

CANDIDATE : ADV GLENN RICHARD THATCHER

APPLICANT: GLENN RICHARD THATCHER

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

1 The candidate's appropriate qualifications

1.1 The candidate holds the degrees of Bachelor of Arts and a Bachelor of Laws from the University of Natal, Durban (as it then was) and a Master of Laws degree from the University of Cambridge.

1.2 He is suitably qualified.

2 Whether the candidate is a fit and proper person

2.1 The candidate is a member of the Society of Advocates of KwaZulu-Natal, in good standing, and has practised as advocate and since 1985.

2.2 The candidate is 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 white man and therefore his appointment would not contribute to the racial or gender transformation of the judiciary.

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

- 4.1 The candidate has practised as an advocate in Durban, for the last thirty-two years, and for the last three years, as a senior counsel.
- 4.2 The candidate has vast experience in most, if not all, areas of the civil law (see paragraph 6.2.5 of the candidate's application).
- 4.3 This is demonstrated by the number of cases, dealing with a variety of subjects listed by the candidate at paragraph 6.3 of his application as significant.
- 4.4 It should be noted, that the candidate has made numerous appearances in the Supreme Court of Appeal and is thus familiar with dealing with matters from inception to appearing in the Supreme Court of Appeal.
- 4.5 The candidate, in the recent past, has not had much experience of criminal law. He was employed, however, as a prosecutor for a period of seven months; attended to murder trials in the early years of his practice on a *pro deo* basis and has sat an Assessor in criminal trials.
- 4.6 From a reading of the judgments prepared by the candidate and the manner in which he is able to distil the law, we are of the opinion that should he be required to do so, the candidate will be more than capable of coping with criminal matters.

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

5.1 The candidate, does not appear to have a practice particularly focused on constitutional law.

5.2 However, from a reading of his numerous judgments, it is clear that in all matters, whether they be commercial, labour, or administrative, the candidate reflects the values in our constitution in the manner in which he has adjudicated these matters.

6 Whether any judgments have been overturned on appeal

6.1 *NMB Bank Limited v Capsopoulos and another* [2017] ZASCA 94

6.1.1 This matter involved banking procedures, foreign exchange regulations in both South Africa and Zimbabwe and whether or not the Respondent was aware of the unlawful source of the money received.

6.1.2 The Supreme Court of Appeal ultimately found, unlike the candidate who dealt with the trial in the court a quo, that the Respondent ought to have known that the receipt of the funds was unlawful, whether or not they were in truly were aware of such fact, and that the same amounted to fraud.

6.2 *Harilall v Standard of South Africa*, [2017] JOL 37946 (KZP)

6.2.1 The judgment of the candidate was taken on appeal to the full bench of the Kwazulu-Natal High Court, Pietermaritzburg. This trial matter related to the National Credit Act and whether or not a debt review had been lawfully terminated; whether the

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Defendant was in fact indebted to the Plaintiff; and whether or not in this instance, the decision in *Ferris v First National Bank Limited* 2014 (3) SA 39 (CC) was of application.

6.2.2 The Appeal Court found that the matter in question was distinguishable on the facts from the aforesaid Ferris case and that it was not bound by the Ferris decision, as the candidate had found *a quo*.

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

7.1 The candidate commenced practice at the Durban Bar in 1985 and has practised as such for the last thirty-two years.

7.2 The candidate took Silk in November 2014, an event which was deferred due to family commitments.

7.3 The candidate sat as a Small Claims Commissioner for a period of approximately ten years.

7.4 The candidate was chairman of the Tax Board from August 2008 to 2013.

7.5 The candidate has acted as an arbitrator from time in ad hoc arbitrations.

7.6 The candidate has been appointed a referee in terms of section 5(2)(e) of the Admiralty Jurisdiction Act 105 of 1983 from time to time.

7.7 The candidate is a former member of the KwaZulu-Natal Society of Advocates Bar Council.

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7.8 The candidate has also acted on five different occasions in the KwaZulu-Natal High Court for a cumulative period of five months.

7.9 In light of the above and the variety of work attended to by the candidate, we find him to have extensive professional experience.

8 The candidate's linguistic and communication skills

8.1 The judgments written by the candidate are in English and he is proficient in the same.

8.2 The candidate articulates both the facts and legal principles clearly and has written a number of judgments in opposed applications and trial matters in an irrelatively short period of time (refer to the list of judgments annexed hereto).

8.3 It is noteworthy that, for the last fourteen years, the candidate has, on behalf of the Society of Advocates of KwaZulu-Natal, been actively involved in the training of pupil advocates in Legal Writing. This is indicative of the high standard and quality of the candidate's linguistic and communication skills, especially in the written form.

9 The candidate's ability to produce judgments promptly

9.1 From the judgments examined, the candidate generally produces written judgments in opposed matters within a period of two weeks from hearing.

9.2 Of the judgments examined, two matters, which took three to four weeks for judgment to be delivered, were trial matters that involved an analysis of oral evidence as well as legal argument.

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9.3 The candidate has stated that he has only one outstanding reserved judgment, but it was heard only five days before the application was submitted.

9.4 In the circumstances, the candidate has demonstrated that he is able to deliver timeous judgments, even when allocated a number of opposed matters in the same session.

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

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

10.2 The candidate has sat as a Small Claims Commissioner, an arbitrator on *ad hoc* occasions, chairman of the Tax Board and a referee in terms of section 52(e) of the Admiralty Jurisdiction Act as well as a member of the Society of Advocates of KwaZulu-Natal's sub-committee, dealing with complaints in relation to its members.

10.3 In the light of all of the candidate's above experience, it would appear that he is a fair and impartial adjudicator.

11 **The candidate's independent mindedness**

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

11.2 The candidate has not written any dissenting judgments of which we are aware.

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

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12.1 The candidate has, over a number of years, appeared in Court frequently and is familiar with court proceedings, practise and procedure.

12.2 The candidate has acted on five separate occasions in the High Court and has had no difficulty in conducting court proceedings.

13 The candidate's administrative ability

13.1 When the candidate acted as a judge in September 2013, the candidate produced four written judgments (referred to a list of cases annexed hereto).

13.2 When the candidate acted as a judge in March 2015, the candidate produced eight written judgments.

13.3 This is indicative of the candidate's administrative abilities in managing to fulfil his court duties and provide judgments timeously.

13.4 Bearing in mind the various positions which the candidate has held and the fact that he has been a successful advocate for the last thirty-two years, there is no reason to doubt his administrative abilities.

14 The candidate's reputation for integrity and ethical behaviour

14.1 The candidate has high regard for ethics and integrity so much so that the candidate has been appointed by the Society of Advocates of KwaZulu-Natal for a cumulative period of eight years to its Complaints sub-committee.

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14.2 This sub-committee investigates and adjudicates complaints against members of the Society of Advocates of KwaZulu-Natal in relation to their conduct and any potential unethical behaviour.

15 The candidate's judicial temperament

15.1 No concerns appear from the judgments we have considered.

15.2 The candidate, during in his acting appointments, was considered to be well suited in temperament by his 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 served *pro bono* as a commissioner in the Small Claims Court for a period of ten years.

16.2 The candidate, being aware of the difficulties faced by pupils (especially those not proficient in the English language has dedicated, many hours of his personal time over the last fourteen years in lecturing, setting assignments, and marking the same in order to assist pupil advocates joining the profession to communicate and draft legal documents proficiently and to uplift the standard of advocacy generally.

17 The candidate's potential

17.1 The candidate is an experienced advocate with extensive and varied experience in litigation and the resolution of disputes.

17.2 He has been invited to act as a judge on numerous occasions.

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

18.1 The candidate is a Senior Counsel and a practising advocate of many years standing.

18.2 The candidate possesses a wealth of knowledge in relation to court proceedings as well as the law itself.

18.3 He would, in our opinion, be an asset to the judiciary and, his experience, in litigation, would be invaluable.

18.4 Such experience and knowledge is invaluable and would send a message, that the bench is one of experience and sound legal knowledge and which would benefit litigants obtaining justice before the Court.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Pacific International Lines (Pty) Ltd v Capewinds Trading 33 CC [2016] JOL 37310 (KZD)

M K v R K [2013] ZAKZDHC 51

Matisonn v Matisonn and others [2016] JOL 37353 (KZD)

M v M and Others [2013] ZAKZDHC 49

Standard Bank of South Africa Limited v Harilall [2015] ZAKZDHC 33

Hlatswayo N.O. and Others v Silver Falcon Trading 99 (Pty) Ltd [2015] ZAKZDHC 28

FirstRand Bank Limited t / a FNB Insurance Brokers v Prithipal [2015] JOL 32993 (KZD)

Ethekwini Municipality v Gumbi and Others [2015] ZAKZDHC 24

W v C [2015] ZAKZDHC 25

Deoraj and another v Maharaj NO and others [2017] JOL 39289 (KZD)

78 Stamfordhill CC v Velvet Star Entertainment CC [2015] ZAKZDHC 34

LOT 695 Hibberdene (Pty) Ltd vs Coalition Trading 689 CC [2015] ZAKZDHC 37

Appeal Judgments

NMB Bank Limited v Capsopoulos and another [2017] ZASCA 94

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Harilall v Standard Bank of South Africa [2017] JOL 37946 (KZP)

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