

**JSC INTERVIEW ROUND: APRIL 2022**

**CANDIDATE: ADVOCATE THOGOMELA COUTION TSHIDADA**

**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 holds an LLB (University of Limpopo) 27 May 2008.

1.2. The candidate is appropriately qualified.

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

2.1. The candidate is a fit and proper person, because:

2.1.1 The Legal Practice Council issued certificate of good standing in support of his application dated 21 June 2021.

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

2.1.3 There do not appear to be any:

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

2.1.3.2 criminal or civil litigation pending against him;

2.1.3.3 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;

2.1.3.4 the candidate is also involved in various sub-committees which aim to serve the legal fraternity and community as well as to promote transformation, as may gleaned from the candidate's involvement in the Black Lawyers Association: 2018 to date.

2.1.4 The candidate has 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 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 is committed to the values of the Constitution, as is evident from his involvement in the following community and other organizations in the last ten years:

4.1.1. Tshiozwi Community Development Fund (2017 to date); and

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

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

5.1. 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 matter and his having presided over both civil and criminal matters as an acting judge, continually during 2019 – 2021.

5.2. He has not published any written articles.

**6. Judgments of the candidate that have been overturned, upheld or commented 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, one is pending before the Limpopo Division, Polokwane and the other is pending before the Supreme Court of Appeal.

6.2. He furthermore indicates that that although “many” of his judgments delivered in the Regional Court have been taken on appeal, his judgments were upheld, and all such appeals were dismissed.

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

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

7.2. The candidate could benefit from a longer acting period to gain experience, and to enable the JSC properly to assess the candidate's suitability.

**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 had no part-heard matters pending, nor did he have any reserved judgments outstanding.

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

10.1. The candidate has presided in various matters whilst acting as a judge. It seems however, that three of his judgments have been taken on appeal. Unfortunately, the candidate has not indicated the result of the appeals.

10.2. Furthermore, the majority of the candidate's practice consists of Road Accident Fund ("RAF") matters, which may pose a question regarding the breadth of his experience in other matters.

10.3. However, in relation to judgments, his colleagues have indicated that he was well prepared, robust, but fair, and asks probing questions.

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

11.1. The candidate has not published any writings. In relation to judgments, as mentioned above, his colleagues have indicated that he was well prepared and asked probing questions. His judgments further reflect his independent mindedness in relation to the application of the law to the facts, and the analysis thereof.

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

12.1. The candidate has held various administrative positions such as clerk of the court, junior judge's registrar and senior judge's registrar. His positions formerly held therefore indicate that he possesses fair administrative abilities.

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

13.1. The candidate's appointment may convey the message that it is possible to rise from humble beginnings to great success. However, the fact that the candidate has been involved in mostly RAF matters, might send the message that he is inexperienced, and may cultivate mistrust in his

ability to adjudicate upon other types of matters, especially since he has been in practice for just over ten years.

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

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

*LW v DB* 2020 (1) SA 169 (GJ)

*Retmil Financial Services (Pty) Ltd v Sanlam Life Insurance Company Ltd and others* [2013] 3 All SA 337 (WCC)

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

*Carsten v Kullmann* 2018 JDR 0018 (GJ)

*Arcus v Arcus* (attached to application)

### **Judgments upheld on appeal:**

*Bragge v Douglasdale Dairy (Pty) Ltd* 2018 (4) SA 409 (GJ), upheld in *Douglasdale Dairy (Pty) Ltd and Others v Bragge and Another* 2018 (4) SA 425 (SCA)

*Arcus v Arcus* (attached to application), upheld in *Arcus v Arcus* [2022] ZASCA 9

### **Judgments overturned on appeal:**

*Fischer v Persons Unknown* 2014 (3) SA 291 (WCC), overturned in *Fischer v Ramahlele* 2014 (4) SA 614 (SCA)

*Marshalls World of Sport (Pty) Ltd v Tellytrack* (unreported), overturned in *Tellytrack v Marshalls World of Sport (Pty) Ltd and Others* 2020 (2) SA 435 (SCA)