

CANDIDATE : JUDGE COLIN GORDON LAMONT

APPLICANT: JUDGE COLIN GORDON LAMONT

COURT FOR WHICH APPLICANT APPLIES: SUPREME COURT OF APPEAL

1 The candidate's appropriate qualifications

1.1 The candidate holds the following academic qualifications:

1.1.1 BA (University of the Witwatersrand 1972), and

1.1.2 LLB (University of the Witwatersrand 1974).

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 to our knowledge suggesting that he is not a fit and proper person.

2.2 A review of his judgments and information in the public domain provides no indication that he is unfit for the position applied for.

3 Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa

3.1 Currently, the SCA comprises of twenty-two permanent Judges. Five are black women, eleven are black men, one is a white woman and five are white men.

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3.2 It is apparent, therefore, that while strides have been taken to address racial representivity, the Court is not representative of either the racial or gender composition of South Africa. In particular, gender representivity still lags behind. While a positive step was taken in the appointment of a black woman as the President of the SCA, there remains a significant gender imbalance in the ranks of permanent Judges of the SCA.

3.3 The candidate is a white man. His appointment to the SCA would not enhance the racial or gender composition of that Court.

3.4 The candidate is currently 67 years old and will be subject to retirement in March 2021 in terms of section 3(2) of the Judge's Remuneration and Condition of Employment Act 47 of 2011, should he be appointed, in less than three years' time.

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

4.1 The candidate has experience in many areas of the law. His judgments reflect an understanding of procedure, and substantive law.

4.2 Where the issues to be determined are novel and highly complex, some of the candidate's judgments reflect less astute reasoning.

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

5.1 The candidate in his application does not make any specific reference to his commitment to the values of the Constitution, but there is no reason to question such commitment. In certain of his

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judgments he refers to the Constitution and the principles enshrined therein.

5.2 In judgments where he deals directly with matters of constitutional import, it is difficult to discern whether the candidate is completely conversant with this area of the law.

5.3 That said, in the matter of *Afriforum and Others v Malema and Another* 2011 (6) SA 240 (EQC), the candidate demonstrates an appreciation for the Constitution insofar as it relates to issues of freedom of expression and hate speech. In this decision, there is a clear analysis of the importance of the right to dignity in a constitutional democracy.

5.4 The candidate's extracurricular involvements show commitment to the development of legal practitioners, including the judiciary, through his involvement in training attorneys in the field of trial advocacy through the Black Lawyer's Association ("the BLA"), advocacy training through the Johannesburg Bar for Advocates and his involvement as a trainer for SAJEI.

5.5 The candidate participates in the training and mentoring of judges in the Gauteng Division and has trained both judges and magistrates in cyber law and equity training.

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

6.1 *Eskom Pension and Provident Fund v Krugel and Another* 2012 (6) SA 143 (SCA)

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The SCA held that once a pension benefit had accrued, as was the case here, the provisions of sections 7 and 7A of the Divorce Act were no longer applicable. The court held that the candidate's order premised on these provisions was not competent, neither was reliance on section 37(D)(6) of the Pension Funds Act 24 of 1956. The applicant's reasoning could not be considered as the decision was unreported and is gleaned from the decision of the SCA.

6.2 *South African Rail Commuters Corporation Ltd v Thwala* [2011] ZASCA 170

The SCA overturned the decision of the candidate visiting the appellant with damages sustained by the respondent when she fell and sustained injuries after being pushed by a crowd from a stationary train. The only issue to be determined was whether the train was stationary or in motion. The respondent's case was that she had fallen and sustained injuries having been pushed by a large crowd from inside a moving train. The candidate found that the train was stationary but then still held that the appellant was liable. The SCA, however, determined that on the defined issue only a finding that the train was in motion would give rise to liability. The candidate had erred in this finding. The Appeal Court also found that there was no evidence to support the candidate's finding that the train was overcrowded, with the resultant liability on the respondent.

6.3 *Tristar Investments (Pty) Ltd v The Chemical Industrial National Provident Fund* [2013] ZASCA 59

The SCA, in upholding the appeal, held that the candidate had incorrectly approached the interpretation of the contract between the parties. Instead of focussing his enquiry on whether the services provided by the appellant constituted intermediary services, the candidate found that, because the applicant was only licensed to provide advice, it was prohibited from rendering other services and the agreement was invalid. The SCA found, on an analysis of the evidence, and the prevalent issue, intermediary services were not rendered and the agreement was valid and lawful.

6.4 *WT v KT* 2015 (3) SA 574 (SCA)

The candidate had found that the assets of a discretionary family trust of WT formed part of the assets of the joint estate of the parties, who were married in community of property. The SCA found that there was no factual or legal basis for the finding by the candidate that the trust was a continuation of the previous situation between the parties as it was common cause that WT had procured the establishment of the trust as well as the purchase of the property prior to his marriage to KT without participation or any significant financial contribution from KT. The court further found that the candidate's reliance on *Badenhorst v Badenhorst* 2006 (2) SA 255 (SCA) was misplaced. The matter of *Badenhorst* which dealt with the redistribution of assets in terms of section 7(3) of the Divorce Act for a marriage out of community of property, and which affords the court with a discretion was not applicable in a marriage in community of property. The decision of the candidate amounted to a transfer of the Trust's assets to the joint estate without consideration of the legal

implications of a court order on the creditors of the trust. The Appeal Court questioned whether the discretion in section 7(3) of the Divorce Act incorporated a transfer of ownership of trust assets rather than the inclusion of the value of the trust assets as part of the personal estate of the trustee by piercing the corporate veil.

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

7.1 The candidate has by virtue of his experience as an advocate and senior counsel for 33 years and a judge for 10 years in the Gauteng High Court, Johannesburg, intimate knowledge of the legal profession, procedure and the law.

7.2 The candidate's judgments reflect that he has dealt with many areas of the law including arbitration, criminal procedure, divorce – civil and customary law, criminal law, civil and criminal procedure, prescription, evictions, recusal, constitutional law, delict , property law inter alia.

8 The candidate's linguistic and communication skills

8.1 The candidate's style of writing has evolved and matured in his tenure over the past 10 years.

8.2 While the candidate generally arrived at the correct decision, his writing style in the initial period of his tenure as a judge, with limited exceptions, in the period up to 2013 displayed a tendency to repeat facts, confused thinking, and gaps in logic in matters of greater complexity. While the facts of the case and the applicable law are clear, the application of the facts to the law and the legal reasoning

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is weak. The writing style in the judgments does not allow for easy reading. There are no clear paragraphs; there are different ideas recorded in the same paragraph; there is no attempt to analyse and explain the relevance of authorities mentioned in the judgments.

8.3 From 2014 the quality of the candidate's written judgments improves dramatically. These judgments are succinct, well researched, structured and competently written, showing a development of the candidate's judicial skills.

8.4 The candidate delivered three judgments while acting in the SCA in 2017. The candidate delivered:

8.4.1 a well written judgment explaining the important issue of compensation for land claims in *Uys v Mzisa* (1222/2016);

8.4.2 a competent judgment in the matter of *S v Umude* (2017 JDR1836) dealing with a procedural issue in the criminal appeal; and

8.4.3 the correct decision in the matter of *Minister of Safety and Security v Magagula* (2017 JDR1486), although the judgment does not make for easy reading.

9 The candidate's ability to produce judgments promptly

9.1 The candidate states that he has no outstanding judgments.

9.2 The judgments reviewed indicate that his judgments were given within approximately two weeks which shows that the candidate was very prompt. It was only in one matter, the *Krejcir* matter, where

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there were six accused, and a lengthy trial, that the judgment took four months to produce. In the circumstances, the slight delay in giving this judgment is acceptable.

10 **The candidate's fairness and impartiality**

10.1 The candidate's judgments show that he has a sound sense of fairness and acts impartially. His inherent sense for fairness and justice particularly to the "*underdog*" has, in some instances, resulted in his liberal interpretation of the facts and the law to arrive at an equitable result in favour of the underdog. On appeal, as discussed in the case analyses, the SCA has found there to have been a misdirection in the application of the law and conclusions underpinned by the evidence led.

11 **The candidate's independent mindedness**

11.1 No adverse comments have been received.

12 **The candidate's ability to conduct court proceedings**

12.1 The candidate has had 10 years of experience as a permanent judge of the High Court and practised in this court as an advocate for 33 years.

12.2 His judgments reflect a good understanding of the rules of court, evidential rules and a commitment to procedural fairness.

13 **The candidate's administrative ability**

13.1 There is no reason to believe that the candidate does not have the appropriate administrative ability.

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13.2 He was appointed to the Bar Council for 12 years, and actively participated in its administration. He also currently assists the Judge President on the judges' salary committee where SARS representatives were invited to assist judges with their tax returns.

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

14.1 The candidate is well respected and has a reputation for being a person of integrity.

14.2 His judgments reflect a strong sense of judicial integrity.

15 **The candidate's judicial temperament**

15.1 In motion court, the candidate has a pleasing temperament. In chambers and in his exchanges with counsel he is respectful and expects colleagues to act professionally and respectfully toward one another at all times. He will not tolerate belligerence and disrespect between colleagues.

15.2 On occasion, the candidate's impatience and irritability is marked when hearing matters of a complex nature or where it appears he does not understand the issues or the arguments presented.

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

16.1 The candidate clearly has a strong commitment to constitutional principles, as evidenced from his judgments. The candidate's commitment to fairness and finding justice for the party he feels has been wronged is clear from his judgments.

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16.2 He has given much of his time to training judges and magistrates in in the judicial function and in cybercrime, trained young advocates as part of the advocacy training program and also young lawyers as part of the BLA training program since 2009. He has a clear commitment to education and transformation of the judicial landscape by transferring skills and knowledge.

17 **The candidate's potential**

17.1 The candidate has already been acknowledged in the legal field as a person deserving of respect and leadership.

17.2 He has developed his skills during the course of his career as an advocate and judge and demonstrates a passion to continue doing so.

17.3 As such he has the potential to acquit himself as a SCA judge.

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

18.1 The candidate is a white man but it is also important to appoint persons of vast legal experience, which the candidate has. The candidate presided over a lengthy, high profile criminal trial, *S v Krejcir*. He demonstrated that he had the courage and convictions to do so, and his judgment reflects that he is profoundly aware of the interests of the South African citizens, who he serves and who live in communities wracked by drug-related and violent crime.

18.2 He has committed himself to academic excellence and sharing his knowledge by training and teaching judges, young advocates and magistrates to further their education.

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- 18.3 His judgments reflect a judicial maturity and a commitment to constitutional values and principles.
- 18.4 His appointment would send a positive message to the community.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Langeveld v Union Finance Holdings (Pty) Ltd 2007 (4) SA 572 (W)

Bredenkamp v Standard Bank 2009 (6) SA 27(GSJ)

Mills v Hoosen 2010 (2) SA 316 (W)

Afriforum and Another v Malema and Another 2011 (6) SA 240 (EQC)

Eskom Pension and Provident Fund v Krugel and Another 2012 (6) SA 143
(SCA)

*Prism Payment Technologies (Pty) Ltd v Altech Information Technologies (Pty)
Ltd t/a Altech Card Solutions and Others* 2012 (5) SA 267 (GSJ)

S v Ndebele and Others 2012 (3) SA 266 (GSJ)

*Makulu Plastics and Packaging CC v Born Free Investments 128 (Pty) Ltd and
Others* 2013 (1) SA 377 (GSJ)

SJ v CJ 2013 (4) SA 300 (GST)

WT v KT 2015 (3) SA 574 (SCA)

S v Krejcir 2016 (2) SACR 214 (GJ)

*Organisasie vir Godsdienste-Onderrig en Demokrasie v Laërskool Randhart
(The Council for the Advancement of the South African Constitution, Cause
of Justice, Council for the Protection and Promotion of Religious Rights,
Afriforum and Solidarity as amicus curiae* 2017 (6) SA 129 (GJ)

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Unreported decisions

Elandsfontein Beverage Marketing (Pty) Limited v Joubert Scholtz Inc 2010 JDR
1107 (GSJ)

Shear v Eye of Africa Development (Pty) Ltd [2010] ZAPGJHC 46

East London Homeowners' Association v Coface SA Insurance 2011 ZAGP JHC
2011

South African Rail Commuters Corporation v Thwala [2011] ZASCA 170

S v Rikhotso 2012 ZAGPJHC 106

Investec Bank v Strydom NO 2013 JDR 0760 (GSJ)

Tristar Investments (Pty) Ltd v The Chemical Industrial National Provident Fund
[2013] ZASCA 59

S v Krejcir 2014 (JDR) 1678 (GJ)

Mettle Development Finance One (Pty) Ltd v Calgro M3 Developments (Pty) Ltd
2015 JDR 1649(GJ)

WT v KT [2015] ZASCA 9

EN v SD 2016 JDR 1192 (GJ)

S v Krejcir 2016 (JDR) 0572 (GJ)

Uys v Mzisa (1222/2016) (SCA)

Hydeprop Investments Ltd v NSC Carriers and Forwarding CC 2017 JDR0339
(GJ)

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Minister of Safety and Security v Magagula 2017 JDR 1486

Ndebantlhe Business Enterprises CC v Vodacom (Pty) Ltd 2017 JDR0038 (GJ)

S v Umude 2017 JDR 1836

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