

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: MS GUGULETHU PURRIFINE MTHALANE

**COURT FOR WHICH THE CANDIDATE APPLIES: LABOUR COURT
(JOHANNESBURG AND DURBAN)**

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

1.1. The candidate is appropriately qualified.

1.1.1. The candidate holds an LLB from the University of the Witwatersrand, obtained in 2006.

1.1.2. The candidate was admitted as an attorney in 2009.

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) woman.

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 10 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 will be 40 years old at the time of the interview.

4.5. If appointed, the candidate could serve up to 30 years in office.

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

5.1. The candidate states that she regards her most significant contribution to the law and the pursuit of justice in South Africa to be her training of young black female attorneys.

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

6.1. The candidate is an expert in labour law, as recognised by 2022 and 2023 editions of the Best Lawyers in South Africa.

6.2. We are unaware of the candidate's knowledge of constitutional law. In her application, she states that none of her litigation work has been in the field of constitutional law.

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

7.1. In her application, the candidate states that her judgment in *Serakala v National Bargaining Council for the Road Freight, Logistics Industry and Others* [2019] ZALCJHB 96 was upheld on appeal (*DHL Supply Chain v Serakala* (case no. JA113/2019)).

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

8.1. The candidate has the following professional experience:

8.1.1. PEPSICO: Group ER Manager (March 2023 – date);

8.1.2. Lawtons Africa: Director (January 2021 – February 2023);

8.1.3. Solomon Holmes Attorneys: Director (January 2018 – December 2020);

- 8.1.4. Solomon Holmes Attorneys: Senior Associate (June 2013 – December 2017);
 - 8.1.5. Mabaso Attorneys: Associate (January 2011 – February 2013);
 - 8.1.6. Cowan Harper Attorneys: Associate (July 2009 – December 2011);
 - 8.1.7. Mkhabela Huntley Attorneys: Associate (November 2008 – June 2009);
 - 8.1.8. Mkhabela Huntley Attorneys: Candidate Attorney (January 2006 – October 2008); and
 - 8.1.9. Master of the High Court: Examiner – Deceased Estate and Guardian’s Fund (January 2005 – December 2005).
- 8.2. The candidate therefore has over 14 years’ experience as an admitted attorney practising in the field of labour law.
- 8.3. The candidate has also served as an acting judge in the Labour Court for a total period of 46 days (spread over three acting stints).

9. The candidate’s linguistic and communication skills:

- 9.1. The candidate’s judgments demonstrate a proficient linguistic capability.
- 9.2. Her judgments are well structured and clear, but contain a few grammatical and spelling errors.

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

10.1. Out of a total of nine judgments, the candidate has delivered judgment more than three months from the date of hearing in three matters:

10.1.1. *Department of Correctional Services v Nxele and Others* (JR483/21) ZALCJHB (26 January 2023) – four months;

10.1.2. *National Union of Mineworkers and Another v CCMA and Others* [2019] ZALCJHB 93 (9 May 2019) – four months; and

10.1.3. *Serakala v National Bargaining Council for the Road Freight, Logistics Industry and Others* [2019] ZALCJHB 96 (14 May 2019) – four months.

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

11.1. The reviewers are aware of an allegation against the candidate in the matter of *Department of Correctional Services v Nxele and Others*. The candidate is alleged to have refused leave to appeal in chambers, without the parties' legal representatives being present, and then issuing a variation order on the same day. If correct, these allegations call for an answer.

12. The candidate's independent mindedness:

12.1. The candidate's judgments demonstrate an objective approach to the facts, using legal precedent as the starting point to evaluate the facts in any particular matter.

12.2. The candidate's judgments also demonstrate that she has found equally for employers and employees, which indicates independent mindedness.

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. The candidate, although relatively young, has extensive knowledge and experience in the field of labour law. Her 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 judgments:
 - 1.1. None
2. Unreported judgments:
 - 2.1. *Bidvest Protea Coin (Pty) Ltd v PTAWU and Others* [2023] ZALCJHB 59 (13 March 2023)
 - 2.2. *Blennis v Makole and Others* [2022] ZALCJHB 210 (3 August 2022)
 - 2.3. *Department of Correctional Services v Nxele and Others* (JR483/21) [2022] ZALCJHB (2 November 2022)
 - 2.4. *Department of Correctional Services v Nxele and Others* (JR483/21) [2023] ZALCJHB (26 January 2023)
 - 2.5. *Department of Correctional Services v Nxele and Others* (JR483/21) [2023] ZALCJHB (26 January 2023) – order varied
 - 2.6. *National Union of Mineworkers and Another v CCMA and Others* [2019] ZALCJHB 93 (9 May 2019)
 - 2.7. *SACCAWU and Others v Connect Financial Services (Pty) Ltd* [2023] ZALCJHB 32 (9 March 2023)
 - 2.8. *SACCAWU obo Mabaso and Others v Masstores (Pty) Ltd t/a Makro* [2023] ZALCJHB 49 (9 March 2023)
 - 2.9. *Serakala v National Bargaining Council for the Road Freight, Logistics Industry and Others* [2019] ZALCJHB 96 (14 May 2019)

3. Judgments upheld on appeal:

- 3.1. *Serakala v National Bargaining Council for the Road Freight, Logistics Industry and Others*

4. Judgments overturned on appeal:

- 4.1. None