

**JSC INTERVIEW ROUND: APRIL 2022**

**CANDIDATE: ADVOCATE LESIBANA GEMINE PHILEMON LEDWABA**

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

**1. The candidate's tertiary qualifications, professional admissions and honours:**

1.1. The candidate has completed the following tertiary qualifications:

1.1.1. B. Proc (University of Limpopo) – 1988

1.1.2. LLB (University of Pretoria) – 2002

1.1.3. LLM, Human Rights and Constitutional Practice (University of Pretoria) – 2003

1.1.4. LLM, Labour Law (University of South Africa) – 2018

1.2. The candidate neglected to indicate how he performed in any of degrees. It is therefore not possible to comment on those issues.

1.3. The candidate was an admitted attorney from November 1993 until his removal (in order to be admitted as an advocate) in 2007. The candidate was admitted as an advocate of the High Court of South Africa on 11 July 2007.

- 1.4. The candidate is an associate member of the Pretoria Society of Advocates, a full member of the Polokwane Society of Advocates and a member of the Legal Practice Council.
- 1.5. The candidate is also a qualified arbitrator at the Arbitration Foundation of South Africa. The candidate neglected to indicate when he acquired this qualification.

## 2. **The candidate's integrity and ethics:**

- 2.1. Both the Pretoria Society of Advocates and the Polokwane Society of Advocates confirmed that the candidate is a member in good standing with no record of any disciplinary proceedings or complaints against the candidate.
- 2.2. The candidate declared that in 2000, when he was a director at the firm Moima-Ledwaba Inc., the Law Society fined the firm for the late submission of their books of account. The candidate explained that the late submission was because the firm's computer system was unable to capture any figures "beyond 1999". We infer that the accounting software that the firm was using at that time could not capture or reproduce any data post 1 January 2000. Given the well-reported Y2K issues that were experienced by several computer software programmes when the year changed from 1999 to 2000, the candidate's explanation appears plausible. The Law Society at the time imposed a fine of less than R500 upon the candidate's firm. This transgression does not appear to such as to call into question the candidate's integrity and ethics.

2.3. Consequently, no circumstances are known that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour or is not a fit and proper person for appointment.

**3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:**

3.1. There are currently 8 full time judges on the Limpopo Division bench, comprising (as far as could be ascertained from the latest law reports):

3.1.1. 2 black women.

3.1.2. 5 black men.

3.1.3. 1 white man.

3.2. The candidate is a black man.

**4. The candidate's personal commitment to the values of the constitution:**

4.1. The candidate completed a Master's Degree in Human Rights and Constitutional Practice at the University of Pretoria in 2003. The candidate furthermore took up employment at Lawyers for Human Rights (1991 – 1993) where he represented indigent litigants in both criminal and civil matters. During his tenure at Lawyers for Human Rights the candidate also participated in a programme to assist previously disadvantaged candidate attorneys to enter the attorneys' profession.

4.2. Based on the candidate's academic interest in Constitutional law (evidenced by his LLM degree), his participation with an institution that

focuses on the attainment of Constitutional values (Lawyers for Human Rights) and his involvement in projects aimed at advancing Constitutional values (the candidate attorney project), the candidate demonstrated that he is committed to the achievement of dignity, equality and freedom for all, and human rights generally, through public service and civil society and community involvement.

**5. The candidate's knowledge of the law, including constitutional law:**

- 5.1. The candidate has been actively practicing law since 1989 – until 2006 as an attorney and since 2008 as an advocate.
- 5.2. The candidate states that as an attorney, he gained experience in criminal law, civil litigation, commercial law, matrimonial law and property law. Even though the candidate never qualified as a conveyancer, the candidate performed conveyancing work under supervision of duly qualified conveyancers.
- 5.3. During the candidate's tenure as a part-time commissioner in the Small Claims Court, the Commission for Conciliation, Mediation and Arbitration ("CCMA"), *"as well as bargaining councils"*, between 2008 and 2014, the candidate facilitated mediations and presided over arbitrations in labour disputes. The candidate was further appointed *"recently"* by the Department of Labour as Presiding Officer in terms of section 4(2) of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 ("COIDA") to preside over workplace related compensation claims resulting from occupational injuries, disease or death.

- 5.4. The candidate appears to have experience in criminal law, civil litigation, commercial law, matrimonial law, property law and labour law.
- 5.5. Even though the candidate states in answer to Section 2, Question 6.2 of the JSC's Questionnaire that 40% of his litigation work comprises of constitutional law, the candidate neglected to provide any details relating to such work in his application. Furthermore, none of the cases in which the candidate appeared and which he regarded as his most significant cases (in Section 2, Question 6.3 of the JSC's Questionnaire) concerns primarily constitutional issues.
- 5.6. Based on the above observations, we conclude that the candidate has no verifiable practical experience in constitutional law litigation.

**6. Judgments of the candidate that have been overturned, upheld or commented on appeal:**

- 6.1. In paragraph 9 of his submissions to the JSC the candidate states that the following judgments were upheld on appeal:

6.1.1. *Puane and Others v JK Gaddin Petrol Sales Close Corporation*  
Case no: HCAA05/2019: Limpopo Division: Polokwane. In these proceedings, the appellant applied for special leave to appeal. The candidate states that this application was dismissed by the Supreme Court of Appeal.

6.1.2. *Merifon (Pty) Ltd v Greater Letaba Municipality and Another*  
Case no: 02/2014, Limpopo Division: Polokwane. The Supreme Court of Appeal dismissed the appeal. That judgment is reported

at [2021] 4 ALL SA 356 (SCA) (22 April 2021). We note that that an appeal is currently pending before the Constitutional Court, under case no. CCT 159/21, to be heard on 1 March 2022.<sup>1</sup>

6.1.3. *Shane John Francis & Others v Southern Sky Hotel and Leisure & Others* case no: 2013/2016 Limpopo Division: Polokwane. The candidate states that the appeal was dismissed.

6.2. The candidate states that the following judgments are the subject of pending appeal proceedings:

6.2.1. *Do Light Transport (Pty) Ltd v G Phadziri & Another* case no 1171/2019, Limpopo Local Division: Thohoyandou. The candidate states that this appeal is pending before the Supreme Court of Appeal.

6.2.2. *Mohuba DK v The University of Limpopo* case no: 4754/2019: Limpopo Division, Polokwane. The candidate states that this appeal is pending before the Supreme Court of Appeal.

6.3. We are unable to ascertain, on the information provided to us, whether any judgments of the candidate have been overturned on appeal. Further investigations have revealed no information.

6.4. We are unable to ascertain, on the information provided to us, whether any judgments of the candidate were commented upon on appeal. Further investigations have revealed no information.

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<sup>1</sup> <https://collections.concourt.org.za/handle/20.500.12144/36873>

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

- 7.1. The candidate indicated in answer to Section 1, Question 6 and Section 2, Question 1 of the JSC's Questionnaire that he held the position of "appointed prosecutor" at the "Former Lobowa / Now Limpopo Government – Department of Justice" between "1981 – 1985". The candidate however indicated in answer to question 5 of the JSC's Questionnaire that he only acquired his B. Proc Qualification in 1988 – three years after he claims to have been employed as an "appointed prosecutor". As a prosecutor requires a law degree as a minimum qualification and as the candidate did not have such a qualification in "1981 – 1985", it is unlikely that the candidate was appointed as prosecutor during that period. The candidate's work experience for the period between 1981 and 1985 is accordingly disregarded for the purposes of assessing the candidate's relevant experience and he ought to be given the opportunity to clarify this apparent contradiction.
- 7.2. After the candidate acquired his legal qualification (B. Proc) in 1988, the candidate immediately proceeded to undergo his vocational training. The candidate completed his articles in 1990 whereafter he was employed by Lawyers for Human Rights between 1991 and 1993 as a "Legal Officer, Co-Coordinator of Placement & Law Reform Program, Deputy Director of Litigation". The candidate unfortunately neglected to indicate what his duties and responsibilities were whilst employed in those positions or for what period of time he held any of those positions. It is therefore not possible to determine whether the candidate acquired any experience and skills during his employment at

the Lawyers for Human Rights that could be relevant to assessing the candidate's application.

- 7.3. From 1994 until 2006 the candidate was a director of a firm of attorneys called Moima-Ledwaba Inc. In 2008 the candidate was admitted as an advocate and became a member of the Pretoria Society of Advocates as well as the Polokwane Society of Advocates. The candidate still practices as an advocate.
- 7.4. After being admitted as an advocate in 2008, the candidate was also employed as a part-time commissioner at the CCMA and bargaining council arbitrator between 2008 and 2014. In addition, the candidate acted as a commissioner in the Small Claims Court (2002 and 2005), as an arbitrator, as proforma prosecutor in terms of section 31(2)(c) of the Property Valuers Profession Act, 47 of 2000 and as a presiding officer under COIDA.
- 7.5. Between 2019 and 2021 the candidate acted as a judge in the Gauteng Division of the High Court, Pretoria and in the Limpopo Division of the High Court, Polokwane and Thohoyandou for a total of 57 weeks and two days.
- 7.6. Despite the candidate's lengthy legal career spanning over nearly three decades, both as an attorney with right of appearance in the High Court and as an advocate, the candidate had not appeared in any reported decisions that we could trace. The candidate has also not been granted senior status. Outside of the available judgments delivered by the candidate and his lengthy career, we were unable to find facts that point towards a conclusion that the candidate had exposure to sufficiently

complex or novel cases and that he demonstrated the exceptional ability required from a judge of the High Court to efficiently deal with such matters. The available judgements by the candidate are not such that an exceptional ability can be deduced from the judgements. We have reservations in this regard.

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

8.1. Judging from the candidate's judgments, the candidate has a satisfactory command of the English language. As a result, the candidate is able to communicate his thoughts clearly and effectively.

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

9.1. The available facts direct to a conclusion that the candidate has the ability to deliver judgments promptly.

9.2. In the matter of *Nyakane v Nyakane* Case no HCAA12/2018: Limpopo Division, Polokwane, the matter was heard on 26 April 2019 and judgment delivered on 24 May 2019.

9.3. In the matter of *Mohuba DK v The University of Limpopo* Case no 4754/2019: Limpopo Division, Polokwane, the matter was heard on 24 August 2021 and judgment delivered on 27 October 2021.

9.4. In the matter of *Merifon (Pty) Ltd v Greater Letaba Municipality and Another* Case no. 02/2014: Limpopo Division, Polokwane, the matter was heard between 24 – 28 June 2019 and judgment was delivered on 18 July 2019.

- 9.5. In the matter of *Sindane v Minister of Police* Case no. 57244/2013: Gauteng Division, Pretoria, the matter was heard between 18 – 20 August 2020 and judgment was delivered on 9 November 2020.
- 9.6. In the matter of *Manyaka v The State* Case no. BA 14/2021: Limpopo Division, Polokwane, the matter was heard on 4 August 2021 and judgment was delivered on 18 August 2021.
- 9.7. In the matter of *Emmuel Assemblies Northern District Council v Maponya and Others* Case no. 570/2019: Limpopo Division, Polokwane, the matter was heard on 16 August 2021 and 20 September 2021. Judgment was delivered on 30 September 2021.
- 9.8. In the matter of *Francis and Others v Southern Sky Hotel and Leisure (Pty) Ltd trading as Hans Merensky Hotel & Spa* (2013/2016) [2020] ZALMPPHC 8 (21 January 2020) the matter was heard on 25 November 2019 and judgment was delivered on 21 January 2020.
- 9.9. In the matter of *Steyn v S* (A281/2019) [2020] ZAGPPHC 654 (16 September 2020) (Gauteng Division, Pretoria) the matter was heard on 3 August 2020 and judgment was delivered on 16 September 2020.
- 9.10. In the matter of *Mopani District Municipality v Rebecca and Other* (HCA04/2020) [2021] ZALMPPHC 40 (28 July 2021) the matter was heard on 23 July 2021 and judgment was delivered on 28 July 2021.

10. **The candidate's ability to conduct court proceedings fairly, efficiently and effectively:**

10.1. Based on the information provided, there are no reservations regarding the candidate's ability to conduct court proceedings fairly, efficiently and effectively.

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

11.1. Based on the information provided there are no reservations or concerns regarding the candidate's independent mindedness.

12. **The candidate's administrative ability (other than in relation to court proceedings):**

12.1. Based on the candidate's ability to properly complete his application for appointment as a judge and to attach all the required supporting documents to the application, the conclusions is drawn that the candidate's administrative abilities are adequate.

13. **The message that the candidate's appointment would send to the public at large:**

13.1. The candidate has extensive legal experience both as a legal practitioner, first as an attorney and then as an advocate, and as a presiding officer (acting judge, arbitrator, and commissioner of the Small Claims Court and CCMA).

13.2. Further, if the candidate is appointed, it will convey to the community at large that the judiciary:

13.2.1. consists of judges that are suitably qualified and experienced in litigation;

13.2.2. is prioritising transformation.

**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

**Reported judgments (SALR; All SA; SACR; BCLR; CPLR; SATC; ILJ; BLLR; ALR; BIP):**

None

**Unreported judgments (judgments attached to application and judgments only available on JDR; JOL and SAFLII):**

*Nyakane v Nyakane* Case no HCAA12/2018: Limpopo Division, Polokwane. Full Bench Decision (attached to application)

*Mohuba DK v The University of Limpopo* Case no 4754/2019: Limpopo Division, Polokwane (attached to application)

*Merifon (Pty) Ltd v Greater Letaba Municipality and Another* Case no. 02/2014: Limpopo Division, Polokwane (attached to application)

*Sindane v Minister of Police* Case no. 57244/2013: Gauteng Division, Pretoria (attached to application)

*Manyaka v The State* Case no. BA 14/2021: Limpopo Division, Polokwane (attached to application)

*Emmuel Assemblies Northern District Council v Maponya and Others* Case no. 570/2019: Limpopo Division, Polokwane (attached to application)

*Francis and Others v Southern Sky Hotel and Leisure (Pty) Ltd trading as Hans Merensky Hotel & Spa* (2013/2016) [2020] ZALMPPHC 8 (21 January 2020)

*Steyn v S* (A281/2019) [2020] ZAGPPHC 654 (16 September 2020)

*Mopani District Municipality v Rebecca and Other* (HCA04/2020) [2021] ZALMPPHC 40 (28 July 2021)

**Judgments upheld on appeal:**

*Puane and Others v JK Gaddin Petrol Sales Close Corporation* Case no: HCAA05/2019: Limpopo Division: Polokwane. In these proceedings, the appellant applied for special leave to appeal. The candidate states that this application was dismissed by the Supreme Court of Appeal.

*Shane John Francis & Others v Southern Sky Hotel and Leisure & Others* case no: 2013/2016 Limpopo Division: Polokwane. The candidate states that the appeal was dismissed. We have been unable to locate any appeal judgment.

*Merifon (Pty) Ltd v Greater Letaba Municipality and Another* Case no: 02/2014, Limpopo Division: Polokwane

The Supreme Court of Appeal dismissed the appeal. That judgment is reported at [2021] 4 ALL SA 356 (SCA) (22 April 2021).

The Supreme Court of appeal endorsed and upheld the candidate's reasoning and his application of the law, quoting portions of the candidate's judgment.

We note that that an appeal is currently pending before the Constitutional Court, under case no. CCT 159/21, to be heard on 1 March 2022.<sup>2</sup>

**Judgments overturned on appeal:**

None

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<sup>2</sup> <https://collections.concourt.org.za/handle/20.500.12144/36873>