

**JSC INTERVIEW ROUND: OCTOBER 2023**

**CANDIDATE: JUDGE GRAHAM NASIOUS MOSHOANA**

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION**

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

- 1.1. The candidate is appropriately qualified.
- 1.2. The candidate holds the following qualifications:
  - 1.2.1. BProc – University of the North – 1991;
  - 1.2.2. LLB – University of the Witwatersrand – 1993;
  - 1.2.3. Candidate Attorney – Moseneke & Partners - 1993 to 1995;
  - 1.2.4. Higher Diploma in Labour Law – Rand Afrikaans University – 1995;
  - 1.2.5. Attorney and Director – Mohlaba & Moshoana Inc – 1995 to 2017;
  - 1.2.6. Diploma in Corporate Law – North West University – 2003;
  - 1.2.7. LLM (Labour Law) – University of Johannesburg – 2003;  
and
  - 1.2.8. LLD candidate – pending.
- 1.3. The Candidate was appointed as a judge of the Labour Court of South Africa in 2017.

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

- 2.1. 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 79 full time judges on the Gauteng Division bench, comprising (as far as could be ascertained):

3.1.1. 23 black women (17 African, 4 Indian, 2 coloured);

3.1.2. 25 black men (19 African, 3 Indian, 3 coloured);

3.1.3. 15 white women; and

3.1.4. 16 white men.

- 3.2. The candidate is a black (African) man.

**4. The maximum time period the candidate could serve if appointed:**

- 4.1. Section 176(2) of the Constitution provides that all judges other than Constitutional Court judges "*hold office until they are discharged from active service in terms of an Act of Parliament.*" The Act in question is the Judges Remuneration and Conditions of Employment Act 47 of 2001.

- 4.2. Section 3(2)(a) of the Act provides that, subject to section 4(4), a judge will ordinarily be discharged from active service upon reaching the age of 70 if, by that date, they have completed a period of active service of not less than ten years. If not, they will be

discharged from active service after having completed ten years of active service.

4.3. Section 4(4) allows for a judge who reaches the age of 70 to continue serving until the age of 75 if, at the time of turning 70, they have not yet served 15 years' active service.

4.4. The candidate is 54 and has completed a period of 6 years of active service as a judge.

4.5. The candidate could serve up to a further 16 years actively in office.

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

5.1. There are various decisions of the candidate that demonstrate his commitment to the values of the constitution, including those wherein he provided clarity in relation to various provisions of the Labour Relations Act, as well as decisions that brought about the amendment of the CCMA rules.

5.2. This demonstrates his passion to giving effect to the Labour Relations Act on a case-by-case basis in order to reach its true intention and meaning, which is one of the objectives of the Constitution.

5.3. His application does not detail any community engagements save for his membership of a church. He has not been involved in any associations since joining the bench in 2017.

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

6.1. Apart from his Labour Court judgments, of which there are many, he has also dealt with various fields of law during his stint acting in the Gauteng Division.

6.2. The majority of the candidate's Labour Court judgments are reported. The candidate's judgments are detailed and supported by law and precedent. These decisions demonstrate his knowledge of the law, including constitutional law and principles.

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

7.1. In the matter of *Real Time Investment v CCMA* (2022) 43 ILJ 1642 (LAC) the Labour Appeal Court dismissed the candidate's decision in the court a quo and made the following comment:

*“Nevertheless, the unfairness of what occurred is obvious. The court a quo should have taken into account before granting the order of reinstatement, that in his notice of application (or notice of motion), Mr Rantsieng did not seek reinstatement and that the appellant had not been notified that such an order would be sought. The court could not grant such an order without at least being certain that the appellant was aware that such relief was sought, or was contemplated and had been given a (reasonable) opportunity to react thereto.”*

7.2. The candidate's unreported decision on 4 August 2021 in the matter of *Solomons v Commission for Conciliation, Mediation & Arbitration & others* (“*Solomons*”) caused some consternation

within the labour law community because the candidate held that the “*dismissal*” of a dispute by the Commission on procedural grounds amounted to a striking of the matter from the roll (and therefore that the matter could be re-enrolled without the need for a rescission application). The candidate’s decision is still subject to appeal. However, the Labour Appeal Court, in *Mohube v Commission for Conciliation, Mediation & Arbitration & Others* (2023) 44 ILJ 1683 (LAC), has already delivered a judgment in which it discussed the *Solomons* matter (in a separate judgment, per Waglay J) at some length. In paras 46 and 48, the LAC described the candidate’s decision not to grant rescission (because it was unnecessary) as “reason-defying”:

*“To dismiss it [the dispute] was not harsh, it simply made no sense and to compound the problem, the proper next step of applying for rescission [the rescission application launched in respect of the CCMA dismissal] was similarly met with a reason-defying refusal of the rescission application. Sadly, instead of reviewing and setting aside the refusal by the commissioner to rescind the ruling, the Labour Court decided to interpret the word ‘dismiss’ as set out in s 138(5) to mean ‘struck off the roll’. All this does is create legal confusion and is neither helpful nor correct.*

[...]

*[...] the Solomons judgment has the effect that a meaning is ascribed to a word in a statute which departs from the settled understanding of that word, with the result that the word ‘dismiss’ is altered to mean something other than what was intended by the legislature. This is erroneous[...]*”.

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

- 8.1. The candidate opened a law firm after being admitted as an attorney in 1995. He practiced in that capacity for 22 years before being appointed to the bench in 2017, which position he has held for 6 years.
- 8.2. His application is silent on the periods where he has acted as a judge in the High Court. However, SAFLII reveals that he has acted as a judge in the Gauteng Division of the High Court in Pretoria in October, November, and December 2022; and that he delivered judgments in that time.
- 8.3. This application is for a transfer from a specialised court. The candidate's 6 years of experience on the bench should be sufficient to continue in the similar position. He has drafted good judgments, many of which have been reported and one of which was confirmed by the Constitutional Court on appeal from the Labour Court.
- 8.4. The candidate has heard approximately 322 matters for which judgments are available on SAFLII, the majority of which are written by him. The judgments include decisions in which the candidate gave a dissenting judgment.

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

- 9.1. The candidate has good command of English. His judgments are well written, structured, and well researched. His writing style is excellent.
- 9.2. One exception to this is the matter of *Ithala SOC Limited v South African Reserve Bank and Others* (010146/2022) [2022] ZAGPPHC

784 (14 October 2022), where the candidate did not fully outline the background facts of the cases, with the result that the reader is left uncertain about the facts of the case.

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

10.1. The reviewing team has not considered all 322 judgments on SAFLII. However, it appears from those that were reviewed that the majority of the candidate's judgments have been delivered promptly in approximately 30 days or within the same month the matter was heard. The candidate has no pending judgments and no part-heard matters.

10.2. Therefore, the candidate's delivery of judgments is exceptional.

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

11.1. Counsel who have appeared before the candidate speak highly of the candidate's preparedness and willingness to debate issues.

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

12.1. The candidate's judgments illustrate his passion for the law and illustrate that he is objective.

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

13.1. No adverse comments on the candidate's administrative ability have been received.

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

14.1. A competent and hardworking candidate is applying to be transferred from a specialist court to the generalist High Court. We do not believe that the candidate's transfer would send any particular message to the public.



## ANNEXURE: LIST OF JUDGMENTS CONSIDERED

### 1. Reported judgments:

- 1.1. *Valinor Trading 133 t/a Kings Castle v CCMA* (2023) 44 ILJ 1106 (LC)
- 1.2. *LA Foy v Department of Justice and Constitutional Development & others* (2023) 44 ILJ 1733 (LC)
- 1.3. *Botes v City of Johannesburg Property Co SOC Ltd & others* (2021) 42 ILJ 530 (LC)
- 1.4. *Glencore Operations SA (Pty) Ltd v CCMA* (2021) 42 ILJ 2446 (LC)
- 1.5. *PUTCO (Pty) Ltd v Transport & Allied Workers Union of SA obo members & others* (2015) 36 ILJ (LAC)
- 1.6. *Van Metzinger & others v Conservation Corporation t/a CC Africa* (2013) 34 ILJ (LC)
- 1.7. *SAMWU v SA Local Government Bargaining Council & others* (2012) 33 ILJ 353 (LC)

### 2. Unreported judgments:

- 2.1. *Hennops Sport (Pty) Ltd v Luhan Auto (Pty) Ltd* (A52/2022) [2022] ZAGPPHC 953 (2 December 2022)
- 2.2. *Ithala SOC Limited v South African Reserve Bank and Others* (010146/2022) [2022] ZAGPPHC 784 (14 October 2022)
- 2.3. *Commissioner for The South African Revenue Services v Moloto and Others* (63778/2021) [2022] ZAGPPHC 832 (2 November 2022)

- 2.4. *Road Accident Fund v Newnet Properties (Pty) Ltd t/a Sunshine Hospital and Another* (6088/2022) [2022] ZAGPPHC 948 (6 December 2022)
  - 2.5. *Ndobe v Minister of Police* (14/22926) [2022] ZAGPPHC 845 (21 October 2022)
  - 2.6. *National Credit Regulator v National Consumer Tribunal and Another* (A289/2021; A288/2021; A104\2019) [2023] ZAGPPHC 24 (20 January 2023) – gave a dissenting judgment
  - 2.7. *Mamodupi v Property Practitioners Regulatory Authority and Another* (J68/23)[2023] ZALCJHB 19 (13 February 2023)
3. Judgments upheld on appeal:
- 3.1. *Skinner v Nampak Products* (2021) 42 ILJ 838 (LAC)
  - 3.2. *NUM v Cullinan Diamond Mine* (2021) 42 ILJ 785 (LAC)
  - 3.3. *Carolin v Power World* (2021) 42 ILJ (LAC)
  - 3.4. *Khan v CCMA* (2020) 41 ILJ 1129 (LAC)
  - 3.5. *TSB Sugar RCL Foods v Dorey* (2019) 40 ILJ 1224 (LAC)
  - 3.6. *NUMSA v Aveng Trident Steel* (2019) 40 ILJ 2024 (LAC)  
[Confirmed in Constitutional Court - *NUMSA v Aveng Trident Steel* (2021) 42 ILJ 67 (CC)]
4. Judgments overturned on appeal:
- 4.1. *Cape Gate (Pty) Ltd v Mokgara and others* (2022) 43 ILJ 1277 (LAC)

- 4.2. *Real Time Investments v CCMA* (2022) 43 ILJ 1642 (LAC)
- 4.3. *MTN v Mweli* (2021) 42 ILJ 775 (LAC)
- 4.4. *Telkom v Van Staden* (2021) 42 ILJ 869 (LAC)
- 4.5. *Nkomati JV v CCMA* (2019) 40 ILJ 819 (LAC)