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

1. The candidate's appropriate qualifications

1.1. The candidate holds the following degrees:

1.1.1. BA (1987) University of Fort Hare;

1.1.2. B.Proc (1992) University of Fort Hare;

1.1.3. LLB (2000) University of Free State; and

1.1.4. LLM, mercantile law (2000) University of Free State.

1.2. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

2.1. The candidate is currently a judge of the Free State High Court.

2.2. There is nothing in the candidate's application or judgments that would suggest that the candidate is not 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 a black woman.

3.2. Women are poorly represented on the Labour Appeal Court ("LAC") and presently only one judge on the bench of eight

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judges is a woman. This ought to be taken into account in consideration of the candidate's application.

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

4.1. The candidate's judgments indicate her grasp of the law, including constitutional law. In her judgments, particularly in the LAC, she demonstrates her knowledge of constitutional law. This is apparent in the decision of *Independent Municipal and Allied Trade Union obo Anton Strydom* (2012) 7 BLLR 660 (LAC) where the candidate overturned a decision of the Labour Court which had upheld the dismissal of an employee based on incapacity on the grounds of illness. The candidate in setting aside the judgment of the Labour Court applied principles laid down by the Constitutional Court, which had been overlooked by the Labour Court.

4.2. Similarly the candidate demonstrated a sharp appreciation of constitutional law in *Palace Group Investments (Pty) Ltd and Others v Mackie Alexander Michael* JA52/12 where she followed the Constitutional Court and found that an interim order interdicting a disciplinary hearing pending the outcome of an unfair labour practice may be appealable even though an interim order is ordinarily not appealable.

4.3. The candidate has attended a certificate course on human rights in Denmark (1996) and a certificate course on the judicial enforcement of socio-economic rights in Africa at the University of Pretoria (2012). The candidate's knowledge of

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the law is broad and includes criminal law, military law and employment law.

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

5.1. The candidate is a member of the South African chapter of the International Association of Women Judges and a former member of the Black Lawyers Association (1987 to 2008), and the South African Women Lawyers Association (2007 to 2008). The candidate is also a member of the Association of Women Judges.

5.2. The candidate has demonstrated her commitment to the values of the Constitution particularly in the judgments referred to in paragraph 4 above.

6. Whether any judgments have been overturned on appeal

6.1. Two of the candidate's judgments have been overturned on appeal:

6.1.1. *Liberty Group v Jordaan* (A289/11) [2012] ZAFSHC 16 concerned an appeal from the High Court. The appeal was granted on the basis that the Court *a quo* did not consider the inherent probabilities of the case in light of the credibility of the witnesses.

6.1.2. *S v Sifiso* 2013 JDR 0757 (GSJ) was also an appeal from the High Court. In that matter, the Court found that the Court *a quo* incorrectly admitted the identification evidence of the witness at the scene as this evidence was found not to be reliable. The appeal was upheld and the

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conviction of accused number 2 on counts 1 and 2 were set aside.

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

7.1. The candidate states that she has 21 years' post-qualification experience. The candidate first worked as a prosecutor at the Thaba Nchu Magistrates' court and, on completing articles at a small law firm, was admitted as an attorney in 1993. The candidate was admitted as a notary and conveyancer in 1996. The candidate then acted as a director or partner in three law firms, the last one being Smith Tabata Buchanan Boyes, which the candidate left in 2008.

7.2. In addition to the above qualifications, the candidate has also worked as a CCMA commissioner (1999 to 2002), a part-time lecturer at the University of the Free State, a panellist for the South African Local Government Bargaining Council (2003 to 2008) and the General Public Service Sectoral Bargaining Council, the Military Arbitration Board and Tokiso Dispute Resolution.

7.3. In 2004, the candidate was appointed as a military judge.

7.4. From 2005 to 2008 the candidate was appointed as an acting judge in the High Court, Free State division as well as an acting judge of the LAC. The candidate has indicated that she has acted in the LAC for 5 terms.

7.5. On 28 July 2008, the candidate was appointed as a judge of

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the High Court, Free State division.

- 7.6. Compared to other candidates, the candidate is lacking in the breath of experience of her colleagues.

8. The candidate's linguistic and communication skills

- 8.1. The candidate expresses herself well and accurately in written English.

- 8.2. Her judgments are well-structured, well-written and generally easy to follow.

9. The candidate's ability to produce judgments promptly

- 9.1. The candidate is prompt in producing judgments in the High Court, particularly in criminal matters – most of which are handed down on the day the matter is heard or within a month of the hearing.

- 9.2. The longest period within which the candidate took to produce a judgment was in the LAC in the matter of *Shell SA Engineering* 2013 JDR 0173 (LAC). This judgment took 10 months to hand down. This may be a result of the collaboration required when sitting with other judges of appeal.

10. The candidate's fairness and impartiality

- 10.1. The candidate's judgments demonstrate that she works her way through the relevant facts and issues meticulously, and weighs them up with reference to the issues raised and the relevant principles before reaching her conclusion.

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10.2. From a review of the judgments handed down by the candidate, it appears that she is fair and impartial in the handling of cases.

11. The candidate's independent mindedness

11.1. No adverse comments were raised in this regard.

12. The candidate's ability to conduct court proceedings

12.1. There is no indication from the judgments considered that the candidate is incapable of conducting court proceedings in an appropriate manner. It is taken into account that the candidate has been a judge for five years and has acted on the bench of the LAC five times.

13. The candidate's administrative ability

13.1. The candidate was a partner in three law firms prior to her appointment to the bench and it may be inferred that she has sufficient administrative abilities. The candidate has also worked as a judge in the Free State High Court.

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

14.1. No adverse comments were raised in this regard.

15. The candidate's judicial temperament

15.1. No adverse comments were raised in this regard.

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

- 16.1. The candidate was a member of the Black Lawyers Association ("BLA") from 1987 to 2008 and a trustee of the BLA legal education centre for the period 2003 to 2008. The BLA is an organisation which was founded during the apartheid era. The strategic aim of the BLA at that time was, *inter alia*, to expose and highlight the discriminatory and unjust laws and to increase the number, and enhance the quality, of the black lawyers in South Africa. Members of the association sacrificed their time and resources to achieve these objectives on a voluntary basis.
- 16.2. The BLA Legal Education Centre, of which the candidate was a trustee has as one of its aims the advancement of the education of lawyers from the previously disadvantaged communities. The candidate's membership of the BLA and trusteeship of the BLA Legal Education Centre is a demonstration of her commitment to advancing human rights.
- 16.3. The candidate has also served as a Commissioner in a Commission of Enquiry established by the Free State Premier Investigating Racism and Abuse of resources at police stations in Bloemfontein.
- 16.4. The candidate has been actively involved in community organisations like the Free State Rural Development Association, a non-profit organisation aimed at empowering farm workers and emerging farmers. The applicant has also

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given presentations to members of the community (mostly rural communities) on forms of business and business enterprises. The applicant has also prepared and delivered a presentation on human trafficking and engaged in a number of training programmes both for law school graduates and magistrates.

16.5. The candidate is a member of the South African Chapter of the International Association of Women Judges and was nominated by that organisation. The organisation states in its nomination motivation that the candidate is their active and respected member.

16.6. The candidate has been extensively involved in the affairs of the Commission for Conciliation, Mediation and Arbitration (“CCMA”). She has also been actively involved in professional affairs and activities of the Free State Law Society, and served as a councillor.

16.7. The candidate is therefore clearly an active member of the community with a long history of community organisational involvement and a commitment to human rights.

17. The candidate’s potential

17.1. The candidate has reasonable judicial experience, and appears to be a competent judicial officer. While there appears to be no reason to expect that she would not be able competently to fulfil the function of one of the judges of the LAC, given the candidate’s relative lack of experience comparable to other candidates, prior to her elevation to the bench, the candidate

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may benefit from greater experience on the Bench before being elevated to an appellate Court.

17.2. The candidate demonstrates a clear potential to rise within the judiciary and make a meaningful contribution to the advancement of justice and jurisprudence.

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

18.1. The appointment of a Black woman would demonstrate the commitment to racial and gender equality in judicial appointments.

18.2. The appointment of the candidate will send a message that women in general and Black women in particular may be appointed to the highest judicial offices in the country and will serve as an encouragement to others.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Independent Municipal and Allied Trade Union v Witzenburg Municipality (2012) 7 BLLR 660 (LAC)

National Bargaining Council for the Road Freight v Marcus NO and Others (2013) 34 ILJ 1458 (LAC)

S v Mwase 2011 (2) SACR 462 (FB)

Shell SA Energy (Pty) Ltd v National Bargaining Council for Chemical Industry and Others (2013) 34 ILJ 1490 (LAC)

Thole v the State 2012 (2) SACR 306 (FB)

Unreported decisions

Agritrans CC and Others v Mafube Local Municipality and Others (4338/2006) [2006] ZAFSHC 55

Coalition Trading 1130 CC (2008/154841/23) t/a Brother Accommodation v Motheo FET College, Bloemfontein and Another (4003/2013) [2013] ZAFSHC 177

De L and Another v Commissioner for the South African Revenue Services (IT 12291, VAT 596) [2010] ZATC 3

Dipuo Urandar Sehlabaka (for the appointment of a curator bonis BE Khumalo) 2011 JDR 0170 (FB)

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DNH Makelaars Bk v Kleinhans (A324/10) [2011] ZAFSHC 90

Ex parte: Mpitsang (2232/2009) [2009] ZAFSHC 65

Firststrand Bank Ltd v Western Breeze Trading 213 (Pty) Ltd (5095/2010)
[2013] ZAFSHC 42

Firststrand Bank Ltd v Western Breeze Trading 213 (Pty) Ltd 2011 JDR
1535 (FB) / (5095/10) [2011] ZAFSHC 137

Godla and Another v S (A140/2012) [2013] ZAFSHC 61 (25 April 2013)

Goliath v Mangaung Local Municipality and Others (2786/2008) [2008]
ZAFSHC 117

*Haw and Inglis Civil Engineering (Pty) Ltd v MEC of Police Roads and
Transport: Free State Provincial Government and Others* (5972/2009)
[2010] ZAFSHC 51

Jankowitz and Another v Road Accident Fund (1113/2007) [2008]
ZAFSHC 131

Karsten v Road Accident Fund 2008 JDR 1359 (O)

Khathi and Another v the State (A180/2011) [2013] ZAFSHC 12

Labuschagne v the State (A79/2010) [2010] ZAFSHC 138

Legau and Others v Mokhasi (6749/2007) [2008] ZAFSHC 74

M v the State (A45/09) [2010] ZAFSHC 12

Maartens v Kobus Van Zyl Boerdery BK 2010 JDR 0387 (FB) /
(1973/2006) [2008] ZAFSHC 149

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Macheka and Another v ABSA Bank Bpk and Others [2009] ZAFSHC 44

Maluti-A-Phofung Municipality v Prellex 192 CC t/a Prellex 192 Consulting Services (5186/07) [2009] ZAFSHC 95

Mdali v S [2007] ZAFSHC 112

Memeza and Others v the State (A310/2012) [2013] ZAFSHC 27

Mofokeng v the State (A63/2013) [2013] ZAFSHC 134

Mohapi v S [2006] ZAFSHC 129

Monyane v S [2007] ZAFSHC 115

National Bargaining Council For The Road Freight Industry v Commissioner M H Marcus NO 2013 JDR 0172 (LAC)

Nhlapo v the State (A176/2012) [2013] ZAFSHC 57

Nienaber v Minister of Safety and Security (A290/09) [2010] ZAFSHC 96

Oos Vrystaat Kaap Bedryf Beperk v Verster NO and Others (3723/2006) [2006] ZAFSHC 125

Palace Engineering (Pty) Ltd v Ngcobo and Others (JA20/2012) [2014] ZALCJHB 34

Palace Group Investments (Pty) Ltd and Another v Mackie (JA 52/12) [2013] ZALAC 27

Phutuma Networks (Pty) Ltd v Telkom SA (Pty) Ltd (108/CAC/MAR11) [2012] ZACAC 9

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Rasello v Chali and Others, Chali and Others v Rasello and Others (A69/2012, 683/2011) [2013] ZAFSHC 182

Reahilwe Funeral Homes CC and Another v Moekoa and Others (1745/2011) [2011] ZAFSHC 98

Richards v Mgojo and Others, Mgjo v Richards and Others (919/2013, 372/2013, 1559/2013) [2013] ZAFSHC 172

S v Coetzer (619/2009) [2009] ZAFSHC 125

S v Lephuthing 2012 JDR 2555 (FB)

S v Lesenyeho (1188/2005) [2005] ZAFSHC 108

S v Makhanda 2013 JDR 0415 (FB)

S v Mariti (269/08) [2008] ZAFSHC 130

S v Mathabela [2009] ZAFSHC 134

S v Mochochondno 2013 JDR 1583 (FB)

S v Moeti (271/2008) [2008] ZAFSHC 127

S v Nagel (522/2008) [2008] ZAFSHC 125

S v Nyathi (262/2013) [2013] ZAFSHC 200

S v Pule (282/2008) [2008] ZAFSHC 113

S v Sebagalo 2012 JDR 2533 (FB)

S v T (A179/2005) [2006] ZAFSHC 52

S v Tshubane (260/2008) [2008] ZAFSHC 118

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S vs Moloke [2007] ZAFSHC 105

Seitisho v S [2008] ZAFSHC 151

South African Breweries Ltd v Retail and Allied Workers Union and Others (JA 10/2010) [2013] ZALAC 8 (*minority judgment*)

Steenbergen and Others v Minister of Safety and Security (1071/2003, 1072/2003) [2010] ZAFSHC 26

Talenyane v S ([2005] JOL 15500 (O);) [2005] ZAFSHC 9

Taute NO v Heymans (6032/2008) [2009] ZAFSHC 77

Thebe v Road Accident Fund (5674/2008) [2010] ZAFSHC 5

Tlhobelo v S [2006] ZAFSHC 51

Videx Wire Products (Pty) Ltd v Competition Commission of South Africa (124/CACOct12) [2014] ZAWCHC 32

Voges v Vicente (A103/09) [2010] ZAFSHC 28

Wurth South Africa (Pty) Ltd v Schaup and Another (3872/2006) [2010] ZAFSHC 8

Judgments upheld on appeal

Kula v S (A172/2010) [2010] ZAFSHC 155

S v Melato (126/2012) [2012] ZAFSHC 162

Tladi v S (A189/2012) [2013] ZAFSHC 21

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Judgments overturned on appeal

Liberty Group v Jordaan (A289/11) [2012] ZAFSHC 16