

**JSC INTERVIEW ROUND: APRIL 2024**

**CANDIDATE: JUDGE MAJAKE MESHACK MABESELE**

**COURT FOR WHICH CANDIDATE APPLIES: ELECTORAL COURT**

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

1.1. The candidate holds the following academic qualifications:

1.1.1. B.A. Social Sciences (University of Limpopo) (1982);

1.1.2. B.A. Hons, Development Studies (University of Limpopo) (1984);

1.1.3. M.A. (Development Studies) (University of Limpopo) (1987);

1.1.4. LLB (University of Limpopo) (1990);

1.1.5. Doctor of Technology in Human Sciences (*honoris causa*) (Vaal University of Technology) (2013);

1.2. The candidate was permanently appointment to the Gauteng High Court, Johannesburg, in 2010.

1.3. The candidate has also been appointed to the following judicial roles:

1.3.1. Military Judge in Limpopo (2008 to 2010);

1.3.2. Acting Judge of the Equality Court since 2019; and

1.3.3. Chairperson of the Water Tribunal (until 2010).

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

2.1. There is nothing in the candidate's application or to the knowledge of the reviewers that suggests that the candidate is not a fit and proper candidate.

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

3.1. The Electoral Court is currently comprised of two permanent judicial members, who are both black (African) women (as provided by the Registrar of the Electoral Court).

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. Section 19(2) of the Electoral Commission Act, 51 of 1996 provides that the President shall determine the terms of office of members of the Court.
- 4.5. At the time of the interviews, the candidate will be approximately 65 years and 11 months old and will have completed a period of approximately 14 years and 3 months of active service.
- 4.6. The candidate is eligible to complete a further period of 4 years' active service as a judge, during which period he would remain eligible to be a judge-member of the Electoral Court.

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

- 5.1. The candidate records that:
  - 5.1.1. during 1991 he was part of a delegation that attended a two-day summit in Durban concerning political tolerance in preparation for the first democratic elections in 1994;
  - 5.1.2. in 1994 and 1998, he was appointed by the IEC in Limpopo as a mediator during the respective national and local government elections, dealing with disputes between political parties arising from the counting of votes at polling stations;

- 5.1.3. during 2004 to 2005, he was a member of the ward committee of Flora Park, which was established in terms of local government elections; and
- 5.1.4. he has served on several administrative tribunals before his appointment to the bench.
- 5.2. The candidate has demonstrated a commitment to public service and the values embodied in the Constitution over a long period of time.
- 5.3. The candidate has authored four books on topics of human rights and important social issues such as providing hope to people living with HIV and discouraging the use of drugs.

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

- 6.1. The candidate has held a permanent appointment as a High Court Judge since July 2008.
- 6.2. The candidate's M.A. dissertation was titled "*The Administrative Problems Experienced by Blacks in the Urban Areas in the Eighties and their Conditions of Employment.*"
- 6.3. He lectured in Development Studies at the University of Limpopo from 1985 to 1997.
- 6.4. The candidate practised as an advocate and member of the Church Square Association of Advocates in Pretoria from 1992 to 2010, in the areas of environmental law, planning law, property law, criminal law and administrative law.

6.5. The candidate's judgments reflect knowledge of a diversity of fields of the law, with a particular strength in criminal law. The candidate therefore appears to have a sound general knowledge of the law.

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

7.1. *Devonport v Premier of the Free State Province and Others* [2009] ZAFSHC 136 (not reported) (overturned).

7.2. *Topham v Member of Executive Committee for the Department of Health, Mpumalanga* [2013] ZASCA 65 (not reported) (overturned).

7.2.1. The SCA, in overturning the judgment, stated:

*“The judgment of the court below cannot be supported. The learned judge not only disregarded evidence presented by and on behalf of the appellant but also failed properly to consider the evidence of Dr Molete. He further made an irrelevant and unwarranted credibility finding against the appellant.”*

7.3. *M Schneider & Hans Schneider Investments (Pty) Ltd v Renasa Insurance Company Ltd* [2019] JDR 1348 (overturned).

7.4. *South African Football Association v Fli-Afrika Travel (Pty) Ltd* 2020 JDR 0306 (SCA) (Full Bench appeal including candidate overturned by the SCA).

7.5. *Smith v Astra Medical Consulting CC* 2018 JDR 2182 (GJ) (upheld).

- 7.6. *The University of KwaZulu-Natal v The Medicines Control Council* 2007 JDR 0601 (T) (upheld).
- 7.7. *Van Niekerk v Absa Bank Limited* 2015 JDR 0276 (GJ) (rescission of default order granted by candidate).
- 7.8. *Leadtrain Assessments (Pty) Ltd and Others v Leadtrain (Pty) Ltd and Others* 2013 (5) SA 84 (SCA) (overturned).
- 7.9. *Unlawful Occupiers of Portion 2 of Erf 813 Rosettenville Situated at 18 Haig Street, Rosettenville v Okoye* 2019 JDR 0454 (GJ) (rescission of eviction order granted by candidate, based on lack of service on municipality).
- 7.10. *Visser v 1 Life Direct Insurance Ltd* 2015 (3) SA 69 (SCA) (overturned). Willis JA, on an issue of evidence presented in the trial a quo, stated that “*The trial court was clearly wrong. The trial court failed to make a proper distinction between the production of a document in terms of rule 35 (1) and the admissibility of its contents as evidence.*” (at para 41).

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

- 8.1. The candidate has experience in academia (both administration and lecturing) and legal practice.
- 8.2. He has been a Judge of the High Court since 2008.

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

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

9.2. The candidate has published several books and presented several papers, which suggests that the candidate has appropriate linguistic and communication skills.

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

10.1. The Electoral Court is required to issue urgent judgments on short time periods in accordance with section 20 of the Electoral Commission Act, 51 of 1996.

10.2. The candidate does not list any judgments outstanding in his application and no adverse comments have been received.

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

11.1. There is nothing to suggest that the candidate does not conduct court proceedings fairly, efficiently and effectively.

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

12.1. There is nothing to suggest that the candidate is not fair and impartial to parties before him.

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

13.1. The candidate is a Senior Judge in the Johannesburg High Court and heads the criminal section. His duties include allocating petitions, special reviews, and bail applications to fellow Judges and attending to allocation problems.

13.2. He has previously worked as Deputy Dean and Deputy Registrar at the University of Limpopo.

13.3. Accordingly, the candidate must have excellent administrative abilities.

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

14.1. The candidate has progressed professionally from being a university lecturer in Development Studies to being a Judge for the last 15 years. His writings and lectures on issues of morality and humanity show a commitment to human rights and constitutional values.



## ANNEXURE: LIST OF JUDGMENTS CONSIDERED

### 1. Reported judgments:

- 1.1. *Afrika and Others v Minister of Police* 2019 (2) SACR 77 (GP)
- 1.2. *South African Breweries (Pty) Ltd v Professional Transport and Allied Workers Union SA aka PTAWU and Another* (2017) 38 ILT 2463

### 1. Unreported judgments:

- 1.1. *Nadroc Logistics CC v GLM Logistics (Pty) Ltd* 2015 JDR 1766 (GJ)
- 1.2. *Erasmus v Ekurhuleni Metropolitan Municipality* 2006 JDR 0437 (T)
- 1.3. *Topham v Member of the Executive Committee for the Department of Health, Mpumalanga* 2011 JDR 1284 (GNP)
- 1.4. *Topham v Member of the Executive Committee for the Department of Health, Mpumalanga* 2013 JDR 1059 (SCA)
- 1.5. *Ekurhuleni Metropolitan Municipality v Ergo Mining (Pty) Ltd* 2017 JDR 1860 (GJ) – Full bench appeal
- 1.6. *Educated Risk Investment 165 (Pty) Ltd v Ekurhuleni Metropolitan Municipality* 2018 JDR 1328 (GJ)
- 1.7. *Mahapa v The Honourable Minister of Higher Education* 2017 JDR 0272 (GJ)
- 1.8. *Fourie v Road Accident Fund* 2018 JDR 2120 (GJ)

- 1.9. *Mmako v Temba* 2019 JDR 0263 (GJ)
- 1.10. *Ishendra v The Minister of Justice and Correctional Services* 2018 JDR 114 (GJ)
- 1.11. *Pholile Business Solutions CC v Sidas Security Guards (Pty) Ltd* 2017 JDR 1297 (GJ)
- 1.12. *Manse v Forensic Department of Health Germiston* 2019 JDR 2058 (GJ)
- 1.13. *Minister of Police v Mashilwane* 2019 JDR 2610 (GJ)
- 1.14. *The South African Breweries (Pty) Ltd v Professional Transport & Allied Workers Union of SA aka PTAWU* 2017 JDR 1129 (GJ)
- 1.15. *Selemolela v Central Johannesburg College* 2020 JDR 0212 (GJ)
- 1.16. *Springett NO and Others v Global Technology Investments (Pty) Ltd and Others* 2004 JDR 0668 (T)
- 1.17. *LTE Consulting (Pty) Ltd v The Minister of Police* 2022 JDR 0654 (GJ)
- 1.18. *Minister of Police v Mashilwane* (A3157/2018) [2019] ZAGPJHC 473 (11 November 2019)
- 1.19. *C [...] and Another v State* (SS013/2021) [2021] ZAGPJHC 125 (26 July 2021)
- 1.20. *Qutswa v Mngomezulu N.O. and Others* (0000664/2018) [2018] ZAGPJHC6 (19 January 2018)
- 1.21. *EA and Others v Minister of Police* (14/41567) [2019] ZAGPJHC 9 (12 February 2019)

1.22. *LM v RT* (28133/2009) [2018] ZAGPJHC 676 (16 November 2018)

1.23. *Stuurman and others v S* (A374/14) [2016] ZAGPJHC 137 (2 June 2016)

2. Judgments upheld on appeal:

2.1. *Educated Risk Investment 165 (Pty) Ltd v Ekurhuleni Metropolitan Municipality* 2018 JDR 1328 (GJ)

2.2. *Educated Risk Investments 165 (Pty) Ltd and Others v Ekurhuleni Metropolitan Municipality and Others* 2016 (6) SA 434 (SCA)

2.3. *S v Molema* 2011 JDR 0316 (SCA)

2.4. *S v Sewela* 2010 JDR 1471 (SCA)

3. Judgments overturned on appeal:

3.1. *Visser v 1 Life Direct Insurance Ltd* 2015 (3) SA 69 (SCA)

3.2. *Leadtrain Assessments (Pty) Ltd and Others v Leadtrain (Pty) Ltd and Others* 2013 (5) SA 84 (SCA)

3.3. *South African Football Association v Fli-Afrika Travel (Pty) Ltd* 2020 JDR 0306 (SCA)

3.4. *M Schneider & Hans Schneider Investments (Pty) Ltd v Renasa Insurance Company Ltd* [2019] JDR 134

3.5. *Topham v Member of Executive Committee for the Department of Health, Mpumalanga* [2013] ZASCA 65

3.6. *Devonport v Premier of the Free State Province and Others* (1291/06) [2007] ZAFSHC 127 (not reported)