

CANDIDATE : MR SIDWELL BONGANI MNGADI

APPLICANT: SIDWELL BONGANI MNGADI

**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 Dip Juris (Cum Laude) (University of Zululand) (1981);

1.1.2 Dip Legum (University of Zululand) (1984);

1.1.3 B Proc (University of Zululand) (1986);

1.1.4 LLB (University of Zululand) (1988);

1.1.5 Dip Tax Practice (Rand Afrikaanse Universiteit) (1996); and

1.1.6 MBA (University of Potchefstroom) (2001).

1.2 The candidate is currently practising for his own account as an attorney of Mngadi & Partners.

1.3 The candidate is appropriately qualified.

2 Whether the candidate is a fit and proper person

2.1 The candidate commenced his legal career in 1976 working for the Department of Justice as a clerk and progressed to the position of Magistrate in 1986.

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- 2.2 He was duly admitted on 5 March 1990 as an attorney and on 8 March 2002 as a conveyancer.
- 2.3 The candidate has served as an Acting Judge of the Kwazulu-Natal Division, South Gauteng and North Gauteng Divisions of the High Court.
- 2.4 The Candidate took a keen interest during his employment at the legal aid board in training of staff to improve the quality of representation given to indigent persons. He also made a significant impact in reducing the backlog in applications for leave to appeal and petitions whilst employed at the Legal Aid Board.
- 2.5 The candidate has openly disclosed in his application to the Commission that he was found guilty of unprofessional conduct by the Kwazulu-Natal Law Society and a fine imposed on him, relating to an incident in which a Magistrate reported him to the Law Society for failing to appear for a client, notwithstanding the fact that he was on record in the matter.
- 2.6 The candidate is nominated by the Black Lawyers' Association, Durban and Coastal branch.
- 2.7 The candidate is a member of the Mhubheni-AmaNgadi Peace and Development Committee, furnishing free legal advice to it from 1997 to date. He is also a Mabaso Tribe Chief's advisor.
- 2.8 The candidate is a fit and proper person.

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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 that he appears in court frequently, conducting criminal trials in the High Court, attending to applications for leave to appeal, lodging petitions with the Supreme Court of Appeal and appearing in appeals both before the Provincial Appeal Courts and the Supreme Court of Appeal.

4.2 The candidate indicates that he has experience across the board of criminal, administrative, constitutional, labour and civil law, with the bulk of his experience being in criminal and civil law.

4.3 The candidate indicates that he appeared as instructing attorney in the reported decision of *Magwanyana & Others v Standard General Insurance Co. Ltd* 1996 (1) SA 254 (D). He regards the case as significant because it dealt with the admissibility of hearsay evidence in civil proceedings with specific reference to section 34 of the Civil Proceedings Evidence Act, 1965 and section 3 of the Law of Evidence Amendment Act, 1988.

4.4 We have been able to locate the following judgments, handed down by the candidate, during his term as an Acting Judge:

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4.4.1 *Prince Mduduzi Mahlangu v Road Accident Fund Gauteng Local Division, Johannesburg, Case No: 2013/46374*

The candidate wrote the judgment sitting as a court of first instance. The Plaintiff claimed damages arising out of injuries sustained by him when a vehicle lost control and struck him whilst he was standing on the pavement. The only issue for determination by the candidate was the quantum of general damages to be awarded to the Plaintiff for his fractured ankle. The candidate awarded the Plaintiff R300 000.00 in general damages.

4.4.2 *Makaula Zilwa Inc. & Another v Bushbuck Ridge Local Municipality Gauteng Division, Pretoria, Case No: A31/2012*

The candidate wrote the judgment sitting as a court of first instance. The Plaintiffs had sued the Defendant for payment of R4 517 134.00 as commission for debt collection services rendered in terms of a written service level agreement between the parties. Judgment was granted in favour of the Plaintiffs.

4.4.3 *The Body Corporate of Rydal Mount v Gerald Michael Cross, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: AR630/16*

The candidate sat as a member of an Appeal Bench hearing an appeal from the Durban Magistrate's Court. The candidate wrote the judgment with Sishi J concurring. The Appellant appealed against the judgment of the Magistrate's Court dismissing its claim for outstanding levies and allied charges

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and granting a counter claim for the rendering and debatement of the levies account. The Appellant had calculated the Respondent's levies in accordance with the participation quota percentage in the sectional title plan schedule. The Respondent complained about this manner of computation arguing that it was wrong, unreasonable and unfair. The candidate found that the Learned Magistrate, in dismissing the claim and granting the counter claim on the basis of an incorrect participation quota, granted a consequential order without granting the primary remedy. There was no prayer for relief to set aside the existing participation quota in the registered sectional plan or relief sought to amend the sectional plan and participation quota. The appeal was upheld with costs.

4.4.4 *Gerald & Devan Investments CC & 2 Others v Pine Spring Properties (Pty) Ltd, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: AR 343/2016*

The candidate sat as a member of an Appeal Bench hearing an appeal from the Magistrate's Court granting summary judgment in favour of the Respondent. The candidate wrote the judgment with Balton J concurring. The Respondent had claimed outstanding rentals in the court a quo. The Appellants had defended the claim on the basis that the claim amount included a claim for rates, which the Appellants contended they were not liable for in terms of the lease agreement. The candidate found that the Learned Magistrate had misdirected

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herself in granting summary judgment in these circumstances and the appeal was upheld.

4.4.5 *Bianca Bernadis-Larratt & Another v Custom Capital (Pty) Ltd*, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: AR368/2016:

The candidate sat as a member of an Appeal Bench hearing an appeal from the Magistrate's Court. The candidate wrote the judgment with Balton J concurring. The Appellants appealed against a finding of the Magistrate that they were liable for payment of future rentals due under a rental finance agreement, in circumstances where the Appellants had returned the equipment to the supplier upon closing their practice. The Appellants contended that the Respondent was obliged to mitigate its contractual damages by taking reasonable measures to sell or lease out the equipment upon its return, but failed to do so. The candidate found that the court a quo misdirected itself in failing to consider the issue of whether the Respondents had mitigated their loss and that it would be disproportionate "to its expense" for the Respondents to receive payment of the full outstanding accelerated rentals in circumstances where the equipment was returned after only ten months of the sixty-month lease had expired. The candidate accordingly reduced the Respondents' claim for accelerated rentals by 50% and directed each party to pay their own costs.

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4.4.6 *Manilal Rajendra Kumar v Makhuparetsi Mpai*, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: AR551/2016:

The candidate sat as a member of an Appeal Bench hearing an appeal from the Durban Magistrate's Court granting judgment in favour of the Respondent for payment of R45 000.00 in general damages arising out of an assault on the Respondent. The candidate wrote the judgment with Seegobin J concurring. Having considered the mutually contradictory versions on how the assault took place, the candidate came to the conclusions that the Appellants had failed to satisfy the Appellate Court that the Learned Magistrate was wrong in his findings that the Respondent had been assaulted. The candidate, however, reduced the award for damages from R45 000.00 to R25 000.00.

4.4.7 *Tinyiko Mawele v The State*, High Court of South Africa, Gauteng Division, Pretoria, Case No: A99/2014

The candidate sat as a member of an Appeal Bench hearing an appeal against the Appellant's conviction and sentence on two counts of robbery with aggravating circumstances. The candidate wrote the judgment with Maumela J concurring. The only evidence linking the Appellant to the robbery was that of a single witness and it related to identity. The candidate held that the Magistrate had overlooked this fact. The Magistrate had accordingly failed to approach the evidence

with caution. The candidate upheld the appeal and set aside both the convictions and sentences.

4.4.8 *Amerasan Pillay NO & Another v Jahanna Kalisha Reddy & Others*, Kwazulu-Natal High Court, Durban, Case No: 10717/2015

The candidate wrote the judgment sitting as a court of first instance. The Applicants, as joint liquidators, sought an order setting aside as null and void and of no force and effect a court order made on 5 February 2015 which, amongst other things, set aside the voluntary liquidation of a particular company. The candidate also had to consider whether to grant condonation for the late delivery of certain affidavits and/or whether to strike out certain averments in affidavits on the basis that such were scandalous, vexatious or irrelevant. The application to strike out was refused, condonation granted and the application dealt with on the merits. The candidate held he had no power to review or set aside the decision of the Court granted on 5 February 2016. The application was dismissed with costs.

4.4.9 *Pale Native Consultants (Pty) Ltd v Jozini Municipality and Another*, Kwazulu-Natal High Court, Durban Division, Case No: 3472/2015

The candidate wrote the judgment sitting as a court of first instance. The Applicant sought an order directing the Second Respondent to pay a sum of R683 160.00 pursuant to the

performance by the Application of its obligations relating to the building of low cost housing. Having considered the contractual terms of the agreement between the parties, the candidate ordered the Second Respondent to pay the Applicant the amount claimed with costs.

4.4.10 *Darren Marc Goddard v The State*, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: 1493/17P

The candidate wrote the judgment sitting as an Appeal Court in a bail appeal. The Appellant had initially applied for bail, which was refused. He appealed and his appeal was dismissed. A second bail application was brought before the Magistrate, allegedly on new facts, which bail application was likewise refused. The Appellant appealed again and the matter came before the candidate for determination. The candidate held that although the accused was charged with serious offences (the rape of minors), the State's case against him was not strong and the Appellant had shown exceptional circumstances that permitted his release on bail. The Appellant was granted bail in the sum of R10 000.00 subject to conditions.

4.4.11 *Sentinel Retirement Fund v Ntombizodwa Joyce Hadebe & Another*, High Court of South Africa, Gauteng Division, Pretoria, Case No: 5643/2017

The candidate wrote the judgment sitting as a court of first instance. The Applicant sought an order setting aside a

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determination made by the Second Respondent in favour of the First Respondent. The First Respondent had lodged a complaint with the Second Respondent that the Applicant was delaying payment of death benefits arising out of a death of a member of the Fund. The Second Respondent had ordered the Applicant to complete its investigations and proceed with the allocation and payment out of death benefits within eight weeks together with allied relief. Save for a minor amendment made to the determination of the Second Respondent, the candidate dismissed the application with no order as to costs.

4.4.12 *Forsythe Props 5 (Pty) Ltd v Norman Nicky Gebashe & Others*, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: 8378/16P

The candidate wrote the judgment sitting as a court of first instance. The Applicants sought confirmation of a Rule Nisi interdicting and restraining the Respondents from continuing with the erection of residential structures on the Applicant's land and otherwise removing the Respondents from the land. Issues of whether or not the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 applied, and various disputes of fact arose on the papers. The disputes of fact were referred to oral evidence and the candidate ultimately delivered a judgment in which he found that the Respondents' version was contradictory and unreliable. He delivered a judgment in favour of the Applicant confirming

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the Rule Nisi and directing the Respondents to pay costs jointly and severally.

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

5.1 The candidate's judgments appear to recognise, where appropriate, the values enshrined in the Constitution.

6 Whether any judgments have been overturned on appeal

6.1 We have been unable to establish whether any of the judgments handed down by the candidate have been taken on appeal.

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

7.1 The candidate commenced his legal career in 1978 when he joined the Provincial Department of Justice in Kwazulu-Natal as a clerk. As he progressed with his studies, he was appointed as Court Interpreter, Prosecutor and then ultimately as a Magistrate in 1985.

7.2 After serving articles, the candidate was admitted as an attorney on 5 March 1990 and thereafter as a conveyancer on 8 March 2002. The candidate practised for his own account in Empangeni as an attorney from 1991 to 2005 when he joined the Legal Aid Board as Head of its South Coast Region, based in Port Shepstone.

7.3 In 2009 the candidate was appointed as High Court Unit Manager of the Durban Justice Centre and whilst serving in that capacity acted as a Judge of the High Court on numerous occasions.

7.4 The candidate resigned from the Durban Justice Centre in 2017 and recommenced practice as an attorney in Port Shepstone.

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7.5 The candidate has also sat as an assessor in the High Court during 2003 and 2004, chaired disciplinary enquiries of employees at the University of Zululand from 1998 to 2004 and chaired disciplinary enquiries of employees of the Legal Aid Board from 2005 to 2017.

7.6 The candidate has been a member of the Natal Law Society from 1998 to date.

8 **The candidate's linguistic and communication skills**

8.1 The candidate's judgments are in English and he is proficient in the language. His judgments are well written.

8.2 His proficiency in other languages is unknown.

9 **The candidate's ability to produce judgments promptly**

9.1 The candidate indicates in his application that he has no reserved judgments outstanding.

9.2 In the matter of *Bianca Bernadis-Larratt & Another v Custom Capital (Pty) Ltd* (referred to above) the appeal was heard on 13 March 2017 and the judgment delivered on 27 June 2017. The reasons for the delay in delivering this particular judgment are unknown to us, but it is noted that the candidate sat as a member of an Appeal Bench.

9.3 We are unaware of any other judgments in which the candidate took some time to deliver a reserved judgment.

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

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

11 The candidate's independent mindedness

11.1 No adverse comments regarding the candidate's independent mindedness have been noted.

11.2 No dissenting judgments were written by him.

11.3 On each occasion where the candidate wrote a judgment on appeal, the judgment was concurred with.

12 The candidate's ability to conduct court proceedings

12.1 We are not aware of any circumstances which would give rise to doubt regarding the candidate's ability to conduct court proceedings.

13 The candidate's administrative ability

13.1 The candidate has fourteen years' experience running his own practice as an attorney.

13.2 No doubt, whilst employed by the Legal Aid Board of South Africa over the period 2005 to 2017, the candidate's position required him to perform administrative functions within the Justice Centre.

13.3 We have no reason to doubt his administrative ability.

14 The candidate's reputation for integrity and ethical behaviour

14.1 We are unaware of any circumstances that would give rise to doubt regarding the candidate's integrity or ethical behaviour.

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14.2 The positions he has held on disciplinary committees in the past, and at the Justice Centre suggest that he has a high regard for ethics and integrity.

15 The candidate's judicial temperament

15.1 No concerns appear from the judgments that we have considered.

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 been a member of the Black Lawyers' Association and NADEL in both Empangeni and Durban in the past and is currently still a member of the Black Lawyers' Association in Durban.

16.2 The candidate is a member of Mhubheni-AmaNgadi Peace and Development Committee. He has been a member of this committee since 1997 to date. The committee is an informal structure which has intervened in times of political violence and has also intervened to settle family conflict, coordinates land development initiatives and raises community concerns regarding issues such as land disputes, stock theft and witchcraft murders with authorities.

16.3 The candidate has furnished free legal advice in his capacity as a member of such committee from 1997 to date.

17 The candidate's potential

17.1 The candidate is an experienced attorney and Legal Aid practitioner.

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- 17.2 Although the candidate indicates in his application that he has been involved in a reported case (State v Mawele 2017 JDR 1309 (GP)), our investigations revealed that the case is not a reported case in the mainstream law reports but features in JutaStat's unreported judgments.
- 17.3 We are not aware of any reported cases or other matters of major significance or complexity that the candidate has dealt with.
- 18 **The message that the candidate's appointment would send to the community at large**
- 18.1 The candidate is an upstanding, senior attorney, actively involved with the Black Lawyers' Association.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None.

Unreported decisions

Prince Mduduzi Mahlangu v Road Accident Fund Gauteng Local Division, Johannesburg, Case No: 2013/46374:

Makaula Zilwa Inc. & Another v Bushbuck Ridge Local Municipality Gauteng Division, Pretoria, Case No: A31/2012

The Body Corporate of Rydal Mount v Gerald Michael Cross, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: AR630/16

Gerald & Devan Investments CC & 2 Others v Pine Spring Properties (Pty) Ltd, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: AR 343/2016

Bianca Bernadis-Larratt & Another v Custom Capital (Pty) Ltd, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: AR368/2016

Manilal Rajendra Kumar v Makhuparetsi Mpai, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: AR551/2016

Tinyiko Mawele v The State, High Court of South Africa, Gauteng Division, Pretoria, Case No: A99/2014

Amerasan Pillay NO & Another v Jahanna Kalisha Reddy & 2 Others, Kwazulu-Natal High Court, Durban, Case No: 10717/2015

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Sentinel Retirement Fund v Ntombizodwa Joyce Hadebe & Another, High Court of South Africa, Gauteng Division, Pretoria, Case No: 5643/2017

Forsyte Props 5 (Pty) Ltd v Norman Nicky Gebashe & Others, Kwazulu-Natal High Court, Pietermaritzburg Division, Case No: 8378/16P

Judgments upheld on appeal

None reported.

Judgments overturned on appeal

None reported.

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