

APPLICANT: MR PLC MASETI

**COURT FOR WHICH APPLICANT APPLIES: HIGH COURT GAUTENG
– NORTH AND SOUTH DIVISIONS**

1. The candidate's appropriate qualifications

1.1. The candidate has the following qualifications:

1.1.1. BJuris, University of Transkei 1984; and

1.1.2. LLB, University of Transkei 1988.

1.2. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

2.1. The candidate is presently listed on the practising roll of attorneys and has provided a certificate of good standing from the Cape Law Society to this effect.

2.2. Prior to this, the candidate was appointed as an advocate of the High Court. It is unclear when his name was removed from the roll of advocates.

2.3. The candidate served as an Acting Judge of the Gauteng Local Division from July 2013 to August 2013 and of the Gauteng Provincial Division from March 2014 to April 2014 and November 2014 to December 2014.

2.4. The candidate further served as an Acting Judge of the Eastern Cape Provincial Division for the months of June 2014 and March 2015.

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- 2.5. The candidate discloses at paragraph 2 of section 4 of his application that in April 1978, he was convicted of bribery and sentenced to a period of imprisonment of six months.
- 2.6. The candidate explains the nature of the conviction and the circumstances leading thereto in the annexure found at page 153 of his application.
- 2.7. The candidate was employed as a junior prosecutor in the Willowvale Magistrates Court at the time. He accepted the sum of R50 from an accused person awaiting trial. The candidate states that he duly conducted the trial without any favour to the accused who was subsequently convicted and sentenced to two years imprisonment. Upon sentencing, the accused caused a messenger to approach the candidate for repayment of the amount paid and the candidate provided the messenger with a R50 note. The candidate was arrested the following day and subsequently charged and convicted.
- 2.8. At the time of his initial acting appointment in the Eastern Cape Division, the candidate states that he disclosed his previous conviction to the Judge President who nevertheless permitted the candidate to embark upon his acting appointment. Notwithstanding his previous conviction, the candidate has provided a clearance certificate from the South African Police Service, which reflects an absence of any criminal record.
- 2.9. Subsequent to the candidate serving the term of his imprisonment, the candidate has been admitted as both an advocate and an attorney, served as a magistrate and has been permitted to serve as an acting judge.
- 2.10. A Judge of the high Court ought to be beyond reproach in his or her

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reputation for honesty and integrity. Notwithstanding the long period of time that has lapsed since the candidate's aforesaid conviction, the nature of the offence, and the fact that it was committed by the candidate in the performance of his duties at the time in the administration of justice, appears irreconcilable with the aforementioned standard.

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. His appointment would therefore contribute to racial representivity.

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

4.1. The candidate indicates that his present practice as an attorney comprises of mainly criminal and civil practice with smaller elements comprising of administrative law, labour law and constitutional law.

4.2. However, the candidate fails to disclose matters in which he was involved in his capacity as the instructing attorney. It is therefore not possible to ascertain the candidate's knowledge of the law from the provided description of his attorney's practice.

4.3. An analysis of the list of matters over which the candidate presided during his acting appointment reflects a balance between civil and criminal matters. The civil matters appear to be confined to motion court proceedings, the majority of which appear to be unopposed matters, and civil trials. The criminal matters appear to comprise of appeals from the magistrates court.

4.4. The candidate listed the following judgments as his most significant

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judgments:

- 4.4.1. *Value Cement v Aldes Business Brokers Franchise and Others* (29689/2012) [2014] ZAGPPHC 151 (4 April 2014);
- 4.4.2. *Associated Equipment Company CC v International Trade Administration Commission and Another* (15201/2013) [2014] ZAGPPHC 154 (4 April 2014);
- 4.4.3. *Mpisi Training 74 (Pty) Ltd v Mhashu Cross Border Logistics CC*, South Gauteng High Court, case number 9696/2012;
- 4.4.4. *Thandi Sibanda v The Road Accident Fund*, South Gauteng High Court, case number 36756/2013;
- 4.4.5. *Beatrice Tinky Tyesi v Momathamsanqa Cynthia Jobe*, Eastern Cape Local Division, case number 1075/2014;
- 4.4.6. *Brainwave Projects 848 CC t/a Masakhane Project Managers and Construction Cost Consultants v Nthabankhulu Local Municipality*, Eastern Cape Local Division, case number 1019/2013;
- 4.4.7. *Sibusiso Stanley Mlaba v The Road Accident Fund*, South Gauteng High Court, case number 4573/2012;
- 4.4.8. *Pienaar Ritchie v The State*, South Gauteng High Court, case number A84/2013;
- 4.4.9. *Lucky Mohlongo and Another v The State*, North Gauteng High Court, case number A755/2013;
- 4.4.10. *Maishoane Kagiso v The State*, South Gauteng High Court, case

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number A85/2013.

- 4.5. At pages 83 – 143 of the candidate’s application, he annexes reports that he presumably submitted to the Deputy Judge Presidents for the divisions in which he acted. It is evident from these annexures that the candidate has presided over 427 matters in total, 37 of which expressly indicate that judgment was reserved or has subsequently been handed down and only 8 of which could be obtained for consideration.
- 4.6. Only a handful of the candidate’s judgments could be obtained. The judgments obtained are well written and comprise of a schematic elaboration of the existing law applicable to the particular legal principle in question. Furthermore, the judgments considered reflect a diverse but limited exposure to the law.
- 4.7. *Beatrice Tyesi v Nomathamsanqa Jobe*, Eastern Cape Local Division, case number 1075/2014, concerns the applicability of the repealed section 22(6) of the Black Administration Act 38 of 1927 in the face of an agreement between spouses made prior to the conclusion of the marriage that the marriage shall have the consequences of a marriage concluded in community of property and which does not amount to a declaration made in terms of section 22(6) of the Act. The candidate found that, on a balance of probabilities, the parties expressly agreed that the proprietary consequences of the marriage would be as in community of property, alternatively, that the spouses had impliedly and by their conduct so agreed.
- 4.8. An application for leave to appeal was subsequently noted in respect of the candidate’s judgment. The application was dismissed by the

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candidate. It is not evident whether the Supreme Court of Appeal was or has been approached for leave to appeal.

4.9. *Thandi Sibanda v The Road Accident Fund*, South Gauteng High Court, case number 36756/2013, dealt with the question of whether a dependant's action may be extended to the minor child who is not the biological child of the deceased but was nevertheless supported by the deceased whilst he was still alive. The candidate applied the *boni mores* criterion in extending the common law claim for maintenance and loss of support and held that the minor child had enjoyed the protection of the support of the deceased and should continue to enjoy such protection.

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

5.1. The candidate's application read together with his judgments do not offer substantial evidence of commitment to the values of the Constitution.

5.2. In consideration of the judgment in *Thandi Sibanda v The Road Accident Fund*, there is some evidence of the candidate's willingness to apply constitutional considerations in developing the common law.

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

6.1. No appeal judgments overturning the judgment of the candidate sitting in the court *a quo* have been identified.

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

7.1. The candidate states that his legal career commenced with a position as a prosecutor and maintenance officer. During the period of 1979 to 1980,

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he was employed as a clerk in a firm of attorneys. It is not clear whether the reference to clerk refers to a candidate attorney. In 1981, the candidate was appointed as an “*officer leading evidence (prosecutor)*” for the Department of the Interior. In 1984, the candidate was employed full-time as a magistrate where he remained until 1988. Thereafter, he was employed as a legal advisor in parastatal institutions. The candidate fails to identify which institutions.

- 7.2. The candidate was admitted as an attorney in 1994 and has practised to date under the name and style of PLC Maseti Incorporated.
- 7.3. He has acted for a cumulative period of approximately five months as a judge in the Johannesburg High Court, the Pretoria High Court and the Eastern Cape High Court.
- 7.4. During his career, the candidate states that he has acted in the following quasi-judicial positions:
 - 7.4.1. Chairperson presiding over disputes arising between football clubs within the Mthatha region.
 - 7.4.2. Commissioner to the Tax Appeal Board for the South African Revenue Service.
 - 7.4.3. Disciplinary Committee for the Cape Law Society. The position held by the candidate and the extent of his involvement is unclear from the application.
- 7.5. Similarly, the candidate identifies himself as a member of the Provincial Judicial Committee for the Lower Courts for the Eastern Cape Region 1 and 2 but does not disclose the extent to which he was involved and the

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nature of the role played.

8. The candidate's linguistic and communication skills

8.1. The candidate has shown himself to have an appropriate command of the English language.

9. The candidate's ability to produce judgments promptly

9.1. The candidate indicates that he has no outstanding judgments.

9.2. From the judgments that could be identified, it appears that the candidate produces judgments within one to two months after the date of the finalisation of the matter.

9.3. However, informal enquiries directed to members of the Johannesburg Society of Advocates indicate that on one known occasion, the candidate failed to deliver his judgment in respect of an opposed motion for several months. Upon receipt of complaints from the legal representatives involved, the Judge President for the Gauteng division assumed control of the matter. Shortly thereafter, the Judge President handed down a judgment written by the candidate which was dated several months prior. It is unclear where the delay rested.

10. The candidate's fairness and impartiality

10.1. As indicated, the applicant has a conviction for bribery. It is significant that this conviction was in the context of the exercise of his duties in the administration of justice.

10.2. No adverse comments have been received in respect of the candidate's ability to act fairly and impartially.

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11. The candidate's independent mindedness

11.1. It is evident from the judgments in *Beatrice Tyesi v Nomathamsanqa Jobe* and *Thandi Sibanda v The Road Accident Fund* that the candidate is capable of applying his mind independently to the facts.

12. The candidate's ability to conduct court proceedings

12.1. No adverse comments have been received regarding the candidate's ability to conduct court proceedings.

13. The candidate's administrative ability

13.1. The candidate's application provides no indication of his administrative ability.

13.2. However, the candidate has practised as an attorney for many years under the name and style of PLC Maseti Incorporated, which suggests that the candidate was a director of the firm. This is suggestive of administrative ability.

13.3. Further, the candidate has served as a member of a number of professional committees and has acted as a director to numerous companies and corporations.

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

14.1. Informal enquiries made to members of the Johannesburg Society of Advocates indicate that the candidate previously applied for a permanent position as a judge of the Eastern Cape High Court.

14.2. This application was allegedly not supported by the Black Lawyers

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Association.

- 14.3. In the letter of motivation for the candidate's nomination, Mr M Simoyi states that the candidate is a member of the Black Lawyers Association and was elected to act as its chairperson in the Eastern Cape where he served until 31 May 2015. This appointment is not reflected in the candidate's application or his CV.
- 14.4. Whilst the particular reasons behind the decision of the Black Lawyers Association are unknown, their decision not to support the candidate is significant in view of his previous service as its chairperson for the Eastern Cape.
- 14.5. Save for the aforesaid, no negative comments have been received in this regard.

15. The candidate's judicial temperament

- 15.1. No adverse comments have been received in this regard.

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

- 16.1. Despite stating that he presided over numerous criminal trials, none of these judgments was available for perusal. It is therefore not possible to ascertain from the candidate's application the extent to which the candidate has demonstrated a commitment in this regard.

17. The candidate's potential

- 17.1. In light of the limited judgments available on which to assess the potential of the candidate, there are inadequate grounds to conclude that

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the candidate would strengthen the bench in the Gauteng divisions.

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

- 18.1. The candidate is a black man and his appointment would therefore signal commitment to racial transformation of the bench.
- 18.2. The candidate's previous conviction for bribery must be significant to the message that his appointment would convey. Of particular concern is the fact that the conviction relates to the performance by the applicant of his duties in the administration of justice, and that the message that would be conveyed in the event of his appointment is that unquestionable integrity is not a *sine qua non* for appointment as a Judge of the High Court.
- 18.3. Unfortunately the candidate's serious criminal conviction is not offset by any other particular areas of strength. There are thus no compelling reasons to expose the integrity of the judiciary, which has an unblemished record in this regard, to a candidate with a conviction for corruption committed in his capacity as an officer of the court.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

No reported judgments could be identified.

Unreported decisions

Mpisi Trading 74 (Pty) Ltd v Mhashu Cross Border Logistics CC, South Gauteng High Court, case number 9696/2012 (dated 30 August 2013)

Associated Equipment Company CC v International Trade Administration Commission and Another (15201/2013) [2014] ZAGPPHC 154 (4 April 2014)

Value Cement v Aldes Business Brokers Franchise and Others (29689/2012) [2014] ZAGPPHC 151 (4 April 2014)

Garry Cooper v Mbombela Local Municipality and Another, North Gauteng High Court, case number 59120/2010 (dated 30 May 2014)

Buffalo City Metropolitan Municipality v The United Methodist Church of Southern Africa (UMCOSA), East London Circuit Local Division, case number 1327/13 (dated 26 June 2014)

Beatrice Tinky Tyesi v Momathamsanqa Cynthia Jobe, Eastern Cape Local Divison, case number 1075/2014 (dated 18 September 2014)

Associated Equipment Company CC v The International Trade Administration Commission and Another, North Gauteng High Court, case number 15201/2013 (dated 12 December 2014)

Thandi Sibanda v The Road Accident Fund, South Gauteng High Court, case number 36756/2013

Judgments upheld on appeal

No judgments could be identified.

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Judgments overturned on appeal

No judgments could be identified.