

**Curriculum Vitae
of
Adv. Boitumelo
Linchwe-
Tlhakung**



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PERSONAL DETAILS:

FULL NAME: Boitumelo Lencoe [actually Linchwe] -Tlhakung
KNOWN AS: Tumi
NATIONALITY: South African
IDENTITY NUMBER:
EMPLOYMENT EQUITY STATUS: Black Female
LANGUAGE ABILITY: English, South Sotho, Tswana, Xhosa and Zulu
RESIDENTIAL AREA: Midrand
TRANSPORT: Own transport
AVAILABILTY/NOTICE PERIOD: One month's notice
E-MAIL ADDRESS:
CONTACT NUMBER:

EDUCATIONAL DETAILS:

SECONDARY:

School attended: Le-Reng High School: Ladybrand-Free State
Level attained: Matriculation
Year of matriculation: 1992
Achievements: Debating team chairperson;
Senior choir member
Tennis captain

TERTIARY:

Name of institution: University of Cape Town
Dates: 1994-1996
Degree / Diploma: BA (LAW)
Achievements: RAG New Projects Organiser

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Class representative: English 101

Name of institution: Nelson Mandela University
Dates: 1997-2002
Degree / Diploma: New LLB
Achievements: RAG Executive Committee
House Committee Member: Melodi Residence-1999
Street Law Trainer: 2000-2001

Name of institution: General Bar Council: Johannesburg Bar Council-Sandown
Dates: 2003
Degree / Diploma: Pupillage
Achievements: Advocacy extensive legal training completion

Name of the Institution: General Bar Council: Johannesburg Bar Council
Dates: 2003-2004
Degree / Diploma: Admitted Advocate of the South African High Court
Transvaal Provincial Division
July 2003
Before Judge Shongwe and Grobbelaar

Name of institution: University of Johannesburg
Dates: 2006-2007
Degree / Diploma: Higher Diploma in Tax Law

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Name of institution: University of Johannesburg
Dates: 2008
Degree / Diploma: Higher Diploma in International Tax Law

Name of the institution: Gordon Institute of Business Science
Dates: 2013
Executive management course: Leading Women-Authentic Leadership

Name of the institution: South African Institute of Chartered Accountants obo
ABSIP
Dates: October 2013 to June 2014
Degree / Diploma: Leadership Course by Dr. Nikolay Boukovski

Name of the institution: Advantage Training
Dates: September 2020
Degree / Diploma: African Corporate Governance by Ambassador Mumba
Kapumpa SC and Judge Mervyn King.

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CAREER SYNOPSIS:

COMPANY	POSITION HELD	FROM - TO
General Bar Council	Pupil	2003-2003

KEY RESPONSIBILITIES AND DUTIES:

- ❖ I did pupillage under the mastership of Adv. Anthony Mundell SC, of Group 21-Sandown Village. The mastership involved course work, which entailed:
 - - ✦ Legal writing
 - ✦ Motion Court Proceedings
 - ✦ Civil Court Proceedings
 - ✦ Criminal Court Proceedings
 - ✦ Ethics
- ❖ Further there was extensive legal writing and court practice training, which included daily court appearances, at both motion courts various trial courts. For practice purposes and in order to gain experience in all legal practice areas, the whole Group is accordingly tasked in helping with the closing of practice gaps in line with the pupillage curriculum.

COMPANY	POSITION HELD	FROM - TO
Johannesburg Bar Council	Admitted Advocate	2003-June 2004

KEY RESPONSIBILITIES:

- ✦ High Court motion proceedings and litigation on mainly civil matters. This included extensive consultations with the attorneys, drafting of pleadings, drafting of opinions and memorandums, High Court appearances.
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- ✦ Briefed by the National Prosecuting Authority on the Dinokeng Tsa Taemane Municipality [also known as Cullinan Municipality] enquiry on corruption allegations against the Municipality Manager and report under the leadership of Adv. Owen Matjila from the Pretoria Bar as Senior Counsel. The project took us four months to complete.
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- ✦ Was further briefed as Junior Counsel by the National Prosecuting Authority, to make another corruption enquiry and report on the attorneys' conduct when dealing with the Road Accident Fund. The project took us six months to complete.

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COMPANY	POSITION HELD	FROM - TO
SARS	Tax Counsel	July 2004-2008

KEY RESPONSIBILITIES:

- ❖ Started with the Receiver in July 2004, and accordingly joined the then Legal and Policy Division as a Tax Litigator. My focus was mainly tax law litigation, including tax court motion applications – nationwide.
- ❖ Part of the Durban Receiver VAT double book-keeping project with Adv. Geert Stevens which was later rolled to Port Elizabeth and Cape Town ports.
- ❖ Involved in negotiating, drafting and finally settling sec 88D settlements agreements, on all tax matters.
- ❖ Was part of the legal team together with Ms. Ilse Bathheu on BP South Africa (Pty) Ltd case, which was heard at the Cape Town Tax Court, and later at the Supreme Court of Appeal in Bloemfontein, dealing with capital versus revenue over the annual licence repayments by the BP South Africa to BP Plc [Head Office], where BP South Africa claimed that their annual royalty payments be considered as revenue; and thus a deductible expense as per the provisions of section 11(a) of the Income Tax Act.
- ❖ Attained extensive corporate and individual tax litigation experience on amongst other things private equities, mergers and acquisitions, PAYE, including international tax in the form of transfer pricing, thin capitalisation, permanent establishments, expatriates *etc.*
- ❖ SARS nominee to attend and completed a Legal Writing course with the University of Seattle through University of Pretoria for the month of June 2008.
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COMPANY	POSITION HELD	FROM - TO
Nedbank South Africa	Group Tax Risk Auditor/ Law Specialist	2008-2011

KEY RESPONSIBILITIES:

- ❖ Tax risk analysis and management around the Nedbank Group. Draft and finalised the following Group Tax Committee Reports for presentation to Group Risk Committee – headed by Mr Phillip Wessels at the time:
 - Pay As You Earn Tax Risk Assessment Report, on expatriates and overall group employees;
 - New Product Approval Process Report-Tax Risk Assessment Report;

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- Imperial Bank Tax Risk Assessment Report, after the Nedbank Group and Imperial Bank merger;
 - Non Permanent Resources Tax Risk Assessment Report; and
 - Value Added Tax Risk Assessment Report on the employees' fringe benefits tax and withholding tax topics across all group clusters. , and accordingly present it to both the Group Risk Committee and Group Tax Committee.
- ❖ Key performance role of Group Tax Law Risk Specialist within the Group Internal Audit environment involved tax risk assessment on:
- ✚ South African direct and indirect tax;
 - ✚ International tax law risk assessment on expatriates;
 - ✚ Transfer pricing and thin capitalisation tax risk assessment;
 - ✚ Securities transfer tax;
 - ✚ Capital Gains Tax;
 - ✚ Secondary Tax on Companies / Dividends Tax;
 - ✚ Overall withholding tax etc.
- By continually analysing all the clusters' inter-company and third party transactions, going through their contracts, memorandum of understanding, cross border corporate finance transactions etc. and giving my opinion on their tax risks; and ways to mitigate the latter.
- ❖ Key performance role also included tax risk assessment projects:
- ✚ A huge group wide transfer pricing risk assessment audit project which specifically dealt with:
 - The international service and transactions agreements between connected parties like Isle of Man; Nedbank Africa; Nedbank London Branch; Fairbairn and Jersey where there was Double Tax Agreements; Service Level Agreements, Standard Working Documents; Benchmarks; Transfer Pricing Cost Methods; Nedbank Group Transfer Pricing Policy; Cluster Specific Transfer Pricing Policies etc.;
 - Whether the Nedbank Group complied with all the regulatory policies for the purposes of the OECD and the South African Revenue Services; the United Kingdom Tax Law and the South African Tax Law when entering into vast quantity of transactions ranging from transaction management on mining and energy deals, commodity finance and global markets; and the monitoring of the charging methods on the dollar-based finance with regard to the structured trade and derivatives finance business cluster;

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- The secondment of personnel to the London Branch and Old Mutual Plc. for the purposes of withholding tax and for the regulation of the expatriates' services in different jurisdictions taking into account PAYE, UIF and SDL;
 - Document retention for the purposes of transfer pricing compliance.
- ❖ My role in all these projects entailed detailed analysis of the transactions documents, identification of the tax risks; presentation of my analysis to the Group Risk Committee and the Group Tax Risk Committee; conducting bi-weekly workshop with the tax auditors with the aim of directing them to strategies of identifying further tax risks when interacting and or perusing the relevant transaction agreements during audits; drafting the report for the external auditor in order to have the highlighted risks identified for the tax function effectiveness analysis of the group; analysing the group's financial statements and tax returns after they have been handled by the tax accountants from the tax compliance point of view.
- ❖ I have further been involved in the Value Added Tax 'connected parties' risk assessment for the Nedbank Group Private Equity Entities like Development Finance, Nedbank Securities; BoE Private Equity, Syfrets Securities and Blue Capital, specifically the regulation of the charging of services between the Nedbank Group Dealers and Transaction Managers with the intention of aligning the charging with the market related prices, as per the provisions of section 10(4) of the Value Added Tax Act, in anticipation of the various mergers and acquisitions within the Nedbank Group.
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- ❖ I conducted training to the Tax and Finance Risk Team every second week of the month on the recent tax law amendments as and when they came through. These involved preparing training packages, a whole lot of research by liaising with SAICA, going through audit and law firms tax articles; drafting opinions; drafting slides presentations; drafting of memorandums while working closely with the Nedbank Group Tax and Nedbank Group Capital Finance on both domestic and international level, including the low tax jurisdiction entities [e.g. Isle of Man, and Jersey]
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- ❖ I got to further be involved in the Tax Function Effectiveness Project with PWC around the Nedbank Group with the objective of enabling Nedbank Group Tax and Nedbank Group Risk to proactively manage tax risk for the Nedbank Group through the establishment of a formal tax risk process, as well as the development and implementation of a general tax control environment that will support the decentralised business structure of the group, and avoid negative assessment from the South African

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Revenue Service. The project focused on the Nedbank Group Capital and in particular the Investment Banking side, Global Markets, Advisory and Global Structured Finance and Commodities.

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- ❖ My involvement in this project entailed:
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 - The monitoring of the project budget and managing the external auditors [Pricewaterhouse Coopers] and to steer them into the appropriate inherent business tax risk appetite as I have had the advantage of understanding the Nedbank Group Structure [domestic and international] in particular within the Nedbank Group Capital, Corporate, Retail, and Bancassurance and Wealth Management from an internal point of view.
 - The scope of the project sponsors were both Nedbank Group Tax and Nedbank Group Risk with the objective to test the Tax Function Effectiveness and Financial Reporting both from the domestic and international perspective of the following business clusters, were in line with the relevant tax regulatory provisions:
 - Nedbank Group Capital [Investment Bank as a whole];
 - Nedbank Group Corporate
 - Nedbank Group Retail
 - Nedbank Group Shared Service Centre
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- ❖ Training of the Tax Risk Auditors; Tax Graduates and TOPP [trainee Chartered Accountants] programme students for the Nedbank Group, Old Mutual and Imperial Bank, on rotation.

COMPANY	POSITION HELD	FROM - TO
SARS	Tax Compliance Risk Specialist	July 2011-Nov 2013

KEY RESPONSIBILITIES:

- ❖ Review and enhance the analysis of complex industries, taxpayer group application of tax products and recommend risk findings to the LBC National Risk Committee;
- ❖ Review the impact on a wider industry or compliance trend;
- ❖ Quantify the relative level of impact of various risks and prioritise the focus areas for the applicable industry;
- ❖ Keep abreast of risk and compliance trends and changes to the tax risk environment;

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- ❖ Enhance expertise in industries and in areas of speciality;
- ❖ Guide focus of others in the LBC and enhance their capability through dissemination of specialist knowledge in particular with the handling of disputed assessment; and the importance of retaining sustainable assessments.
- ❖ Highlight legislative changes that would reduce or eliminate risk to particular industries;
- ❖ Review individual risk reports and compile consolidated risk reports which will incorporate industry wide compliance risk and intelligence, on groups, industries or clusters of the economy.
- ❖ Consolidate compliance risk reports and present to the LBC executive committee.

National Tax Risk Committee Chairperson for Financial Services and Communications Sector:

- ❖ Twice a week [Tuesday and Wednesday], the NTR committee sits through and listens to the presentations of the tax auditors and risk profilers' risk profiles, involving various corporate sectors the content of which entails tax risk analysis direct and indirect nationwide; through interpretation and analysis of the financial statements; thorough analysis and interpretation of their corporate tax returns and tax schedules; and the analysis of the intelligence risk reports including the financial performance trend analysis information, received from the economists.
- ❖ Then the NRT committee would deliberate and unpack the content thereof, with the intention of making the tax risk analysis informed decision whether the particular corporate tax payer should be audited or not, all factors considered.
- ❖ Further my role as the NRT chairperson and committee member is to guide both the tax auditors and the tax risk profiles on various areas of focus, when conducting their audits and to even train them on the approach to employ when dealing the corporate tax payers; in order to be able to have sustainable assessments.

Financial Services and Communications Sector Specialist Risk Profiling:

- ❖ I was responsible of all financial services sectors within South Africa and this includes the banks [international branches, representative offices and the big five], securities and insurance companies;
- ❖ My area of focus with regard to the financial services sectors and communications sectors specifically involved overall tax compliance behaviour of the international financial services practices ranging from tax planning mechanisms, overall investment bank transactions, expatriates, transfer pricing, thin capitalisation, international tax etc.
- ❖ Constantly educating myself of the tax compliance behaviour of the two sectors globally by going through major tax avoidance deals or finance transactions in particular the one that relates to all the revenue houses which influences the SA Tax Law like the UK [HMRC], IRS,

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Canada, Australia, New Zealand and Netherlands. The list further includes the BRICS countries.

- ❖ Once the has been identified risk adverse there would be assessment of highlighted statutes, and compare it with our Income Tax Act provisions to identify possible tax compliance attack from the related entities which have presence in SA, identify a proactive way of handling the situation. Assess the OECD as a directive on ways to handle the profit shifting mechanisms, analyse the latter and draft a report setting out my opinion therefrom.
- ❖ Normally I would hold a business review with the relevant entity, go through the similar transactions as highlighted by media or relevant tax articles or deal documents, their financial statement etc. in order to assess whether there is an intention to enter into any similar transaction within the SA borders, risk analyse and draft a tax compliance report for the LBC executive committee, and the Legal And Policy Division at the SARS HO. In the report it is imperative to set out your recommended way forward, in a project plan format.
- ❖ This would entail, assembling a specialist task team to proactively do intelligence reports, compliance trend analysis and eventually a field audits on the highlighted transactions; through utilisation of the:
 - ✓ Financial statements, both taxpayer related and the consolidated ones;
 - ✓ Tax returns; [South African and international tax returns];
 - ✓ Tax Schedules;
 - ✓ Specialist Intelligence Risk Report Analysis; and
 - ✓ Specialist Economist Report Analysis; and sometimes including
 - ✓ The Relationship Management Analysis, etc.

Attending of the financial and communications sector specific business reviews:

- ❖ When either the financial sectors or the communications sectors release their financial results, we are invited to attend the presentation together with the intelligence and relationship management specialist. The aim is to assess the tax compliance tendencies of the particular taxpayer, to analyse their yearly performance and their future intentions regarding tax compliance. The objective is to further maintain professional relationship with the taxpayers, while understanding their projected revenue streams and challenges; including their operating model and strategies.

Tax Clearance Certificates Committee Chairperson on disputed matters:

- ❖ This is very operational, as matters which have been declined by the system get to be presented to the committee with all the supporting documentation. The Committee makes the decision to either approve or decline:

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- ✓ on matters which the interest and penalties committee would have heard but are not available to hear;
- ✓ on matters which are pending appeals or at the Alternative Dispute Resolution or at the Tax Court stages;
- ✓ on matters where there are complex tax compliance related issues etc.

AD HOC DUTIES:

Writing of tax law technical opinions for auditors and risk profilers:

- ❖ Consult, advice and write opinions or memorandums for assurance division, after they have received notices of objection to their assessments, where the taxpayers have cited a tax technical point.

Writing ad hoc memorandums and opinions for the Commissioner's Office, The National Treasury, and the Large Business Centre Executive Committee.

- ❖ I have currently finalised a legal opinion [end of October 2012] on the OECD implications with specific reference to the financial and the insurance sector, on the provisions of the latest Article 5 read with Article 7(2). This specifically deals with permanent establishments and profit attributions. The objective was to identify the inherent risks facing the mentioned sector, and since SA is a member state of the BRICS, we needed to find out what can be learned from the fellow member and in particular India. And to further reiterate on the status of SA being an OECD observer state, and whether we should also consider learning from countries like Australia and Canada, given all the latest court decisions on transfer pricing as a whole.
- ❖ I was a project manager together with the Senior Specialist: Legal Support [Barbara Curson] on the nationwide transfer pricing project –BEPS which SARS has embarked on since August 2012.

PREVIOUS PROJECTS:

- ❖ I ran the sponsorship project within the communications sector with particular focus on media broadcast houses like Supersport, and Multichoice in conjunction with the big five banks for which will be utilised for legislative changes – post 2010 Soccer World Cup.

This project entailed seeing a selected taxpayer involved within the sponsorship environment, assess their view on the concept, assess how do they employ the concept within their daily operations and how do they eventually disclose that from the financial reporting point of view.

Assess how our influencers including the BRICS employ the concept within their operations model and how does various revenue services apply the concept for the purposes of revenue versus capital, and what are the compelling factors.

Then draft a report to LAPD HO and the National Treasury on the operational impact of the term and what should be the projected way forward from tax legislation point of view.

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- ❖ Cross border mergers and acquisition on both the financial services and the communications sector:

This project entailed going through all the mergers and acquisition transactions which took place in the past five years and projected to continue for the next three years within the two sectors ranging from tax planning mechanisms and BEPS. Further looking into the new tax incentives on cross border mergers and acquisition through the introduced statute, and whether such provisions can be taken advantage of, and which angles would normally attract aggressive tax planning mechanisms.

I further looked at mergers and acquisitions globally especially if the parties have presence in SA, their tendencies of utilising the corporate structures and adverse tax avoidance research and how their behaviour gets to be perceived by the global revenue entities which have information sharing relationship with South Africa, like HMRC, IRS, Australia, Canada etc.

Then drafted report on the recommended approach from both political and investment point of view. This was presented to the executive strategy office at the SARS HO.

- ❖ In September 2012, I drafted slides presentations for Barbara Curson when she was attending the OECD Transfer Pricing Conference in September which was held in Paris.

CURRENT ROLE:

COMPANY	POSITION HELD	FROM
SARS	SPECIALIST: GFSI ANALYSIS	NOV 2014 - CURRENT

KEY RESPONSIBILITIES:

ABOVE ALL THE RESPONSIBILITIES SET OUT ABOVE THIS IS NOW MY KEY FOCUS AREA

- ❖ The strategy around tax compliance behaviours of the global banking sector with the specific focus on the tax compliance risk. The aim is not to wait for the transactions to materialise, the aim is to proactively make SARS aware that there is a certain development on the way [e.g. HSBC and Standard Chartered Bank's threat to move their headquarters back to Asia]; assess how the affected revenue house is dealing with the matter through the utilisation of the exchange of information processes; derive measures of handling the latter within the SA jurisdiction with regard to the affected branches, interact with the affected entities while trying to understand their take on the matter for SA purposes; report on the anticipated way forward for SARS to the Commissioner's Office after conducting a thorough research on the matter.
- ❖ Proactively manage and monitor high level non-compliant behaviour of all the SA banks including the foreign international branches. This involves regular proactive research on the global banking sector with tax planning reputation; forex currency rigging tendencies, commodity price fixing tendencies, understanding their tax deals structuring mechanisms, the kind of results it has been yielding globally; the risk of the latter's impact on the fiscus, and what mitigation factors needs to be employed in order to regulate such transactions from

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being implemented in SA. And currently I have been monitoring foreign currency rigging impact on Barclays Africa, Standard Bank, HSBC; FICA non-compliant behaviour within SA etc.

- ❖ Focus on global co-finance deals entered into by different financial service entities whether domestic or cross border and actively enquire on their substance versus form; with the aim of reconciling reasonable business reasons and tax planning strategies which have the implications of contravening the overall South African tax legislation and BEPS practices.
- ❖ Liaise with different revenue houses on the National Treasury mandate regulated by the OECD Common Reporting Standards and FATCA through the South Africa's Foreign Financial Institutions to collect and report on certain required information which came into effect from 1 July 2014. SARS already has the exchange of information with the US Treasury agreement through a process of Automatic Exchange of Information under the legal framework provided by the double taxation agreement that exists between South Africa and the US.

PREVIOUSLY COMPLETED PROJECTS:

1. The impact of shadow banking within the South African banking sector – **INCLUDING FSB CAUTIONERY ON NON REGISTERED FINANCIAL SERVICES PROVIDERS;**
2. Analysing regulatory impact on the banking sector versus the embedded risk of cybercrime – **WITH THE IMPLEMENTATION OF NEW IFRS9;**
3. Understanding corporate finance tax risks – **LEGAL FIRMS, AUDIT FIRMS AND PROJECT SPONSORS;** and
4. **AUDIT FIRMS TAX ACCOUNTING RISKS** – in light of the KPMG, Deloitte – Steinhoff scandal.

CURRENT MEMBERSHIPS:

- ❖ Association of Black Securities and Investment Professionals [ABSIP] - ABSIP Women in Focus;
- ❖ A friend of African Women Chartered Accountants [African Women Chartered Accountants];
- ❖ SARS Chartered Accountants and Law Graduates Mentor – SARS Institute of Learning; and
- ❖ SARS National Employment Equity Project Lead – Women.
- ❖ Institute of Directors South Africa [IoDSA]

GOVERNANCE ROLES:

- ❖ **NON-EXECUTIVE DIRECTOR : ENGINEERING COUNCIL OF SOUTH AFRICA**
 - Finance Committee Vice Chairperson
 - Audit Risk Committee Legal Member

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❖ ECSA PENSION FUND BOARD OF TRUSTEES

CURRENT BOARD MEMBERSHIP

❖ BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA

○ COMMISSIONER [2nd Term after being appointed by Justice Froneman]

Adjudicate, sit on Tribunals and Appeal Tribunals including writing judgements resolving various public complaints against the South African Broadcasters. All my adjudications and judgements are publicised on the BCCSA website.

Represent the BCCSA on all radio stations and television interviews [here and international], the latest being the now debate on the **July 2021 Unrest**.

Represents the BCCSA on the **UN Women – Media Law**

Represents the BCCSA on the **Presidential Gender Based Violence Committee**

Past cases: **MMA & Another // BCCSA & Others (Case No.:21/58810)**

The Jacob Zuma Foundation v The Newzroom Afrika

○ FINANCE COMMITTEE MEMBER

❖ NON-EXECUTIVE DIRECTOR: NELSON MANDELA UNIVERSITY

- Institutional Forum Committee Member
- Audit and Risk Committee Legal Member
- HRREM Chairperson
- Vice-Chancellor Performance Review Committee Member
- Disciplinary Committee Review Committee Chairperson – NMU

Review NMU DC Outcomes against students to check :

- Procedural Fairness;
- Proper legal application, and
- The appropriateness of the sanction.

❖ BOARD MEMBER: NELSON MANDELA UNIVERSITY TRUST

❖ INDEPENDENT REGULATORY BOARD FOR AUDITORS

- Committee for Auditing Standards - Attorney Representative.

Completed CFAS projects:

