

CANDIDATE : MR MEERCHAND MAHARAJ

APPLICANT: MR MEERCHAND MAHARAJ

**COURT FOR WHICH APPLICANT APPLIES: KWAZULU-NATAL
HIGH COURT, DURBAN**

1 The candidate's appropriate qualifications

1.1 The candidate holds the following degrees:

1.1.1 B. Juris (University of Durban Westville, 1989); and

1.1.2 LLB (University of Zululand, 1999).

1.2 The candidate is currently a regional magistrate, sitting in Durban.

1.3 The candidate is suitably qualified.

2 Whether the candidate is a fit and proper person

2.1 The candidate has for several years been a member, in good standing, of the Association of Regional Magistrates of Southern Africa ("ARMSA"). There are no disciplinary proceedings pending against him.

2.2 The candidate is nominated by ARMSA, which is of the view that he is a fit and proper person to be appointed to the position.

2.3 The candidate has disclosed that he was charged by the office of the Director of Public Prosecutions on 28 January 2000 on charges of fraud, theft, corruption and defeating the ends of justice. The charges

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were subsequently withdrawn after representations had been made on his behalf. The Magistrate's Commission conducted an enquiry and declined to subject him to a disciplinary enquiry.

2.4 The said charges arose from sentences handed down by the candidate as a District Court magistrate, which sentences were suspended on condition that certain payments were made by the accused to specified charitable beneficiaries. The sentences were later held to be irregular and set aside by the High Court.

2.5 The candidate instituted action in the KwaZulu-Natal High Court against the State for damages suffered as a result of malicious prosecution. The action was dismissed with costs.

2.6 There is nothing in the candidate's application, in the material reviewed, and comments received on the candidate to suggest that he is not a fit and proper person.

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.

3.2 His appointment would contribute to the transformation of the judiciary from a demographic perspective.

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

4.1 The candidate indicates in his application that he commenced employment as a prosecutor in the Department of Justice on 16

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February 1987. He was appointed as a magistrate in June 1993 and as a regional magistrate in 2006.

- 4.2 The candidate is the author of the book “Confident Criminal Litigation” under the name “Anand Maharaj”, which book was published by Lexis Nexis in 2010. The book aims to give novice practitioners the confidence to conduct trials as seasoned practitioners (according to the description given by Lexis Nexis).
- 4.3 The candidate was appointed in an acting capacity on several occasions between January 2015 and November 2017, according to his application. He presently holds an acting appointment, which is not reflected on his application.
- 4.4 He indicates that he has experience in criminal and civil matters (trials, motions and appeals), having presided over such matters in District Courts, Regional Courts and the High Court.
- 4.5 According to his *curriculum vitae*, he has attended several courses, workshops and seminars, which ought to have contributed substantially to his knowledge of the law.
- 4.6 His written judgments indicate a thorough knowledge of criminal law and procedure.
- 4.7 It should be noted that the majority of judgments located and submitted by the candidate are judgments in criminal matters and criminal appeal matters.

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- 4.8 We do not have sufficient information to comment on the candidate's knowledge of constitutional law, outside of the criminal law sphere, to comment on his abilities and knowledge thereof.
- 4.9 The candidate has attached to his application copies of:
- 4.9.1 three criminal appeal judgments, sitting with Bezuidenhout J;
- 4.9.2 three judgments in criminal trials; and
- 4.9.3 one extract from the record of a criminal trial.
- 4.10 The appeal judgment in *S v S Sithole* (case number: AR 61/2017) is noteworthy in that it highlighted the importance of Regional Court Magistrates canvassing the issue of assessors in murder trials. A copy of the judgment was referred to the Office of the Director of Public Prosecutions, KwaZulu-Natal and to the Chairperson of the South African Law Commission.
- 4.11 The other appeal judgments (*S v Sibutha* - AR 122/2017 and *S v Gambu* - AR 224/2017) turned on the application of section 309(1) of the Criminal Procedure Act, 1977. In both matters, the Courts *a quo* imposed life sentences on persons convicted of rape. In both instances the life sentences were set aside and replaced with fixed terms of imprisonment. The judgments demonstrate an ability to apply the principles on sentence judiciously.
- 4.12 The candidate was required, in the matters of *S v Ndlovu* - CC 65/2017P and *S v Khuboni* - CC 69/2017P, to impose sentences in instances where the accused had pleaded guilty to certain offences.

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His reasoning on the sentences imposed in each instance reinforces the comments made in 4.11 above.

4.13 In *S v Dube and Others* - CC 84/2014, the candidate had to deal with common purpose in circumstances where the accused were charged with various offences ranging from murder to housebreaking. His judgment demonstrates an ability carefully to analyse disputed facts and apply the law to the facts found to be proven. Unsurprisingly, his discussion of the applicable legal principles is detailed and compelling.

4.14 We found four further judgments in which the candidate presided on appeal with others. They are:

4.14.1 *Gounder v KwaZulu-Natal law Society* 2017 JDR 1708 (KZP)

The matter dealt with disciplinary proceedings in which an attorney was found guilty of unprofessional conduct. the appeal was upheld;

4.14.2 *S v Majola* 2016 JDR 1419 (KZP)

The accused appealed against a life sentence imposed by the Court a quo. the appeal was dismissed.

4.14.3 *Kisten N.O. v ABSA Bank Limited* 2016 JDR 1515 (KZP)

The appellants appealed against the refusal of the Court a quo to grant a rescission of a default judgment. The appeal was dismissed.

4.14.4 *Young v Mental Health Care User* 2016 (1) SACR 399 (KZP)

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The matter concerned the correct interpretation of section 77(6)(a)(ii) of the Criminal Procedure Act, 1977. The Court a quo ordered the detention of the applicant in terms of section 77(6)(a)(ii) as if he was an involuntary mental health care user as contemplated in section 33 of the Mental Health Care Act, 2002. On appeal, the order of the magistrate was set aside, after careful and concise consideration of the sections of the relevant statutes.

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

- 5.1 There is nothing in the judgments of the candidate or in any publicly available information which suggests that the candidate is not committed to the values of the Constitution.
- 5.2 None of the judgments reviewed refer to any particular constitutional values, save that most criminal matters are inherently linked with general constitutional considerations.

6 Whether any judgments have been overturned on appeal

- 6.1 The candidate granted leave to appeal in *S v Ayanda Mbatha*, case number: CC84/2014P, against conviction and sentence.
- 6.2 The appeal is pending.
- 6.3 The candidate has not referred to any judgments overturned on appeal and none could be found other than the sentences set aside on review, which were referred to above.

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

- 7.1 The candidate was a prosecutor for a period of six years, a district court magistrate for a total period of seven years and regional court magistrate (including an acting appointment) for a period of seventeen years. He was acting Regional Court President for a period of two and a half years and acted as an assessor in the High Court on three occasions during 2006 and 2007.
- 7.2 The candidate has acted as a Judge in the KwaZulu-Natal High Court, for a cumulative period of eight months during seven separate appointments from 2015 to 2017. According to his *curriculum vitae*, he also held brief appointments on another four occasions. No specific indication is made of any trial matters that the candidate presided over.
- 7.3 Apart from the indication in his application that he has presided in criminal, motion and civil courts and brief reference to his civil experience in his *curriculum vitae*, no indication is given in the application of his proportionate experience in various fields of law. It appears that the vast majority of his experience lies in criminal law.
- 7.4 The candidate has attended twenty-four courses, seminars and workshops, which are wide-ranging in content. As already mentioned, he authored a book on criminal litigation.
- 7.5 From the information reviewed, it would appear that, whilst the candidate does have extensive experience in the criminal law, his experience of the civil law and its various fields is limited.

8 The candidate's linguistic and communication skills

- 8.1 The judgments written by the candidate appear to be considered and reasoned with appropriate references to legislation and cases.
- 8.2 His judgments and book are written in English and he is proficient in the language.
- 8.3 His proficiency in other languages is not known.

9 The candidate's ability to produce judgments promptly

- 9.1 The candidate indicates in his application that he has no outstanding judgments.
- 9.2 The information provided by the candidate accords with the view held by many, namely that he is hard-working with a good work ethic.

10 The candidate's fairness and impartiality

- 10.1 Our review of the candidate's unreported judgments affords no reason to doubt his fairness and impartiality.

11 The candidate's independent mindedness

- 11.1 The candidate's brief encounter with the office of the Director of Public Prosecutions gives some insight into his independent thinking.
- 11.2 Whilst the relevant sentences were considered to be irregular on review, they do exhibit an effort to impose sentences which are

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different from the norm. It is to be noted that the sentences were intended to benefit charitable organisations.

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

12.1 The candidate's judgments which we reviewed demonstrate a clear ability properly to conduct court proceedings.

12.2 The candidate provided an extract of the record in the matter of *S v Ngcobo and Another*, case number: CC77/16, which concerns an inquiry into a delay caused by the State during the course of a criminal trial. The extract demonstrates the candidate's ability easily to deal with proceedings before him and to ensure that the Constitutional rights of accused persons are protected.

12.3 The candidate's ability to author a book on criminal litigation speaks to his knowledge of court proceedings and there is no reason to differentiate in that regard between civil and criminal proceedings.

13 **The candidate's administrative ability**

13.1 The candidate has been the treasurer of ARMSA since 2007. He would require good administrative abilities to perform that function.

13.2 The duties of Regional Court President are mainly administrative in nature and the fact that the candidate acted in such capacity for a fairly lengthy period of time is indicative of good administrative abilities.

13.3 The candidate has attended five courses on case flow management, which should stand him in good stead.

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14 The candidate's reputation for integrity and ethical behaviour

14.1 We are unaware of any circumstances that afford doubt to the candidate's integrity and ethical behaviour.

14.2 His position as acting Regional Court President is indicative that he is held in high regard by his peers and employer.

15 The candidate's judicial temperament

15.1 No concerns appear from the judgments considered and no concerns were noted by any practitioners or peers.

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

16.1 The candidate indicates that he has facilitated five workshops to different audiences and has addressed students on several topics between 2005 and 2015.

17 The candidate's potential

17.1 The candidate is an experienced Regional Court magistrate and has completed several acting appointments.

17.2 He appears to have had limited exposure to civil matters.

17.3 His work ethic is commendable and may, in due course, compensate for his limited civil experience

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

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- 18.1 The candidate is a black man with considerable experience presiding over trials.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Young v Mental Health Care User 2016 (1) SACR 399 (KZP)

Unreported decisions

S v S Sithole (case number: AR 61/2017)

S v Sibutha (case number AR 122/2017)

S v Gambu (case number AR 224/2017)

S v Ndlovu (case number CC 65/2017P)

S v Khuboni (case number CC 69/2017P)

S v Dube and Others (case number CC 84/2014)

Gounder v KwaZulu-Natal law Society 2017 JDR 1708 (KZP)

S v Majola 2016 JDR 1419 (KZP)

Kisten N.O. v ABSA Bank Limited 2016 JDR 1515 (KZP)

Judgments upheld on appeal

None reported.

Judgments overturned on appeal

None reported.

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