

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

Candidate: Judge Graham Nasious Moshwana

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:

- BProc, University of Limpopo (1991);
- LLB, University of the Witwatersrand (1993);
- Higher Diploma Labour Law, University of Johannesburg (1995);
- Diploma Corporate Law, University of Johannesburg (2001);
- LLM (Labour Law), University of Johannesburg (2003);
- LLD (Mercantile Law), University of the North West (2025).

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

- admitted as an attorney in 1995.

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

- Judge of the Labour Court (Johannesburg) on 31 May 2017;
- Judge of the High Court (Gauteng Local Division) on 1 December 2024.

1.4. The candidate has acted in the following roles:

- Acting Judge of the Labour Court (2007 to 2017);
- Acting Judge of the Labour Appeal Court (first and second terms in 2026).

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

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 man.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 56 years and 11 months old and will have completed a period of approximately 9 years and 5 months of service as a judge. If appointed, the candidate would be eligible to serve as Deputy Judge President of the Labour Court and Labour Appeal Court for a period of up to 13 years.

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

5.1. There are various decisions and academic articles of the candidate that demonstrate his commitment to the values of the Constitution, including those where he provided clarity in relation to provisions of the Labour Relations Act, as well as decisions that brought about the amendment of the rules of the Council for Conciliation and Mediation ("CCMA").

5.2. The candidate's nomination comes from a senior-junior member of the Johannesburg Society of Advocates ("JSA"). The member notes that the candidate has not had an

acting stint as Deputy Judge President of the Labour Court, but believes his commitment to developing labour law jurisprudence makes him an ideal candidate for such a position.

- 5.3. The candidate has authored articles in *De Rebus*, an attorneys' journal published monthly by the Law Society of South Africa ("LSSA"). An article written by the candidate in *De Rebus* in August 2024, titled '*Listed or arbitrary harassment: Determining the nature of workplace harassment*', focuses on unfair discrimination and the right to equality in the Constitution. The candidate explains that only 'unfair discrimination' is prohibited, but 'harassment' is not included as a listed ground under section 9(3) of the Constitution. The Employment Equity Act 55 of 1998 ("EEA") was enacted to give effect to the right to equality, promote democracy, and guard against unfair discrimination. Section 6(1) of the EEA prohibits discrimination based on the grounds listed in section 9 of the Constitution. The candidate provides a helpful analysis of the law and the extent to which harassment is protected in the workplace in South Africa. The candidate authored this article while a Judge of the Labour Court, and it will provide assistance to a legal practitioner dealing with a dispute.
- 5.4. The candidate also authored an article in *De Rebus* in November 2004, titled '*The vexed question of benefits*', which concerns the issue of jurisdiction when dealing with 'benefits' at the Commission for Conciliation, Mediation and Arbitration ("CCMA"), in unfair labour practice disputes. The candidate concludes that the law at that stage remained uncertain as to whether any benefit of monetary nature would be identified as 'remuneration' or a 'benefit' under the Labour Relations Act 66 of 1995 ("LRA"). The LRA only defined 'remuneration' and not what a 'benefit' was. This was a common issue in practice, where uncertainty remained regarding 'benefits'.
- 5.5. The candidate's further publications include:
- An academic article in the Indian Journal of Law and Legal Research on whether *audi alteram partem* applies when a decision to place an employee on suspension is taken. The candidate engaged robustly with Constitutional Court judgments relevant to the issue and *inter alia* advanced a dignity argument in favour of the application of *audi*; and

- Co-authoring a book titled “The Role of the Labour Court in the Transformation Agre: The Namibian and South African Context”, which includes chapters on social justice, the Constitution and human rights.¹

6. The candidate’s knowledge of the law, including constitutional law
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- 6.1. The candidate has considerable knowledge of labour law, having served as Commissioner of the CCMA for four years, acted as a judge in the Labour Court over a period of 10 years, obtained an LLM in labour law, served as a permanent judge in the Labour Court for seven years, published academic articles and books in the field of labour law, and served as an acting judge in the Labour Appeal Court (“the LAC”).
- 6.2. The candidate has also demonstrated knowledge of the law in other areas. During his acting and permanent stints in the Gauteng division, the candidate dealt with issues arising in various areas of law, including criminal law, administrative law and commercial law.
- 6.3. From an overview of several judgments, including the four LAC judgments in the candidate’s application, all of which he authored, the following themes emerge:
- The candidate’s legal reasoning and analytical skills are generally sound and sufficiently rigorous. A few exceptions apply:
 - In some cases, the LAC overturned the candidate’s judgments on the basis that he decided issues not raised (e.g. *Real Time* (below)). These corrections are now reflected in the LAC judgments recently authored by the candidate, including *Bakhresha*² (at paras 60 to 65) and *UPN*³ (at para 14) in which the LAC unanimously held that a court cannot decide an unpleaded case.
 - An uncorrected issue by the candidate himself, is his view that an unaddressed finding by an appellate court means that the finding *a quo* is “*by necessary implication approved*” which has subsequently been followed in Labour Court decisions (see *Arends* discussion below).

¹ The reviewers were unable to access a copy of the book during the review period to consider its contents, and unable to find a detailed publicly available review thereof. The candidate’s nominator highlighted this book in his nomination form at p 2 of his application.

² Application at p 38 - 41.

³ Application at p 67 – 68.

- The candidate has keen regard to foreign law. For instance, in *Memela v Chairperson of the State Capture Commission of Inquiry* (34177/22) [2025] ZAGPPHC 816 (14 August 2025), the candidate had regard to a decision of the United States Supreme Court when deciding whether section 47(1) of the Superior Courts Act 10 of 2013 – which requires a litigant to obtain leave of the President of the Supreme Court of Appeal before suing the Chief Justice – applied to a review of the report of the State Capture Commission in which former Chief Justice Zondo was cited in his capacity as chairperson of the Commission. Elsewhere in his judgment in *Memela*, the candidate invoked Canadian authority when considering the correct characterisation of commissions of inquiry. The candidate found that section 47(1) did not apply as, when acting as the chairperson of the Commission, the former Chief Justice was acting as a statutory functionary and not as a judge. It is noted that the Gauteng Division of the High Court came to the opposite conclusion in another review of the report of the State Capture Commission, in *Gwede Samson Mantashe v Justice Raymond Zondo NO and Another* (unreported 12 October 2025, case number 007263/2022).

7. Judgments of the candidate that have been overturned, upheld, or commented on, on appeal:
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- 7.1. The candidate has disclosed that 10 judgments have been taken on appeal, and the reviewers found a further eight judgments of the candidate that have been taken on appeal. On appeal, six judgments have been upheld, and 12 judgments have been overturned. As far as the reviewers are aware, no appeals remain to be decided.
- 7.2. The judgments of the candidate upheld on appeal are:
 - *Skinner and Others v Nampak Products Ltd and Others* (case no JS197/16, 20 June 2019), in which employees challenged their employer's exercise of a contractual discretion to cap its contribution to their post-retirement medical aid (PRMA) benefits.
 - The candidate held that the employer had exercised its contractual discretion reasonably and in good faith – driven by a legitimate commercial rationale amid a PRMA liability that was rising sharply out of

step with consumer price inflation (“CPI”) – such that neither a breach of contract nor an unfair labour practice had been established, and dismissed the claim.

- On appeal in *Skinner and Others v Nampak Products Ltd and Others* (2021) 42 ILJ 838 (LAC), the LAC dismissed the appeal with costs, holding that an intention to increase profitability is a legitimate commercial rationale for exercising such a discretion, that the employer's process was transparent and fairly balanced the competing interests at stake, and that the Labour Court did not err in its conclusion.
- *National Union of Mineworkers v Cullinan Diamond Mine, a division of Petra Diamonds (Pty) Ltd* (case no JS102/14, 1 March 2019), in which NUM alleged that the employer had unfairly discriminated against its striking members, in contravention of section 5 of the LRA, by paying a discretionary “*exceptional performance*” bonus to employees who continued working during a protected strike.
 - The candidate reasoned that it is improper and unjustifiable to differentiate an employee solely for participating in a protected strike. However, he found that there was no such differentiation on the facts of this case as the real issue lay not with the payment of the bonus, but with the separate and preceding cancellation of the annual bonus for all employees. Any complaint about the “*exceptional performance*” bonus concerned unfair conduct in the provision of benefits, being an unfair labour practice claim over which the court had no jurisdiction. The candidate dismissed the claim.
 - On appeal, in *National Union of Mineworkers v Cullinan Diamond Mine, a division of Petra Diamonds (Pty) Ltd* (2021) 42 ILJ 785 (LAC), the LAC dismissed the appeal, but on different grounds to those on which the candidate had dismissed the initial claim, namely that the “*exceptional performance*” bonus was a proportional, temporary retaliatory economic measure forming a legitimate part of the collective-bargaining “*resolutive process*” and so did not unfairly discriminate against the strikers.

- *Khum MK Investments and Bie Joint Venture (Pty) Ltd v CCMA and Others* (case no JR678/2015, 5 April 2018),⁴ in which the employer sought to review a CCMA award finding that it had dismissed three employees engaged on an Eskom project, and the candidate had to construe a termination clause said to provide for automatic termination of their fixed-term contracts once Eskom cancelled the relevant task orders.
 - On appeal in *Khum MK Investments and Bie Joint Venture (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (2020) 41 ILJ 1129 (LAC), the LAC dismissed the appeal with costs, rejecting an argument that a term permitting automatic termination should be tacitly implied, and confirming that the express provisions of the contractor agreement did not allow for automatic termination in the circumstances.
- *TSB Sugar RSA Ltd v Dorey* (case no JS287/2012, 3 May 2017), in which the applicant was dismissed after she disclosed irregularities to her employer's company secretary, and the candidate had to determine whether her dismissal was automatically unfair as a contravention of the Protected Disclosures Act 26 of 2000.
 - The candidate reasoned that, for the applicant to succeed, she had to prove a causal link between her dismissal and the protected disclosure. If she could do so, the respondent bore the onus to prove that the applicant was dismissed for a fair reason. The candidate concluded that the dismissal was automatically unfair and granted the applicant maximum compensation.
 - On appeal, in *TSB Sugar RSA Ltd (now RCL Food Sugar Ltd) v Dorey* (2019) 40 ILJ 1224 (LAC), the LAC upheld the candidate's decision.
- *National Union of Metalworkers of South Africa v Aveng Trident Steel (a division of Aveng Africa Pty Ltd)* (case no JS596/15, 13 December 2017), in which NUMSA challenged the retrenchment of some 733 employees who had rejected an employer proposal to work under redesigned job descriptions during a genuine operational-requirements consultation process, contending that their dismissal was automatically

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The candidate's decision in the Labour Court could not be located.

unfair under section 187(1)(c) of the LRA as a dismissal for refusing to accept a demand on a matter of mutual interest.

- The candidate held that in the context of a retrenchment discussion it is reasonable for an employer to suggest a change to the terms and conditions of employment if the purpose of the change is to preserve jobs. The candidate held that the employees had not been dismissed for refusing a “demand” but for the employer's operational requirements after the employees declined a reasonable alternative to retrenchment proposed during a *bona fide* section 189 consultation process and dismissed the claim.
- On appeal in *National Union of Metalworkers of South Africa and Another v Aveng Trident Steel* (2019) 40 ILJ 2024 (LAC), the LAC upheld the Labour Court's judgment, but did so by introducing and applying a two-stage causation test to establish whether the dominant or proximate cause of dismissal was the employer's operational requirements rather than the employees' refusal of a demand.
- On further appeal to the Constitutional Court, in *National Union of Metal Workers of South Africa and Others v Aveng Trident Steel (a division of Aveng Africa (Pty) Ltd) and Another* (2021) 42 ILJ 67 (CC), three separate judgments reached the same conclusion as the candidate, that the dismissal was not automatically unfair, with the second and third judgments both preferring the conventional method of evaluating conflicting evidence applied by Zondo JP in *Algorax*⁵, which aligns more closely with the candidate's reasoning than with that of the LAC. The *Aveng* decision created new law which was ultimately endorsed by the apex court.
- *Avbob Mutual Assurance Society v Mkhonza and Others* (11408/2022) [2024] ZAGPPHC 632 (27 June 2024), where the candidate found against Avbob on a property dispute, including on the basis that it delayed unduly in enforcing a contractual demand. Avbob obtained leave to appeal from the SCA after the candidate refused it, and the matter went to a Full Court, in *Avbob Mutual Assurance*

⁵ *Chemical Workers Industrial Union v Algorax (Pty) Ltd* 2003 ILJ 1917 (LAC).

Society v Mkhonza and Others (A26/2025) [2025] ZAGPPHC 739 (22 July 2025), which dismissed the appeal with costs.

7.3. The LAC judgments overturning the candidate's Labour Court judgments as listed in his application, are:

- *Cape Gate (Pty) Ltd v Mokgara and Others* (2022) 43 ILJ 1227 (LAC)⁶, in which three employees sought to review the arbitrator's finding that they be reinstated without backpay as a result of substantially unfair dismissals relating to their efforts to advocate among employees for a change in retirement funds. The employees faced two charges of misconduct: first, that they used the (a) employer logo without authorisation on documents relating to the proposed transfer and (b) used such documents under false pretences, thereby creating the false impression that the employer supported the transfer; and second, falsely presented themselves to Sanlam as being authorised to act on behalf of the employer in discussions. In disciplinary proceedings, the employees were found guilty of all charges and dismissed. The CCMA held that the employees were guilty of the "first part" ((a) above) of the second charge by using the company logo, but not the second part; and held that the in respect of sanction, the employees did not act dishonestly and directed reinstatement without backpay.
 - On review, the candidate in the Labour Court held that the two components of the first charge were inseparable and all the elements of the charge should have been proved before guilt could be found. The candidate held that commissioner "recrafted" the charges to refer to negligence which is the opposite of dishonesty and which "can never serve as a competent verdict". The candidate held that it is impermissible for a commissioner to recraft a charge and then find employees guilty of the recrafted charge, but concluded that this does not affect the outcome of the award.
 - On appeal, the LAC held that the Labour Court erred in that the charges need not be elegantly drawn or form a model of criminal charges; that the

⁶ Despite a thorough online search, the candidate's decision *a quo* could not be located. Key quotes from, and summary of, the Labour Court judgment is at paras 17 and 22 of the LAC judgment.

arbitrator did not make a finding that the employees were guilty of negligence (as opposed to dishonesty); that the employees were fully aware of the allegations against them which form the basis of the charges; and that all that was required to be proved was the essential allegations which form the basis of the misconduct. The LAC however set aside the Labour Court judgment and award on a somewhat different but related basis: that the arbitrator acted unreasonably in finding dismissal as sanction too harsh when sanction is generally the remit of the employer; and that the arbitrator acted unreasonably in determining the fairness of the dismissal in the erroneous belief that an element of dishonesty was absent. (The LAC found that the employees did act dishonestly.)

- *Real Time Investments 158 t/a Civil Works v Commission for Conciliation, Mediation & Arbitration and Others* (2022) 43 ILJ 1642 (LAC), in which the LAC criticised the candidate for deciding the review on grounds not raised by the applicant, including granting reinstatement not sought and treating the matter incorrectly on an unopposed basis.⁷
- In *Mweli and Another v MTN Group Management Services (Pty) Ltd* (JS610/16) [2019] ZALCJHB 119 (22 May 2019), the candidate held that the employer's restructuring method of "mapping"⁸ to improve efficiency, which required employees to apply for vacant positions, is not fair and objective and the employer failed to advance selection criteria. The candidate held that the employees' dismissal for failure to successfully apply for vacant positions was substantively unfair.
 - On appeal, the LAC in *MTN v Mweli* (2021) 42 ILJ 775 (LAC) held that, as the restructuring had a legitimate commercial rationale, requiring employees who enjoyed job security to apply for appointment to the new structure is not in itself unfair. The LAC also held that key propositions, (that the employees were not given enough interview time, that other candidates were preferred over them, and that no viable alternative positions could be found) were not put to the employer's witnesses and

⁷ Despite a thorough online search, the candidate's decision *a quo* could not be located.

⁸ Described at fn 3 of the candidate's judgment as follows: "*Mapping is also known as competence mapping. Competence indicates the required abilities. Knowledge and skills that enable an employee to perform his work in any organisation. Therefore, mapping is the combination of both observable as well as measurable attributes of an employee or an organization*"

were key omissions. It further held that because there were vacancies, it does not follow that any of those were suitable for the candidates and overruled the candidate in this respect.

- *Telkom SA SOC Ltd v Van Staden and Others* (2021) 42 ILJ 869 (LAC)⁹ in which the LAC held that the candidate erred in finding the employer's restructuring process requiring employees to apply for new positions which entitled employees to object and appeal against their scoring in the new placement process, was not fair and objective.
- *Nkomati Joint Venture v Commission for Conciliation, Mediation & Arbitration and Others* (2019) 40 ILJ 819 (LAC)¹⁰ the LAC held that the candidate erred in finding that the employee did not recant his plea of guilty and overstated the effect of *Sidumo* on the "helping hand" principle.

7.4. The following further judgments of the candidate were identified as having been overturned on appeal:

- In *Arends and Others v South African Local Government Bargaining Council and Others* (P107/12) [2013] ZALCPE 6; [2013] 5 BLLR 465 (LC); (2013) 34 ILJ 2560 (LC) (1 March 2013), the candidate held that an individual employee may not refer a dispute to the Bargaining Council in terms of section 24 of the LRA.
 - The LAC overturned the candidate's judgment,¹¹ but not on this issue. The LAC held that it was not possible for the LAC or the arbitrator to determine the issues in dispute because the question of jurisdiction and absence of evidence make it impossible to decide whether the dispute is indeed one about the implementation of the collective agreement, and if so, how it should be resolved.
 - The candidate subsequently applied his finding on s 24 in *South African Police Services v Du Preez and Others In Re: Du Preez v South African Police Services* (PR157/17; P226/17) [2019] ZALCPE 3 (8 March 2019),

⁹ Despite a thorough online search, the candidate's decision *a quo* could not be located. Reviewers relied on the LAC's summary of the candidate's judgment at para 14.

¹⁰ Despite a thorough online search, the candidate's decision *a quo* could not be located.

¹¹ In *Arends and Others v South African Local Government Bargaining Council and Others* (PA6/13) [2014] ZALAC 69; [2015] 1 BLLR 23 (LAC); (2015) 36 ILJ 1200 (LAC) (6 November 2014).

holding that the LAC judgment in *Arends* did not “*upset this finding*” and it was therefore “*by necessary implication approved*” (at para 11).

- Although the *Arends* interpretation has been applied and/or accepted in several Labour Court judgments, two recent Labour Court judges have departed from it:

(i) In *Skulpad and Another v Department of Health Eastern Cape and Others* (PR139/21) [2024] ZALCPE 45; [2025] 1 BLLR 70 (LC); (2025) 46 ILJ 193 (LC) (30 October 2024), Kroon AJ held that the *Arends* interpretation is incorrect on several grounds, including that it is unconstitutional because it “*eviscerates*” access to justice (para 44); is inequitable; and is inconsistent with the objects of the LRA. The court also held as follows at para 14: “*The proposition, without qualification, that if an Appellate Court sets aside a decision but does not deal with part of the ratio underpinning it, it thereby necessarily endorses the unaddressed reasoning, is without merit. Taken to its logical conclusion, it would mean that, every time an Appellate Court did not express a view on an argument embraced by the Court a quo, it should be taken to have agreed with such argument. This reasoning cannot be correct. It is not how the doctrine of stare decisis works. More often than not, it means no more than that it was unnecessary for the Appellate Court to consider it in order to come to its conclusion*”.

(ii) In *Skhosana v Commission for Conciliation, Mediation and Arbitration and Others* (JR874/22) [2025] ZALCJHB 23; [2025] 6 BLLR 633 (LC); (2025) 46 ILJ 1019 (LC) (9 January 2025), Ramji AJ followed *Skulpad* and endorsed Kroon AJ’s reasoning above.

- *Metcash Trading Africa (Pty) Ltd v Maseko NO and Others* (JA52/08) [2010] ZALAC 34 (28 May 2010)¹²
- *PT Operational Services (Pty) Ltd v RAWU obo Ngwetsana* (JA7/11) [2012] ZALAC 34; [2013] 3 BLLR 225 (LAC); (2013) 34 ILJ 1138 (LAC) (27 November 2012), overturning *RAWU obo Ngweletsana v PT Operational Services (Pty) Ltd*

¹² Despite a thorough online search, the candidate’s decision *a quo* could not be located.

and Others (JR 1777/06) [2010] ZALC 16; (2010) 31 ILJ 1926 (LC) (1 February 2010)

- *Hoogendyk and Another v Gunn* (JA47/2022) [2023] ZALAC 20; [2023] 11 BLLR 1153 (LAC) (17 August 2023), overturning *Gunn v Hoogengyk and Another* (J 1031/15) [2023] ZALCJHB 130; [2023] 8 BLLR 787 (LC) (6 May 2023)
- *MEC for Health (North West Province) v South African Medical Association and Another* (JA42/2020) [2021] ZALAC 38; [2022] 1 BLLR 60 (LAC); (2022) 43 ILJ 134 (LAC) (18 October 2021), overturning *South African Medical Association and Another v Member of Executive Council For Health In North West* (JR2580/12) [2020] ZALCJHB 274 (22 May 2020)
 - The LAC found that the candidate failed to deal with the review grounds and instead decided on whether the deeming provision in section 17 of the Public Service Act 103 of 1994 had come into effect (at para 14); cursorily referred to review grounds but essentially decided the matter on a jurisdictional point (at para 15); incorrectly found that an employee does not require employer approval to take leave (at para 16), in part on a misinterpretation of section 20 of the Basic Conditions of Employment Act 75 of 1997 (at paras 30 – 38); criticised the Court *a quo* for ordering reinstatement on review “*notwithstanding local authority to the contrary, which it attempted to distinguish*” (at para 17); and criticised the Court *a quo*’s approach to dealing with disputes of fact (at paras 29 – 30; 33). The LAC remitted the matter to the Labour Court as the grounds of review had not been decided and ought first to be decided by the lower court.
- *Shell SA Energy (Pty) Ltd v National Bargaining Council for Chemical Industry and Others* (JA 42/10) [2012] ZALAC 39; (2013) 34 ILJ 1490 (LAC) (12 December 2012)
- In *Railway Safety Regulator v Kekana* 1 BLLR 40 (LAC), 45 ILJ 284 (LAC), the LAC again criticised the candidate for granting relief that was not sought in the pleadings. The appeal was partially successful.
- *Mabena v Road Accident Fund* (6954/21; A31/2024) [2025] ZAGPPHC 1385 (18 December 2025)

- The Full Court held that the Court *a quo* erred in finding that the particulars of claim contradicted the evidence and in failing to make a credibility finding in respect of a single witness.

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, a position he has held for nine 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 extensive labour law experience, having served as an acting judge in the Labour Court from 2007 to 2017, as a judge of the Labour Court from July 2017 to October 2025, and as an acting judge of the LAC from 2026.
- 8.4. The candidate has delivered judgments, on time and prolifically: In his High Court tenure, for example, the candidate handed down 47 judgments in 2024, and 51 in 2025.

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.
- 9.3. It is suggested by some reviewers that, from a stylistic point of view, perhaps the candidate's writing may at times be viewed as florid or verbose.

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 judgments considered by the reviewers, none was handed down more than three months after hearing. The candidate's turnaround time is notably quick, with judgments frequently delivered within days, or one or two weeks, of 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. 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.
- 12.2. Of the appellate judgments in which the candidate participated, one contained a dissenting judgment by the candidate: *National Credit Regulator v National Consumer Tribunal and Another* (A289/2021; A288/2021; A104/2019) [2023] ZAGPPHC 24 (20 January 2023), in which some of the candidate's points were affirmed by the SCA,¹³ which overturned the majority decision.

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

- 13.1. The candidate appears not to have acted as Judge President or Deputy Judge President, whether in the Labour Court, the Gauteng High Court or the LAC.
- 13.2. The candidate did, however, successfully manage his law practice for 22 years before being appointed as a Judge.
- 13.3. Further indications of the candidate's administrative efficiency include: (i) his reputation for delivering judgments timeously, which is supported by the fact that none of the judgments reviewed that was authored by the candidate was delivered more than three months from the hearing date, and the candidate had no judgments outstanding at the time of his nomination; (ii) the fact that he read for, and obtained, an LLD whilst serving as a permanently appointed judge in a busy court; and (iii) he co-authored a textbook whilst serving as a permanently appointed judge (and seemingly at the same time as reading for his LLD).
- 13.4. It appears that the candidate has not held an acting stint as Deputy Judge President where his administrative abilities could be put to the test.

¹³ In *National Credit Regulator v National Consumer Tribunal and Others and Similar Matters* 2026 (2) SA 455 (SCA)

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

- 14.1. The candidate's appointment would send a positive message to the public at large that a competent, hard-working, and efficient judge is promoted in the judiciary.
- 14.2. While the candidate has an impressive body of jurisprudence over a lengthy career, his application does not disclose any experience in the formal leadership of the judiciary, either generally or specifically in acting tenures as Deputy Judge President. The JSC may wish to engage the candidate on this issue.

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)
3. *Bakhresa SA (Pty) Ltd v Jaipal and Others* [2026] 2 All SA 376 (LAC); [2026] 6 BLLR 606 (LAC)
4. *Commercial Stevedoring Agricultural Allied Workers Union obo Qomoyi v Commission for Conciliation, Mediation and Arbitration and Others* [2026] 7 BLLR 659 (LAC)
5. *Universal Product Network (Pty) Ltd (UPN) v Mbatsana N.O.* [2026] 7 BLLR 698 (LAC)
6. *Edgray Distributors (Pty) Ltd ta Jumbo Clothing v South African Commercial Catering and Allied Workers Union and Another* [2026] 7 BLLR 673 (LAC)

Unreported judgments

7. *Moloantwa v CCMA and Others* [2021] ZALCJHB 345 (31 May 2021)
8. *Vusi v Ngako and Others* (JR606/2018) [2024] ZALCJHB 162 (5 March 2024)
9. *Ngunyule v MEIBC and Others* (JR1595/19) [2023] ZALCJHB 17 (7 February 2023)
10. *Mazibuko v CCMA and Others* (JR1138/19) [2022] ZALCJHB 176 (27 June 2022)
11. *Mokwalase v Finovest Business Accountants* (JS449/21) [2021] ZALCJHB 444 (9 December 2021)
12. *Kekana v Railway Safety Regulator* (JS468/19) [2021] ZALCJHB 395 (13 October 2021)
13. *Kapa v Phundu and Others* (JR931/19) [2021] ZALCJHB 461 (25 August 2021)
14. *Lea v CCMA and Others* (JR561/18) [2021] ZALCJHB 365 (7 October 2021)
15. *Thandiile v ELRC and Others* (JR1089/16) [2021] ZALCJHB 226 (11 August 2021)
16. *Mathamaga v CCMA and Others* (JR1455/20) [2021] ZALCJHB 104 (26 May 2021)
17. *Maharaj v Strate (Pty) Ltd* (JI616/19) [2020] ZALCJHB 36 (11 February 2020)
18. *Marais v Aveng Grinaker LTA* (JS602/14) [2019] ZALCJHB 259 (10 September 2019)
19. *Vena v CCMA and Others* (JR2783/17) [2019] ZALCJHB 195 (2 August 2019)
20. *Mosiane v CCMA and Others* (JR2468/16) [2019] ZALCJHB 164 (27 June 2019)

21. *Mocheke v GPSSBC and Others* (JR1916/17) [2018] ZALCJHB 391 (29 November 2018)
22. *Ledwaba v Laxness (Pty) Ltd* (JS571/16) [2018] ZALCJHB 377 (16 October 2018)
23. *FNB Insurance Brokers v Grange* (J252/18) ZALCJHB 77 (21 February 2018)
24. *Global Parts v Maltji* (JR1371/09 [2011] ZALCJHB 277 (9 September 2011)
25. *Mining Qualification Authority v CCMA and Others* (JR1766/20) [2023] ZALCJHB 215 (19 January 2023)
26. *Thwala v S* (A175/2023) [2024] ZAGPPHC. 224 (29 January 2024)
27. *LA V EFV* (2024-017275 [2024] ZAGPPHC 213 (11 March 2024)
28. *Cawood and Others v RAF* (27980/2022) [2022] ZAGPPHC (12 October 2022)
29. *Ndobe v Minister of Police* (14/22926) [2022] ZAGPPHC 845 (21 October 2022)
30. *VZLR Inc. v RAF* (019085/2024) [2024] ZAGPPHC 266 (14 March 2024)
31. *ZPM v RAF* (29281/22) [2024] ZAGPPHC 421 (6 May 2024)
32. *Monareng v Dada and Others* (43100/15) [2024] ZAGPPHC 108 (13 February 2024)
33. *Dlamini v RAF and Others* (7658A/2008) [2024] ZAGPPHC 277 (20 March 2024)
34. *Hennops Sport (Pty) Ltd v Luhan Auto (Pty) Ltd* (A52/2022) [2022] ZAGPPHC 953 (2 December 2022)
35. *National Credit Regulator v National Consumer Tribunal and Another* (A289/2021; A288/2021; A104/2019) [2023] ZAGPPHC 24 (20 January 2023)
36. *Memela v Chairperson of the State Capture Commission of Inquiry* (34177/22) [2025] ZAGPPHC 816 (14 August 2025)

Judgments upheld on appeal

37. *Kekana v Railway Safety Regulator* (JS468/19) [2021] ZALCJHB 395 (13 October 2021) partially upheld in *Railway Safety Regulator v Kekana* 1 BLLR 40 (LAC), 45 ILJ 284 (LAC)
38. *Skinner and Others v Nampak Products Ltd and Others* (case no JS197/16, 20 June 2019) upheld in *Skinner and Others v Nampak Products Ltd and Others* (2021) 42 ILJ 838 (LAC)

39. *National Union of Mineworkers v Cullinan Diamond Mine, a division of Petra Diamonds (Pty) Ltd* (case no JS102/14, 1 March 2019), upheld in *National Union of Mineworkers v Cullinan Diamond Mine, a division of Petra Diamonds (Pty) Ltd* (2021) 42 ILJ 785 (LAC)
40. *Khum MK Investments and Bie Joint Venture (Pty) Ltd v CCMA and Others* (case no JR678/2015, 5 April 2018) upheld in *Khum MK Investments and Bie Joint Venture (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (2020) 41 ILJ 1129 (LAC)
41. *TSB Sugar RSA Ltd v Dorey* (case no JS287/2012, 3 May 2017) upheld in *TSB Sugar RSA Ltd (now RCL Food Sugar Ltd) v Dorey* (2019) 40 ILJ 1224 (LAC)
42. *National Union of Metalworkers of SA v Aveng Trident Steel (a division of Aveng Africa Pty Ltd)* (case no JS596/15, 13 December 2017) upheld in *National Union of Metalworkers of SA and Others v Aveng Trident Steel (a division of Aveng Africa (Pty) Ltd) and Another* (2021) 42 ILJ 67 (CC)
43. *Avbob Mutual Assurance Society v Mkhonza and Others* (11408/2022) [2024] ZAGPPHC 632 (27 June 2024) upheld in *Avbob Mutual Assurance Society v Mkhonza and Others* (A26/2025) [2025] ZAGPPHC 739 (22 July 2025)

Judgments overturned on appeal

44. *Metcash Trading Africa (Pty) Ltd v Maseko NO and Others* (JA52/08) [2010] ZALAC 34 (28 May 2010)
45. *RAWU obo Ngweletsana v PT Operational Services (Pty) Ltd and Others* (JR 1777/06) [2010] ZALC 16; (2010) 31 ILJ 1926 (LC) (1 February 2010) – overturned in *PT Operational Services (Pty) Ltd v RAWU obo Ngwetsana* (2013) 34 ILJ 1138 (LAC)
46. *Shell SA Energy (Pty) Ltd v National Bargaining Council for Chemical Industry and Others* (2013) 34 ILJ 1490 (LAC)
47. *Arends and Others v South African Local Government Bargaining Council and Others* (P107/12) [2013] ZALCPE 6; [2013] 5 BLLR 465 (LC); (2013) 34 ILJ 2560 (LC) (1 March 2013) overturned in *Arends and Others v South African Local Government Bargaining Council and Others* (2015) 36 ILJ 1200 (LAC)
48. *Nkomati JV v CCMA* (2019) 40 ILJ 819 (LAC)
49. *Mweli and Another v MTN Group Management Services (Pty) Ltd* (JS610/16) [2019] ZALCJHB 119 (22 May 2019) overturned in *MTN v Mweli* (2021) 42 ILJ 775 (LAC)

50. *Telkom v Van Staden* (2021) 42 ILJ 869 (LAC)
51. *Cape Gate (Pty) Ltd v Mokgara and others* (2022) 43 ILJ 1277 (LAC)
52. *South African Medical Association and Another v Member of Executive Council for Health in North West* (JR2580/12) [2020] ZALCJHB 274 (22 May 2020) – overturned in *MEC for Health (North West Province) v South African Medical Association and Another* (2022) 43 ILJ 134 (LAC)
53. *Real Time Investments v CCMA* (2022) 43 ILJ 1642 (LAC)
54. *Hoogendyk and Another v Gunn* (JA47/2022) [2023] ZALAC 20; [2023] 11 BLLR 1153 (LAC) (17 August 2023) – overturned in *Hoogendyk and Another v Gunn* [2023] 11 BLLR 1153 (LAC)
55. *Mabena v Road Accident Fund* (6954/21; A31/2024) [2025] ZAGPPHC 1385 (18 December 2025)

Academic writings

56. The candidate authored an article titled: “*Audi Alteram Partem Rule, Promotion of Administrative Justice Act and The Labour Relations Act: Precautionary Suspension From Duty*” Indian Journal of Law and Legal Research (2020) ISSN: 2582-8878 | PIF: 7.142
57. *De Rebus* (August 2024), “*Listed or arbitrary harassment: Determining the nature of workplace harassment*”
58. *De Rebus* (November 2004), “*The vexed question of benefits*”