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Media Statement

THE JUDICIARY BIDS FAREWELL TO JUSTICE TSHIQI AS SHE TAKES RETIREMENT

Justice Zukisa Laura Lumka Tshiqi of the Constitutional Court will bring her distinguished twenty-one-year judicial career to a close on 31 May 2026.

Justice Tshiqi joined the Bench on 25 July 2005 when she was appointed by the President of the Republic of South Africa as a Judge of the Gauteng Division of the High Court, Johannesburg Local Division. Her appointment followed several stints as an Acting Judge of the High Court and the Labour Court between 2003 and 2004.

Her legal career began whilst studying towards her B Proc degree at the University of the Witwatersrand, when she was appointed a Legal Coordinator for the South African Council of Churches, a position she held from 1986 until her graduation in 1989.

In 1991, she completed her Articles of Clerkship at Neluheni Attorneys and was admitted as an attorney of the High Court. Following her admission, Justice Tshiqi was appointed as a Professional Assistant at Matlala Attorneys in 1991, where she was exposed to various areas of law. In the following year, she was appointed as the Litigation Officer and Trial Advocacy Trainer of the Black Lawyers Association (BLA) until 1994, when she opened her own practice.

Whilst running her private practice between 1994 and 2005, she was also privileged to concurrently serve as a Senior Commissioner of the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Bargaining Council. Justice Tshiqi is a qualified trainer, facilitator and mediator. She also serves as a part-time judicial trainer for the South African Judicial Institute (SAJEI). Justice Tshiqi also holds an Advanced Diploma



in Labour Law from the Rand Afrikaans University (now the University of Johannesburg), which she obtained in 2001.

Her exposure to varied areas of law during her fourteen years of practice stood her in good stead when she became a Judge. Having spent only two years as a Judge of the High Court, she was appointed as an Acting Judge of the Competition Appeal Court in 2007. She later joined the Supreme Court of Appeal (SCA) as an Acting Judge and in 2009, was permanently appointed as a Judge of Appeal. She served in the SCA for a decade – during which time she also served as an Acting Justice of the Constitutional Court – before taking up a permanent seat in the Constitutional Court on 1 October 2019.

Justice Tshiqi has written the following notable judgments:

- In *City Power (Pty) Ltd v Grinpal Energy Management Services (Pty) Ltd* (2015), Acting Justice Tshiqi wrote the unanimous judgment for the Constitutional Court that affirmed that the automatic transfer of employment contracts under section 197 of the Labour Relations Act (LRA) applies to municipal entities. The Court ruled that when City Power terminated its contract with Grinpal and resumed the prepaid electricity services, it constituted a transfer of a business as a going concern, transferring Grinpal's employees to City Power.
- In *Coughlan N.O. v Road Accident Fund* (2015), Acting Justice Tshiqi wrote the unanimous judgment for the Constitutional Court. The SCA had found that foster child grants were not *res inter alios acta* and were deductible from a child's compensation for loss of support payable by the Road Accident Fund, reasoning that, but for the death of the parent, the foster parents would not have claimed the grants. Justice Tshiqi reversed this finding, holding that foster child grants are not deductible, because they arise from the State's duty to children in need of care, are paid to the foster parent rather than the child, and are not predicated on the death of a parent. The Court extended this principle to child support grants, laying down a general principle applicable to children who had a claim for loss of support, and who are placed under foster care.
- *Sithole v Sithole* (2021) is a unanimous decision of the Constitutional Court, written by Justice Tshiqi, confirming the declaration of constitutional invalidity



granted by the Durban High Court. The Constitutional Court held that section 22(1)(2)(a) of the Matrimonial Property Act (MPA) was unconstitutional because it maintains and perpetuates the racial discrimination created by the repealed Black Administration Act (BAA). The provision imposed a default regime under which marriages of black couples, entered into under the BAA, before the MPA was enacted in 1988, were automatically out of community of property. The Court declared the provision unconstitutional and that all marriages that were concluded out of community of property under the BAA to be marriages in community of property, save for those couples who opt otherwise.

- In 2025, Justice Tshiqi penned yet another unanimous decision of the Constitutional Court in *Van Wyk v Minister of Employment and Labour; Commission for Gender Equality v Minister of Employment and Labour*. The matter concerned two consolidated applications which related to an order seeking confirmation of a High Court order declaring the following sections, which concern maternity and paternity leave, namely, sections 25, 25A, 25B and 25C of the Basic Conditions of Employment Act and sections 24, 26A, 27 and 29A of the Unemployment Insurance Act (collectively, the impugned provisions), invalid and unconstitutional. The Court held that the impugned provisions unfairly discriminate based on gender and violate the right to dignity in that they (a) afford fathers only ten days' parental leave, depriving parents the choice to structure their child-nurturing responsibilities; (b) cast the birth mother as the default primary caregiver, reinforcing the assumption that early childcare falls on women; (c) afford adoptive and commissioning parents less leave than birth mothers; and (d) cap adoption leave eligibility at children below the age of two; discriminating between adoptive parents and between adopted children on the basis of age. The declarations of invalidity were suspended for 36 months, with an interim reading-in providing parents a collective entitlement of four months and ten days' parental leave, to be shared as they agree.

Justice Tshiqi's contribution to South Africa's constitutional jurisprudence has been notable. She leaves behind a legacy of integrity, wisdom and steadfast commitment to justice.



A ceremonial Constitutional Court sitting will be held in honour of Justice Tshiqi on 29 May 2026, where she will deliver her final judgment.

On behalf of the Justices of the Constitutional Court and the Judiciary at large, Chief Justice Maya wishes Justice Tshiqi a fulfilling and rewarding retirement after many years of distinguished service to the law and our country.

“Your years on the Bench have been marked by fairness, courage and fidelity to the Constitution. As you retire from judicial office, we thank you for your remarkable service and wish you a well-deserved season of rest, fulfilment and new opportunities,” said Chief Justice Maya.

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