

# **JSC INTERVIEW ROUND: OCTOBER 2024**

## **VACANCY: JUDGE PRESIDENT OF THE LABOUR APPEAL COURT AND LABOUR COURT**

### **JUDGE MOGOMOTSI EDWIN MOLAHLEHI**

#### **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. BA Law, University of Lesotho (1983)

1.1.2. LLB, University of the Witwatersrand (1986)

1.1.3. LLM, University of Georgetown, USA (1990).

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

1.2.1. Judge of the Labour Court, April 2007 – 2017

1.2.2. Judge of the High Court (Gauteng Local Division), 2017 – 2023.

1.3. The candidate was appointed to the following acting rolls:

1.3.1. Acting Deputy Judge President of the Labour Court, March 2023 – January 2024

1.3.2. Acting Judge President of the Labour Court, February 2024 (ongoing).

#### **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.

2.2. The reviewers have received feedback to the effect that the candidate is a person of the highest integrity.

#### **3. The racial and gender composition on the bench**

3.1. There are currently 11 Labour Court Judges, 3 Labour Appeal Court Judges, and 1 Deputy Judge President who currently acts as Acting Judge President.

3.1.1. 4 black women (3 African, 1 Coloured)

3.1.2. 4 black men (3 African, 1 Indian)

3.1.3. 2 white women

3.1.4. 1 white man

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 67 years and 11 months old and will have completed a period of approximately 17 years and 6 months of active service.

4.2. If appointed, the candidate would be eligible to complete a period of approximately 2 years' active service as Judge President.

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

5.1. Throughout his career as Director of the Commission for Conciliation Mediation and Arbitration, Judge of the Labour Court, Judge of the High Court, Acting Deputy Judge President of the Labour Appeal Court, and Acting Judge President of the Labour Appeal Court the candidate has consistently demonstrated a personal commitment to the values of the Constitution.

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

6.1. The numerous judgments handed down by the candidate during his career as a judge of the Labour Court, High Court and Labour Appeal Court illustrate that the candidate has an excellent knowledge of the law, particularly labour law, including the constitutional aspects of labour law.

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

7.1. The candidate has disclosed that 11 judgments have been taken on appeal. On appeal, 6 judgments have been upheld and 5 judgments have been overturned.

7.2. The judgments of the candidate upheld on appeal are:

7.2.1. *Jooste & others v Dr Maureen Allem Inc & another* 2022 JDR 0941 (GJ);

7.2.2. *Magashule v Ramaphosa & others* 2021 JDR 1486 (GJ);

7.2.3. *Bargaining Council for the Furniture Manufacturing Industry, KwaZulu-Natal v UKD Marketing CC & others* (2013) 34 ILJ 96 (LAC);

- 7.2.4. *Renaissance BMJ Securities (Pty) Limited v Grup* (2016) 37 ILJ 646 (LAC);
- 7.2.5. *Rabothata & others v MEIBCO and others* [2015] ZALAC 19 (3 June 2015);  
and
- 7.2.6. *Paramount Property Fund Ltd v Haupt Property Fund Ltd* 2022 JDR 2229 (GJ).
- 7.3. In *Jooste & others v Dr Maureen Allem Inc & another* the candidate granted leave to appeal against his order in the court *a quo*. The appeal court considered the appeal of the costs order issued by the court *a quo*. The appeal court dismissed the appeal, finding that there was “nothing unfair” in the award of the costs order.
- 7.4. In *Magashule v Ramaphosa & others* a three-judge court (the candidate being one of the judges) considered issues surrounding precautionary suspension, the power to suspend and ancillary resolutions. The application for leave to appeal was dismissed, restating the test for leave to appeal and having considered the test for bias.
- 7.5. In *Bargaining Council for the Furniture Manufacturing Industry, KwaZulu-Natal v UKD Marketing CC & others* the court considered whether a business was conducted, organized, and operated by one entity with the intention to avoid the consequences of an employment relationship. The LAC considered issues surrounding the piercing of the corporate veil, and whether, in the absence of evidence by the respondent an adverse inference should be drawn. The appeal court also considered the issue of a punitive costs order handed down by the court *a quo*. The LAC found that “There does not appear, in my view, to be any basis on which to disturb this particular order of the court *a quo*.” at paragraph 23.
- 7.6. In *Renaissance BMJ Securities (Pty) Limited v Grup* the court held that an erstwhile employee’s entitlement to a deferred equity compensation turned on the interpretation of a clause in a contract of employment, which, when interpreted in accordance with the well-known rules of interpretation, entitled the erstwhile employee to payment of the sum of 250 000 US dollars. On appeal the court considered whether the deferred equity compensation was a recruitment bonus or a retention bonus. The LAC held that “[t]he court *a quo*’s conclusion in this regard can also not be faulted” at paragraph 33.
- 7.7. In the unreported judgment of *Rabothata & others v MEIBCO and others* the court held that the appeal was improperly prosecuted and an application for reinstatement of the appeal was dismissed. The LAC did not deal with the merits of the court *a quo*

because the appeal was improperly initiated and prosecuted and was dismissed prior to reaching the merits of the judgment in the court *a quo*.

7.8. In *Paramount Property Fund Ltd v Haupt Property Fund Ltd* the appeal court held that the order of the court *a quo* that a written agreement between the parties be rectified, was sound. The appeal court held that: “On an analysis of the pleadings and the evidence I am satisfied that the Judge correctly found that the respondent proved its case on a balance of probabilities at trial and was entitled to the rectification as claimed.”

7.9. The judgments of the candidate overturned on appeal are:

7.9.1. *National Union of Metalworkers of South Africa and others v Abancedisi Labour Services [2014] 2 All SA 43 (SCA)*. The candidate’s judgment in the court *a quo* was upheld in the LAC, save for the issue of costs which was overturned. The SCA overturned the judgment of the LAC.

7.9.2. *Grootboom v National Prosecuting Authority & another (2014) 35 ILJ 121 (CC)*. In this matter the candidate’s judgment in the Labour Court was upheld on appeal to the LAC, and then overturned on appeal to the Constitutional Court.

7.9.3. *Academic Professional Staff Association obo 26 others v UNISA & City of Tswane (JA61/14) [2016] ZALAC 70 (16 February 2016)*. In this unreported judgment the LAC overturned the dismissal of a condonation application for the late filing of a statement of claim in the Labour Court, which order was handed down by the candidate.

7.9.4. *Department of Finance and Economic Development (The Province of Gauteng) v Mosome and Others (JA1/2013) [2014] ZALAC 46 (19 September 2014)*. In this unreported judgment the LAC partially overturned the candidate’s judgment in the court *a quo*. The matter related to a review application and issues of insubordination and re-instatement. The appeal was upheld and the order for reinstatement was set aside. The compensation order was not set aside.

7.9.5. *SA Football Association v Mangope (2013) 34 ILJ 311 (LAC)*. The dispute in the court *a quo* pertained to a repudiation of an employment contract in terms of section 77 of the BCEA and the common law. The court *a quo* ordered damages. On appeal, the court held that the damages should not have been computed in the manner they had been and as a result, was substituted with a

different sum of money. The judgment of the court *a quo* was partially overturned.

7.10. In all the considered judgments, no adverse comments were made about the candidate by the appeal court.

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

8.1. The candidate's professional experience includes the following:

8.1.1. he was a Fellow at the Legal Resources Centre from January to December 1985;

8.1.2. he was a Candidate Attorney at Bowman Gilfillan Attorneys from 1986 to 1988;

8.1.3. he was a director at the Centre for Applied Legal Studies from 1990 to 1991 and from 1992 to 1994;

8.1.4. he was a lecturer at Vista University in 1992;

8.1.5. he was the Chairperson of the Department of Labour's Employment Condition Commission from 2000 to 2003;

8.1.6. he as an acting judge of the Labour Court in 2001;

8.1.7. he was Executive Mayor of the West Rand District from January to March 2001;

8.1.8. he was a director of the CCMA from April 2003 to September 2005, and part-time commissioner from February 2006 to March 2007;

8.1.9. he was a panel member of Tokiso Dispute Resolution from February 2006 to December 2006;

8.1.10. he was an acting judge of the Labour Court from 13 December 2006 March 2007;

8.1.11. he was the Chairperson of the Department of Labour's Essential Services Committee in February 2006;

8.1.12. he was the Chairperson of the Public Service Bargaining Council from January 1997 to February 2007;

8.1.13. he was an arbitrator, mediator, and trainer on Community Dispute Resolution under the Independent Mediation Service of South Africa from 2005 to 2007;

8.1.14. he was the Deputy Chairperson and a member of the Board of Legal Aid, South Africa from 2006 to 2014; and

8.1.15. he is currently a judge of the Labour Court as from 2007, and the Acting Judge President of the Labour Court as from 2024.

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

9.1. The candidate's judgments are written in English.

9.2. Nothing in the judgments and other writings considered by the reviewers indicates that the candidate's linguistic and communication skills are not adequate.

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

10.1. The candidate indicated that two judgments were outstanding at the time of completing the questionnaire.

10.2. As far as could be ascertained at the time of completing this review, both of these judgments were still outstanding, both of which have been outstanding for 4 months.

10.3. Of the various reported judgments of the candidate spanning twenty-four years, approximately 10-15% of the judgments appeared to be handed down more than three months after hearing. The longest period identified by the reviewers was a judgment handed down approximately 8 months after the reserved date.

**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.

11.2. The reviewers have received feedback from colleagues affirming the candidate's ability to conduct court proceedings fairly, efficiently, and effectively, both as a judge of the Labour Court and the Labour Appeal Court.

**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. During the time when the candidate has been the Acting Deputy Judge President and the Acting Judge President of the Labour Appeal Court, he has demonstrated excellent administrative ability. He has been both proactive and successful in addressing the

backlog at the Labour Court.

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

- 14.1. The message that would be sent to the public at large by the candidate's appointment is that one of the most experienced Labour Court judges in the country has been appointed as Judge President of the Labour Court.
- 14.2. The candidate has proven his leadership skills in his time as Acting DJP and Acting JP of the Labour Court. He has assisted in the preparation of a manual for acting judges to assist the *pro bono* AJ project.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

The candidate has been a judge in various capacities and various courts for a period in excess of 24 years. The candidate has authored in excess of 200 reported judgments. Juta online research illustrated 211 reported judgments spanning 24 years in the Labour Court and Labour Appeal Court. LexisNexis illustrated 126 reported judgments. On the basis that the candidate is applying for a post as Judge President of the Labour Court and the Labour Appeal Court, specific emphasis has been placed on the judgments emanating from these courts rather than those flowing from the Gauteng Division and Gauteng Local Division.