

VACANCY: DEPUTY JUDGE PRESIDENT OF THE LABOUR COURT AND LABOUR APPEAL COURT

Candidate: Judge Betty Maletsatsi Mahalelo

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

1.1. The candidate holds the following tertiary qualifications:

- BJuris, University of Bophuthatswana (now Northwest University) (1988);
- LLB, University of Bophuthatswana (now Northwest University) (2000).

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

- served as Public Prosecutor from June 1988 to April 1991;
- admitted as an advocate in 2002.

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

- District Magistrate in May 1993;
- Regional Magistrate in November 2003;
- Judge of the High Court (Gauteng Division) on 1 January 2018.

1.4. The candidate has acted in the following roles:

- District Court Magistrate from June 1988 to April 1991;
- Regional Magistrate from April 2003 to October 2003;
- Judge of the High Court (Gauteng Division) (approximately 48 weeks);
- Labour Court Judge (approximately 30 weeks);
- Judge of the Labour Appeal Court (approximately 60 weeks);
- Deputy Judge President of the Labour Court and Labour Appeal Court (approximately 35 weeks).

2. The candidate's integrity and ethics

- 2.1. No circumstances are known to the reviewers that would suggest the candidate is not a person of integrity with a reputation for ethical behaviour, or not a fit and proper person for appointment.
- 2.2. There is a ruling of the Judicial Conduct Committee relating to a complaint brought by Mr L L M Makgabo against the candidate.¹ The Acting Chairperson dismissed this complaint, which dismissal was confirmed on appeal.

3. The racial and gender composition of the bench

- 3.1. As far as could be ascertained, there are currently 4 permanent judges of the Labour Appeal Court:
- 1 black woman (1 African)
 - 1 black man (1 African)
 - 1 white woman
 - 1 white man
- 3.2. As far as could be ascertained, there are currently 12 permanent judges of the Labour Court:
- 4 black women (4 African)
 - 5 black men (4 African, 1 Indian)
 - 2 white women
 - 1 white man
- 3.3. 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 63 years and 5 months old and will have completed a period of approximately 8 years and 9 months of service as a judge. If appointed, the candidate would be eligible to serve as Deputy

¹ <https://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAJSC/2024/9.html&query=mahalelo>

Judge President of the Labour Court and Labour Appeal Court for a period of up to 6 years and 6 months.

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

- 5.1. The candidate has a demonstrable commitment to the values of the Constitution, as shown by her being a founding member of the South African Chapter of the International Association of Women Judges and is currently serving as its treasurer.
- 5.2. The candidate is actively involved in SACIAWJ's Women in Leadership initiatives and is also spearheading awareness of its sexual harassment policy among members, with a view to collaborating with the South African Judicial Education Institute.
- 5.3. The candidate regularly advocates for access to justice by conducting public education initiatives on issues such as domestic violence, human rights and legal awareness in schools and universities. These efforts demonstrate a strong commitment to maintaining an accessible and responsive judiciary.

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

- 6.1. In *Sugar Berry CC t/a Horison Staff Solutions v Motor Industry Bargaining Council and Others* (unreported judgment C607/2021 handed down on 14 October 2024), the candidate demonstrated legal proficiency and analytical skill in interpreting a collective agreement regarding "*pensionable remuneration*" for temporary employment services. Rejecting the applicant's attempt to interpret the fund agreement in isolation, the candidate held that it had to be read harmoniously with the main agreement. The Labour Appeal Court upheld her approach to interpretation, affirming that related statutory and social agreements must be reconciled within the broader framework and purpose of the Labour Relations Act.
- 6.2. In *Netcowave (Pty) Ltd t/a Vincent Park Convenience Centre v Dispute Resolution Centre and Others (PR117/23) [2025] ZALCPE 21 (13 October 2025)*, a review application concerning an arbitration award on misconduct dismissals, the candidate demonstrated a sound grasp of review standards and administrative law principles. She applied the restrictive nature of judicial review, maintaining the distinction between an appeal and a review by focusing on whether the decision was reasonable rather than substituting her own view on the subject of the award. Her analysis properly focused

on the employer's evidentiary burden, pinpointing the key evidentiary deficiencies in the applicant's case. Judgment was delivered nearly 11 months after the hearing.

- 6.3. In *Southern African Clothing and Textile Workers Union & Others v Agri Poultry (Pty) Ltd* (unreported judgment JS 751/22 handed down on 24 July 2025), a large-scale trial involving 665 individual employees across 30 court days, the candidate displayed impressive analytical skill and legal knowledge. She identified and applied the governing legal frameworks, engaging substantively with authorities. Furthermore, her final order reflected a grasp of constitutional remedies by crafting practical, just, and equitable relief tailored to the complex facts of the matter. Judgment was handed down nearly 12 months after the hearing, although this delay may be partly explained by the scale and complexity of the trial.
- 6.4. As regards *Eskom Holdings SOC Ltd v The CCMA and Others* (unreported judgment JA08/2025 handed down on 29 May 2026), an assessment of the candidate's legal reasoning in this Labour Appeal Court matter could not be conducted, as the candidate's application pack contained an incomplete draft (ending at paragraph 29) and the full judgment was unavailable on public databases (SAFLII and LawLibrary). The Johannesburg Bar Library does not have a copy of this judgment.
- 6.5. In *Central Authority for the Republic of South Africa and Another v Zimba-Schlichtig* 2024 JDR 4022 (GJ), an application under the Hague Convention on the Civil Aspects of International Child Abduction, the candidate demonstrated strong legal reasoning and a solid understanding of constitutional child law principles in ordering the prompt return of two minor children to Germany. She established that the children were habitually resident in Germany prior to their mother's unlawful retention of them in South Africa. Applying the high threshold required for an article 13(b) "*grave risk of harm*" defence as settled in Constitutional Court jurisprudence, the candidate found that the mother failed to prove that returning to Germany would expose the children to psychological harm or place them in an intolerable situation. Demonstrating an appreciation for practical and equitable remedies, she crafted a detailed order ordering the children's return while safeguarding their best interests by requiring the father to pay for separate accommodation, education, and therapeutic support if the mother chose to accompany them.

- 6.6. In *Veli v Eskom Holdings SOC Ltd* [2025] ZALCJHB 498 the applicant brought an action against Eskom Holdings under Section 6 of the Employment Equity Act (EEA), alleging unfair discrimination based on race regarding employee relocation and housing benefits. The applicant argued that Eskom engaged in systemic racial differentiation when it agreed to purchase a white colleague's immovable property under its relocation policy while refusing to extend the same property purchase benefit to the applicant under comparable circumstances. The candidate systematically evaluated the evidentiary burden under Section 11 of the EEA, analysing whether the applicant established a prima facie case of direct or indirect race-based discrimination and assessing the employer's justification regarding policy applicability. By meticulously applying the established *Stoman* and *Harksen v Lane* tests to workplace benefit disputes, Mahalelo AJ demonstrated a firm, practical grasp of the statutory framework governing equal protection, race discrimination, and onus of proof in employment disputes.
- 6.7. In *Sally v CPES* [2024] ZALCJHB 519 the candidate dealt with a claim of automatically unfair constructive dismissal grounded in alleged religious discrimination, brought by an employee after his employer failed to immediately accommodate a request for time off for religious observances. The candidate dismissed the employee's claim, emphasising that constructive dismissal is an extraordinary remedy reserved strictly for situations where continued employment has been rendered objectively intolerable by the employer. She underscored the necessity for employees to exhaust available internal grievance procedures and afford their employers reasonable time to investigate and address workplace requests before resigning. In this instance, she ruled that a premature resignation of barely 24 hours after submitting a request falls far short of the high legal threshold required to prove constructive dismissal under the Labour Relations Act. This judgment was handed down more than 9 months after the hearing.

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

- 7.1. The candidate has disclosed that six judgments have been taken on appeal, and the reviewers found a further judgment of the candidate that has been taken on appeal. On appeal, three judgments have been upheld, and five judgments have been overturned.

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

- *Sugar Berry CC t/a Horison Staff Solutions v Motor Industry Bargaining Council and Others* (the appeal judgment is reported at (2026) 47 ILJ 188 (LAC))
- *DR obo KR v MEC for Education, Gauteng* (unreported judgment of the South Gauteng High Court 2013/14863, appeal judgment neutral citation [2019] ZAGPJHC 126). The court on appeal confirmed that the candidate's judgment, which dealt with the vicarious liability of the MEC for damages arising from a goalpost falling on two learners, could not be criticised.

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

- *Featherbrooke Homeowners Association v Mogale City Municipality and Four Others* [2022] ZAGPJHC 83, overturned on appeal in *Featherbrooke Homeowners Association v Mogale City Municipality and Four Others* [2024] ZASCA 27. In this matter, the candidate held the local municipality liable for environmental rights violations caused by chronic flooding and issued a structural interdict compelling it to fix damaged riverbanks and public infrastructure. The SCA criticised the candidate's original order for failing to adjudicate claims against the other co-respondents. The SCA then remitted the matter back to the trial court to properly evaluate the constitutional duties of all joint state entities.
- *National Director of Public Prosecutions v Wood and Eleven Others* [2020] ZAGPJHC 264, overturned on appeal in *National Director of Public Prosecutions v Wood and Eleven Others* [2022] 3 All SA 179 (GJ); 2022 (2) SACR 245 (GJ) (3 May 2022). This matter dealt with the discharge of a provisional restraint under POCA, which the candidate discharged on the basis of alleged non-disclosures by the National Prosecuting Authority. This judgment shows the court's impartiality when dealing with organs of state and ensuring even-handedness in Court proceedings. On appeal, the court found these non-disclosures not to be material, and the restraint was reinstated.
- *Frese NO v Steve Biko Foundation* [2016] ZAGPJHC 358, appeal judgment [2018] ZAGPJHC 446. In this matter, the candidate enforced an adjudicator's award, even though this was subject to further arbitration. On appeal, this was

set aside because the dispute over the adjudicator's award had to first be dealt with in arbitration.

- *Afrisam v Make Commodities case no. 3071/2018* (unreported judgment). Appeal judgment [2022] ZAGPJHC 641. In this matter, the appeal court criticised the candidate for failing to consider all of the evidence placed before it in a contractual dispute.
- *Venter & Four Others v Twenty-Four Motors CC* [2024] ZALCJHB 232. This matter concerned an order made by the candidate under section 18(3) of the Superior Courts Act, allowing enforcement of a restraint of trade pending appeal. The Labour Appeal Court overruled this on the basis that the exceptionally high standard for this relief was not met, as there was no concrete evidence showing protectable interests to sustain the restraint of trade.

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

- 8.1. The candidate has served in various capacities, starting her career as a Public Prosecutor at Taung Magistrate Court in the North West from 1988 to 1991.
- 8.2. The candidate has extensive judicial experience of 35 years as a magistrate and as a judge of the High Court, the Labour Court, and the Labour Appeal Court, as well as more than ten years of experience as a prosecutor and advocate.
 - The candidate served as Acting District Court Magistrate for the Mogwase Magistrate Court from 1991 to 1992. In 1993, she was appointed District Magistrate in the same court until 1997. From 1998 to 2003, the candidate was appointed District Magistrate in the Molopo Magistrate Court. In total, she served as a Magistrate in various jurisdictions until 2017.
 - The candidate began acting in the High Court in 2018.
 - The candidate has also acted in the Labour Court for three terms and sat as Acting Deputy Judge President (“DJP”) of the Labour Court and Labour Appeal Court from 2025 to July 2026.
 - She commenced acting in the LAC from February 2025 and did so for over a year, until May 2026.

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 one judgment was outstanding at the time of completing the questionnaire, namely *Department of Sports, Arts, Culture and Recreation Gauteng Province v General Public Service Sector Bargaining Council and Others* (JA 14/2025), reserved on 19 May 2026.
- 10.2. As far as could be ascertained at the time of completing this review, this judgment was still outstanding. It has been outstanding for approximately five months to date.
- 10.3. Of the 12 judgments of the candidate considered by the reviewers, 3 were 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.
- 11.2. The candidate's referees speak highly of her character, approachability, collegiality, and willingness to offer guidance and assistance to her colleagues. They describe her presence within the Labour Court as fostering a spirit of collaboration and professionalism, and state that she commands her colleagues' respect through her conduct and work.

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 held the position of Acting Deputy Judge President for five terms and has been involved in a number of organisations at an executive or administrative level.
- 13.2. The candidate's referees speak highly of her performance as Acting DJP. They describe her as having discharged her responsibilities with excellence and as having assumed the role with "*confidence, dignity and effectiveness*". According to her referees, she leads with clarity and purpose and has demonstrated an ability to manage the administrative and judicial demands of the office of DJP effectively. They further describe her as having represented the office with distinction.
- 13.3. It remains notable that a number of judgments have been handed down late, including one judgment that is still outstanding.

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

- 14.1. The candidate has extensive judicial experience and has shown commitment to the administration of justice.
- 14.2. The candidate's appointment would signal that sustained and committed long service within the magistracy and judiciary provides a pathway to permanent appointment at the helm of a court. Her varied career is also noteworthy, as it reflects a commitment to public service and puts her in good stead to lead the Labour Court and LAC.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Everton Construction and Engineering (Pty) Ltd and Others v Access Bank South Africa Ltd (McDonnell as Third Party)* [2025] JOL 68971 (GJ)

Unreported judgments

2. *Netcowave (Pty) Ltd t/a Vincent Park Convenience Centre v The Dispute Resolution Centre and Others* [2024] ZALCJHB 365
3. *Southern African Clothing and Textile Workers Union & Others v Agri Poultry (Pty) Ltd* (JS 751/22) [2025] ZALCJHB 304
4. *Central Authority for the Republic of South Africa and Another v Zimba-Schlichtig* (47305/2024) [2024] ZAGPJHC 1082
5. *Veli v Eskom Holdings SOC Ltd* [2025] ZALCJHB 498
6. *Sally v CPES* [2024] ZALCJHB 519

Judgments upheld on appeal

7. *DR obo KR v MEC for Education, Gauteng* (2013/14863) [2019] ZAGPJHC 558 upheld in *MEC for Education Gauteng v RD obo KR* (A5004/2018) [2019] ZAGPJHC 126
8. *Sugar Berry CC t/a Horison Staff Solutions v Motor Industry Bargaining Council and Others* (C607/2021) [2023] ZALCCT 72 in *Sugar Berry CC t/a Horison Staff Motor Industry Bargaining Council and Others* (2026) 47 ILJ 188 (LAC))

Judgments overturned on appeal

9. *Featherbrooke Homeowners Association v Mogale City Municipality and Four Others* [2022] ZAGPJHC 83 in *Featherbrooke Homeowners Association v Mogale City Municipality and Four Others* [2024] ZASCA 27)
10. *National Director of Public Prosecutions v Wood and Eleven Others* [2020] ZAGPJHC 264 in *National Director of Public Prosecutions v Wood and Eleven Others* [2022] 3 All SA 179 (GJ); 2022 (2) SACR 245 (GJ) (3 May 2022)
11. *Frese NO v Steve Biko Foundation* [2016] ZAGPJHC 358 overturned in *Steve Biko Foundation v Frese NO and Another* (A5008/2017) [2018] ZAGPJHC 446 (7 March 2018)

12. *Make Commodities (Pty) Ltd v Afrisam (South Africa) (Pty) Ltd* (3071/2018) [2019] ZAGPJHC 62 (5 March 2019) overturned in *Afrisam v Make Commodities* [2022] ZAGPJHC 641
13. *Venter & Four Others v Twenty-Four Motors CC* [2024] ZALCJHB 232, overturned in *Venter & Four Others v Twenty-Four Motors CC t/a Ford Ermelo* (JA34/2024) [2024] ZALAC 32 (28 June 2024)

Academic writings

14. None disclosed or identified.