

**CANDIDATE: JUDGE AA LANDMAN**

**COURT FOR WHICH CANDIDATE APPLIES: LABOUR  
APPEAL COURT**

**1. The candidate's appropriate qualifications**

1.1. The candidate has the following qualifications:

1.1.1. BA (Wits) 1969;

1.1.2. LLB (Wits) 1970;

1.1.3. HDip (Tax Law) (Wits) 1978; and

1.1.4. LLM (Unisa) 1986.

1.2. The candidate is appropriately qualified.

**2. Whether the candidate is a fit and proper person**

2.1. There is nothing in the candidate's application suggesting he is not a fit and proper person.

2.2. The candidate has been nominated by the National President of the South African Society of Labour Law ("SASLAW").

2.3. No adverse comments have been received.

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

3.1. The candidate is a white man.

*CANDIDATE: JUDGE AA LANDMAN*

3.2. Women are poorly represented on the Labour Appeal Court (“LAC”) and presently only one judge on the bench of eight judges is a woman. The candidate’s appointment would not improve this position.

3.3. The candidate’s appointment would not ordinarily help to reflect the racial composition of the South African judiciary. However, given the present demographics of the LAC, his appointment would help reflect such composition.

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

4.1. The candidate’s experience is predominantly in the field of labour law, although his professional experience prior to his elevation to the bench was not restricted to the labour field. He has presided for a brief period over general civil litigation matters in the High Court, having sat in opposed and unopposed motions, including *inter alia* Rule 43’s, sequestration applications and criminal appeals.

4.2. The candidate has also served in the Industrial Court and the Agricultural Labour Court.

4.3. He has lectured in mercantile law and written numerous articles, relating predominantly to labour law. He acted as a consulting editor of the Industrial Law Journal.

4.4. The candidate’s expertise in employment law, by its very nature, requires extensive constitutional law knowledge.

CANDIDATE: JUDGE AA LANDMAN

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

5.1. The candidate was appointed as an advisory member of the Ministerial Drafting Team charged with drafting the Labour Relations Act 66 of 1995 and represented the interests of the State on the Rules Board of the Labour Courts. As referred to in the recommendation letter from SASLAW, the candidate has "*played a significant part in the drafting of the Act*".

5.2. He was appointed as a member of the Third and Fourth National Manpower Commissions, and was chairperson of the Labour Relations Committee for the Fifth National Manpower Commission.

5.3. The candidate's commitment to constitutional values is evident from his judgments, in which his substantive reasoning demonstrates an understanding of individual or collective employment rights entrenched by the Constitution.

5.4. His academic writings have encouraged a more practical and workable understanding of the world of employment and are indicative of a vast knowledge of employment law and sound understanding of the constitutionally guaranteed employment rights.

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

6.1. The following judgments have been disclosed by the candidate as well as identified as being overturned on appeal:

6.1.1. In *Pilane & Another v Pilane & Another* 2013 (4) BCLR 431 (CC), the candidate, sitting in the North West High

Court, granted three interdicts in favour of traditional leaders in terms of the *Traditional Leadership and Governance Framework Act* 41 of 2003. The interdicts restrained residents of the Motlhabe village from convening any unauthorised meetings under certain auspices; acting in a manner contrary to applicable statutory and customary law; and holding themselves out as a traditional authority using specified names and cognate titles. These three interdicts were overturned in the Constitutional Court. The Constitutional Court held that an essential requirement for the grant of an interdict was lacking in one case and ought to have dealt a fatal blow to the grant of the interdict. The second interdict was held to be unsuitably tailored and lacking sufficient specificity and accordingly raised rule of law concerns. In the case of the third interdict, the Court found that an undertaking given by the respondents should have been sufficient to cause the High Court to decline to grant the interdict. All three interdicts infringed the residents' rights to freedom of expression, association and assembly.

6.1.2. In *Smith v Van der Heever NO & Others* 2011 (3) SA 140 (SCA), the candidate, sitting in the North West High Court, upheld in part a contractual claim against the defendant (who raised the plea of *exceptio non adimpleti contractus*) and upheld a counterclaim for damages against the plaintiff. Both parties appealed. The Full Bench upheld the plaintiff's appeal against the

counterclaim and dismissed the defendant's appeal. The defendant appealed to the SCA, which dismissed the appeal.

6.1.3. In *North West Provincial Government and Another v Tswaing Consulting CC & Others* [2007] 2 All SA 365 (SCA), the candidate dismissed an application to set aside a tender following fraudulent misrepresentations by the respondent in securing the contract. The candidate held that although the tender was voidable, it should not be set aside as the province had failed effectually to rescind the agreement. This decision was successfully appealed against. The SCA found the candidate's finding regarding the failure effectually to rescind to be unwarranted and based on a mis-appreciation of the facts.

6.1.4. *Holcim (South Africa) (Pty) Ltd v Prudent Investors (Pty) Ltd & Others* [2011] All SA 364 (SCA) dealt with the refusal by property owners to permit the holder of old-order mining rights to access certain property on the grounds that no mining operations were being conducted on their properties immediately before the date on which the Mineral and Petroleum Resource Development Act 28 of 2002 took effect and that the holders had therefore lost their tenure to the land. The candidate concluded that the Transitional Arrangements in the Act did not provide security of tenure in the appellant's circumstances. The SCA, however, held that the literal, contextual and

purposive interpretations of the Transitional Arrangements led to a conclusion that the creation of an old-order right depends not upon use of any particular portion of land to which a mining licence relates, but rather upon whether mining operations were being conducted according to the terms of the licence on the relevant date.

6.1.5. In *Edgars Consolidated Stores Ltd v FEDCRAW* [2004] 7 BLLR 649 (LAC), the candidate had held that when an employer seeks to withdraw organisational rights from a trade union on the basis that the union is no longer sufficiently representative in the workplace, that withdrawal may only take place in terms of the provisions of section 21(11) of the Labour Relations Act, even in circumstances where those rights had been acquired by the union *ex contractu* prior to the coming into operation of the Act. An appeal against this order was upheld. The LAC held that the contractual agreement could be terminated in terms of the contractual provisions and that section 21(11) of the LRA need not be complied with.

6.1.6. In *Chake v S* [2013] ZASCA 141, the appellant was convicted on two counts of rape and a sentence of life imprisonment was imposed upon him by a Regional Magistrate. The appellant proceeded to lodge an appeal to the High Court against his sentence. This he did without obtaining the trial court's leave to do so.

Consequently, when the matter came before the High Court (with the candidate sitting with Leeuw J) counsel drew the court's attention to case law which held that, since 1 April 2010, an accused sentenced to life imprisonment by a Regional Magistrate required leave to appeal. The High Court concluded that the case law was incorrect and that the appellant enjoyed an automatic right of appeal. The High Court then dismissed the appeal on the basis that no substantial circumstances justified a sentence of less than life imprisonment. The SCA overturned the High Court's decision that the appellant had an automatic right of appeal and held that the High Court was "*clearly wrong*". The SCA held with reference to the decision that "*Judges must be careful not to submit to the temptation of substituting what they regard would have been reasonable and sensible for what was in fact done by the legislature, and to thereby 'cross the divide between interpretation and legislation'*".

- 6.1.7. In *Moruleng and District Taxi Association and Another v North West Provincial Department of Transport and Others* [2011] ZASCA 138, the candidate dismissed a review application on an *in limine* point on the basis that the application contravened section 7 of the Promotion of Administrative Justice Act in that it was not instituted timeously. The appellants appealed to the Full Bench, which found that the court of first instance had erred in upholding the point in limine. The Full Bench upheld the

CANDIDATE: JUDGE AA LANDMAN

appeal against the order upholding the point *in limine* but dismissed the appeal on the merits. The SCA thereafter upheld the appeal from the Full Bench and granted the review application.

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

- 7.1. The candidate has vast experience.
- 7.2. In December of 1965 the candidate commenced employment with the Department of Justice as a clerk of the Germiston Magistrates' Court. It is uncertain how long he held this position.
- 7.3. In January of 1973 he was appointed as an attorney, notary and conveyancer of the Supreme Court of South Africa.
- 7.4. In February of 1973 he re-entered the service of the Department of Justice and was stationed at the Johannesburg Magistrates' Court as a public prosecutor with the rank of legal assistant.
- 7.5. In August of 1973 the candidate was called to the Bar and practiced as an advocate until September 1981.
- 7.6. He was appointed as a senior lecturer in the Department of Mercantile Law at the University of South Africa in October 1981. He was promoted to professor of Mercantile Law in 1986.

*CANDIDATE: JUDGE AA LANDMAN*

- 7.7. The candidate was appointed as an additional member of the Industrial Court of South Africa in 1983. He was appointed as the President of the Industrial Court of Kwa-Zulu in a part-time capacity and served a three-year term.
- 7.8. In June of 1993 he was seconded for three years from the University of South Africa to the Industrial Court of South Africa as the President of that court. With the institution of the Agricultural Labour Court in January 1994 he became *ex officio* President of that court.
- 7.9. He was appointed as an acting judge of the Labour Court from February 1997 until he became a judge of the Labour Court on 1 November 1997. He acted as a Judge of the High Court (Transvaal Provincial Division) during March/April of 2003.
- 7.10. He also acted as a judge of the High Court (Bophuthatswana Provincial Division) for three-month period in 2003.
- 7.11. He has also acted as a judge of the LAC for certain terms in 2010, 2011 and 2012.
- 7.12. The candidate claims in his application to have delivered some 238 judgments in the Industrial Court, Agricultural Labour Court, LAC (as Assessor) and the Labour Court (including awards). The reviewers are unable to confirm this exact number, but accept it as accurate.

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

- 8.1. The candidate's linguistic and communication skills are excellent. His judgments are well written, structured and concise.
- 8.2. He is proficient and able to communicate in English and Afrikaans. He delivers judgments in both languages.

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

- 9.1. The candidate has no outstanding judgments and has a reputation for handing down his judgments promptly.
- 9.2. The candidate's *curriculum vitae* reflects that he completed a judgment whilst acting in the LAC in *Rasool v Auto Umhlanga* expeditiously, but omitted to hand down the judgment. The matter was settled between the parties.

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

- 10.1. The candidate is meticulous and thorough in his consideration of the issues, and provides clear reasoning for his decisions.
- 10.2. He is reputed to be fair and impartial.
- 10.3. No adverse comments have been received.

**11. The candidate's independent mindedness**

- 11.1. As a judge and academic the candidate has demonstrated a high degree of independent mindedness.
- 11.2. No adverse comments have been received.

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

- 12.1. The candidate has presided over numerous proceedings as a judge of the Labour Court, High Court and acting judge in the LAC.
- 12.2. He has an excellent reputation especially in the labour law community and has demonstrated an ability to conduct court proceedings effectively and efficiently.
- 12.3. No adverse comments have been received.

**13. The candidate's administrative ability**

- 13.1. The candidate is a skilled and efficient administrator. This is demonstrated *inter alia* by his successful occupation of positions requiring that he perform administrative work.

**14. The candidate's reputation for integrity and ethical behaviour**

- 14.1. The candidate's career is a distinguished one as a member of the Bar, academia and as a Judge.
- 14.2. He has established a reputation as a sound, fair minded and efficient judge and for displaying integrity and honesty.
- 14.3. No adverse comments have been reported.

**15. The candidate's judicial temperament**

- 15.1. The candidate has a reputation for fairness, impartiality and patience in conducting court proceedings.

*CANDIDATE: JUDGE AA LANDMAN*

15.2. The candidate has disclosed that he suffers from depression. He notes, however, that this condition is well managed and has never resulted in his absence from the bench. There are no reported comments that the candidate's depression has in any manner interfered with his duties as a judicial officer.

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

16.1. As appears from paragraph 5 above, the candidate is committed to upholding human rights, particularly as they relate to employment rights.

16.2. The labour laws in South Africa are a product of robust social dialogue. The current Labour Relations Act has been hailed as the first piece of post-apartheid legislation consolidating a democratic industrial relations system accepted by labour, employers and the state. As one of the original drafters of that Act, the candidate has demonstrated a commitment to human rights and constitutional values and has been an advocate for these rights throughout his professional career.

**17. The candidate's potential**

17.1. The candidate's appointment would add considerable strength to the LAC. He is deeply knowledgeable in employment law and litigation and enjoys strong support in the labour law community.

*CANDIDATE: JUDGE AA LANDMAN*

17.2. His judicial experience in the High Court as well as the Labour Court and LAC, his academic prowess and his sense of fairness and equity mark him out as an excellent candidate.

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

18.1. The candidate's appointment would indicate a commitment to strengthening the LAC. Given the candidate's background his appointment would demonstrate a commitment to constitutional values, open mindedness and judicial independence.

18.2. His commitment to labour rights and his role in drafting the current Labour Relations Act, suggests that his appointment would be of considerable value to the LAC.

CANDIDATE: JUDGE AA LANDMAN

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

### **Reported decisions**

*Mbanjwa v Head of Department: Public Works, Roads and Transport North West Provincial Government and Another* 2013 (34) ILJ (NWM)

*Queesntown Fuel Distributors CC v Labuschagne NO and Others* [2000] 1 BLLR 45 (LAC)

*Louw v Golden Arrow Bus Services (Pty) Ltd* [2000] 3 BLLR 311 (LC)

*Kadiaka v Amalgamated Beverage Industries* 1999 (20) ILJ 373 (LC)

*Bargaining Council for the Clothing Industry (Natal) v Confederation of Employers of Southern Africa* [1998] JOL 2729 (LC)

### **Unreported decisions**

*PSA v Minister of Justice and Constitutional Development* 2001 JDR 0791 LC

*Professional Transport Workers' Union v Magnum Security (Pty) Ltd* 2002 JDR 0474 LC

*Superb Meat Market Suppliers v Maritz* 2002 JDR 0341 LC

*Unique Air; Parnis Airport Maintenance Services (Pty) Ltd v CCMA* 2001 JDR 0787 LC

*Fouldien v House of Trucks (Pty) Ltd* 2002 JDR 0822 LC

CANDIDATE: JUDGE AA LANDMAN

*Eskom v Dr Marshall and Others* 2002 JDR0837 LC

### **Judgments upheld on appeal**

*Netherburn Engineering CC t/a Netherburn Ceramics v Mudau and Others* 2010 (2) 269 SACW

*Macru Farming CC v Standard Bank of South Africa Ltd* [2008] ZASCA 20

*Wessels v Pretorius* [2007] SCA 108 (RSA)

*Queenstown Fuel Distributors CC v Labuschagne NO and Others* [2000] 1 BLLR 45 (LAC)

### **Judgments overturned on appeal**

*Pilane & Another v Pilane & Another* 2013 (4) BCLR 431 (CC)

*Smith v Van den Heever NO & Others* 2011 (3) SA 140 (SCA)

*North West Provincial Government and Another v Tswaing Consulting CC & Others* [2007] 2 All SA 365 (SCA)

*Holcim (South Africa) (Pty) Ltd v Prudent Investors (Pty) Ltd & Others* [2011] 1 All SA 368 (SCA)

*S v Monageng* [2009] 1 All SA 237 (SCA)

*Chake v S* [2013] ZASCA 141

*CANDIDATE: JUDGE AA LANDMAN*

*Moruleng and District Taxi Association and Another v North West Provincial Department of Transport and Others [2011] ZASCA 138*

*County Fair Foods v CCMA and Others [1999] 11 BLLR 1117 (LAC)*

*Edgars Consolidated Stores v Federal Council of Retail and Allied Workers Union [2004] 7 BLLR 649 (LAC)*