the candidate has no part-heard matters pending, nor does he have any reserved judgments 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. The candidate's ability in respect of independent discourse reflects from the judgments attached to the application.

11.2 However, the candidate has only been practising as an Advocate since 2010 (a period of almost eleven years) which may be to his detriment in formulating decisions relating to matters involving complex legal principles and questions. This is so, with specific reference to the candidate's limited exposure, which consists of mainly RAF matters (70% of the candidate's practice). A mere 25% of the candidate's practice consists of administrative law, which percentage is representative of ten years in practice.

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

12.1 Not answered.

13 **The candidate's administrative ability**

13.1 The candidate is administratively proficient, as may be gleaned from his career record, and with specific reference to:

13.1.1 the positions he has held as a clerk of the High Court and Judge's Registrar;

13.1.2 High Court Criminal Trial Assessor;

13.1.3 his position as Acting Judge in the Limpopo Division Polokwane and Thohoyandou; and

13.1.4 his involvement as member of the Tshiozwi Community Development Fund.

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

14.1 As mentioned above, during 2014, an investigation was launched by the Johannesburg Society of Advocates (JSA) in respect of overreaching in RAF matters. The candidate was charged with overreaching during the period of 2011 – 2012, and he pleaded guilty to the charge. He was subsequently given a warning and fined.

14.2 No additional information is proffered with regards to any additional transgressions or complaints.

14.3 Despite the aforementioned transgression, the candidate has served as an Acting Judge in mainly the Limpopo Division, Polokwane, and Limpopo Local Division, Thohoyandou.

15 The candidate's judicial temperament

15.1 Not commented upon.

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 his involvement in the community activities as mentioned *supra*.

17 The candidate's potential

17.1 Despite the candidate's experience as an Acting Judge, the candidate respectfully does not, at this stage, possess the required exposure to different fields of law which would enable him to contribute to the legal system with legal acuity.

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

18.1 The candidate does not, at this stage, possess the necessary skill and experience which, should he be appointed, convey to the community at large that the judiciary consists of judges that are sufficiently experienced and proficient to effectively contribute to the South African legal system in a Constitutional era.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

(ATTACHED TO THE CANDIDATE'S APPLICATION):

Reported decisions

Pako, M. R. v Pako, L.W, (Limpopo Division, Polokwane Case no.: 3285/2018)

Debeila, V. v Road Accident Fund (Limpopo Division, Polokwane, Case no: HCAA10/19)

Unreported decisions

Kganakga v Minister of Police & Another (Limpopo Division, Polokwane, Case no.: 566/2017)

Khoza, J. v The State (Limpopo Division, Polokwane, Case no: A70/2017)

Makondo R.P. obo Makondo, J v Road Accident Fund (Limpopo Division, Polokwane, Case No:401/ 2010)

JT Rafutho v The State (Gauteng Local Division, Case no.: A288/2016)

Judgments upheld on appeal

Unknown – only two matters are pending on appeal at the Limpopo Division of the High Court and one at the Supreme Court of Appeal.

Judgments overturned on appeal

N/A.