

**JSC INTERVIEW ROUND: OCTOBER 2023**

**CANDIDATE: MR MOLATELO ROBERT MAKHURA**

**COURT FOR WHICH CANDIDATE APPLIES: LABOUR COURT,  
JOHANNESBURG**

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

1.1. The candidate is appropriately qualified.

1.2. The candidate holds the following qualifications:

1.2.1. Bachelor of Laws, University of Witwatersrand (2005);

1.2.2. Certificate: Advanced Administrative Law, University of Witwatersrand (2018); and

1.2.3. N6 Certificate (Electrical Engineering), Capricorn FET (2000).

1.3. The candidate was admitted as an attorney in 2008.

**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 12 judges permanently appointed to the Labour Court. Based on the names listed on the judiciary's website, the Labour Court's racial and gender composition appears to be:

3.1.1. 5 black women (4 African, 1 coloured);

3.1.2. 2 white women;

3.1.3. 3 black men (2 African, 1 coloured); and

3.1.4. 2 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 45.

4.5. If appointed, the candidate could serve up to 25 years actively in office.

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

5.1. The candidate has been a member of the South African Society for Labour Law (SASLAW), a non-profit organisation that has promoted labour law as a legal and academic discipline, since 2008 and has contributed his time at this organisation on a *pro bono* basis.

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

6.1. The candidate has served as an acting judge of the Labour Court for a total of 11 weeks and 3 days:

6.1.1. 17 January to 18 February 2022;

6.1.2. 27 June to 1 July 2022 (*pro bono*);

6.1.3. 10 April to 12 May 2023; and

6.1.4. 21 to 23 June 2023;

6.2. The review team could locate only approximately 15 judgments handed down by the candidate, including.

6.2.1. reviews of CCMA awards;

- 6.2.2. strike interdicts;
- 6.2.3. actions and applications concerning fair labour practices (unfair dismissal etc.); and
- 6.2.4. restraint of trade disputes.
- 6.3. The candidate delivered a judgment in a novel matter concerning a challenge to an employer’s Covid-19 vaccination policy (*Solidarity and Another v Ernest Lowe, a division of Hudago Trading (Pty) Ltd* (2022) 43 ILJ 1125 (LC)).
- 6.4. In *Letsholonyane v Minister of Human Settlements and Another* (LC) (unreported case no J616/23) (15 May 2023) the candidate considered the jurisdiction of the Labour Court to consider an urgent challenge to a summary dismissal. The candidate had to consider whether the claim concerned a breach of the LRA or a breach of contract. He found the latter. The candidate considered the question of urgency against the backdrop that “*political heads [were] alleged to have subverted the rule of law*”.
- 6.5. In *Makgoka v Silverstar Casino* [2023] JOL 59338 (LC) the candidate dealt with a jurisdictional challenge to a referral of a dispute based on an alleged unilateral change to conditions of employment. The candidate had to deal with whether it was permissible for the applicant to invoke a section of the BCEA which he had not pleaded. The candidate, having gone through various authorities, held that it was permissible.
- 6.6. In *Mmolawa v Safety and Security Council and Others* (JR547/18) [2023] ZALCJHB 133 (26 April 2023) the candidate reviewed and set aside an arbitration award on the basis of the arbitrator having

proceeded to decide the dispute on the papers and heads of argument only without any hearing.

6.7. In *Payflex (Pty) Ltd v Deacon and others* [2022] JOL 53951 (LC) the candidate dismissed an application to enforce two restraint of trade agreements. The candidate succinctly and accurately summarised the principles applicable to restraints of trade and analysed the facts against such principles.

6.8. Of the judgments assessed, only two addressed the Constitution expressly, namely, *Trustees for the time being of the Ampath Trust v Ingram and others* [2022] JOL 56292 (LC) and *Colefax Trading (Pty) Ltd v Justice for all Workers of South Africa and others*, Case No: J853/21.

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

7.1. None of the candidate's judgments appear to have been commented on or referred to by other courts.

7.2. None of the candidate's judgments appear to have been appealed against. However, the candidate has stated in his application that he did grant leave to appeal in the *Ernest Lowe* matter and that as far as he is aware, the matter is pending before the Labour Appeal Court.

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

8.1. The candidate has been practicing in the field of labour law for some 15 years.

8.2. The candidate states that he appears in the High Court and Magistrates' Courts on contractual disputes, has represented trade

union members in bail applications, and “*assisted*” counsel in criminal trial proceedings (but does not specify whether this is related to a labour law matter).

8.3. The candidate does state, under court experience, that he appears “*occasionally*” in the Labour Court in urgent, motion, and trial proceedings.

8.4. The candidate appears to be an experienced labour law attorney who has represented a wide range of clients.

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

9.1. The candidate’s judgments are reasoned and well-written.

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

10.1. Of the judgments considered, there is one instance in which the candidate took longer than three months to hand down judgment. In *Trustees for the time being of the Ampath Trust v Ingram and others* [2022] JOL 56691 (LC) the candidate handed down judgment almost 15 weeks after hearing.

10.2. The candidate has no reserved judgments.

10.3. At the time of submitting his application, the candidate had one part-heard trial which was scheduled to continue from 21 to 23 June 2023. Its current status is unknown.

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

11.1. The candidate is able to conduct court proceedings, having regard to his judgments.

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

12.1. From the candidate's judgments there is nothing to warrant any concerns about the candidate's independent-mindedness.

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

13.1. The candidate has been a director in the labour department of an established law firm for almost 12 years. It is fair to assume that this imposes a reasonably high level of administrative demands.

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

14.1. The candidate, although relatively young, has extensive knowledge and experience in the field of labour law. His appointment to the bench would send a message that young and competent lawyers also have a contribution to make as judicial officers.

## ANNEXURE: LIST OF JUDGMENTS CONSIDERED

### 1. Reported decisions:

- 1.1. *Solidarity obo members & another v Ernest Lowe, a division of Hudago Trading (Pty) Ltd* [2022] 6 BLLR 566 (LC)

### 2. Unreported judgments:

- 2.1. *Association of Mineworkers and Construction Workers Union obo Maeyane v Mello NO and others* [2023] JOL 59359 (LC)
- 2.2. *Colefax Trading (Pty) Ltd v Justice for All Workers of South Africa and Others* (J853/21) [2022] ZALCJHB 39 (7 March 2022)
- 2.3. *De Klerk v National Union of Furniture and Allied Workers of SA (NUFAWSA)* [2023] JOL 59384 (LC)
- 2.4. *Department of Military Veterans v Moche and others* [2022] JOL 52964 (LC)
- 2.5. *Dumakude v Nedbank Group* [2022] JOL 52955 (LC)
- 2.6. *Letsholonyane v Minister of Human Settlements and Another* (LC) (unreported case no J616/23) 15 May 2023
- 2.7. *Makgoka v Silverstar Casino* [2023] JOL 59338 (LC)
- 2.8. *Mmolawa v Safety and Security Council and Others* (JR547/18) [2023] ZALCJHB 133 (26 April 2023)
- 2.9. *Payflex (Pty) Ltd v Deacon and others* [2022] JOL 53951 (LC)
- 2.10. *Pioneer Foods (Pty) Ltd v CCMA and others* [2023] JOL 59383 (LC)



- 2.11. *Strado Remanufacturing (Pty) Ltd v Diphoko NO and others* [2023] JOL 59385 (LC)
- 2.12. *Trustees for the time being of the Ampath Trust v Ingram and others* [2022] JOL 56691 (LC)
- 2.13. *Twala v Dis-Chem Pharmacies and others* [2022] JOL 56292 (LC)
- 2.14. *Workforce Staffing (Pty) Ltd v Sadan and others* [2023] JOL 59382 (LC)

3. Judgments upheld on appeal:

- 3.1. None

4. Judgments overturned on appeal:

- 4.1. None