

CANDIDATE: JUDGE RT SUTHERLAND

**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 (1972), LLB (1975) University of the Witwatersrand;

1.1.2. Higher Diploma in Tax Law (1982) University of the
Witwatersrand; and

1.1.3. Certificate in Industrial Relations (1988) University of
the Witwatersrand.

1.2. The candidate is currently a post-graduate student for MA
(Applied Ethics) 2014 to 2015.

1.3. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

2.1. There is nothing in the candidate's earlier practice as an
advocate of the Bar, in his judgments and in the public arena
that suggests that the candidate is not a fit and proper person.

2.2. Furthermore, there is no information that detracts from his
abilities as a Judge and which may negatively impact his
abilities to perform in the position applied for.

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.
- 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. Given the present demographics of the LAC, however, his appointment would help reflect such composition.

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

- 4.1. The candidate was granted silk in 1995.
- 4.2. The candidate developed an extensive practice as an advocate specialising in labour law and public law. He has an extensive knowledge of these fields of law.
- 4.3. The candidate acted in the High Court on several occasions from 1997 to 2011, the Labour Court from 1998 to 2002 and in the LAC from January to June 2013. The candidate was permanently appointed to the South Gauteng High Court in 2012.
- 4.4. Further, the candidate served on the Labour Court Rules Board from 1999 to 2001.

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4.5. The candidate's knowledge of the law, including labour law and constitutional law, is extensive.

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

5.1. The candidate's continued participation in pupillage training and other extra-judicial activities is a clear indication of his commitment to the values of the Constitution.

5.2. This commitment is also apparent from his reported judgments.

6. Whether any judgments have been overturned on appeal

6.1. Two judgments have been successfully appealed:

6.1.1. *Kotze v Axal Properties 2 CC* [2013] ZASCA 110 (16/09/2013); and

6.1.2. *Ulde v Minister of Home Affairs and Another* 2009 (4) SA 522 (SCA).

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

7.1. The candidate has extensive professional experience:

7.1.1. Clerk of the Court 1968 to 1972;

7.1.2. District Court Prosecutor 1972 to 1974;

7.1.3. Special Industrial Court Prosecutor 1975;

7.1.4. Regional Court Prosecutor 1975 to 1976;

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- 7.1.5. State Advocate 1976 to 1977;
- 7.1.6. Worked at the Legal Aid Clinic at Riverlea;
- 7.1.7. Wits Legal Aid Clinic; and
- 7.1.8. Johannesburg Society of Advocates 1977 to 2011.

8. The candidate's linguistic and communication skills

- 8.1. The written judgments of the candidate provide a clear indication of his linguistic abilities. In particular, he writes with clarity and precision.
- 8.2. The candidate communicates well. This is apparent from the manner in which he has carried out leadership tasks at the Johannesburg Bar.
- 8.3. In addition to the above, the candidate was:
 - 8.3.1. the Council and School Best Speaker in 1968; and
 - 8.3.2. the chair of the Debating Union and twice Best Speaker.

9. The candidate's ability to produce judgments promptly

- 9.1. The candidate has no outstanding judgments.

10. The candidate's fairness and impartiality

- 10.1. The candidate was asked to recuse himself in the case of *Le Car Auto Traders v Degswa 1038 CC and Others* (2011/47650) [2012] ZAGPJHC 286 (14 June 2012). The application for recusal was dismissed on the grounds that judgment had already been granted in the matter and that, on

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the facts, no impropriety had occurred. Sutherland J concluded that there could be no reasonable apprehension of bias.

10.2. Members have appeared before the candidate when he has acted as an arbitrator. His fairness and impartiality is beyond question.

11. The candidate's independent mindedness

11.1. From a review of the judgments handed down by the candidate, it appears that he is independent of mind. The same conclusion may be reached from the candidate's conduct as arbitrator before his elevation to the bench.

12. The candidate's ability to conduct court proceedings

12.1. There have been no adverse comments received about the candidate's abilities to conduct court proceedings. In fact, many practitioners interviewed are in agreement that the candidate conducts his court efficiently, fairly and to good effect.

13. The candidate's administrative ability

13.1. The candidate has served in many positions which require managerial and administrative skills. For example, he:

13.1.1. led the Bridge Group with success from 1999 to 2007;

13.1.2. has held several positions in the Bar Council, including the position of Chairperson of the Bar Council; and

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13.1.3. has also served on the Executive Committee of the General Council of the Bar.

13.2. The candidate has excellent administrative skills.

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

14.1. The candidate lectures ethics in the Pupillage Programme. He has addressed fellow Judges and Magistrates on Judicial Ethics.

14.2. The candidate is enrolled as student in postgraduate MA degree in Applied Ethics.

14.3. The candidate has an excellent reputation for integrity and ethical behaviour.

15. The candidate's judicial temperament

15.1. The candidate appears to command great respect among practitioners who have appeared before him. It appears to be common among those interviewed that the candidate conducts his court efficiently and treats practitioners and litigants with consideration and humility.

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 demonstrated his commitment to transformation within the Bar. His continued commitment to Bar training is one example of his commitment to these values.

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17. The candidate's potential

17.1. The candidate appears to have good potential to develop further as a judge of the LAC.

17.2. The candidate's specialist expertise in labour law would be beneficial to the LAC.

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

18.1. The LAC is vested with significant constitutional and labour related responsibilities. Appointees to this important court are highly regarded specialists in their field. Litigants and practitioners can expect fair and impartial consideration of their causes as well as knowledge and specialist expertise contributing to a just outcome.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Nchabeleng v University of Venda and Others (2003) 24 ILJ 585 (LC)

B D O Spencer Stuart (Johannesburg) Incorporated v Otto (2002) 23 ILJ 1374 (LC)

Lentsane and Others v Human Sciences Research Council (2002) 23 ILJ 1433 (LC)

Manyele and Others v Maizecor (Pty) Ltd and Another (2002) 23 ILJ 1578 (LC)

MTN South Africa v Van Jaarsveld and Others (2002) 23 ILJ 1597 (LC)

Rustenburg Base Metal Refiners (Pty) Ltd and Another v National Union of Metalworkers and Others (2002) 23 ILJ 1891 (LC)

SA Broadcasting Corporation v Commission for Conciliation, Mediation & Arbitration and Others (2001) 22 ILJ 487 (LC)

Chemical Workers Industrial Union v Polifin Ltd (2001) 22 ILJ 682 (LC)

Northern Province Local Government Association v Commission for Conciliation, Mediation and Arbitration and Others (2001) 22 ILJ 1173 (LC)

National Construction Building & Allied Workers Union v Masinga and Others (2000) 21 ILJ 411 (LC)

Ndlovu v Mullins NO and Another (1999) 20 ILJ 177 (LC)

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North West Tourism Council v Commission for Conciliation, Mediation & Arbitration and Others (1998) 19 ILJ 1530 (LC)

Transport and General Workers Union and Others v Hiemstra NO and Another (1998) 19 ILJ 1598 (LC)

Mndaweni v JD Group t/a Bradlows and Another (1998) 19 ILJ 1628 (LC)

Kilpert v Buitendach and Another (1997) 18 ILJ 1296 (W)

C S O Valuation (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others (1999) 4 LLD 238 (LC)

De Paauw and Living Gold (Pty) Ltd (2006) 27 ILJ 1077 (ARB)

Lothlorien Pulp Mill and Paper Printing Wood & Allied Workers Union (1993) 14 ILJ 1117 (ARB)

Waste-Tech (Pty) Ltd and Transport & General Workers Union (1992) 13 ILJ 1032 (ARB)

Tubatse Ferrochrome (Pty) Ltd and National Union of Mineworkers (1991) 12 ILJ 174 (ARB)

Liberty Box & Bag Manufacturing Co (Pty) Ltd and Paper Printing Wood & Allied Workers Union (1990) 11 ILJ 427 (ARB)

National Union of Mineworkers v Tubatse Ferrochrome (Pty) Ltd (1990) 11 ILJ 875 (ARB)

National Construction Building and Allied Workers Union v Masinga and Others (2000) 5 LLD 115 (LC)

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Coetzee v Taxing Master, South Gauteng High Court and Another 2013 (1) SA 74 (GSJ)

NSC Carriers and Forwarding Cc and Others v Hyprop Investments Ltd and Others 2013 (1) SA 340 (GSJ)

Sil & Others v Road Accident Fund 2013 (3) SA 402 (GSJ)

Choice Decisions v MEC Department of Development, Planning and Local Government, Gauteng, and Another (No 1) 2003 (6) SA 280 (W)

ABSA Bank Limited New City Group (Pty) Ltd and Another matter [2013] 3 All SA 146 (GSJ)

Unreported decisions

Majali v The Minister of Safety and Security and Others, Unreported Judgment, Case No. 2009/37292 (2 December 2009)

B v B (2010/50006) [2012] ZAGPJHC 108 (28 May 2012)

Judgments upheld on appeal

Hyprop Investments v NSC Carriers (935/12) [2013] ZASCA 169 (27 November 2013)

Judgments overturned on appeal

Kotze v Axal Properties 2 CC [2013] ZASCA 110 (16/09/2013)

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Ulde v Minister of Home Affairs and Another 2009 (4) SA 522 (SCA)