

VACANCY: JUDGE OF THE LAND COURT

Candidate: Advocate Mikateko Joyce Maluleke

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

- BA, University of the Witwatersrand (1994);
- LLB, University of the Witwatersrand (1996);
- LLM, University of Pretoria (2011).

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

- admitted as an advocate in 2003.

1.3. The candidate has acted in the following roles:

- Acting Judge, Land Court of South Africa (approximately nine months).

2. The candidate's integrity and ethics
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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 of the bench
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3.1. As far as could be ascertained, there are current four permanent judges of the Land Court:

- 2 black women (1 African, 1 Coloured)
- 1 black man (African)
- 1 white woman

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

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 65 years and 9 months old. If appointed, the candidate would be eligible to complete a period of up to 9 years and 2 months of active service as a judge.

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

5.1. The candidate's professional history demonstrates a sustained commitment to constitutional values, particularly gender equality, human dignity, access to justice, and the protection of vulnerable persons. For example, as a part-time researcher at the Centre for Applied Legal Studies (CALS), she contributed to research undertaken in preparation for the certification of the Constitution, including in areas such as reproductive rights, socio-economic rights, and traditional leadership. Her research on reproductive rights has contributed to the development of constitutional discourse in this important area.

5.2. The candidate has been involved in a range of initiatives to advance the rights of women and children. Her work through the South African Law Reform Commission has included research into the practice of *ukthwala* and its impact on the rights of young girls, as well as the development of public-awareness material concerning its criminal and constitutional implications. In her capacity as Director-General of the Department of Justice and Constitutional Development, she chaired an interdepartmental committee responsible for developing the South African Service Charter for Victims of Crime and the Minimum Standards for Services for Victims of Crime. She was also involved in developing guidelines for implementing the Domestic Violence Act and initiatives to improve access to justice in the family courts.

5.3. The candidate has further committed to transformation within the legal profession and judiciary. She was instrumental in establishing the South African Chapter of the International Association of Women Judges and the South African Women Lawyers Association, and has organised meetings and conferences focused on judicial transformation. She has driven justice sector reforms, including the National Rape Strategy, Thuthuzela Care Centres, the Victim's Charter, the Domestic Violence Act implementation guidelines, Family Court reforms, and E-Justice initiatives.

- 5.4. Her publications and other work similarly reflect a sustained engagement with gender equality, customary law, and women's rights.

6. The candidate's knowledge of the law, including constitutional law
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- 6.1. The candidate's application indicates knowledge across various areas of law, including constitutional law, administrative law, labour law, customary law, and human rights law. Her experience includes providing guidance on constitutional and administrative law litigation while employed in the public service.
- 6.2. Her LLM dissertation concerned legitimate expectation in tax law, with her current doctoral studies focusing on the interactions between the Extension of Security of Tenure Act 62 of 1997 ("ESTA"), the Interim Protection of Informal Land Rights Act 31 of 1996 ("IPILRA"), and the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA").
- 6.3. The candidate attached three judgments to her application. The reviewers are aware of two others, both of which are available on SAFLII. All five judgments are considered below.
- 6.4. In *Rustenburg Platinum Mines Ltd v Langa and Others* [2026] ZALCC 7, a decision in which Ncube J concurred, the candidate balanced the residence rights of community members with those of mineral right holders. The inquiry required a consideration of the MPRDA, IPILRA, and ESTA. The candidate showed an understanding of all three pieces of legislation, and appreciated the interaction of mining rights (under the MPRDA) with informal land rights (under IPILRA) and community consent (under ESTA).
- 6.5. In *GD Kilpin Estates (Pty) Ltd v Van der Vywer and Others* [2026] ZALCC 16, the candidate considered the impact of terminating an employment relationship on an alleged right of residence and, in particular, whether the statutory requirements for eviction had been met. In so doing, she located ESTA within a constitutional framework, recognising its purpose in giving effect to security of tenure and protection against arbitrary eviction. Her judgment demonstrates an understanding that ESTA requires the court to undertake a just and equitable enquiry, rather than merely determining whether formal notices were issued. In this respect, the candidate recognised and sought to balance the competing interests of the landowner with the circumstances and vulnerability of the occupiers.

- 6.6. Similarly, in *Charles Johannes Lambrechts NO and Others v Piet Booysen and Others* [2026] ZALCC 20, the candidate considered the impact of terminating an employment relationship on an alleged right of residence, and whether the statutory requirements for eviction had been met. The case demonstrates the candidate's ability to deal with factual disputes in application proceedings, indicating that her strengths are not limited to the substantive issues that arise in disputes before the Land Court. Her engagement with just and equitable considerations also demonstrates an appreciation of the constitutional character of security of tenure disputes.
- 6.7. In *Ezwelethu Communal Property Association v Khubeka and Others* [2026] ZALCC 5, the candidate demonstrates further knowledge of ESTA, applied in a materially different context from that of *GD Kilpin* and *Lambrechts*. As the matter came before her on automatic review in terms of section 19(3) of ESTA, the candidate was required to consider the Magistrate's Court's treatment of the matter, and to determine whether the order satisfied the substantive and procedural requirements of ESTA.
- 6.8. In considering the judgment, the candidate went beyond characterising the matter as an eviction and concluded that it required reconsideration as a relocation. The order *a quo* was set aside in its entirety, and remitted for reconsideration, with an emphasis on substantive fairness, and mindful of the possibility of mediation. The candidate's characterisation of the dispute under ESTA, examination of the parties' relationship, and relief sought, reflects her sensitivity to the differentiated mechanisms available within the security of land tenure framework.
- 6.9. The judgment also reflects her understanding of what the substantive fairness enquiry requires. The candidate recognises that ESTA requires judicial consideration of the real consequences of displacement, and the respective rights and interests of the parties affected. Furthermore, the candidate's identification of mediation as a possible means of resolving the dispute demonstrates an understanding that adjudication of eviction matters is not the only available (or sometimes even appropriate) avenue, and that broader remedial means are also available to parties.
- 6.10. In *Ndumo obo Emdwebu Community v Minister of Agriculture, Land Reform and Rural Development* [2026] ZALCC 33, a decision in which Du Plessis J concurred, the candidate considered whether – in light of the decision of the SCA in *Minister of Agriculture, Land Reform and Rural Development and Others v Ndumo (obo Emdwebu*

Community)) [2023] ZASCA 136 – the Land Court could proceed with an “*enquiry into possible compensation payment ... [could] be considered for a referral under section 14 of the Restitution of Land Rights Act 22 of 1994*”.

- 6.11. At issue was the nature of the claim: whether it could properly be characterised as a family claim, or whether, as alleged by the plaintiff, it was properly characterised as a community claim. The plaintiff had sought to prevent the referral on various grounds, including that “*the claim had already received ministerial approval and was allegedly settled; [and] that no dispute existed capable of referral in terms of section 14*”. The candidate dismissed the plaintiff’s special pleas, holding that, in light of the SCA’s judgment, “*no valid community claim arises on the papers before this Court under this case number.*”
- 6.12. Although the judgment makes for difficult reading, it provides evidence of the candidate’s ability to deal with a complex set of facts, identify the key legal concerns at the heart of the matter, and deal sensitively – but dispassionately – with the legal issues at play. It also shows that the candidate is able to consider the particular issues ordinarily raised in matters brought to the Land Court in their broader legal context.
- 6.13. The candidate also included an order granted in *Hester Francina Blackburn NO and Others v Sephia Kerneels and Others* [case no. LCC 162/2023; Court Online case no. 2024/113096), a matter over which she presided. Because there is no judgment in the matter, the case has not been considered.
- 6.14. Collectively, the five judgments considered by the reviewers reflect a sound knowledge of land tenure law and the applicable constitutional principles. They reflect the candidate’s ability to address the cross-sectionality of land rights, employment rights, procedural law, and constitutional protections.

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

- 7.1. The candidate has disclosed that one of her judgments has been taken on appeal, with an application for leave to appeal in respect of a second having been set down for hearing on 24 July 2026. The outcome of that application is not known to the reviewers.
 - In granting leave to appeal against her judgment and order in *Rustenburg Platinum Mines Ltd v Langa and Others*, the candidate found no reasonable prospects of

success, but nevertheless granted leave to appeal to the SCA on the basis that the matter raises three important legal questions: whether historical community consent remains operative in subsequent relocation disputes; whether section 54 of the MPRDA must be fully exhausted where IPLRA consent is alleged; and whether IPLRA communities may be evicted under ESTA while compensation issues remain unresolved.

- The outcome of the application for leave to appeal against her judgment and order in *Charles Lambrechts NO and Others v Piet Booysen* is not known to the reviewers.

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

- 8.1. The candidate's career has included a range of experience, including legal practice (as an advocate), state law advisory work, legislative reform, senior public administration, academic research, and (limited) judicial service.
- 8.2. Her employment history includes work as a researcher at CALS, a candidate attorney at the Wits Law Clinic, a state law adviser (at the level of a deputy director) in the Department of Justice, and a Director-General in the Department of Women, Youth, and Persons with Disabilities.
- 8.3. The candidate's litigation experience encompasses criminal, labour, delictual, administrative, and constitutional matters. As a candidate attorney, criminal and labour matters each accounted for approximately 30% of her litigation work, with delict accounting for approximately 10%. She records that approximately 20% of her work as an advocate was in the Labour Court.
- 8.4. The candidate's public sector career involved substantive legal and justice sector reform. Her stated contributions include work on *ukuthwala*, the development of the Victims' Charter and minimum standards for victims of crime, implementation guidelines for the Domestic Violence Act, maintenance-related initiatives, and measures to improve access to justice in family courts.
- 8.5. Her work experience also includes institutional and quasi-judicial responsibilities. She has served as a commissioner on both the Commission for Employment Equity and the Judicial Service Commission, and as chairperson of the SARS Tax Board.

- 8.6. The candidate records a longstanding interest in land law and has undertaken research relating to forced removals. Her current doctoral research concerns the interaction between ESTA, IPILRA, and the MPRDA.
- 8.7. Since being appointed as an acting judge of the Land Court in November 2025, she has presided over trials, hearings, urgent applications, reviews and pre-trial conferences, and dealt with restitution, tenure, labour tenant, and related land matters. She has also undertaken case management responsibilities in land reform disputes.
- 8.8. The candidate's overall professional experience is broad and substantial and includes significant experience in constitutional and public law, law reform, governance, human rights, labour law, and land related matters. Her conventional litigation experience is not particularly extensive; a considerable portion of her career has been spent in senior public service, policy, and institutional roles.

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 no judgments were outstanding at the time of completing the questionnaire.
- 10.2. Of the five judgments the candidate considered by the reviewers, only one was handed down more than three months after 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. There is no reason to believe that the candidate, if appointed, would not bring an independent mind to bear on issues presented for judicial determination, nor that the

candidate would be unduly influenced in any way, including by the executive or legislative branches of government.

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

- 13.1. The candidate has extensive senior administrative and institutional management experience. She served as Director-General of the Department of Women, Youth and Persons with Disabilities, and previously held senior roles in the Department of Justice and Constitutional Development, including as Deputy-Director General and Senior State Law Adviser.
- 13.2. She has also served as a commissioner on the Commission for Employment Equity and the Judicial Service Commission, and as chairperson of the SARS Tax Board. Her experience therefore includes management of public institutions, policy and legislative processes, dispute resolution structures, and institutional responsibilities.

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

- 14.1. The candidate's appointment would demonstrate that experience in areas of legal practice that are not ordinarily pursued by those seeking judicial appointment, such as public service and law reform, is valued in appointments to the Land Court.
- 14.2. The candidate's appointment would also contribute to the racial and gender transformation of the judiciary. Her record includes longstanding involvement in initiatives to advance women within the legal profession and judiciary, including her role in establishing the South African Chapter of the International Association of Women Judges and the South African Women Lawyers Association.
- 14.3. The candidate has acted in the Land Court since November 2025, and her appointment could therefore convey confidence that the court is constituted by judges with an understanding of both the legal framework governing land rights and the social and historical context within which land disputes arise.
- 14.4. However, her list of judgments provides a relatively limited body of judicial work from which to assess the full breadth of her judicial knowledge and potential. The candidate's application should therefore be assessed with due regard to her experience, and the recent nature of her acting judicial experience.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. None disclosed or identified.

Unreported judgments

2. *Rustenburg Platinum Mines Ltd v Langa and Others* [2026] ZALCC 7
3. *Charles Lambrechts NO and Others v Piet Booysen* [2026] ZALCC 20
4. *GD Kilpin Estates v Van der Vyver* [2026] ZALCC 16
5. *Ezwelethu Communal Property Association v Kubheka and Others* [2026] ZALCC 5
6. *Ndumo obo Emdwebu Community v Minister of Agriculture, Land Reform and Rural Development* [2026] ZALCC 33

Judgments upheld on appeal

7. None disclosed or identified.

Judgments overturned on appeal

8. None disclosed or identified.

Academic writings

9. *Culture, Tradition, Custom, Law and Gender Equality* (PER/PELJ, 2012); [2012] PER 1
10. *A Critical Analysis of the Doctrine of Legitimate Expectation in the Context of the Advance Tax Ruling System and Tax Assessment Measures by SARS* – LLM Dissertation
11. *Women and the Law in South Africa: Gender Equality Jurisprudence in Landmark Court Decisions*; Department of Justice and Constitutional Development, 2004