

**CANDIDATE: JUDGE DJ MUSI**

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

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

1.1. The candidate holds the following qualifications:

1.1.1. Dip Iuris (1985), University of the Western Cape;

1.1.2. BA (Law) (1988), University of the Western Cape;

1.1.3. LLB (1991), University of the Western Cape;

1.1.4. BA (Honours in Public Administration) (1993),  
University of the Western Cape; and

1.1.5. LLM (1995), University of Cape Town.

1.2. The candidate is appropriately qualified.

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

2.1. There is nothing in the application or judgments reviewed that  
would suggest that the candidate is not a fit and proper person.

2.2. No adverse comments to his nomination 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 black man.

*CANDIDATE: JUDGE DJ MUSI*

- 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 to the bench of the LAC will further the aim of the judiciary reflecting the racial composition of South Africa, although this is not necessary in the case of the LAC.
4. **The candidate’s knowledge of the law, including constitutional law**
  - 4.1. The candidate’s judgments reflect that he considers and applies the relevant legal principles correctly. He has been a High Court Judge for almost nine years.
  - 4.2. The candidate commenced his career as a prosecutor in 1986 and was thereafter appointed as District Magistrate (1992 to 1997), Regional Magistrate (1997 to 2004), acting Judge, Northern Cape High Court (2004 to 2005) and Judge of the Free State High Court (2005 to present).
  - 4.3. The candidate has acted as a Judge of the Labour Court (April 2008 to June 2008 and September 2009 to December 2009), the LAC (February 2010 to June 2010 and July 2012 to December 2012 and July 2013 to December 2013), the Lesotho High Court and the Lesotho LAC (2010 to present) and the Lesotho Commercial Court (July 2012 to present).

*CANDIDATE: JUDGE DJ MUSI*

- 4.4. A review the candidate's judgments indicate that he has a good general knowledge of the law. As a High Court Judge the candidate applied constitutional principles in the area of criminal law.
- 4.5. In the Labour Court and the LAC, the candidate displayed a sound understanding and application of Labour Law in the areas of, *inter alia*, review, dismissal, collective rights and agreements, procedural fairness, strike interdicts (interim and final relief), trial matters, prescription and statutory interpretation.

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

- 5.1. The candidate's judgments indicate that he is committed to the values of the Constitution and he has applied constitutional principles whenever it has been called for.
- 5.2. Examples of this are as follows:
- 5.2.1. in *Melani v S* [2005] 2 All SA 280 (NC) the candidate displayed a good appreciation of an accused's section 35 rights to a fair trial; and
- 5.2.2. in *Dr Malcolm Naude v Member of the Executive Council Department of Health Mpumalanga* (2009) 30 ILJ 910 (LC), the candidate found that the MEC had flagrantly disregarded her duties under the Constitution.

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

6.1. The candidate lists *Van der Vyver v S* (A161/2011) [2012] ZAFSHC 121 (21 June 2012) as a judgment of his, which was overturned on appeal. In this matter the sentence which the candidate had imposed was found to be disproportionate to the crime committed and was reduced from 17 to 12 years.

6.2. In *Tlali v Mantsopa Local Municipality and Others* (A78/11) [2011] ZAFSHC 195 (1 December 2011) the candidate's judgment was also overturned on appeal. The Court found that the candidate erred in not finding that the court had jurisdiction to determine the lawfulness of the termination of a fixed-term employment contract.

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

7.1. Apart from the experience referred to above, the candidate has also participated as a "Peer Facilitator" in training Magistrates since 1996 in maintenance, domestic violence, "social context in judicial decision making" and Equality Court matters.

7.2. The candidate has delivered papers on "Judicial Ethics," "Judicial Independence," "Case Flow Management," "Maintenance and Culture" and "The Right to a Fair Trial: The Role of the Interpreter."

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

8.1. The candidate presents well-written, reasoned, and easy to understand judgments.

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

- 9.1. The candidate delivered judgment six months after the hearing in *South African Local Government Association v Independent Municipal and Allied Trade Union and Others* (JA46/2012) [2014] ZALAC 2 (4 March 2014).
- 9.2. The candidate has listed one judgment reserved on 5 November 2013, which remains outstanding.

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

- 10.1. In *Melani v S* [2005] 2 ALL SA 280 (NC) and *S v Monyane, S v Monyane, S v Ramateletse* (354/2010) [2010] ZAFSHC 129 (30 September 2010), the candidate reviewed judgments of Magistrates he found wanting for failing to display the qualities of fairness and impartiality required of them.
- 10.2. The candidate has, in a number of cases, recognised the principle of the Labour Court being a Court of equity, especially in making costs awards.
- 10.3. From the judgments reviewed the candidate has a high regard for judicial fairness and impartiality. It was also consistent with the views of members of the Bar that appeared in cases before him.

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

- 11.1. From the information reviewed, no adverse comments can be made and there is no reason to doubt the candidate's open mindedness.

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

- 12.1. The candidate has displayed a sound understanding of the conduct of Court proceedings. This is further demonstrated in his review of the decisions in *Melani v S* [2005] 2 All SA 280 (NC) and *S v Monyane, S v Monyane, S v Ramateletse* (354/2010) [2010] ZAFSHC 129 (30 September 2010).

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

- 13.1. The candidate conducts training with Magistrates, was the National President of the "Judicial Officers Association of South Africa" (2002 to 2004) and completed his Honours in "Public Administration". This justifies the inference that he has above average administrative ability.

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

- 14.1. The candidate is known for his integrity and ethical behaviour.
- 14.2. The candidate has delivered papers on "Judicial Ethics" and "Judicial Independence."

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

- 15.1. No adverse comments received.
- 15.2. Members who commented were positive.

*CANDIDATE: JUDGE DJ MUSI*

**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 trained Magistrates in "Social Context in Judicial Decision Making" and was a board member of the "Law, Race and Gender Research Unit" (UCT, 2005).

**17. The candidate's potential**

17.1. The candidate has served on the High Court Bench from June 2005 to present.

17.2. The candidate has twice acted in the Labour Court and the LAC.

17.3. The candidate is 52 years old and has demonstrated that he has the potential to sit as an appeal court judge.

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

The candidate was appointed to the bench in June 2005 and will contribute positively to the racial representation of the LAC bench.

CANDIDATE: JUDGE DJ MUSI

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

### **Reported decisions**

*Melani v S* [2005] 2 ALL SA 280 (NC)

*Dr Malcolm Naude v Member of the Executive Council Department of Health Mpumalanga* (2009) 30 ILJ 910 (LC)

*Popcru obo Sifuba v Commissioner of Police Service and Others* (2009) 30 ILJ 1309 (LC)

*Kouga Municipality v South African Local Government Bargaining Council* (2010) 31 ILJ 1211 (LC)

*Food & Allied Workers Union And Others V Key Spirit Trading 193 CC T/A Jimmy* (P 550/2009) (2011) 32 ILJ 2677 (LC)

*Apollo Tyres South Africa (Pty) Ltd v CCMA* (2013) 34 ILJ 1120 (LAC)

*Pt Operational Services (Pty) Ltd v Rawu obo L Ngwetsana* (2013) 34 ILJ 1138 (LAC)

### **Unreported decisions**

*S v Monyane, S v Monyane, S v Ramateletse* (354/2010) [2010] ZAFSHC 129 (30 September 2010)

*Thabo Mofutsanyana District Municipality v Uncle Mass Tuck Shop* (A333/10) [2011] ZAFSHC 168 (31 October 2011)

CANDIDATE: JUDGE DJ MUSI

*Mokhahla v S* (A59/2012) [2012] ZAFSHC 116 (14 June 2012)

*Johnson Uniform Solutions (Pty) Ltd v Lynette Brown* (LAC) 2012 (SAFLII)

*Fana Ben Msimanga v The State* (A119/12) [2013] ZAFSHC 26 (4 February 2013)

*City of Johannesburg Metropolitan Municipality and Others V Independent Municipality and Allied Workers Union and Others* (J 1232/06) [2013] ZALCJHB 273 (21 October 2013)

*Refilwe Muriel Mogale v A & D Spitz (Pty) Ltd* (JA 36/2011) [2013] ZALAC 21 (22 August 2013)

*South African Local Government Association V Independent Municipal and Allied Trade Union and Others* (JA46/2012) [2014] ZALAC 2 (4 March 2014)

### **Judgments upheld on appeal**

The candidate listed *S v Ransutho* (A221/2011) and *S v Tshabalala* (A74/2011) – these were not on the databases searched.

*Maartens v Kobus van Zyl Boedery BPK* (A1973/2006) – this was a review of taxation and not an appeal

### **Judgments overturned on appeal**

*Van der Vyver v S* (A161/2011) [2012] ZAFSHC 121 (21 June 2012)

*CANDIDATE: JUDGE DJ MUSI*

*Tlali v Mantsopa Local Municipality and Others* (A78/11) [2011]

ZAFSHC 195 (1 December 2011)