

APPLICANT: **TINTSWALO ANNAH NANA MAKHUBELE SC**

COURT FOR WHICH APPLICANT APPLIES: **GAUTENG DIVISION**

1 The candidate's appropriate qualifications

1.1 BA (Social Work) (University of the North)

1.2 LLB (University of the Witwatersrand)

1.3 The candidate is appropriately qualified.

2 Whether the candidate is a fit and proper person

2.1 The candidate is a senior member of the Pretoria Society of Advocates, has served on its Bar Council and various subcommittees, and has sat regularly as an acting judge.

2.2 There is no reason not to conclude that the candidate is a fit and proper person.

3 Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa

3.1 The candidate is an African woman. Her appointment would help the judiciary to better reflect the racial and gender composition of South Africa.

4 **The candidate's knowledge of the law, including constitutional law**

4.1 The candidate has been exposed to various aspects of law and has displayed knowledge both as counsel and as acting Judge.

4.2 The candidate's judgments demonstrate an excellent grasp of the law, in particular *Du Plessis v Min of Justice and Constitutional Development* Case Number: 71827/2013 and *Daiking Air Conditioning v SARS* Case No 50781/2015, in which she dealt extensively and admirably with the facts and the law to reach difficult decisions.

4.3 *Bally Gaming Inc v TCS John Huxley (Pty) Ltd* Case No: Patent 2000/5613 was a complicated intellectual property matter and is well written and well reasoned.

4.4 The candidate's judgments are robust, thorough, and demonstrate keen insight.

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

5.1 The candidate demonstrates commitment to the Constitution and its values and principles.

6 **Whether any judgments have been overturned on appeal**

- 6.1 None have been located.
- 6.2 In one judgment, *Samtoy CC v Haffenden Groves (Pty) Ltd* (49507/12) [2014] ZAGPPHC 336 (14 April 2014), in which the candidate refused leave to appeal, leave was granted on petition but the appeal was dismissed (*Haffenden Groves (Pty) Ltd v Samtoy CC* (A61/15) [2016] ZAGPPHC 734 (23 August 2016)).
- 6.3 The *Bondev* cases (listed in the annexure) are set down for a hearing of an application for special leave to appeal on 6 September 2017.

7 **The extent and breadth of the candidate's professional experience**

- 7.1 The candidate was a Public Prosecutor in the Giyani Magistrates Court from 1992 to 1996.
- 7.2 The candidate has been practicing as an advocate of the High Court since 1999 and was awarded Silk in 2014. She has handled matters from different fields of law: Administrative and Constitutional, Environmental, Labour, Contracts and Tax Law. The candidate has worked with experienced Silks and has been briefed on significant matters even on her own. Since 2013 the candidate has acted as a judge and has delivered a significant number of judgments.

8 **The candidate's linguistic and communication skills**

8.1 The candidate's judgments demonstrate excellent linguistic and communication skills in the English language. Her judgments are clear and easy to understand.

8.2 The candidate does not state what her proficiency in other languages is.

9 **The candidate's ability to produce judgments promptly**

9.1 The candidate appears to produce judgments in a reasonable time. Some judgments however appear to have taken longer than three months.

10 **The candidate's fairness and impartiality**

10.1 The candidate demonstrates fairness and impartiality in her judgments. She shows even handed treatment towards parties and a commitment to fair hearings.

10.2 The judgment refusing leave to appeal on the merits but granting leave on costs in *Janse van Rensburg v Kotze* demonstrates fairness.

11 **The candidate's independent mindedness**

11.1 The candidate's independent mindedness is demonstrated in her judgments, for example in the *Nine Nine Ninety Nine* judgment which orders the Minister of Energy to formulate guidelines for compliance with the Act.

11.2 Comments have been received to the effect that the candidate is independent minded and not susceptible to bullying tactics.

12 **The candidate's ability to conduct court proceedings**

12.1 The candidate has demonstrated ability to conduct court proceedings, being well versed with the rules, procedures, and court practice.

12.2 Counsel in the matter of *Bally Gaming Inc* commented that the candidate ran the trial in a professional and proper manner, and showed a good grasp of facts and legal concepts.

12.3 No adverse comments have been received.

13 **The candidate's administrative ability**

13.1 The candidate seems to be well organized with good time management and planning skills. Her curriculum vitae shows that

she has occupied various positions requiring administrative ability.

14 The candidate's reputation for integrity and ethical behaviour

14.1 No adverse comments have been received. The candidate's application gives an impression of a strong moral character.

15 The candidate's judicial temperament

15.1 In her judgements the candidate demonstrates fairness, commitment to equal justice, open-mindedness and decisiveness.

16 The candidate's commitment to human rights, and experience with regard to the values and needs of the community

16.1 The candidate has the advantage of having been a social worker in the early years of her professional career. This has helped her to understand and respond to the needs of the community. As someone who has demonstrated high regard for constitutional values even in her judgements she appears to be someone who is committed in preserving, protecting and defend human rights.

16.2 The candidate's commitment is demonstrated in the *Nine Nine Ninety Nine* judgment.

17 **The candidate's potential**

17.1 The candidate is 53 years old, and has a breadth of experience as a former prosecutor, an assistant Master of the High Court, a social worker, and in her practice at the Bar since 1999, first as junior counsel until the conferral of silk on her in 2012. Although she only took silk relatively recently, the areas of her practice indicate exposure to several different areas of law and a certain depth of experience that bodes well for a career on the bench.

18 **The message that the candidate's appointment would send to the community at large**

18.1 The candidate would be the first black female silk to be appointed.

18.2 The candidate's appointment would demonstrate clearly that appointment of black women to the bench does not require any relaxation of standards.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Unreported decisions

Bally Gaming Inc v TCS John Huxley (Pty) Ltd Case No: Patent 2000/5613.

Bondev Midrand (Pty) Limited v Puling and Others (58/2014) [2015]
ZAGPPHC 1127 (27 October 2015)

Bondev Midrand (Pty) Limited v Ramokgopa and Others (72637/2013) [2015]
ZAGPPHC 1136 (27 October 2015)

*Bondev Midrand (Pty) Limited v Ramakgoba and Others; in re: Bondev
Midrand (Pty) Limited v Pulling Pulling* (72637/2013; 7819/2014 ; 58/2014)
[2016] ZAGPPHC 600 (14 April 2016) (judgment in the leave to appeal)

Du Plessis v Min of Justice and Constitutional Development Case Number:
71827/2013

Daiking Air Conditioning v SARS Case No 50781/2015

Ex Parte Reggioro and Others (66537-14; 21414-15; 23068-15; 23076-15;
25733-15; 25741-15; 39697-145; 23403-15) [2015] ZAGPPHC 1152 (8
August 2015)

Faquir v the State Case No: A73/ 2013

Janse Van Rensburg and Others v Kotze (A302/2012) [2014] ZAGPPHC 453
(11 March 2014)

Mageza v Minister of Safety & Security (70310/09) [2015] ZAGPPHC 327 (30
April 2015)

Nedbank Limited v van der Berg and others Case Number: 61063/2013

*Nine Nine Ninety Nine Projects (Pty) Ltd and Another v Minister: Department
of Energy and Others* (A543/12) [2014] ZAGPPHC 335 (30 April 2014)

Nhlanhla Lucky Sibisi v the State Case No A71/2013.

Judgments upheld on appeal

Samtoy CC v Haffenden Groves (Pty) Ltd (49507/12) [2014] ZAGPPHC 336
(14 April 2014)

Judgments overturned on appeal

None