

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, GAUTENG DIVISION OF THE HIGH COURT

JUDGE GRAHAM NASIOUS MOSHOANA

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

1.1. The candidate holds the following tertiary qualifications:

1.1.1. B.Proc (1991)

1.1.2. LLB (1993)

1.1.3. LLM (Labour Law) (2001)

1.1.4. Higher Diploma Labour Law (1995)

1.1.5. Diploma Corporate Law (2003)

1.2. The candidate holds the following professional admissions and honours:

1.2.1. admitted as an attorney in 1995

1.3. The candidate was permanently appointed to the following judicial roles:

1.3.1. Judge of the Labour Court (Johannesburg) on 31 May 2017

2. The candidate's integrity and ethics

2.1. No circumstances are known to the reviewers 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. The racial and gender composition on the bench

3.1. As far as could be ascertained, there are currently 76 permanent judges of the Gauteng Division of the High Court:

3.1.1. 24 black women (19 African, 2 Coloured, 3 Indian)

3.1.2. 23 black men (17 African, 2 Coloured, 4 Indian)

3.1.3. 14 white women

3.1.4. 15 white men

3.2. According to the questionnaire, the candidate is an African man.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 54 years and 11 months old and will have completed a period of approximately 7 years and 4 months of active service.

4.2. If appointed, the candidate would be eligible to complete a further period of approximately 15 years active service as a judge until the age of 70.

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

5.1. Nothing has been brought to the attention of the reviewers that indicates that the candidate is not committed to the values of the Constitution.

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

6.1. The candidate has considerable knowledge of labour law.

6.2. During his acting stints in the Gauteng division, the candidate dealt with issues arising in various different areas of law, including criminal law and commercial law.

6.3. The judgments considered covered a wide variety of areas of law and clearly illustrated the candidate's understanding of legal and constitutional principles.

7. Judgments of the candidate that have been taken on appeal

7.1. The candidate has not indicated in his application which of his judgments have been upheld or overturned on appeal and has instead referred to his previous application, to which the current reviewing team does not have access. However, the following appears from the review of that previous application.

7.1.1. In the matter of *Real Time Investment v CCMA* (2022) 43 ILJ 1642 (LAC) the Labour Appeal Court overturned 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.”

7.1.2. 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 CCMA 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). However, the Labour Appeal Court, in *Mohube v Commission for Conciliation, Mediation & Arbitration & Others* (2023) 44 ILJ 1683 (LAC), has since delivered a judgment in which it discussed the Solomons matter at some length. In paragraphs [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...”

7.2. In *Railway Safety Regulator v Kekana* 1 BLLR 40 (LAC), 45 ILJ 284 (LAC) the Labour Appeal Court again criticised the candidate for granting relief that was not sought in the pleadings. The appeal was partially successful.

7.3. Finally, an appeal against the candidate’s judgment was partially upheld in *Kekana v Railway Safety Regulator* (JS468/19) [2021] ZALCJHB 395 (13 October 2021).

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 practised in that capacity for 22 years before being appointed to the bench in 2017, which position he has held for 6 years.
- 8.2. During his tenure as an attorney, he served as a commissioner of the CCMA for four years.
- 8.3. The candidate has served five terms in the North Gauteng High Court.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English. The candidate has a good command of the English language. His judgments are well written, structured, and well researched.
- 9.2. The candidate co-authored a labour law book entitled: "*The Role of Labour Court in the Transformation Age*" and has published three English articles in *De Rebus*.

10. The candidate's ability to produce judgments promptly

- 10.1. The candidate indicated that, at the time of completing the questionnaire, no judgments in matters where he sat alone were outstanding.
- 10.2. The candidate indicated that, at the time of completing the questionnaire, judgments were still reserved in about four matters where he sat in a panel and was not the appointed scribe.
- 10.3. Of the 31 judgments of the candidate considered by the reviewers, none was handed down more than three months after the hearing.

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

- 11.1. The reviewers received no adverse comments from colleagues relating to the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.

12. The candidate's independent-mindedness

- 12.1. The reviewers received no adverse comments from colleagues relating to the candidate's independent-mindedness.

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

13.1. The candidate successfully managed his law practice for 22 years.

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

14.1. The candidate's appointment would send the message that the skills honed by a judicial officer in a specialist court are transferable to a generalist court.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Monqatane v Momentum Group Ltd* (2019) 30 SALLR 286 LC
2. *CSARS v Moloto & Others* [2023] 1 All SA 607 (GP)

Unreported judgments

3. *Moloantwa v CCMA and Others* [2021] ZALCJHB 345 (31 May 2021)
4. *Vusi v Ngako and Others* (JR606/2018) [2024] ZALCJHB 162 (5 March 2024)
5. *Ngunyile v MEIBC and Others* (JR1595/19) [2023] ZALCJHB 17 (7 February 2023)
6. *Mazibuko v CCMA and Others* (JR1138/19) [2022] ZALCJHB 176 (27 June 2022)
7. *Mokwalase v Finovest Business Accountants* (JS449/21) [2021] ZALCJHB 444 (9 December 2021)
8. *Kekana v Railway Safety Regulator* (JS468/19) [2021] ZALCJHB 395 (13 October 2021)
9. *Kapa v Phundu and Others* (JR931/19) [2021] ZALCJHB 366 (6 October 2021)
10. *Lea v CCMA and Others* (JR561/18) [2021] ZALCJHB 365 (7 October 2021)
11. *Thandiile v ELRC and Others* (JR1089/16 [2021] ZALCJHB 226 (11 August 2021)
12. *Mathamaga v CCMA and Others* (JR1455/20) [2021] ZALCJHB 104 (26 May 2021)
13. *Maharaj v Strate (Pty) Ltd* (JI616/19) [2020] ZALCJHB 36 (11 February 2020)
14. *Marais v Aveng Grinaker LTA* (JS602/14) [2019] ZALCJHB 259 (10 September 2019)
15. *Vena v CCMA and Others* (JR2783/17) [2019] ZALCJHB 195 (2 August 2019)
16. *Mosiane v CCMA and Others* (JR2468/16) [2019] ZALCJHB 164 (27 June 2019)
17. *Mocheke v GPSSBC and Others* (JR1916/17) [2018] ZALCJHB 391 (29 November 2018)
18. *Ledwaba v Laxness (Pty) Ltd* (JS571/16) [2018] ZALCJHB 377 (16 October 2018)
19. *FNB Insurance Brokers v Grange* (J252/18) ZALCJHB 77 (21 February 2018)
20. *Global Parts v Maltji* (JR1371/09 [2011] ZALCJHB 277 (9 September 2011)
21. *Mining Qualification Authority v CCMA and Others* (JR1766/20) [2023] ZALCJHB 215 (19 January 2023)
22. *Thwala v S* (A175) [2024] ZAGPPHC 224 (29 January 2024)
23. *LA V EFV* (2024-017275 [2024] ZAGPPHC 213 (11 March 2024)
24. *Cawood and Others v RAF* (27980/2022) [2022] ZAGPPHC (12 October 2022)
25. *Ndobe v Minister of Police* (14/22926) [2022] ZAGPPHC 845 (21 October 2022)
26. *VZLR Inc. v RAF* (019085/2024) ZAGPPHC 266 (14 March 2024)
27. *CSARS v Moloto and Others* (63778/2021) [2022] ZAGPPHC 832; [2023] All SA 607

- (GP); 85 SATC 470 (2 November 2022)
28. *ZPM v RAF* (29281/22) [2024] ZAGPPHC 421 (6 May 2024)
 29. *Monareng v Dada and Others* (43100/15) [2024] ZAGPPHC 108 (13 February 2024)
 30. *Dlamini v RAF and Others* (7658A/2008) [2024] ZAGPPHC 277 (20 March 2024)
 31. *Hennops Sport (Pty) Ltd v Luhan Auto (Pty) Ltd* (A52/2022) [2022] ZAGPPHC 953 (2 December 2022)

Judgments upheld on appeal

32. *Kekana v Railway Safety Regulator* (JS468/19) [2021] ZALCJHB 395 (13 October 2021) (partially)

Judgments overturned on appeal

33. *Cape Gate (Pty) Ltd v Mokgara and others* (2022) 43 ILJ 1277 (LAC)
34. *Real Time Investments v CCMA* (2022) 43 ILJ 1642 (LAC)
35. *MTN v Mweli* (2021) 42 ILJ 775 (LAC)
36. *Telkom v Van Staden* (2021) 42 ILJ 869 (LAC)
37. *Nkomati JV v CCMA* (2019) 40 ILJ 819 (LAC)

Academic writings

38. The candidate co-authored a book entitled: “*The Role of Labour Court in the Transformation Age*”.