

APPLICANT: JUDGE P COPPIN

**POSITION 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) (1982); and

1.1.2. LLB (Wits) (1984).

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 or judgments to indicate that the candidate is not a fit and proper person.

2.2. 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 black (Coloured) man.

3.2. As far as we are aware, there are no coloured men on the Labour Appeal Court ("LAC") as it is currently constituted.

3.3. Women are poorly represented on the LAC and presently only one judge on the bench of eight judges is a woman. The candidate's appointment would not improve this position.

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3.4. 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. Having regard to the judgments authored by the candidate, he appears to have a good knowledge of the law and applies constitutional law where applicable. See further comments in this regard below in the section on the candidate's commitment to the values of the Constitution.

4.2. The candidate has extensive experience in labour law having practiced predominately in the field of labour law both as junior as well as senior counsel.

4.3. The candidate has also had an acting appointment in the Labour Appeal Court ("LAC"), during which he authored or concurred in nine judgments of which we are aware. In these judgments the candidate demonstrates a sound knowledge both of the provisions of the Labour Relations Act 66 of 1995 and the principles underlying the statute, for example, the need for expeditious resolution of disputes.

4.4. The candidate's judgments in *Minister for Public Service and Administration v Kaylor and Another* [2013] 9 BLLR 858 (LAC) and *Greeff v Consol Glass (Pty) Ltd* (2013) 34 ILJ 2835 (LAC), in particular, reflect the candidate's grasp of principles particular to labour law – in the former case the

right of an employer to transfer an employee, in the latter case the principle that labour disputes should be resolved as expeditiously as possible.

4.5. Noteworthy amongst the candidate's judgments are the following:

4.5.1. *Juchniewicz and Another v Rijavea and Another: In re: Rijavea and Another v Juchniewicz and Others* ZAGPJHC 44 (18 April 2012) involved the qualifying fees of expert witnesses. The candidate had previously adjudicated on the matter and had made an order as to costs. No order had been made in respect of the qualifying fees of the expert witnesses. The application concerned the question whether the candidate was able to consider the application in view of his previous order. In the judgment, the candidate deals with the substantive law, discusses the legal positions held by the parties and then exercises his discretion in holding that the qualifying fees of experts are ancillary to costs and the court was not *functus officio*. The judgment appears correct in its granting of the ancillary costs and demonstrates the candidate's ability to exercise his discretion in reaching a fair and just within the ambit of the legal position.

4.5.2. *Kalahari Resources (Pty) Ltd v ArcelorMittal SA and Others* [2012] 3 All SA 555 (GSJ) (26 June 2012) concerned an urgent application involving a complex factual dispute. In this judgment, the candidate first sets

out the context of the dispute, discusses the shareholders agreement, the arbitration argument raised in defence and explores the requirements for interim and final relief in the ambit of business rescue proceedings. The candidate grapples with difficult factual and legal issues before concluding that the shareholder was obliged to discharge its funding obligations towards the applicant. The judgment appears correct and demonstrates the candidate's ability to deal with complex issues in an urgent application.

4.5.3. In *NUMSA obo Sinuko v Powertech Transformers (DPM) and Others* [2014] 2 BLLR 133 (LAC) (2 December 2013), the candidate, sitting together with Waglay JP and Tlaletsi ADJP, wrote a significant judgment regarding the powers of review of the LAC. The judgment is succinct and demonstrates a thorough understanding of labour law. The judgment is well-structured, firstly discussing the findings of the court *a quo*, then exploring the prevalent legal principles governing the dispute and distinguishing applicable case law. The judgment pronounces on a novel point regarding the ambit of the grounds of review before the LAC. The candidate shows an appreciation for the distinction between the court *a quo*, the LAC and the SCA and confronts and challenges the SCA's earlier criticism of the ambit of the review powers of the LAC. This judgment demonstrates the candidate's independence of thought and his ability to grapple with

complex issues and contribute to the development of the law.

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

5.1. The candidate was one of the first black members to join the Johannesburg Bar.

5.2. The candidate was a founding member of the Black Advocates Forum ("BAFO") which was a precursor to Advocates for Transformation ("AFT"). The candidate was an active member of AFT and was instrumental in the support and advancement of black practitioners, especially junior black women practitioners. He has mentored a number of black practitioners who have since achieved the status of senior counsel.

5.3. The candidate is known for his foresight and transformation agenda and made considerable in-roads in promoting and training black women advocates whilst at the Johannesburg Bar. The candidate continues to provide support and advice whilst on the Bench to many women AFT members during acting appointments.

5.4. The candidate is widely known for his commitment to transformation. His actions portray a commitment to South Africa and the values enshrined in the Constitution.

5.5. Several of the candidate's judgments have been written in his capacity as an acting LAC judge. In this respect the candidate has been required to consider the constitutional values

underpinning fair labour practices. In a notable judgment, authored by the candidate, *Ball v Bambalela Bolts (Pty) Ltd and Another* (2013) 34 ILJ 2821 (LAC); [2013] 9 BLLR 843 (LAC), the candidate considers the constitutional principles applicable to costs orders as they apply to labour matters. He applies the constitutional standard to the adjudication of costs where a party seeks to exercise his or her right to fair labour practices, finding that fairness, not a party's success in a case, should be the prevailing determinant in the award of costs.

5.6. From this, and an overall conspectus of the judgments written by the candidate particularly in the labour context, the candidate appears to have a commitment to the values of the Constitution.

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

6.1. Having regard to approximately 25 of the candidate's judgments, it appears that of these four have been overturned on appeal. In two cases, the candidate authored the judgments during his acting appointments in the High Court in 2001 and 2002. Recently (2013) two judgments in which the candidate concurred in the majority judgment were overturned by the SCA.

6.2. Judgments in which the candidate concurred in the majority judgment that were overturned on appeal were: *Clearfreight (Pty) Ltd v Pictech Sales CC* [2013] SASCA 181 (29 November 2013), and *Joubert Scholtz Inc and Others v*

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Elandsfontein Beverage Marketing (Pty) Ltd [2012] 3 All SA 24 (SCA):

- 6.2.1. in the *Clearfreight* decision, the SCA held that in the court *a quo*, the appellant had failed to prove its loss on a balance of probabilities, and accordingly overturned the candidate's judgment (with Masipa J); and
- 6.2.2. in the *Joubert Scholtz* decision, the SCA overturned the decision of the court *a quo* (an appeal heard by Lamont, Coppin and Mayat JJ) on the ground that the probabilities did not support its finding to overturn the decision of the trial court.
- 6.3. The judgments authored by the candidate as an acting judge of the High Court that were overturned on appeal are *Odendaal v Odendaal* 2002 (1) SA 763 (W) and *Ex parte Body Corporate of Caroline Court* 2001 (4) SA 1230 (SCA) (note that the High Court judgment of the candidate in these matters was not readily obtainable):
 - 6.3.1. In the *Caroline Court* decision, the SCA held that the candidate had erred in his approach to deciding a complex matter on an *ex parte* basis; and
 - 6.3.2. In the *Odendaal* decision, the full bench overturned the candidate's judgment in the court *a quo*. The full bench, per Goldstein J, noted that Coppin AJ had prepared a "*full and careful judgment*", but disagreed with his broad application of the term "*ante-nuptial contract*".

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

- 7.1. The candidate was called to the Bar in 1985 and practised as an advocate for 20 years before taking silk in 2005.
- 7.2. The candidate was appointed as a High Court judge in 2010. Prior to that he held an acting appointment as a High Court judge in about 2002. Since his appointment to the High Court, the candidate has also acted as a LAC judge, and has authored several judgments in that capacity. He appears to have had good preparatory experience for a position as a LAC judicial appointment.
- 7.3. During his time on the High Court bench, the candidate has heard matters in a wide range of legal areas, including, but not limited to, reviews of criminal matters from the Magistrates' Court, family law, contractual matters, delictual claims, appeals and restraints of trade.
- 7.4. The candidate also indicates that he has been a presiding officer in the Small Claims Court and has advised on and drafted key legislation in the health sector, specifically the Medicine Price Containment Measures in and the General Regulations under the Medicines and Related Substances Control Act of 1965 (as amended), and anti-smoking legislation.
- 7.5. The candidate consequently seems to have a wide range of professional experience. His appointment as an acting judge in

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the LAC, as well as his practice while an advocate, mean that he has particular experience in labour matters.

8. The candidate's linguistic and communication skills

8.1. The candidate expresses himself well in his judgments and articulates issues in a clear and concise manner. His judgments are articulate and generally concise.

9. The candidate's ability to produce judgments promptly

9.1. Of the judgments reflecting the date of hearing and date of judgment, it appears that the candidate has delivered judgment fairly quickly after hearing matters (generally within 1 to 3 months).

9.2. At the time of his application, the candidate indicated that he had two judgments outstanding, one from October 2013, the other from November 2013 (approximately three months).

10. The candidate's fairness and impartiality

10.1. The candidate's judgments suggest that he is fair and impartial in the adjudication of matters before him in that they reflect an apparently open mind to the facts, and a judicial application of the law.

11. The candidate's independent mindedness

11.1. The candidate appears to be independent in his evaluation of cases before him.

12. The candidate's ability to conduct court proceedings

- 12.1. Although no comments have been received regarding the specific conduct of the candidate in court, it appears from the judgments handed down that the candidate conducts the matters in his court in an efficient manner, without undue delay, and is able to deliver judgments fairly quickly.
- 12.2. The candidate has several years of experience as a sitting judge in the High Court, as well as an acting LAC judge, and in that respect there does not appear to be any difficulty experienced by the candidate in the conduct of court proceedings.

13. The candidate's administrative ability

- 13.1. The candidate indicates that he has been a member of the Medical and Dental Professional Board, the Aspen Home Owners' Association and the Sabie River Eco Estate Home Owners' Association.
- 13.2. The candidate has also been a member of the Motion Court Committee of the Gauteng Local Division, Johannesburg. From this it is not unreasonable to infer that the candidate has a fair amount of administrative experience and is not reticent to involve himself in administrative responsibilities.

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

- 14.1. No adverse comments have been received and there is no reason to doubt the candidate's integrity and ethical behaviour based on the information supplied.

15. The candidate's judicial temperament

- 15.1. The candidate appears to be fair and even-handed in the handling of cases. His written judgments set out clearly and methodically the relevant facts and the applicable law.

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

- 16.1. As stated above, the candidate has demonstrated in his judgments a commitment to the Bill of Rights insofar as labour relations are concerned. The candidate has not supplied any other information that would permit assessment of his general commitment to human rights and the needs of the community.

17. The candidate's potential

- 17.1. The candidate brings a great deal of general experience, both from practice and as a judge, which should place him in good stead to develop as judge specialising in Labour law.

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

- 1.1. The appointment of the candidate is likely to send a positive message to the community at large.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Ball v Bambalela Bolts (Pty) Ltd and Another (2013) 34 ILJ 2821 (LAC); [2013] 9 BLLR 843 (LAC)

Benefeld v West 2011 (2) SA 379 (GSJ)

De Beer v Minister of Safety and Security/Police and Another [2013] 10 BLLR 953 (LAC)

Dreyer v Wiebols And Others 2013 (4) SA 498 (GSJ)

Greeff v Consol Glass (Pty) Ltd (2013) 34 ILJ 2835 (LAC)

Hyprop Investments Ltd And Another v NCS Carriers and Forwarding CC And Another 2013 (4) SA 607 (GSJ)

Melamed and Another v BP Southern Africa (Pty) Ltd [2000] 1 All SA 342 (W)

Minister for Public Service and Administration v Kaylor and Another [2013] 9 BLLR 858 (LAC)

Mogale Alloys (Pty) Ltd v Nuco Chrome Bophuthatswana (Pty) Ltd and

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Others 2011 (6) SA 96 (GSJ)

NUMSA obo Sinuko v Powertech Transformers (DPM) and Others (CA16/2012) [2013] ZALAC 34; [2014] 2 BLLR 133 (LAC) (2 December 2013)

Odendaal v Odendaal 2002 (1) SA 763 (W)

S v Nkuna (18/2012) [2012] ZAGPJHC 115; 2012 (2) SACR 526 (GSJ) (18 May 2012)

SMI Trading CC v Mobile Telephone Networks (Pty) Ltd and Others 2012 (2) SA 642 (GSJ)

Unreported decisions

4Seas Worldwide (Pty) Ltd v Commission for Conciliation Mediation and Arbitration and Others (CA 15/2011) [2013] ZALAC 30 (13 November 2013)

Bartolo v Da Cruz (11/44852) [2012] ZAGPJHC 28 (7 March 2012)

De Lange A NO and Another v Nunes (SGHC case no 20195/11)

Director of Public Prosecutions v Holzen NO and Another (28126/07) [2010] ZAGPJHC 180 (1 September 2010)

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Democratic Union of Security Workers (DUSWO) and Others v Royal Serve Cleaning (Pty) Ltd (CA5/2012) [2013] ZALAC 12 (31 May 2013)

Emfuleni Local Municipality v Builders Advancement Services CC and Others (A 5047/11) [2012] ZAGPJHC 39 (23 March 2012)

Juchniewicz and Another v Rijavec and Another, In re: Rijavec and Another v Juchniewicz and Others (08/26088) [2012] ZAGPJHC 64 (18 April 2012)

Lazar Park Industrial (Pty) Ltd and Others v Seilskip Road Investments CC (A2010/5046) [2012] ZAGPJHC 55 (12 April 2012)

Maroga v Eskom Holdings Ltd and Others (A5021/11) [2011] ZAGPJHC 171 (16 November 2011)

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

S v Luphuwana (DH 10/07) [2013] ZAGPJHC 289 (6 November 2013)

Sekwele v Road Accident Fund (43071/2010) [2012] ZAGPJHC 27 (1 March 2012)

Siyanda Resources (Pty) Ltd and Another v Moloto NO; Mashile-Nkosi and Others v Moloto NO and Others (5955/2010, 06013/2010) [2010] ZAGPJHC 14 (26 March 2010)

Vector Logistics v Lenchoane and Others (JA 26/11) [2013] ZALAC 31 (4 October 2013)

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Judgments upheld on appeal

Armgold/Harmony Freegold Joint Venture (Pty) Ltd v CSARS (Tax Court case no 12856)

Bartolo L v Da Cruz MJM [2012] JOL 28603 (GSJ)

HR Computek CC (now (Pty) Ltd) v CSARS (VAR case 759) 2012 JDR 2281 (SCA) (only SCA judgment available)

SMI Trading CC v Mobile Telephone Networks (Pty) Ltd and Others 2012 (2) SA 642 (GSJ)

Judgments overturned on appeal

Judgments written by the candidate overturned on appeal:

Ex parte Body Corporate of Caroline Court 2001(4) SA 1230 (SCA) (only SCA judgment available)

Odendaal v Odendaal 2002(1) SA 763 (W)

Judgments in which the candidate concurred in the majority judgment that were overturned on appeal:

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