APPLICANT: JUDGE BHEKISISA JEROME MNGUNI

COURT FOR WHICH APPLICANT APPLIES: COMPETITION APPEAL COURT

1 **The candidate's appropriate qualifications**

1.1 The candidate holds the following academic qualifications:

1.1.1 Bachelor of Laws (B Juris) (University of Zululand) – 1987;

1.1.2 LLB (University of Zululand) – 1991; and

1.1.3 Certificate in Legislative Drafting (University of Johannesburg) – 2005.

1.2 The candidate possesses the requisite qualifications for the position applied for.

2 **Whether the candidate is a fit and proper person**

2.1 The candidate has been a judge of the High Court (KwaZulu-Natal Division) with effect from 1 January 2009.

2.2 There is nothing in the application or the judgments considered by the reviewers that would suggest that the candidate is not a fit and proper person.

2.3 No adverse comments have been received.

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

3.1 The Competition Appeal Court bench currently comprises seven Justices of Appeal, of whom three are men (two white and one black) and four are women (three black and one white).

3.2 The candidate is a black man. The candidate's appointment as a Justice of Appeal of the Competition Appeal Court would help ensure that the racial composition of the Court is closer to the racial and gender composition of the country.

3.3 Moreover, the candidate has been nominated to the position sought by the Pietermaritzburg and Northern Kwazulu-Natal Branch of the Black Lawyers Association. This endorsement may therefore contribute, in the eyes of the public, to the candidate's suitability in furthering the transformation sought to be achieved in the judiciary.

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

4.1 The candidate qualified in 1991. His career has encompassed practicing as an attorney from 1994 to 2008. In various periods during 2007 and 2008, the candidate acted as a judge in the High Court of South Africa, KZN Division. The candidate took up his current permanent position as a judge in the KZN Division with effect from January 2009, which position he still occupies. The candidate also acted as Acting Deputy Judge President for the period January to April 2016.

4.2 A number of the candidate's reported and unreported judgments that we have reviewed demonstrate that he is able to grapple with complex factual matters and to undertake substantial case law research in preparing his judgments.

4.3 The candidate's knowledge of the law is evident from several of his written judgments.

4.4 The candidate also appears to be experienced in commercial law matters. The candidate has been sitting as an acting judge in the Competition Appeal Court for some seven months where he has been exposed to competition law. He has, however, not written any judgments alone as an acting judge in the Competition Appeal Court although he has co-written one with Victor AJA. In *Hosken Consolidated Investments Limited & Another v The Competition Commission Case No. 154/CAC/Sept 17,* Mnguni AJA, together with Victor AJA, upheld the appeal and issued a declaratory order to the effect that the appellants did not require the Competition Commission's approval. The matter essentially centred around an advisory opinion issued to the first appellant by the respondent.

4.5 The Competition Appeal Court was required to deliberate at some length on two key issues: (1) whether the Competition Tribunal has jurisdiction to entertain a matter in circumstances where a party has not notified a transaction in terms of section 13 of the Competition Act; and (2) whether an acquiring company that has already obtained an unconditional prior approval from the Competition Commission to acquire sole control of an entity over which it exerts control, must

still obtain merger approval before entering into a subsequent transaction with that entity.

4.6 In August 2017, the Competition Commission gave an advisory opinion in terms of which it said the proposed transaction was notifiable based on its view that, firstly, the first appellant would be acquiring (through another entity) more than half of the issued share capital of the second appellant, as contemplated by section 12(2)(a) of the Act; and, secondly, circumstances had changed since 2014 and the structure of the market altered with the effect that a merger investigation rather than an advisory opinion was appropriate (the Competition Commission also stressed that an advisory opinion was precisely that, and the Commission could not be held to a non-binding agreement).

4.7 The appellants approached the Tribunal on an urgent basis to seek certainty. The Tribunal asked the parties to address it on whether it had jurisdiction to consider the application because it was of the view that a transaction is only triggered when the parties have first notified the Commission of the transaction. The Tribunal heard and dismissed the application. It said it does not have the power to grant declaratory relief in terms of sections 27(1) and 58 of the Act; and that the Commission's advisory opinion is not binding on the appellants. It held further that the notification of a transaction to the Commission is a jurisdictional requirement to trigger their function. The Tribunal concluded that that appellants could thus not approach the Tribunal directly for the order they sought.

4.8 The appellants, aggrieved at the Tribunal's outcome, approached the Competition Appeal Court. The essence of its argument on appeal was that the Tribunal ought to have found that it had jurisdiction to grant the appellants their declaratory relief on the same basis that it has jurisdiction to interdict the implementation of notifiable mergers and to order their notification to the competition authorities for approval under the Act (especially in terms of section 27(1)(d)).

4.9 Mnguni and Victor AJJA upheld the appellants' submission that it would result in an incomprehensible reading of the Act to conclude that if the Act conferred upon the Tribunal the power to declare that a transaction constituted a merger, to order the parties to notify the merger, and to order the parties not to implement the transaction (pending approval) yet at the same time preclude the Tribunal from being able to issue declaratory relief that a transaction does not constitute a merger when approached by the parties for such relief. The acting judges concluded that the jurisdictional basis had been established such that the Tribunal's powers indeed include declaratory orders for relief.

4.10 The Competition Appeal Court was then required to determine whether the Tribunal ought to have exercised its discretion in favour of the appellants. The court considered the jurisprudence. It aligned itself with the two-stage approach to the consideration of an application for declaratory relief and surmised that the appellants have a legal interest in the declaratory relief as it relates to whether there is a legal obligation to notify the competition authorities about the proposed transaction.

4.11 The Competition Appeal Court again upheld the appellants' submissions that at the time the competition authorities had conducted a merger assessment in terms of section 12A of the Act and were aware that in time the first appellant would exert sole control over the gaming interests of the second appellant and Niveus. At the same time the first appellant also enjoyed sole control of Niveus gaming interests. Accordingly, it became clear that, in analysing section 12(2), it becomes clear that the section does not purport to define control in terms of an exhaustive list as details may very often be unclear at the time of the notification. Accordingly, held the court, section 12(2) does not list different kinds of control, each of which is separately notifiable but illustrates different ways in which control could be acquired within the meaning of section 12(1). Once sole control has been approved and acquired in one of the ways envisaged in section 12(2), it does not require separate approval if it is later implemented in one of the other ways contemplated in 12(2).

4.12 The court finally concluded as follows:

4.12.1 The Competition Commission cannot demand the notification of a transaction based on a reason that it wishes to assess the implications of that transaction. The effects of an acquisition of control must be considered when the merger approval is sought; and

4.12.2 The Tribunal has (based on the particular circumstances of the case) jurisdiction to grant declaratory relief.

4.13 We note from media reports that the Commission has stated that this Competition Appeal Court decision creates a precedent which can be used by parties to challenge a non-binding advisory opinion issued by the Competition Commission if they do not agree with it. It appears that the Competition Commission has filed (or is considering) an application for leave to appeal to the Constitutional Court. The Commission is reported as saying that its final decision on the advisory opinion service will be made after the outcome of its application for leave to appeal (and appeal if leave is granted) to the Constitutional Court.

4.14 The candidate has not published any articles or books in the legal field.

4.15 The candidate does not profess to have particular experience or expertise in constitutional law. The candidate does, however, appear to be familiar with constitutional court jurisprudence, as gleaned from at least one of the judgments reviewed.

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

5.1 The candidate has, to the best of the reviewers' knowledge, demonstrated an appreciation of the values of the Constitution and the rule of law. This was evident in the following judgments:

5.2 *Sithole v S* (AR 118/13) [2013] ZAKZPHC 30 (20 June 2013)

Mnguni J wrote the judgment in this appeal against the severity of the sentences imposed by the Magistrate. Patel JP and Stretch AJ concurred with his finding. The court a quo imposed a non-parole

period of 25 years in respect of three counts of attempted robbery, two counts of indecent assault, two counts of assault with intent to do grievous bodily harm and three counts of rape.

Mnguni J found there to be no material misdirection by the trial court. Having carefully considered the evidence placed before the Magistrate in mitigation of the sentence and aggravation, respectively, Mnguni J aligned himself with the court *a quo*'s findings both that rape is one of the most serious of the violent crimes, that the accused was unmoved by the anguish of the complainants, denied involvement despite DNA evidence, and had conducted himself in a manner which showed a sadistic streak, and that actions such as those of the accused rip into the moral fabric of the country. The appeal was accordingly dismissed and the sentences imposed by the magistrate were confirmed.

5.3 *Klaas v S* (AR 587/12) [2013] ZAKZPHC 29 (11 June 2013)

Mnguni J wrote the judgment in this criminal appeal from the Magistrates' court, with which Gorven, J, sitting with Judge Mnguni, concurred. The appellant appealed both his conviction of rape and GBH and the sentence of twenty years imprisonment.

With regard to the appellant's argument that the complainant had been drinking, the court considered and agreed with the court a quo's assessment, that the complainant's observations of her surroundings and interactions, indicated she was in control of her faculties when she was assaulted and, importantly, she was able to indicate to her mother where the sexual assault occurred. The judge was also

satisfied that the complainant had correctly identified the appellant as the assailant.

Mnguni J went on to say that he agreed with the Magistrate's reasoning and findings in convicting the appellant as he had carefully satisfied himself that the appellant's exculpatory evidence but also that of his witnesses were not true, and that each element of the offence was established by evidence that was truthful and reliable beyond reasonable doubt.

In weighing up the considerations regarding sentence, Judge Mnguni said that although the interests of society are not best served by too harsh a sentence, one must strive for a balance so that it is equally not too lenient – the punishment must fit the crime. Remarking on the extremely prevalent and serious offence of rape, the judge concluded that even if there was substantial and compelling circumstances to justify a sentence lighter than that prescribed by the legislated minimum, he was mindful of the fact that a crime of a particular kind has been singled out for severe punishment by the legislature. He accordingly dismissed the appeal, and both the conviction and sentence were confirmed.

5.4 *SOHCO Property Investments (Company Incorporated Under Section 21) v Ramdass and Others* (14264/10) [2013] ZAKZDHC 4 (15 January 2013)

This was an application for eviction of 232 respondents from a social housing complex. The applicant was a Section 21 Company, not for gain, and provided social housing complexes for families with a combined monthly income of between R2 500 and R7 500. One of

the key features of the housing scheme was the benefit of cross-subsidisation in that while all the units were the same size, a tenant's rent varied according to their individual income. Each respondent was in occupation in accordance with a written lease agreement, all of which were identical for the most part, save for the monthly rent payable. It specifically provided for termination in the event of any failure by the lessee to make payment. The applicant sought the eviction of the respondents for ongoing failure to pay their respective rentals.

Mnguni J carefully considered the merits of each and then dispensed with all four points *in limine* raised by the respondents, for lack of substance.

The respondents relied, in the main, on the fact that the lease agreements were concluded in English and that the rental amounts had only been inserted (handwritten) in the space provided after signature. Accordingly, said the respondents, they had never actually agreed to pay the rentals later entered onto their leases, which is why they declined to pay the rentals.

In his consideration of the merits, Mnguni J indicated upfront that Swain J's comments in a similar matter found favour with him. Namely, the respondents' conduct amounted to a "*rent boycott*". *"In my view, such conduct amounts to the kind of self help that is inimical to our legal order"* said Judge Mnguni. The judge was satisfied that the notices of termination of the leases were properly served upon the respondents and that they became unlawful occupiers with effect from 10 October 2010. Judge Mnguni was also satisfied that since the respondents were in unlawful occupation for

less than six months, the additional requirements of The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) did not apply.

The judge discerned from the papers that the respondents were not prepared to the pay rental amounts stated in their leases. He said it was apparent from the evidence that the respondents had appropriated unto themselves when, where and how to pay the rentals. He said it was significant to note that they had defied the Housing Tribunal and embarked on a deliberate strategy of non-payment to compel the applicant to reduce the amounts.

Mnguni J acknowledged that he was required by the Constitution and PIE to (in addition to lawfulness of the occupation) *"infuse elements of grace and compassion into the formal structures of the law".* In response to the respondents' argument that it was not just and equitable to evict the respondents as it would result in homelessness, Judge Mnguni distinguished the case relied upon by the respondents on the basis that the respondents had occupied the property *after* concluding the lease agreement. The judge satisfied himself that the respondents had not made out a case to persuade him why their interests should trump the applicant's. Accordingly, he said it was just and equitable that an eviction order be granted against all the respondents in the matter.

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

6.1 The reviewers have considered a total of 29 judgments which have either been written by the candidate, are judgments on appeal from

the candidate's judgments, or are judgments with which the candidate has concurred.

6.2 The candidate listed seven of his judgments that were taken on appeal, three of which were successfully appealed against. A further judgment taken on appeal was found which was not listed in the candidate's application, namely *Zwelibanzi Utilities (Pty) Ltd Adam Mission Services Centre v TP Electrical Contractors CC* (160/10) [2011] ZASCA 33 (25 March 2011). The candidate had not written that judgment but concurred in it. The appeal against the judgment was unsuccessful.

6.3 There appear to be no pending appeals against the candidate's judgments.

6.4 The three judgments overturned on appeal are:

6.5 *Rinaldo Investments (Pty) Ltd v Giant Concerts CC and Others* [2012] 3 All SA 57 (SCA)

In this judgment, the Supreme Court of Appeal overruled the decision of Mnguni J in *Giant Concerts CC v Minister for Local Government, Housing and Traditional Affairs KwaZulu-Natal and Others* 2011 (4) SA 164 (KZP). The SCA's judgment was upheld on appeal by the Constitutional Court.

The question before the High Court was the validity of a sale by private bargain of municipal land to Rinaldo Investments, to which Giant Concerts had objected. Mnguni J Ordered the setting aside of

the agreement of sale and the Municipality's decision to alienate the property.

On the issue of *locus standi*, Mnguni held at para [22] of his judgment that "*once the right to object is conferred and the decision is adverse to the objector, it follows that a person is entitled to approach a court for appropriate relief."*

On appeal, the SCA held that the issue of the standing of the first respondent to review the decision of the municipality to sell the land to the appellant was decisive of the appeal.

The registered address of Giant Concerts was in Pietermaritzburg while the land to be sold was in Durban. Further Giant Concert did not claim to act in any capacity other than in its own interest.

The SCA considered that in terms of the relevant Ordinance only those who have an interest in "*the interests of the borough*" may object to a sale by private bargain such as the one at issue. Giant Concerts did not have such an interest. It therefore also did not have sufficient interest to challenge the validity of the sale.

6.6 *Baront Investments (Pty) Ltd v West Dune Properties 296 (Pty) Ltd and Others* 2014 (6) SA 286 (KZP)

Mnguni J granted an order for a servitude to be registered over the appellant's property. He refused leave to appeal his decision. The SCA granted leave to appeal to a full bench. The appeal court said the following regarding Judge Mnguni's decision:

> *"In the circumstances of this case, it was not open to the Court to make that order. The first, second and third respondents were not entitled to have any servitude registered over the appellant's property.*
>
> *The order granted by the Court a quo should not be allowed to stand. Had the Court a quo decided the matter on the facts and the law applicable, it would not have granted the order which it did, and it would have dismissed the application with an appropriate order as to costs."*

6.7 *South Coast Furnishers CC v Secprop 30 Investments (Pty) Ltd* 2012 (3) SA 431 (KZP)

This is an appeal against the judgment of Mnguni J in *Secprop 30 Investment (Pty) Ltd v South Coast Furnishers CC* 2010 JDR 0557 (KZD)

The issue for determination was whether a lease was a monthly tenancy or a term lease. Effectively, the case was to be resolved around the premise that if the lease is truly in terms of a monthly tenancy the timeous notice cancelling the lease and requiring the respondent to vacate the premises. If, however, the contrary contention as to a term lease is correct, the purported cancellation is of no force or effect.

Central to the finding of the Court *a quo* was an admission by the tenant that he occupied in terms of a monthly tenancy. On appeal, an application was made to withdraw the admission if it were found that

such an admission had been made. On this point, the Full Bench held that:

> "*[t]aken within the context of the answering affidavit as a whole, and coming as it does after para 4 thereof in particular, I am not convinced that the first para 7 amounts to a judicial admission*." p437C-E

The Court also remarked that:

> "*The second sentence of para 8, relating to the location of the premises, is clearly admitted. There is therefore no binding admission to withdraw. If, contrary to what I have found, the first para 7 of the answering affidavit does amount to an admission of the first sentence in para 8 of the founding affidavit, the application to withdraw that admission can clearly cause no prejudice whatsoever to the applicant, in the light of the thrust of the entire answering affidavit. Any such admission was clearly made in error and the applicant could have been under no illusion as to the case made out by the respondent. If it did amount to an admission, therefore, I would have been disposed to grant the application to withdraw the admission in question.*"

The further question was whether the papers raised a genuine dispute of fact. Decisive on appeal was the approach employed by Mnguni J in the evaluation of the versions presented in the affidavits by parties.

The Full Court observed that there were "*apparent improbabilities*" on which the applicant relied which, when weighed against the "*full*

and detailed" version in the answering affidavit, and to which the applicant did not deal with in the replying affidavit, the Court a quo had no basis "*to have granted the order on the papers before him. He should have found … that the respondent had raised a genuine factual dispute as to the existence or otherwise of the oral lease contended for by it*."

6.8 Furthermore, althrough the following judgment dismissed an appeal against a judgment of the candidate, it raised serious conerns regarding the candidate.

Northern Endeavour Shipping Pte Ltd v owners of MV Nyk Isabel and Another [2016] 3 ALL SA 418 (SCA)

This appeal involved a claim for security by the second respondent against the appellant. Mnguni J sat in the KwaZulu-Natal Local Division, Durban, exercising its admiralty jurisdiction. Mnguni J upheld the claim and ordered the appellant to provide the security demanded of approximately USD 10 million within ten days of the court's order. The penalty for it failing to do so was that the deemed arrest of the *NYK Isabel*, which it had obtained in order to pursue an action *in rem* against that vessel in respect of a claim against the respondent, would fall away and become of no force and effect.

In addition, the order provided that the action would either lapse automatically, or that the appellant could approach the court for an order dismissing the action. In practical terms the effect of the order was that the appellant would be unable to continue with its action. The High Court granted leave to appeal to the SCA against that

order. The SCA remarked that the circumstances in which the claim for security was made were unusual and therefore felt it necessary to set out the factual background in some detail.

The SCA dismissed the appeal subject to two amendments to the court order made by Mnguni J. The following remarks by Wallis JA (all concurring) are nevertheless noteworthy in that they illustrate that Mnguni J's less than satisfactory approach to dealing with the issue of security.

> *"[52] It is unclear on what grounds the High Court exercised its discretion in favour of NYK. Having set out the facts it summarised the issues and concluded that there were five questions that needed to be addressed. The third of these was whether the court had jurisdiction in respect of NES to order it to furnish security for a claim advanced in Brazil and the fourth was whether the court should exercise its discretion to make such an order. It then said that the fifth issue was whether NYK had established a genuine and reasonable need for such security. That inverted the enquiry because proof of a genuine and reasonable need for security is a prerequisite for the exercise of the discretion. Proof of that need is essential.*
>
> *[53] This may explain why in the latter part of the judgment the fourth and fifth issues were dealt with together. But having set out the arguments by NYK in favour of security being ordered, the judgment digressed to deal with the quantum of security. It concluded simply:*

> *'I agree with counsel for applicants that fairness would, in the circumstances, dictate that the respondent actually pay (and secure) its liability to the intervening applicant and in that way, if the respondent is correct, it will have met its obligation in terms of the binding judgment and will have recovered that which it claims to be entitled to recover in the South African action in rem. Conversely, if the intervening applicant is correct, and the respondent's claim in rem is bad, the respondent will have met its obligations. Obviously in those circumstances the South African court will ultimately decide where the losses will lie.'*

The following paragraph added the conclusion that the application for 'additional' security was genuine and reasonable.

[54] It seems to me that this approach conflated the question whether NYK's need for security was reasonable and genuine with the exercise of the court's discretion and led in the end result to the court not dealing with the latter question. It falls to be emphasised that these are separate issues. Whether there is a reasonable and genuine need for security is a prior question concerned with the likelihood that the applicant for security will be paid if it is successful in obtaining an order for costs or in pursuing its claim."

Although the candidate arrived at the correct outcome, there was an apparent lack of appreciation for the fundamental issues in the case,

and he conflated them. This is, however, the first and only maritime law matter that the candidate appears to have been exposed to in his capacity as a judge as far as we are aware.

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

7.1 The candidate was a legal advisor for one year, and after admission as an attorney in 1994, he practiced as such until 2009 when he became a judge of the High Court. He accepted an appointment as an acting judge of the Competition Appeal Court in June 2017. He can be considered a seasoned attorney and judge and is currently acquiring experience in the Competition Appeal Court, to which he is now applying for a permanent position.

7.2 Although the candidate is undoubtedly an experienced judge of the High Court, his experience in competition law matters is limited.

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

8.1 The candidate's judgments demonstrate that he has good linguistic skills in English.

8.2 His proficiency in other languages is unknown to the reviewers.

8.3 No adverse comments were raised about the candidate's communication skills.

8.4 His judgments appear to be well-written and reasoned.

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

9.1 It appears that the following judgments were handed down by the candidate more than 3 months after the hearing:

9.1.1 *Giant Concerts CC v Minister of Local Government, Housing And Traditional Affairs, Kwazulu-Natal, and Others* 2011 (4) SA 164 (KZD) (11 ½ months);

9.1.2 *Sohco Property Investments (Company Incorporated Under Section 21) v Ramdass* 2013 JDR 0244 (KZD) (just short of 5 months);

9.1.3 *Oppex Consultants CC v University of Kwazulu-Natal* (1053/08) [2012] ZAKZDHC 30 (1 JUNE 2012) (9 months);

9.1.4 *First Rand Bank Ltd t/a Wesbank v Dual Discount Wholesalers CC* (2142/2009) [2013] ZAKZDHC 23 (16 MAY 2013) (1 year);

9.1.5 *Jazira Holdings Ltd v Wonderflooring (Pty) Ltd and Others* (2277/09) [2015] ZAKZDHC 61 (12 AUGUST 2015) (just more than 3 months);

9.1.6 *Distell Ltd v KZN Wines and Spirits CC* (10006/2011) [2013] ZAKZDHC 25 (23 MAY 2013) (13 months)

9.1.7 *Jacobs and Another v Upward Spiral 1196 CC* (AR 539/09) [2012] ZAKZPHC 9 (27 FEBRUARY 2012) (2 years)

9.1.8 *Chundrakumar v MEC for Transport, Kwazulu-Natal and Others* (1671/10) [2012] ZAKZPHC 15 (22 MARCH 2012) (5 months).

9.2 Although the candidate's judgments appear to be well reasoned, it is of grave concern that the candidate has had so many judgments outstanding for such long time.

9.3 In particular, that the candidate can have judgments outstanding for a year or more, and, in one case, two years, should weigh against the candidate's suitability for the position applied for, unless the candidate is able to satisfy the Commission of the reasons for the long periods.

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

10.1 There is no indication that the candidate is unfair or lacking impartiality in the judgments he has delivered. No adverse comments have been received.

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 No adverse comments have been received. It is noted that the reviewers do not ordinarily practice in the division in which the candidate is sitting as a permanent judge (KwaZulu-Natal). The reviewers have not had any personal experience with the candidate and are, accordingly, not in a position to provide any meaningful comments in this regard.

13 **The candidate's administrative ability**

13.1 It is noted that the candidate is a member of several committees in the Office of the Judge President.

13.2 The candidate also served as acting Deputy Judge President from 24 January 2016 to 30 April 2016. This would seem to suggest that he has gained recognition for his administrative ability.

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

14.1 No adverse comments have been received.

15 **The candidate's judicial temperament**

15.1 No adverse comments have been received. The judgments that have been reviewed all appear to give thorough consideration to the issues.

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

16.1 The candidate assisted in integrating a Legal Practice course into the curriculum of the University of Zululand's law degree. The effect of this was that the students gained practical experience and that the community received much-needed legal service.

16.2 This is demonstrative of a commitment to the values and needs of the community.

17 **The candidate's potential**

17.1 Although the candidate has only co-written one judgment in the competition law arena in his capacity as an acting judge of the

Competition Appeal Court, there is no reason to conclude that the candidate does not have potential for permanent appointment to the Competition Appeal Court if he obtains further experience as indicated in 7.2 above. The candidate is 53 years of age and has a cumulative 27 years' experience in law, nine of which were as a director in law firms, and ten on the bench.

17.2 The candidate emerged from humble beginnings and a rural background and has a number of noteworthy achievements to his name, particularly at his relatively young age of 53.

17.3 From these attributes and achievements, one can infer that the candidate has a strong potential to succeed in the position applied for. However, it may be preferable that he acquire further experience in competition law and that his occasional (but severe) delay in handing down judgments is carefully considered.

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

18.1 Subject to what is stated in paragraph **Error! Reference source not found.** above, the candidate's competence, clarity of thought and linguistic skills would send a positive message to the community at large in the event of his appointment.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Judgments upheld on appeal

Northern Endeavour Shipping Pte Ltd v owners of MV Nyk Isabel and Another [2016] 3 ALL SA 418 (SCA)

Distell Ltd v KZN Wines and Spirits CC (20291/2014) [2016] ZASCA 18 (15 March 2016)

Phulele Trading 105 CC v Sewpersadh and Another (AR12/2017) [2017] ZAKZPHC 53 (1 December 2017)

Six – A Property Investments (Pty) Ltd v CJA Ferreira and another [2014] KZNPHC 11 (28 February 2014)

Judgments overturned on appeal

Rinaldo Investments (Pty) Ltd v Giant Concerts CC and Others [2012] 3 All SA 57 (SCA)

Baront Investments (Pty) Ltd v West Dune Properties 296 (Pty) Ltd and Others (AR 372/12) 2014 (6) SA 286 (KZP)

South Coast Furnishers CC v Secprop 30 Investments (Pty) Ltd 2012 (3) SA 431 (KZP)

Reported decisions

Business Partners Ltd v World Focus 754 CC 2015 (5) SA 525 (KZD)

Unreported decisions

Oppex Consultants CC v University of Kwazulu-Natal (1053/08) [2012] ZAKZDHC 30 (1 June 2012)

Ascon Trading CC v Anix Trading 401 CC t/a She Sand And Others (7309/2011) [2012] ZAKZDHC 32 (8 June 2012)

SOHCO Property Investments (Company Incorporated Under Section 21) v Ramdass and Others (14264/10) [2013] ZAKZDHC 4 (15 January 2013)

First Rand Bank Ltd t/a Wesbank v Dual Discount Wholesalers CC (2142/2009) [2013] ZAKZDHC 23 (16 May 2013)

Distell Ltd v KZN Wines and Spirits CC (10006/2011) [2013] ZAKZDHC 25 (23 May 2013)

Sithole v S (AR 118/13) [2013] ZAKZPHC 30 (20 June 2013)

Klaas v S (AR 587/12) [2013] ZAKZPHC 29 (11 June 2013)

Jazira Holdings Ltd v Wonderflooring (Pty) Ltd and Others (2277/09) [2015] ZAKZDHC 61 (12 August 2015)

Hosken Consolidated Investments Limited & Another v The Competition Commission Case No. 154/CAC/Sept 17

Jacobs v Upward Spiral 1196 CC 2012 JDR 0270 (KZP)

Secprop 30 Investment (Pty) Ltd v South Coast Furnishers CC 2010 JDR 0557 (KZD)

Chundrakumar v MEC for Transport, Kwazulu-Natal and Others or Sookraj v MEC for Transport, KZN & others [2012] JOL 28773 (KZP)

CANDIDATE : JUDGE BHEKISISA JEROME MNGUNI